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I hereby declare that I have read and understood the regulations governing the submission of Master of Laws dissertations, including those relating to length and plagiarism, as contained in the rules of this University, and that this dissertation conforms to those regulations.
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Plagiarism Declaration.

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2. I have used the convention for citation and referencing. Each contribution to, and quotation in this dissertation from the work(s) of others has been attributed, and has been cited and referenced.

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Acronyms

EMCOZ     Employers Confederation of Zimbabwe
GDP       Gross Domestic Product
GNP       Gross National Product
ILO       International Labour Organization
NEDLAC    National Economic Development and Labour Council
RISDP     Regional Indicative Strategic Development Plan
SADC      Southern African Development Community
SADCC     Southern African Development Coordination Conference
SAPs      Structural Adjustment Programmes
ZiCTU     Zimbabwe Congress of Trade Unions
Abstract.

The world is undergoing rapid changes some of which dent both the social and economic development. The world of work gets affected by these changes. Society faces risks that ultimately leave many of its members poor and destitute. At the end of the day society looks up to the government to provide solution for these problems. It is at this juncture that the state has to formulate policies that can best deal with this kind of issues. Social protection becomes very important in an attempt to ward off the harmful effects of the risks society faces. However both experience and research would have one believe that finding social protection that is comprehensive for the benefit of the entire society is an uphill battle especially in developing or low in some economies. The SADC region is not immune to this predicament as it is considered one of the poorest in the world. Nevertheless, this does not mean that the region is succumbing to this challenge as it continues to find possible ways out. Its initiatives have been to include in its policy formulation the measures that are advocated by the ILO in order to strengthen their regional policies especially in the labour law context. For this reason the importance of the ILO in the regional policy promotion and development cannot be overemphasized. The idea of “borrowing and bending” still continues in the region. Not only is this important within the labour law context, but in other disciplines. The ILO introduced, in one of its recent reports, the concept of decent work for all. The cardinal issue is the importance and relevance of this concept and its content in fostering social protection and labour issues in the SADC region. This question is the fulcrum upon which the discussion in this study is based.
Decent Work for All: Its Meaning and Content, Social Dimensions and SADC Social Policy Perspectives.

Section One:

1.0 Introduction.

The Southern African Development Community (SADC) region is continually and constantly working towards addressing a lot of challenges the region is facing. These comprise political, economic and social challenges. These challenges are somewhat interrelated as the existence of one culminates in the cause of another. One of the issues on the top agenda of virtually every member of the SADC region is ways in which labour standards, social dialogue, income distribution and social protection systems can be improved in order that factors affecting both the labour market and economic development can be overcome. The approach in a number of instances has been based on transplantation of legal systems from other jurisdictions by “borrowing and bending”. Apart from this, organizations such as the International Labour Organization (ILO) have been very influential regarding strategies and policies that are useful in improving social security world wide. Decent work for all is an ILO initiative and approach meant to encourage member states world wide to rethink and enhance both conditions of work and social policies. The important task for our purposes in this study however, is to find ways in which the concept of decent work may be useful in fostering SADC social policies in the field of work and related areas. Put differently, the issue is to analyse the extent to which ideas that underpin decent work may be incorporated into the region’s social protection, social dialogue, fundamental principles of rights at work and employment and income opportunities strategic plans devised in the region. This is based on the view that social security, labour conditions and social dialogue in the region face some peculiar challenges, the existence of which hampers economic development.¹

1.1 The objectives of the study
The study discusses the concept of decent work focusing on its meaning, content, social dimensions, and its possible link to SADC social policy perspectives. The important point to consider in the study is the extent to which the region lives up to the requirements of decent work for all and also the extent to which this concept can foster the social protection in the region. The major aim is to study and examine the concept of decent work and identify ways in which its underpinning theories and principles can be of assistance to regional objectives of fostering a comprehensive social protection. For this to be achieved the study examines a number of issues that thwart the development of a comprehensive and viable social policy system in the region. Along side this exercise the study traces the historical evolution of the concept of decent work and its translation into policy. It then embarks on synthesis of these policies with a view to finding out what could be borrowed from elsewhere to revamp SADC social policy.

