

Chapter 5

**Developing a balanced framework for Foreign Direct Investment in SADC:
a decent work perspective**

Daniela Zampini

SADC countries are both recipients and providers of Foreign Direct Investment (FDI). Multinationals and Social Policies (MNEs) are currently found in a diverse range of sectors from construction, industrial chemicals, telecommunications and media to paper, packaging, metal and mining industries. Recently, a Protocol on Finance and Investment (FIP) has been developed as a tool for achieving regional integration through the harmonisation of financial and investment policies in member states. However, there are still instances (see for example the Namibia Ramatex case) of SADC countries competing with each other for foreign investment without being able to measure the benefits derived from the investment vis-à-vis the costs of the incentive package provided by the government.

There is growing concern that the process of competitive bidding between countries for FDI may be inducing countries to offer concessions on regulation, taxes, environmental protection and labour standards that are unnecessary. Apart from the direct social and environmental impact, these concessions may impair the competitiveness of the domestic economy, reduce the potential for such investment to contribute to development, and ultimately impede the entry of FDI. 'Beggars-thy-neighbour' investment incentive competition may even distort the international allocation of FDI away from sites with a potentially higher return in terms of development and to investors.

The paper explores the political feasibility of a SADC balanced development framework for FDI, where countries begin to act collectively to resolve the issue of investment policy competition by making incentives more transparent. Two main questions are addressed, namely i) What is the rationale for a SADC-wide framework for FDI? and ii) What are some of the building blocks of a regional policy framework that promotes FDI inflows and more balanced outcomes?

1. Introduction and premises

This paper moves from the premise that, contrary to anecdotal reports, studies conducted on the application of *core labour standards* provide no sufficient evidence that lower labour standards are a key factor driving the investment decision by foreign investors. Nor is a country's poor performance vis-à-vis decent work measures correlated to a competitive advantage in trade (Hayter 2004:15)^[1].

Building on this argument, in attempts to deal with the myths and facts of globalisation, and with its social dimensions in particular, some may argue that globalisation and its related increased mobility of capital are not the unavoidable trigger for downward spiralling trends in living and working conditions of poor people around the world.

However, scholars complain that existing studies do not account for the behaviour of governments bent on attracting investment and increasing their export competitiveness, or of that of MNEs seeking out the most favourable business environment. It is a widely accepted practice for governments to provide incentives (such as tax benefits) to entice foreign firms to invest in their country. According to UNCTAD (1996), the number of countries offering incentives and the variety of these incentives are on the rise. On the other hand, some literature indicates that, given certain circumstances, it does not really matter what thriving or newly-created investment promotion agencies (IPAs) endeavour to achieve with their one-stop-shops and investment facilitation propositions^[3]. Investors become enthusiastic about or steer completely away from countries for reasons that do not always appear to be strictly correlated to a country's reputation for offering stable and viable economic

^[1] See Kucera (2001). The paper uses country-level measures of worker rights (constructed from coding textual information and emphasising de facto considerations) in econometric models of foreign direct investment inflows and manufacturing wages in samples of up to 127 countries. The wage model is used to address a key hypothesised mediating link between worker rights and FDI, but also considered are other possible causal channels through which worker rights might influence FDI, such as through enhancing political and social stability and human capital development. Worker rights addressed are in regard to freedom of association and collective bargaining, child labour, and gender discrimination and inequality.

Please note that this analysis only refers to FDI (definition: a certain amount of holding interest in an enterprise by a foreign investor). It is a long-term ownership of assets in one country by residents of another country for purposes of controlling the use of those assets. FDI stands in contrast to foreign portfolio investment (FPI), where the investor does not necessarily seek to exert control over the foreign assets. See Graham & Krugman (1995). Hence, the considerations expressed above do not preempt the findings of research on MNEs participating in global production systems.

^[3] See for instance Morriset (2003).

and democratic governance conditions. Common wisdom would suggest that free cross-border capital flows are a reflection of good practice in government policy and corporate governance and that investors would pull out if companies and/or countries were not well run^[4]. However, the controversial flow of South-to-South investments to the Sudan or the recent USD400 million investment by AngloPlatinum in Zimbabwe^[5] may hint at different prevailing dynamics. The case of Zimbabwe, in particular, leads to a first consideration of political economy, which is certainly relevant in the context of SADC countries, that is, the difference between dealing with mineral rents (investment in mining) and other kinds of FDI, such as the more foot-loose manufacturing. We reiterate later in the paper the importance of this distinction not only from a methodological and analytical point of view, but also in terms of implications and recommendations for SADC policy makers, business organisations and other stakeholders, such as trade unions and human rights groups.

There is a body of literature on both determinants of FDI and regional integration. However, it still contentious whether regional integration processes have an impact on the amount and the 'quality' of FDI that individual countries and regional value chains can hope to attract.

The rationale for the International Labour Organisation (ILO)^[6] to invite its constituents to begin to deal with the regional dimension of FDI was offered by instances, such as the Namibia Ramatex case (see Box 1), where SADC countries were competing with each other for foreign investment without being able to measure the benefits derived from the investment vis-à-vis the costs of the incentive package. The lack of transparency in the system of investment incentives provided by

^[4] See argument in Ha-Joon Chang (2007).