1.2 The hypothesis
The hypothesis that underlies this study stems from the following:

- That the SADC region is confronted with a number of socio-economic challenges. These socio-economic challenges comprise *inter alia*, poverty, child labour, unemployment, income inequality, migration; HIV/AIDS and its effects and many others. These are detrimental to the social and economic development. These challenges are interrelated. The impact of these challenges may differ from one country to another but the point is that there are elements of commonality of factors that impede the economic development of the region.

- That the SADC region has been able to formulate policies that attempt to ward off the effects of the socio-economic challenges such as measures for social protection. That notwithstanding, the region continues to experience challenges due to the ineffectual social policies that have been put in place. Problems however differ from one country to another depending on the economic situation.
and the extent of the level of implementation and structures which have been devised.

- That the region has to rethink its policies by opening doors for accommodation of other new emerging concepts. This is done for purposes of integration of these concepts on the already existing policies for revamping socio-legal perspectives.

1.3 Methodology.

This is a socio-legal research in terms of which both legal and social theories are brought to bear. The aim is to find out the extent to which the concept of decent work may be put into utility for purposes of fostering social policies in the SADC region. For this reason, primary sources including some pieces of legislation, regional agreements and international Conventions in this instance are used in the analysis.

In addition, the study will benefit a lot from the books, journal articles and other publications most of which were presented in various conferences regionally and abroad. In most instances these presentations were made by specialists in the social protection and labour law. They thus provide an in-depth knowledge on the subject. Publications of the International Labour Organisation will be extensively used as they provide relevant authority on the subject. The main reason being that decent work is actually the ILO initiative. Use will also be made of the secondary sources from the internet.

1.4 The Significance of the study.

This study is about ways in which the ideas underlying the concept of decent work may improve both labour conditions and social protection in the SADC region. Decent work is quite a wide concept. The aim of the following analysis is to find out what aspects of decent work could be integrated into the policies in the regional level so as to have a comprehensive social policy system. It is must pointed out however that harmonization of decent work with social policies in the SADC region has been discussed in previous researches. Therefore this might not necessarily provide a new ground. We nevertheless
hope to suggest new ideas and approaches on how to enhance social protection in the region. It was previously pointed out that the social policy system in the region is confronted with a legion of challenges that need to be addressed. Thus the aim of the study is to contribute towards structuring a comprehensive social policy in the region.

1.5 Outline of the study.

The study is divided into seven sections all of which discuss different but related issues. Section one deals with the idea behind the carrying out of this research. Generally it gives various grounds on which it was thought of importance to conduct this research and what is intended to be achieved. Section two provides a profile of SADC region concerning its evolution and socio-economic situation. Section three delves into the theoretical analysis of social protection. Section four discusses the nature of the social protection and labour standards in the SADC region in view of the challenges that exist. Section five engages in an in-depth discussion of the concept of decent work in the light of its meaning, content and social dimensions. Section six discusses decent work and its implications for the SADC social policy perspectives. It is in this section that the extent to which decent work may be used to foster social protection and labour standards and conditions in the SADC region is closely considered. Section seven comprises the conclusion. It is a summary of the study, its nature and findings.
Section Two:

2.0 Introduction

This section provides an overview of the SADC profile. The purpose is to give information concerning the status of the region. Amongst the important issues discussed is the historical background of the region in terms of how the region came into existence. It also gives some insight into the economic situation in the region by looking at certain aspects as to how the region sustains its economy. The region is facing some adverse socio-economic factors which apparently affect economic growth. This section discusses these factors and analyses their effects both in the society as a whole and in relation to economic growth and development. It should be mentioned however that the region is not succumbing to these challenges as there has been some measures which seek to overcome the adverse effects of these challenges.

2.1 SADC Region: Brief historical background.

SADC came into being following its predecessor, the Southern African Development Coordination Conference (SADCC) in 1992 at which Heads of State and Government signed a treaty in terms of which SADCC was transformed into SADC. The reason for this transformation was the desire to promote deeper economic cooperation and integration, and to help address numerous factors which impeded the sustainability of economic growth and socio-economic development. The decision to form SADCC as a new distinct regional cooperation arrangement for Southern Africa apparently emanated from a meeting of the leaders of Angola, Botswana, Mozambique, Tanzania, and Zambia held in Arusha, Tanzania in July 1979. SADC region is geographically situated on the Southern part of the African continent. It is a regional cooperation and integration of some of the African member states whose purpose was at its inception to achieve a political liberation of the member countries in the region. The whole reason behind this

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2 Southern African Development Community (SADC), (DRAFT) Regional Indicative Strategic Development Plan (RISDP), SADC Secretariat (March 2003) p 3. The SADC region is made up of fourteen member countries.