^[5] See, among others, the following websites:

<http://www.guardian.co.uk/business/2008/jun/25/angloamericanbusiness.zimbabwe> and

<http://www.timesonline.co.uk/tol/news/world/africa/article4207971.ece>. Some of Anglo's shareholders said that they would raise the investment with the company amid concern that it may breach pension fund ethical guidelines. Legal & General is Anglo's largest single shareholder with about 5% of the company. A spokesman said: 'We have a corporate and social responsibility policy and that overrides all investment activity. We do engage with companies to ensure they act in an appropriate fashion.' Roy Bennett, treasurer of Zimbabwe's opposition MDC party, said: 'Any company doing business in Zimbabwe is keeping that regime alive. Anglo American is complicit with the regime as whatever they are doing in Zimbabwe has the endorsement of the regime. The money they invest is a lifeline to the politicians and government of Zanu PF.' On the other hand, the author is not aware of what type of discussions the company entertained with the Government of Zimbabwe and what type of pressure the management has been subject to.

^[6] For more information about the ILO, please visit www.ilo.org.

governments is at the core of the 'beggar-thy-neighbour' policy competition, which can reduce the benefits from investment for host countries as a whole and possibly also place downward pressure on labour standards. It is very clear in the case of Ramatex that lack of coordination and dialogue among SADC member states led to questionable outcomes for the workers in all countries involved.

A consensus seems to emerge that regional collective action may be necessary to prevent a situation in which countries seeking to attract much needed investment are be pitted against one another, with negative consequences for workers and for development. Already in 2004, the Report of the World Commission on the Social Dimension of Globalisation (ILO 2004) recommended that 'as a first step toward a balanced development framework for FDI, countries begin to act collectively to resolve the issue of investment policy competition by making incentives more transparent'. At the global level, the Report of the World Commission has generated concern that the process of competitive bidding between countries for FDI may be inducing countries to offer concessions on regulation, taxes, environmental protection and labour standards that are unnecessary. Sometimes countries are forced to offer incentives merely because other countries offer them, and not because they would choose to do so based on a cost-benefit analysis. The result is a 'winner's curse' phenomenon, where the winning country in the FDI competition wishes it had not won because the costs from the attracted investment, primarily in the form of revenue loss but also including other costs, are much greater than the benefits derived from the FDI influx. Apart from the direct social and environmental impact, these concessions may ultimately impair the competitiveness of the domestic economy, reduce the potential for such investment to contribute to local development, and prevent the entry of FDI. 'Beggar-thy-neighbour' investment incentive competition may even distort the international allocation of FDI away from destinations with a potentially higher return in terms of development and to investors, as well as a reduction of world efficiency and welfare as compared to the level which could be attained if countries agreed not to pursue such policies.

This paper was prompted by the interaction with SADC institutions and SADC social partners conducted during the implementation of a programme of collaboration

between the ILO and the SADC Secretariat^[8]. Entitled ‘SADC: Harnessing social dialogue and corporate social responsibility to achieve Decent Work objectives’, the project was aimed at equipping SADC business’ and trade unions’ umbrella organisations with the necessary tools and analytical skills to participate meaningfully in policy-level discussions concerning SADC regional integration. The main consideration underpinning these efforts is that if SADC policies are generated through a process of social dialogue they are more likely to deliver on both their social and economic objectives. The project also recognised FDI as a priority area among issues of regional relevance where social partners could make a positive contribution (value addition proposition). The project used as a framework of reference one of the ILO instruments dealing with FDI impacts, i.e. the Declaration of Principles concerning Multinationals and Social Policy (MNE Declaration). The MNE Declaration is the only ILO instrument that contains recommendations for enterprises in addition to governments, employers and workers’ organisations. The dual objective of the MNE Declaration is to encourage the positive contribution that multinationals can make to economic and social progress and to minimise and resolve the difficulties to which their various operations may give rise. It provides guidelines on how enterprises should apply principles deriving from international labour standards concerning employment, training, conditions of work and life, and industrial relations. They are intended to guide multinational enterprises (whether they are of public, mixed or private ownership), governments, and organisations of employers and workers in home countries as well as in host countries. The principles laid down in the declaration reflect good practices that all enterprises – multinational and national – should try to adopt. Both should be subject to the same expectations in respect of their conduct in general and their social practices in particular.

This paper is based on interviews with the SADC Secretariat, business organisations and trade unions from the SADC region as well as on the review of the existing policy orientations as expressed by the SADC institutions and individual governments.

^[8] The ILO and SADC have a Memorandum of Understanding (MoU) covering several aspects of their collaboration. The MoU was recently renewed (July-September 2008).

Box 1: The Namibia Ramatex case in a nutshell (based on Jauch 2004 and Jauch 2008)

1995: The Namibian Government introduces the Export Processing Zones (EPZ) Act. Among other incentives provided such as tax holidays, exemption from import duties on imported intermediate and capital goods, free repatriation of profits, the Labour Act of 1992 would not apply to the EPZ sector. The government saw the non-application of labour laws in the EPZ sector as a delicate compromise in order to create employment. When the National Union of Namibian Workers (NUNW) challenged the exclusion of the labour laws in EPZs, a compromise was reached whereby the labour law was allowed to apply in the EPZs, but strikes and lock-outs were outlawed for a period of five years.