3 Ibid


5 Southern African Development Community (SADC). (DRAFT) Regional Indicative Strategic Development Plan (RISDP), SADC Secretariat (March 2003) (footnote 2)
struggle lies in the historical experience of colonialism. Thus, these countries wanted to be free from dependence on their former colonialists. Most of these countries did manage to get independence. However decolonisation left massive poverty, economic backwardness and several powerful and hostile white minority-ruled neighbours. The Southern African countries also inherited from colonial times a low skilled workforce and extremely fragmented labour markets in which highly paid skills and resources had to be imported from outside. Furthermore, infrastructure in most cases had to be developed from scratch with very few available resources. In Zambia, for example, it is said that there was little infrastructure left after the British pulled out. These factors were compelling reasons that led leaders of members of this region to come up with ways in which promotion of economic and social development through integration and cooperation might be attained. Therefore, over and above the political independence, the integration and cooperation of these countries are aimed at the promotion of economic and social development. It is interesting though to mention that the region experiences economic imbalance amongst the members. The mission statement of the region captures the very essence and purpose for which the region came into being as follows:

“To promote sustainable and equitable economic growth and socio-economic development through efficient productive systems, deeper co-operation and integration, good governance and durable peace and security so that the region emerges as a competitive and effective player in international relations and the world economy”. (My emphasis in italics)

It is clear from this policy objective that socio-economic development is an important item on the agenda being pursued by the community.

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6 Ibid
7 Ibid
9 Ibid
10 Ibid
11 See SADC (DRAFT) (RISDP) (footnote 2)
12 See the SADC Treaty of 1991, Article 5
2.2 The economic situation in the region: some salient features

The fourteen member countries which make up the SADC region are at different stages of development. However it is important to note that generally they are predominantly underdeveloped. Consequently, both social and economic growth and development across the region is not the same. Some countries attain high growth rates and others achieving very low growth rates. For this reason it suffices to mention that the economic situation in the SADC region reveals the characteristic of an economic imbalance. One research has indicated that while advocating policies and approaches that would favour growth in the regional context, including the economic integration, it is apparent that there are important disparities which exist among the different countries within the region and the challenges that this may pose to policies of harmonization and integration. The fact that some countries in the region are confronted with the poor economic growth suggests that these countries are vulnerable to quite a number of social factors. This is confirmed by the fact that economic performance in the region has remained fragile and most SADC counties continue to be exposed to natural disasters and adverse external shocks. One other important aspect that merits mention is that the structure of production of SADC countries is characteristic of a developing region where large shares of Gross Domestic Product (GDP) emanate from primary sector of production. Research has revealed statistical information to the effect that within the region only Mauritius and South Africa have sizeable manufacturing sectors at 23% and 24% respectively. This epitomizes the fact that comparatively these countries are relatively high in economic status in the rest of the member countries. There have however been some remarkable efforts in the region which are aimed at economic development and growth.

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13 SADC (DRAFT) (RISDP) (footnote 2) p 9
14 Ibid
16 SADC (DRAFT) (RISDP) (Footnote 2) p 11
17 Ibid
18 Ibid
2.3 The Socio-economic factors and their effects on the labour market.

2.3.1 Poverty

The preceding discussion has at least shown that the driving force behind the region’s integration and cooperation was the promotion of socio-economic development due to the legacy of colonialism. Social challenges which impede economic development include, *inter alia*, poverty. Poverty is one of the most distressing social risks that African countries have to grapple with.\(^{19}\) On average more than 50 per cent of the inhabitants of the continent live below the poverty line, which constitutes the highest percentage in all regions of the world.\(^{20}\) Poverty in all its dimensions is one of the major development challenges that face the SADC region.\(^{21}\) It is viewed in terms of three components, namely, income poverty which denotes that people do not have enough income to feed themselves in order to prevent starvation.\(^{22}\) Moreover there is asset related poverty that concerns access to land, credit, equipment and many others for generation and sustenance of income.\(^{23}\) The last component of poverty evolves around capability poverty which addresses the issue of access to basic services like health care, education, shelter and clean water.\(^{24}\) These three components are features that can be used to ascribe the poverty situation which exists in most SADC countries. One recent study substantiates this view in that millions of people in the SADC region live in abject poverty.\(^{25}\) Another research on Lesotho has revealed that one-half to three-quarters of the population may be considered poor and a quarter to one-half may be "ultra poor".\(^{26}\) Poverty is regionally concentrated in predominantly rural areas, where more than 80 percent of the people may be poor, and the poverty situation does not seem to have improved over the past decade.

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\(^{20}\) Ibid  
\(^{21}\) See SADC (DRAFT) (RISDP) (*Footnote 2*) p 19  
\(^{22}\) Naidoo R, ‘*Extension of Coverage*’, Appears on *Towards the Development of Social Protection in the SADC Region*, Proceedings and outcomes of a conference held at the Helderfontein Conference Centre, Johannesburg, South Africa,(17-19 October 2001)  
\(^{23}\) Ibid  
\(^{24}\) Ibid  
despite the economic boom that Lesotho has enjoyed since the late 1980s.\textsuperscript{27} Angola and Mozambique have been said to be having poverty levels that are greater than 50 percent.\textsuperscript{28} One argument which has been put forth is that poverty is largely a rural phenomenon.\textsuperscript{29} In other words poverty targets a certain category of the population. Tandari opines that in Tanzania the poor are largely based in the subsistence agriculture and also that the youth, the old and large households are the most vulnerable to poverty. Moreover households headed by old and children are exposed to poverty and its effect within the region.\textsuperscript{30} Consequently, about 14 million people are threatened with starvation as a result of poverty in the region.\textsuperscript{31}

2.3.2 Income inequality
The issue concerning income inequality constitutes one other socio-economic challenge within the region. This issue concerns the high differences in the earning capacities of some groups of working class. As Fenwick and another indicate, income inequality is the long-standing feature in the SADC region which is overlaid with racial differentiation.\textsuperscript{32} This of course is prevalent in countries that are multiracial like South Africa. The research reveals that the white population earns significantly higher proportions of national income than their black counterparts.\textsuperscript{33} The net effect of the structural income inequality is that it adversely affects the population especially the poor.\textsuperscript{34} The implication of this is that low income level makes it difficult for those affected to take necessary measures to ward off the effects of poverty and other economic challenges.

\textsuperscript{27} Ibid
\textsuperscript{28} Fenwick C et al (footnote 25) p 10.
\textsuperscript{30} SADC (DRAFT)(RISDP) (footnote 2)
\textsuperscript{31} Ibid p 20
\textsuperscript{32} See Fenwick C et (footnote 25) p 11
\textsuperscript{33} Ibid
\textsuperscript{34} Ibid
2.3.3 Unemployment

Another issue which is at the top of the agenda in virtually every member of SADC is unemployment. Put differently many countries in the SADC region are experiencing the increase of unemployment. Research indicates that employment levels and labour productivity trends in the region are generally low.\(^{35}\) Unemployment in the region is said to be ranging between 30 and 40 percent.\(^{36}\) According to the Zambian report, employment levels in Zambia have been dropping since 1994 labour force survey which recorded 81 percent to 65.2 percent in 1997.\(^{37}\) It is said that the unemployment situation in South Africa is a compelling reason for policies that will address this problem.\(^{38}\) It is important however to point out that the unemployment situation in SADC region is due to a couple of reasons. This situation is worsened by the fact that the labour force is expanding faster than jobs are becoming available.\(^{39}\) In some countries universities are producing graduates who become jobless because of the saturated labour market. This therefore also affects the skilled labour. Unskilled labour is similarly affected due to the use of capital-intensive techniques of production in some sectors of the economy which lessen the chances of employment generation thus further aggravating unemployment.\(^{40}\)