2001: The Ministry of Trade and Industry claims to have grabbed a N\$1 billion project ahead of South Africa and Madagascar which had also been considered as an investment location by the Malaysian clothing and textile company Ramatex. This was achieved by offering even greater concessions than those offered to other EPZ companies and an incentive package which included subsidised water and electricity, a 99-year tax exemption on land use as well as over N\$100 million to prepare the site including the setting up of electricity, water and sewage infrastructure. This was justified on the grounds that the company would create 3,000–5,000 jobs during the first two years and another 2,000 jobs in the following two years. Considering that Ramatex employed up to 7,000 workers at N\$500 per month, the subsidy is equivalent to 34 months of wage bill.

2003: 2,000 to 5,000 thousand jobs are created in Namibia while Ramatex closes its Tay Wah Textiles and May Garments operations in South Africa. 2,500 jobs are lost in South Africa.

2005: 2,000 more jobs are created in Namibia but they are mostly migrant workers from Asia.

2008: Workers are told to go home at 16h00, due to a power failure at the plant. When they return the next morning, they find the factory gates closed and they are told that Ramatex has closed operations. Upon pressure by the Namibia government they receive one month's severance pay and one week's wage for each year of service.

2. Key elements of the FDI context in SADC: labour and business perspectives^[9]

If the case of Ramatex was the point of departure for the ILO to draw some serious considerations on the need to identify feasible governance solutions to the 'bidding war' to attract FDI, an important milestone in this process was the first bilateral meeting of SADC business and workers organisations to debate the question of whether or not there should be a development-friendly regional policy framework for investment. Held during the SADC meeting of Heads of State and Government (Johannesburg, August 2008), this FDI Policy Dialogue brought together representatives from the regional umbrella organisations, SATUCC (Southern African Trade Union Coordination Council) and SEG (SADC Employers Group). Position papers were prepared with the support and facilitation of the ILO and a set of recommendations emerged, which were brought to the attention of the SADC Ministers of Trade and Industry and the SADC Secretariat.

Labour and business representatives participating in the FDI Policy Dialogue identified some key issues that should be investigated further from a regional perspective and discussed at subsequent regional tripartite fora on FDI, i.e.:

1. Factors behind investment decisions and the attraction of FDI: business environment and the relationship between labour standards and FDI.
2. Market-seeking versus resource-seeking FDI. Implications of a SADC single market for FDI.
3. The relationship between movement of people and FDI.
4. The impact of bilateral investment treaties (BITs); the role of performance requirements; the impact of multilateral initiatives, including codes of conduct and charters.

^[9] This section is based on the presentations and discussions held at the FDI Policy Dialogue, an event facilitated by the author of this paper.

Factors behind investment decisions and the attraction of FDI: business environment and the relationship between labour standards and FDI. In the position papers presented and discussed at the FDI Policy Dialogue, labour argues that, contrary to neo-liberal theoretical expectations linking FDI flows to the ease of doing business, there is no relationship between the two. SADC countries are ranked by both ease of doing business indicators and FDI inflows^[10], and thereafter the Spearman's rank correlation coefficient is calculated. The coefficient is -0.022, casting doubt on expectations that FDI inflows are influenced by the ease of doing business.

It is worth noting that the international labour movement has a fairly idiosyncratic relationship with the way information is presented in the Doing Business reports of the World Bank and International Finance Corporation (IFC) since their first issue, in October 2003. The International Trade Union Confederation (ITUC) claims that the data collected through the Doing Business process has been used to promote labour market deregulation and to recommend that governments implement specific measures to infringe workers' rights (such as social protection) with flagrant disregard to the poverty impact of such measures and their implications for employment, wages, working conditions and respect for workers' fundamental rights (ICFTU 2006)^l. One example is the case of South Africa. In the Doing Business 2006 report, the country was considered a 'business unfriendly environment' with reference to the 'Grounds for firing' category^[12], which does not look positively upon rules such as 'the employer may not terminate employment contract without cause' and 'the law establishes a public policy list of "fair" grounds for dismissal'. It was argued that the report failed to remind the reader that the higher hiring-and-firing indicators for South Africa (as in comparison to Organisation for Economic and Cooperation Development (OECD) countries) were explained in part by the country's affirmative action programmes, adopted by post-apartheid governments to overcome the legacy of decades of racial discrimination in the labour market (Ibid.:12). In 2008, also Business Unity South Africa (BUSA), the voice of South African organised

^[10] Data is from the World Bank and the International Financial Corporation: Doing Business Report, 2008. FDI inflow data is from UNCTAD (2008)

[11] ICFTU, How the World Bank and IMF Use the Doing Business Report to Promote Labour Market Deregulation in Developing Countries (Washington, 2006)

[12] 'Hiring and Firing Workers' indicators were called 'Employing Workers' indicators starting with Doing Business 2007.

business, expressed concerns over the methodology and approach adopted in the Doing Business reports^[14].