2.3.4 HIV/AIDS and its effects

The region has been and is continually being hit by the HIV/AIDS and its effects. One of the most critical threats to the attainment of SADC's social, economic and political objectives is HIV and AIDS. This region is the most affected in the world.\(^{41}\) Therefore, HIV and AIDS is accorded priority as a cross-cutting issue in all SADC programmes.\(^{42}\) The prevalence and sheer impact of the disease and the alarming rate at which it increases

\(^{35}\) See SADC (DRAFT) (RISDP) (footnote 2) p 26
\(^{36}\) Fenwick C et al (footnote 25)
\(^{39}\) See Fenwick C et al (footnote 25)
\(^{40}\) See SADC (DRAFT) (RISDP) (footnote 2)
\(^{42}\) Ibid
has grave consequences in all social and economic spheres in all the member countries.\textsuperscript{43} It reduces the supply of labour and undermines the livelihood of millions of workers and those who depend on them.\textsuperscript{44} Nine out of ten people living with HIV and AIDS are of working age.\textsuperscript{45} The loss of skills and experience in the workforce threatens productivity and diminishes the capacity of national economies to deliver goods and services on a sustainable basis.\textsuperscript{46} Fundamental principles and rights at work are undermined through discrimination against those infected.\textsuperscript{47} These effects are harmful to the SADC’s already badly affected labour market and economic growth by other social factors. The region however is taking all necessary and possible measures that could aid in the proper dealing of the disease and the overcoming of its effects. The region through a tripartite approach produced a Code of Practice on HIV/AIDS and Employment.\textsuperscript{48} The purpose is to provide guidance to member states in the nature of common standards by which the region could deal with the rights and duties relating to the pandemic disease.\textsuperscript{49}

2.3.5 Migration

Labour migration remains a big challenge similar to other social problems that have been discussed above in the region. Migration in the SADC region is a historical reality which finds its expression primarily in the movement of people across borders in search of employment or other opportunities.\textsuperscript{50} From an historical point of view, it is associated with the mining industry where contract labour systems and recruitment agencies have been operated to regulate the flow of labour.\textsuperscript{51} Discovery of minerals in the British colonies in the mid nineteenth century quickly attracted migrant labour particularly to the

\textsuperscript{43} See Olivier M (footnote 1) p 379
\textsuperscript{45} Ibid
\textsuperscript{46} Ibid
\textsuperscript{47} Ibid
\textsuperscript{48} The SADC Council of Ministers approved the Code in September 1997 and was adopted by Summit during the same period.
\textsuperscript{50} Migration, Integration and Border Management, First MIDSA Forum –IMP Follow-up Seminar for Southern Africa, Background Paper, Mbabane, Swaziland (6 to 9 November 2000) p 3
\textsuperscript{51} See Fenwick C and Kalula E (footnote 25) p 12
then Transvaal from Mozambique.\footnote{Ibid p 13} The copper mines of Zambia also used to have migrant workers from Tanzania and Malawi.\footnote{Crush J et al, ‘Migration in Southern Africa’, A paper presented for the Policy Analysis and Research Programme of the Global Commission on International Migration ,(September 2005)} Migrants from Mozambique used to work in Havelock asbestos mines and sugar companies from the 1930s.\footnote{Ibid} The flow of migrants within the region was however brought under control in terms of placing some immigration laws especially to regulate the coming of unskilled labour.\footnote{Ibid} Trends in labour migration in the SADC region indicate that the flow still mainly remains towards South Africa and in some cases Botswana.\footnote{See Fenwick C and Kalula E \textit{(footnote 25)}} It merits a significant mention that the issue of labour migration has a couple advantageous reasons attributed to it. One argument is that it helps to increase productivity in the receiving country especially if there is paucity of skilled labour. At the same time it addresses the unemployment crisis from the sending country. Regional migration is said to be a way of amassing capital and income as migrant workers travel for work and trade opportunities thus generating access to land and other services in their home countries.\footnote{See Crush J et al, \textit{(footnote 53)} p17} This may be seen as one way of overcoming poverty and its effects. The situation of Lesotho provides an example of the importance of migration both from the economic point of view and income benefit standpoint. Basotho mine workers in South Africa remit significant amounts to Lesotho through the deferred pay system that sees about 30 per cent of their wages being remitted to banks in their home country.\footnote{See Fenwick and Kalula \textit{(footnote 25)} p 14} Also some money that is send to their members of families for living.\footnote{Ibid} Economically this means boosting the country’s Gross National Product (GNP).\footnote{Ibid} The downside of migration is that it culminates in a deprivation of skilled labour to the detriment of the sending country. The receiving country also confronts a problem since its nationals may complain of the migrant workers increasing the competition in the labour market thus making it difficult for job opportunities. One major problem which faces the region is extending social protection to the migrant workers. The
Taylor Committee aptly captures this view as it found that a distinct social security paradigm is necessary in the regional level.\textsuperscript{61} The rationale behind this is to regulate social insurance for particular categories especially the employed with the aim of developing measures of coordination in the region.\textsuperscript{62} It is interesting to note that some few countries within the region have taken action in dealing with this issue by entering into bilateral treaties.\textsuperscript{63}

2.4 Socio-economic challenges: SADC Approach towards solution

The socio-economic challenges as discussed above have posed a serious threat to the region and its economic development. It can be safely said that these are part of the reason the region is considered the poorest in the whole world. However initiatives have been taken by the region to get out of this impasse. Social protection has been thought to be a viable tool in terms of trying to deal with the grave repercussions of these challenges. Olivier makes a similar point that social security is perceived as one of the means to deal with poverty and other social effects.\textsuperscript{64} It is important however before delving into how social protection has been used in the region to provide some understanding from a conceptual point of view. This is the issue for discussion in the section that follows.

\textsuperscript{61} Taylor Committee
\textsuperscript{62} Ibid
\textsuperscript{63} The examples are Zambia and Malawi who have bilateral treaty to that effect and Lesotho and South Africa.
\textsuperscript{64} Olivier M.P (footnote 19) p 4
Section Three:

3.0 Social protection and its theoretical analysis

Social protection is a wide concept under which a number of sub-notions are subsumed. These comprise social security, social assistance, social insurance, social allowance and other notions aimed at providing means of safety-net. Put differently a total consideration of all of these notions translates into social protection.

3.1 Social Security: Brief Conceptual Understanding

The concept of social security can be traced from its historical background. For this reason the industrial revolution became a driving force behind the idea that there has to be some mechanisms for income protection. As a consequent two approaches were developed from two European jurisdictions to achieve this goal. These were the Bismarckian approach from Germany and the Beveridge approach in the United Kingdom. These approaches had mark differences in the manner in which they are conceptualised. The Bismarckian approach was based on contributions that emanated from the employment relationship. This was a mandatory contribution by the employers and the employees in terms of which maintenance of income and earning related benefits were the primary aim for achievement. The basic aim of this approach seems to be income-protection based. It is important to mention further that the benefits were allocated upon the happening of a risk. The Beveridge’s approach on the other hand was based on the minimum income protection for the population as a whole. This had an implication of the state involvement especially where there was need for universal coverage. It meant that benefits had to be drawn from the state income in the form of tax revenues to provide people with a safety net. Thus, the entitlement arising from the state grants is means-tested.

From this historical evolution it suffices to submit that social security is viewed in the light of social insurance and social assistance. This is mirrored in the argument that the two main components of social security are social insurance and tax-financed social

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66 Ibid
67 Ibid
68 Ibid
69 Ibid
benefits or social protection.\textsuperscript{70} This concept generally is based on the understanding that human beings are exposed to unavoidable risks which undermine their capacity to earn a proper living.\textsuperscript{71} These risks include among others, old age, unemployment, death, divorce, maternity and many others. A prominent feature of social security however is that it is not intended to enrich those who have been exposed to risk. It merely provides cushion against the effects of the contingencies that occur. Put differently it meets the victim of the risk half way towards mitigating the harmful effects of the risk. Social security as it has been understood and practiced in both developed and developing countries largely refers to what may be called collective care arrangements to meet contingencies.\textsuperscript{72} In fact, the very notion of social security evolved out of humanity’s quest for protection from hazards of nature’s furies in the primitive communities, and then from hazards of life and work in modern societies.\textsuperscript{73}