Starting in 2003, Doing Business indicators have been used with a regional leverage.^[15] Countries were advised to gauge their labour market rigidity indices as recorded under the 'Hiring and Firing Workers' section and take actions to get them lower than the regional average. Unions argue that the 'Doing Business' has been used in SADC countries to place downward pressure on workers' protection. For instance, in the 2006 Article IV Consultation report for Lesotho, the IMF (2006:16-17) recommends a 'downward flexibility of real wages' in Lesotho so as to 'improve competitiveness', without mentioning that wage levels in Lesotho are already lower than those in other countries in the Southern African region (for example wages in the garment manufacturing sector were already less than a third of those in neighbouring South Africa). In turn, Lesotho's low wage levels are mentioned in the IMF's Article IV report for Swaziland, in connection with a recommendation to the local government to 'reduce the cost of doing business', which emphasises that wages in Lesotho are only half of those in Swaziland (IMF 2007:14-15). Labour also observes how in its Country Partnership Strategy (CPS) for the Republic of Mauritius the World Bank announces the availability of a Development Policy Loan for 'reforming the labour market', one facet of which will be 'overhauling the current tripartite wage-setting machinery'. The overall aim of the reform, according to the CPS, 'is to secure a position for Mauritius in the top ten most investment- and business-friendly locations in the world (according to the Doing Business survey) (ITUC/Global Unions 2007:23)'.

Market-seeking versus resource-seeking FDI. Implications of a SADC single market for FDI.^[19] Resource seeking motives play a major role with regard to inward FDI flows into SADC countries and the long-term prospects for raw material value

^[14]See the websites http://www.silobreaker.com/DocumentReader.aspx?Item=5_905584147 and <http://www.itinews.co.za/companyview.aspx?companyid=21871&itemid=097B5744-55A5-4030-94C9-6E60EFC73D49> (30 September 2008).

^[15] The World Bank's World Development Report (World Bank 2005:19) entitled 'A better investment climate for everyone' devoted itself to the issue. It argued that a 'good investment climate fosters productive private investment – the engine for growth and poverty reduction. It creates opportunities and jobs for people'. As a result, regional development plans such as the SADC's Regional Indicative Strategic Plan (RISDP) (2004) and the New Economic Partnership for Africa's Development (NEPAD) rely heavily on achieving macroeconomic stability as a basis for attracting investors (cited from the SATUCC position paper).

^[19] This study covered predominantly European parent companies with operations in SADC.

chain activities remain dominant. During the past two decades, most of the inflows were in the primary and services sectors owing largely to the existence of vast natural resources, privatisation schemes, and the high prices of major commodities^[20]. In the case of South Africa, the share of the primary sector in inward FDI stock increased from 5% in 1996 to 41% by 2006, while that of the manufacturing sector almost halved from 40% to 27% respectively. In Botswana, the primary sector accounted for more than 60% of the FDI stock in 2005. Only in a few relatively small FDI recipient countries (Madagascar, Namibia and Tanzania), the share of the manufacturing FDI inflows increased in the 1990s. In Madagascar, the share of FDI in the primary sector increased more than it did in the manufacturing sector. In the apparel and textiles sector, FDI inflows suffered from the end of the Multi-Fibre Arrangement (MFA) in 2005.

An analysis of South-to-South investment over ten years suggests that FDI flows into Africa from other developing countries have had two major sources, i.e. Asia (China, Taiwan and India), and South Africa itself (Gelb 2005). South Africa is the largest recipient of Asian FDI, while Mauritius is the largest recipient of FDI from India and Malaysia. Chinese investment is concentrated in the manufacturing sector^[22] (with, of course, different distribution according to whether we look at number of project or value terms), while the sectoral distribution of South African investment (by number of projects) shows that 20% were in manufacturing, 15% in mining, and a few in agriculture. The vast majority were in service industries: in utilities, hospitality and tourism, construction, IT and banking (Gelb 2005:202).

SADC regional meetings often give consideration to the dominant role of South Africa in the region: is it a magnet for FDI to flow into the region or is it diverting FDI away from other SADC countries? Most regional economies are too small for market-seeking FDI. As Jenkins and Thomas (2002) found, market seeking is more important than cost considerations as a motivation for location in Southern Africa.

[20] Interestingly, a comparison of UNCTAD's index of inward FDI performance to that of inward FDI potential shows that many African economies are still far below their potential. In this regard, we would like to mention the noteworthy study by ANSA (ANSA, 2007), which looks at how the narrow focus on resource-seeking activities will remain the driving force of FDI inflows to Africa, yet the challenge is to diversify these economies, which have fostered an enclave type of development, with a bias towards extractive activities.

[22] Distribution by investment project is: 46% in manufacturing, 40% in services and 9% in resource-related industries, while in value terms, extractive and resource-related projects comprise a much higher share at 28%, while manufacturing obtains 64% of the value of Chinese investment in Africa

The analysis conducted by Stephen Gelb and Anthony Black (September 2002) shows that except for primary and infrastructure firms, foreign firms entered South Africa for market-seeking purposes: on average, 81% of starting sales went to the domestic market. South Africa is the main recipient of FDI in the region because of its superior infrastructure, physical and financial, and the fact that it has the largest economy. In this context, incentive competition would not make sense and the focus should be on cooperation rather than on competition. The interaction between domestic and regional shares suggests a pattern whereby sectors like information technology (IT) and machinery and equipment (M&E) have dramatically increased their regional share since 1994. In five sectors, the increase in the regional share was at the expense of the domestic share. In four sectors with domestic and regional share together over 85% (consumer goods, M&E, finance and business services and pharmaceuticals) South Africa and the region appear to be a single market (Gelb & Black September 2002).