### 3.1.1 Social Insurance

This form of social security refers to the contributory social security schemes that protect income earners and their dependants against temporary or permanent involuntary loss of income.\textsuperscript{74} It is therefore proper to say that social insurance is the creation of income transfer mechanisms that are intended to safeguard individuals and households against the risks that arise from dependence on wages as a principal source of income.\textsuperscript{75} There are two important points to note concerning social insurance. One is that it has a distinct feature of contribution. Such social security arrangements are provided through the work status of individuals.\textsuperscript{76} This however takes into account only those in the formal labour market and they constitute a majority in the developed countries and a minority in

\textsuperscript{73} Ibid
\textsuperscript{74} See Kaseke E,(footnote 71) p 90
\textsuperscript{75} Freedland M and Deakin S, ‘Updating international labor standards in the area of social security: A framework for analysis’,(2006) 27 (2) Comparative Labor Law & Policy Journal p 152
\textsuperscript{76} Kannan K.P (footnote 72)
developing countries. In other words entitlement to benefits is reliant on the person’s contribution in the scheme. The contribution aspect of social insurance suggests an income capacity earning of an individual. They are also intimately related to employment policies, because most social insurance schemes are financed out of worker’s incomes and protect against risks related to employment capacity, such as unemployment, sickness, disability and old age. It suffices to submit that social insurance follows the Bismarckian conception of social security. The second aspect of social insurance is that the member or contributor is entitled to the benefits accruing from the contribution once a risk or contingency occurs. It is for this reason that social insurance is said to be contingency-based. This implies that in the absence of occurrence of the risk, the contributor is not entitled to any benefit.

3.1.2 Social assistance
Social assistance operates somewhat differently from social insurance. Social assistance is a non-contributory form of social security which provides benefits for poor and needy groups. It is financed through tax revenue. This suggests the state involvement in terms of providing assistance to those who cannot afford to be covered by the social insurance schemes. Kaseke opines that social assistance benefits accrue to persons who are not covered by other social security schemes or who are receiving inadequate benefits. Mpedi points out that social assistance is generally financed from the general revenue of a country rather than from individual contributions. It is however important to note that although there is no contribution to make, the entitlement of the benefits under social assistance is not automatic. There are some requirements that a person has to satisfy prior to entitlement. A means-test is therefore applied in order to establish that the seeker of the benefit deserves to be assisted. Means-tested benefits also often referred to as social assistance benefits are those which require a claimant to show that he or she has

77 See Kaseke E (footnote 71) p 90
80 See Kaseke stated above p 92
81 Mpedi L.G and Kuppan G.Y, ‘Social assistance and legal aid’, appears in *Introduction to social security* by Olivier et al, p 222
82 See Kaseke (footnote 71).
insufficient other resources and therefore needs the benefit.\textsuperscript{83} Consequently one may point out in passing that while contribution to social insurance is seen as a barrier to entry in the scheme, failure to prove insufficiency of resources by the applicant on the social assistance presents a barrier for entitlement as well.

### 3.1.3 Social Allowance

Social allowances are non contributory benefits that are paid to persons in designated categories irrespective of their incomes.\textsuperscript{84} It is ostensible from this view that social allowances possess a somewhat similar feature as social assistance in that it is non-contributory, it targets impoverished segments of the population and it is wholly funded from tax revenue. However unlike social assistance, it operates without the requirement of a means-test. The absence of means-test means that there is no stigma attached to accessing the benefits to those eligible.\textsuperscript{85} Social allowances are usually paid to families with children for purposes of defraying some of the costs associated with raising the children and also older people and people with disabilities in the form of grants.\textsuperscript{86} Social allowances are more prevalent in the developed countries than developing countries due to the requirement of huge economic resources which developing countries are struggling to get.\textsuperscript{87}

### 3.2 Social Protection: Analysis of Issues and Challenges as Espoused by ILO

The preceding discussion implied the continuing role played by the ILO in the world of work. Amongst other initiatives it has so far taken is by the recent ushering in of the concept of decent work. One of the strategic objectives on which decent work is based is social protection. Therefore without social protection; aspirations about maintaining decent work for all might continue being elusive. For this reason the ILO thought ahead