The relationship between movement of people and FDI. Literature that integrates international trade negotiations, FDI and the movement of people is relatively sparse. Given the current interest in liberalising temporary migration, more rigorous studies of the relationships between trade and FDI and patterns of international migration are needed (Manning and Bhatnagar 2004).

If we trace the origins and development of SADC initiatives on regional cooperation on population movement, we realise that huge obstacles have been in the way of the development of a regionally harmonised approach to migration management. The far-reaching 1995 SADC Draft Protocol on Free Movement of Persons ran aground in Mauritius in September 1998^[25] and it still has not been ratified by the required number of member states, despite having been relaunched recently and promoted throughout the region. Some of these negotiations remain confidential while the movement of people is an increasingly politically sensitive topic in view of the situation in Zimbabwe and other concerns. Moreover, the current economic situation makes it difficult to negotiate access to a country's labour market by those charged

^[25] Only nine SADC member states have signed the protocol as of March 2008. See website: http://www.sadc.int/english/documents/legal/protocols/facilitation_of_movement.php The protocol will only enter into force 30 days after two-thirds of SADC member states have ratified it in accordance with their national constitutional procedures and have lodged their ratification documents with the SADC secretariat. At the time of writing, only Botswana, Mozambique, and Swaziland have done so.

with trade and FDI negotiations, given the complexity of the issues and difficulty in assessing the potential trade-offs.

The impact of bilateral investment treaties (BITs), the role of performance requirements, the impact of multilateral initiatives, including codes of conduct and charters. FDI has induced a number of national policy changes in SADC countries since the early 1990s. Several reforms have resulted in the removal of obstacles to the operation of Transnational Corporations (TNCs) so that they now operate in most industries of the economy. Limitations on profit remittances and repatriation of capital have been dropped or substantially relaxed, the practice of imposing performance requirements is now less prevalent and access to incentives available to domestic firms has been granted in most reforming economies. It has been observed that in a number of cases foreign companies are being granted even better incentives. The signing of bilateral investment treaties to protect such investments against political risks has complemented the liberalisation of FDI regimes. By December 2006, African governments had signed over 1,120 such treaties (687 Bilateral Investment Treaties [BITs] and 438 Double Taxation Treaties [DTTs]) (UNCTAD 2008). All of the SADC member states are parties to the Multilateral Investment Guarantee Agency (MIGA) of the World Bank. The result is competition over FDI with widespread and generous incentives to make it more attractive. For example, Angola, Botswana, Malawi, Tanzania, and Swaziland are some of the countries that provide exemption from customs duties and taxes to inward FDIs. As observed by SATUCC in their position paper, the correlation between signing BITs and DTTs and attracting FDI inflows is not obvious. Some countries that have not signed as many BITs and DTTs have attracted larger inflows of FDI (see UNCTAD 2008). Typically, BITs allow investors to accrue rights as 'aliens' without being burdened with obligations.

During the 1990s, export processing zones providing extremely generous incentives were established in Madagascar, Malawi, Namibia, Tanzania and Zimbabwe with similar developments in Swaziland, Lesotho, Botswana and South Africa (spatial development initiatives – SDIs). According to the unions, the lowering of labour standards in the in the EPZ sector in Namibia and Zimbabwe (in the mid-1990s)

showed the levels to which governments in the regions were prepared to bend backwards to attract investors.

International investment agreements do not address social issues such as labour or environmental concerns. The focus is almost exclusively on delivering a liberal environment conducive to flows of investment. Where such social clauses are included, they are merely declaratory and not legally binding. Moreover, international investment agreements are between states, and hence do not create direct obligations for investors. Where provisions for not lowering standards are included in free trade agreements, as in the Americas, or where labour and environmental issues are covered, unfortunately, the remedies only apply to trade-related disputes, leaving investor behaviour to the regulation of host governments. Similarly, the trend of excluding social issues is also evident in multilateral investment agreements. In Africa, only two investment agreements include social goals and conditionalities, at least in a declaratory sense, i.e. SADC in its founding treaty and the Francophone West African Monetary Union.

3. The political feasibility of an Integrated Regional Policy Proposal for Balanced Development Framework for Foreign Direct Investment in SADC

The bottom line of many theoretical enquiries is that as countries continue to receive (or succeed in attracting new) FDI, they may as well identify ways to maximise its positive impacts and deal with the downsides. Moreover, we argue, it would be better done by SADC countries as a regional economic community (REC) rather than as individual member states. The Ramatex case showed how competition among governments effectively shifted profits from the host country to the multinational enterprise, which enjoyed a typical advantage of MNEs over states: capital owners can organise much more easily than can states. Some RECs^[26] have adopted labour frameworks and established tripartite socio-labour committees to oversee the implementation. SADC has an employment and labour sector (ELS) committee.

The context of our analysis on the political feasibility of a SADC balanced framework for FDI is defined by the interaction between regional integrations tools, such as FIP

^[26] For instance, the MERCOSUR's Socio-Labour Declaration of 1998 committed member states to a list of rights based on the ILO conventions they had ratified.

(the 2007 SADC Finance and Investment Protocol), and other SADC instruments, such as the SADC Charter of Fundamental Social Rights, adopted in 2003.

The SADC Protocol on Finance and Investment (2007:26) raises concern about ‘...the low level of investment into the SADC, even though a number of measures have been taken to improve the investment environment’. Using the World Bank’s World Development Indicators, the Alternatives to Neo-liberalism in Southern Africa (ANSA 2007) shows that on the basis of the share of trade (imports and exports) in GDP, the SADC region is more integrated into the global economy than the average Sub-Saharan African country, making it particularly vulnerable to occurrences such as the current financial crisis. Thus, reform of the investment climate has occurred to the extent that UNCTAD fears that the ‘swing in attitudes has been such that expectations may have become too high in terms of what TNCs can do. While they can, indeed, contribute to the development effort in many ways, the performance of the domestic sector is typically much more important’ (UNCTAD 1999:11).

When dealing with the global governance of FDI, public frameworks such as bilateral trade agreements and bilateral investment treaties have often been the preferred option. In other cases, transnational corporation have opted for private frameworks (such as codes of conduct). What role do these new frameworks play in stopping any downward pressure on labour standards that may exist, improving working conditions and promoting development?

It has been shown that bilateral and multilateral agreements are skewed towards liberalising the policy environment, often providing right for MNEs, without focusing on their responsibilities. In some instances, even issues that had been rejected at the multilateral level such as investment and competition policies and government procurement are being sneaked into such agreements. These seek to provide national treatment for FDIs and prohibit affirmative measures that favour domestic capital (see for instance the proposed Economic Partnership Agreements (EPAs) and the Africa Growth and Opportunity Act (AGOA)). As Penfold (2003) pointed out, there are three potential areas of public support for FDIs, i.e. bilateral and multilateral investment agreements; government export credit agencies offering overseas investment insurance; and regional and national development finance institutions offering private sector financing. These three groups provide a series of services to

foreign direct investors and can be tied to social responsibility obligations, which can be mandatory or voluntary.

A key objective of the SADC Protocol on Finance and Investment is the harmonisation of financial and investment policies to make them consistent with the objectives of SADC and to ensure that any changes in the financial and investment policies in one state do not necessitate adjustments in other state parties. Article 19 of the Protocol states that harmonisation is aimed at creating a 'SADC investment zone'. The protocol seeks to achieve this objective through the facilitation of regional integration, cooperation and coordination within finance and investment sectors. The Protocol on Finance and Investment sets up multiple policy bodies, committees, and technical working groups with responsibility for implementation, such as the Committee of Ministers for Finance and Investment; the Committee of Central Bank Governors in SADC; and the Peer Review Panel (made up of the two Committees). States may place emphasis on industries that provide upstream and downstream linkages and have a favourable effect on attracting foreign direct investment and generating increased employment. The protocol permits member states to exclude short-term portfolio investments of a speculative nature or any sector sensitive to its development or which would have a negative effect on its economy. In doing so, states have to notify the SADC Secretariat for information purposes within a period of three months. Article 10 of the SADC Protocol on Finance and Investment on Corporate Responsibility simply states that foreign investors shall abide by the laws, regulations, administrative guidelines and policies of the host state, with no specific reference to the core international labour standards.^[27] The responsibilities with respect to labour/employment issues can therefore be derived from, and based for instance on, the ILO's MNE Declaration, which is tripartite and also addresses the responsibility of MNEs. Remedies should be applied to the social issues, as much as they apply to the investment ones to achieve an integrated and balanced framework^[28].

[27] In contradistinction, Article 13 of the protocol considers it inappropriate to encourage investment by relaxing domestic health, safety or environmental measures, while Article 14 allows member states to regulate in the public interest where investment is not sensitive to health, safety or environmental concerns.

[28] Member countries also agree to ratify and implement relevant ILO instruments, with the priority given to the core ILO Conventions. Virtually all SADC member states have ratified the eight core ILO Conventions. The charter also provides for information, consultation and participation of workers to

The SADC Social Charter could offer a framework to consider the long-term implications of investments. It embodies the recognition by governments, employers and workers in the region of the universality and indivisibility of basic human rights as adopted through such instruments as the UN's Declaration of Human Rights, the African Charter on Human and People's Rights, the Constitution of the ILO, and the Philadelphia Declaration. Article 4 of the charter encourages member states to create an enabling environment that is consistent with ILO Conventions on freedom of association, the right to organise, and collective bargaining. There is therefore a need to align national legislation with international labour standards so that they have legal force. The underlying element of the reference to ILO instruments is that they are addressed to all key stakeholders, namely governments and employers' and workers' organisations.

SADC governments are beginning to link trade and investment with the social responsibilities of business, with a focus on labour and environmental issues. In South Africa, for instance, companies are considering a code of conduct (based on the MNE Declaration) or a set of ethical principles that would govern various aspects of doing business in Zimbabwe. Such a code has been suggested for South African companies doing business with the rest of the African continent and this broader idea is currently under discussion in National Economic Development and Labour Council (NEDLAC) among the key constituencies of Government, Business and Labour^[29]. However, these efforts run the risk of being fragmented and remain sometimes only declaratory in their intents. A regional development framework for FDI would offer a more comprehensive approach to dealing with these issues and the social aspects of globalisation. The starting point ought to be the promotion of a paradigm shift so that social issues are not treated as residual, but as an integral part of the development strategy, at all levels, namely, national, regional and, indeed, global.

promote industrial and workplace democracy. Issues of education and training, as well as health, safety and environment, social protection, equal treatment of men and women are also covered by the charter. The responsibility for the implementation of the charter lies with national tripartite institutions and regional structures, which are encouraged to promote social legislation and equitable growth within the region. On the basis of Article 18, SATUCC has proposed the amendment of the charter. This could offer an opportunity to strengthen the charter by linking it to the ILO's MNE Declaration on MNEs in order to secure a common floor of fundamental principles and rights at work in the context of competition to attract international investment.

^[29] Based on an interview with Business Unity South Africa (BUSA) and the Department of Trade and Industry (DTI) in South Africa.

It is in this context that the ILO has invited SADC business and workers organisations to participate in a FDI policy dialogue that looked at the role of national policies in maximising the benefits and minimising the costs of FDI, and the role of regional policy frameworks in promoting the flow of FDI to developing countries and more balanced outcomes. The interaction between the two dimensions (national and regional) is a key element in tackling the issue of investment competition. At the national level, for instance, there are questions as to what is the extent of incentives and the effects in respect of the investment diversion. Some of the countries participating in the policy dialogue have supported the idea of developing a multilateral inventory of investment incentives in order to assess the effects. Most importantly, one would need to understand which incentives are part of a longer term development package and which fuel beggar-thy-neighbour policy competition with little real benefit to the domestic economy. As incentives and guarantees are paid with public money, the expectation would be that investments could also be shaped to benefit broad public interest. It is very difficult to say, with reference to SADC countries, what policies have been most effective in promoting backward linkages and what effect have content requirements had on promoting these linkages, or what policies have been most effective in promoting the transfer of technology. This discussion is also relevant to the current debate about the use of performance requirements to maximise the benefits of MNEs for host countries. There are two contrasting approaches in this regard: one that argues in favour of using performance requirements (such as local content and technology requirements) to encourage the development of backward linkages and the transfer of skills and technology, and another that argues in favour of leaving MNEs quite free to design their competitive strategy, while putting appropriate accompanying policies in place. Some authors (e.g. Moran 2007) argue that in a number of industries the latter seems to be a superior method of maximising the benefits in terms of technology transfer, skills upgrading and developing local suppliers.

Some key questions would need to be answered on the role of regional policy frameworks in promoting the flow of FDI to developing countries and more balanced outcomes. In particular:

- What are the development provisions that are needed? How can the national policy measures be supported in a regionally agreed development framework for FDI so that investment can be shaped to benefit broad public interest? How can the necessary policy space for development be accommodated in a regional policy framework?
- How can the interests of home and host countries, investors (both foreign and domestic) and workers be balanced? How should issues such as the right to regulate in the public interest, expropriation and compensation be dealt with? How should disputes be settled?
- What should the modalities be in the pre-establishment phase and post-establishment phase? What should the provisions be on transparency, non-discrimination and national treatment?
- What exceptions and safeguards need to be included?
- What is the role of voluntary regulations and rules governing FDI such as codes of conduct or the ILO MNE Declaration?
- How can transparency and information be shared in a manner that encourages a more balanced international distribution of FDI and reduces information asymmetries?

One important point also arises as to where these issues should be discussed, at what fora and with what institutional arrangements.

For instance, the Nepad/OECD Africa Investment Initiative^[31] uses a Policy Framework for Investment (PFI) and has explored options for introducing a PFI-like investment dimension in the African Peer Review Mechanism. The OECD PFI covers ten policy areas and addresses some 82 questions to governments to help them design and implement policy reform to create a truly attractive, robust and competitive environment for domestic and foreign investment. The ten policy areas include investment, investment promotion and facilitation, trade, competition, tax, corporate governance, responsible business conduct, human resources development, infrastructure and financial sector development, and public

^[31] [Online]. Available:
http://www.oecd.org/document/51/0,3343,en_2649_34893_36167091_1_1_1_1,00.html.

governance. These are all considered to be critical points in the assessment of the investment climate.

According to the OECD, the PFI is neither prescriptive nor binding. It emphasises the fundamental principles of rule of law, transparency, non-discrimination and the protection of property rights, but leaves for the country concerned the choice of policies, based on its economic circumstances and institutional capabilities.

In this respect, the OECD also stresses that, although addressed to governments, the PFI needs to be seen in the broader context of other converging international initiatives to improve the investment climate and managing FDI impacts, including the OECD Guidelines for Multinational Enterprises. These guidelines belong to a set of internationally recognised instruments that provide guidance and orientations to TNCs as to how they can manage their social responsibilities. This instrument is similar to the ILO MNE Declaration and initiatives like the Global Compact. They all provide some level of response to the request for better global governance of FDI. Private codes of conduct adopted by multinationals draw intensively on these international instruments^[32].

International Framework Agreements^[33] between trade unions and MNEs can complement efforts at regional level to achieve more balanced outcomes. Such agreements can make MNEs responsible for the behaviour of the often complex global supply chains of contractors and suppliers they have created.^[34] More importantly, they represent a point of departure for understanding how our global actors investing in multiple countries can balance the interests of investors (both foreign and domestic) and workers in home and host countries. Two South African companies already have IFAs, i.e. Nampak with UNI (Union Network International) and AngloGold with ICEM (International Confederation of Chemical, Energy, Mine

^[32] The MNE Declaration is unique in the sense that it is a tripartite instrument, negotiated through a process of social dialogue between business, unions, and governments.

^[33] International Framework Agreements (IFAs) are instruments negotiated between a multinational enterprise and a Global Union Federation (GUF) concerning the international operations of the company. They are aimed at establishing an ongoing and stable relationship between the parties. Sectoral trade unions from the home country of the company also participate in the negotiation of the agreement. As of 14 August 2008, there are 59 IFAs in place.

^[34] For quite some time, MNEs argued that they were not responsible for the behaviour of their subcontractors, insisting that their relationships were transaction-based rather than hierarchical. The growth of such supply chains of suppliers and contractors has resulted in new forms of employment characterised by temporary work placement, agency working, cross border outsourcing and flexibility.

and General Workers' Unions). Moreover, a number of companies with investments in SADC have IFAs, as in the case of Lafarge, BSN/Danone, and, of course, several multinationals in the automotive industry, such as BMW, DaimlerChrysler, and Volkswagen with IMF (International Metalworkers' Federation).

Framework agreements are often cited in the corporate responsibility discourse as instruments where multinational enterprises can formalise their commitment to applying the same labour standards to their employees in all the different countries in which they operate. Framework agreements are the result of negotiation between companies and international workers' representatives and may well be one of the most interesting developments in the sphere of industrial relations in the era of globalisation. Most framework agreements make reference to the entire supply chain, even if supplier companies are not parties to them. Companies usually commit to inform all their subsidiaries, suppliers, contractors and subcontractors about the agreement. Most framework agreements also include mechanisms for the global union federation to raise a case if the company violates the terms of the agreement. They could be quite a powerful instrument. As indicated above, some MNEs from SADC and many MNEs operating in the SADC region have adopted IFAs. This could represent a common regional base from which discussions and negotiations on a regional development-oriented framework for FDI could stem.

4. Conclusions and implications for future research

The discussion with SADC employers and trade unions at the FDI Policy Dialogue highlighted three major trends with regard to incentives and labour issues, i.e. that:

- 'fundamentals' rather than 'incentives' are important factors behind investment decisions. In the case of labour, it is mainly its productivity and the level of skills rather than its cost that matter.
- studies that have carried detailed cost-benefit analyses of incentive-driven policies of FDI such as EPZs concluded that the costs outweigh the benefits (see for instance Jauch et.al. 1996; Kanyenze et.al. 1994).
- the use of generous incentives often attracts 'footloose' type of investors who do not have a long-term perspective.

A regional framework for FDI:

- Could provide a mechanism for advocating policy actions aimed at improving local capacities such as infrastructure development across the region, skills upgrading and expansion of technological capabilities. It has been shown that a coordinated regional approach to infrastructure, training, investment and other sectoral initiatives offers better benefits than country-specific approaches (see ANSA Kanyenze 2007). Critically therefore, regional, as opposed to individual country initiatives offer better prospects for beneficial balanced inward investment flows. One example could be, for instance, the identification of regional value chains, where regional investment in human capital could stir a process of upgrading of enterprises for their integration in these value chains. The author has studied the case of diamond manufacturing, where several SADC countries would benefit from regional investment in skill development with regard to the value addition phase of the process (cutting and polishing).
- Could promote foreign and intra-regional investments into manufacturing and services, thereby encouraging economic diversification and sustainable growth. Studies also show that SADC looks like a single market in at least four sectors (machinery and equipment, financial services, pharmaceuticals and retail).
- Could help to strengthen consultations with the private sector and trade unions. Some commentators have indicated that one of the major hurdles preventing the implementation of FIP is the fact that the participation of the organised private sector has so far been missing, due to the limited participation in the technical committees, subcommittees and working groups related to FIP. This approach emphasises the role of social dialogue not only through the employment and labour sector, but also through other committees with the view to create the necessary political space. More importantly, dialogue with employers' and workers' organisations should also permeate other Directorates of the SADC Secretariat, including TIFI (Trade Investment and Finance).

In Section 2 and 3 of the paper we looked at some of the considerations involved in the development of a regional balanced framework for FDI, including potential building blocks. They range from the existing policies and tools promoted by SADC to innovative approaches such as International Framework Agreements emanating from

MNE and Global Unions. A common understanding of these issues would provide the basis for moving forward to develop an actual proposal for such regional framework. The institutional question of where such a framework should be developed would arise out of an assessment of the substantive policy issues, rather than the other way around.

Over the years, there have been different responses to the increasing social demand for new forms of global governance of FDI. One of the justifications commonly used for global governance is the supply of public goods. Some authors argue that the '[p]rovision of international public goods must include maintaining the rule of law (and especially provide for the settlement of disputes in trade, FDI, and other areas), ensuring monetary and financial stability, setting common standards and regulations for business, managing global communication and transportation, and solving environmental problems' (Gilpin 2001).⁹ Though we could not yet find sufficient literature, it may be worthwhile also exploring the impact of incentives that are meant to enhance the provision of public goods, such as for instance the right to enjoy a clean environment. Maybe the Clean Development Mechanism (CDM) under the Kyoto Protocol could represent a first interesting case study in this respect.

Another interesting area for further research would include the analysis of the impact of the home country regulatory frameworks, *ceteris paribus*. It would for instance be interesting to look at the impact of similar investments from China and South Africa in SADC countries to understand what elements of the home-country regulatory framework have a bearing on the developmental impact of the investment.

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