\textsuperscript{84} See Kaseke E \textit{(footnote 71)} p 93
\textsuperscript{85} Ibid
\textsuperscript{86} Ibid
\textsuperscript{87} Ibid
and felt it was not enough to stop at maintaining and advocating for the respect of core labour standards but started thinking about how labour standards might contribute to the process of extending social protection and the innovations that might replete them with greater impact. However this presents challenges and to some extent necessitates some structural adjustments to meet some of the goals. The ILO puts this point succinctly as follows:

“Many countries are now re-examining their systems, questioning their structure, impact, effectiveness and equity. Critics in industrialized countries argue that established systems of social protection are too expensive, or that they have eroded principles of social solidarity and universalism, or that they are a brake on economic progress, slowing growth and reducing competitiveness and employment. In the transition economies orthodox social protection seems incapable of covering large proportions of the population. Critics in developing countries question the relevance of systems that cover so few people and offer such low levels of protection. Throughout the world there have been questions about the equity and efficiency of conventional systems in environments of flexible and unstable employment, with many more workers in the informal economy”.

An analysis of this observation paints a clear picture of the barriers to be surmounted in having a proper social protection to meet the requirement of decent work for all. The creation of this impasse is the inability to afford social protection mechanisms by reason of their being expensive, exclusion of coverage especially in the developing countries, and job insecurity. The most vulnerable population in all of these instances is people falling in the category of the informal economy. They are either not recognized at least legally, not registered, or protected under labour legislation and social protection often because their employment status is ambiguous. Informal economy workers have little or no security of employment or income. They also have little or no social protection from

either the employer or the government.92 Their earnings tend to be very low and to fluctuate more than those of other workers.93 They are exposed to risks which adversely affect their ability to earn a living. Goldin submits that social protection coverage is of utmost importance and urgency but this encounters difficulties especially in the developing countries in which large sections of the population live outside the formal economy and which have high rates of poverty and marginalization.94 This group of people faces exclusion from proper education, skills building training, health care and childcare, which are particularly important for women workers.95

One other identifiable source of the problem of finding a comprehensive social protection is the financing of the schemes. The argument put forth in this instance is that regard being had to the current situation at the state-based social security systems, a changing economic and social environment and ageing of the populations make heavy task for the developing countries as far as economic and financial crisis are concerned.96 This ultimately prompts government to undertake strong measures to alleviate their budgetary difficulties.97 The ILO recognizes that finance is a persistent problem.98 Indeed, the potential for public funding of social security seems to be declining.99 Even if it is not declining, in some instances the country may be experiencing difficulties in economic development and growth. There may also be social challenges such as poverty, pandemic diseases like HIV/AIDS and unemployment. Thus much of the funding goes towards financing institutions that help to deal with these social challenges. As a result social protection may not be seen as a crucial area of concern at this stage. In most industrialized countries social protection accounts for a significant proportion of national income.100 However the contributions base is steadily being eroded by the effects of globalization, economic instability, flexible labour markets and the growth of the

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92 See ‘Working out of Poverty’, (footnote 90).
93 Ibid
95 See, Working out of Poverty Report (footnote 90)
97 Ibid
98 See the 1999 Report (footnote 89)
99 Ibid
100 Ibid
informal economy.\textsuperscript{101} This notwithstanding, policy suggestions have been put forth to try and deal with these impediments to proper social protection systems. This is the issue that follows for discussion hereunder.
Section Four:

4.0 The nature of social security and labour standards in the SADC region

It is worth mentioning that within the regional context, the understanding of social security is viewed by some member countries in the light of its components as alluded to in the previous section. Most countries whose social security system is considered well, have tailored their social security legislation in view of it as insurance-based and state-based. The South African social security laws provide evidence of this proposition. An example is found in a situation where a person becomes unemployed for some reasons. For such a person to be entitled to benefits by reason of falling into the risk of unemployment, such a person must be a contributor.\(^\text{102}\)

\(^\text{102}\) This is according to the law.\(^\text{103}\)

From the social assistance angle, it is said that old age grants are made available subject to a means-test.\(^\text{104}\)

\(^\text{104}\) Means-tested benefits also often referred to as social assistance benefits are those which require a claimant to show that he or she has insufficient other resources and therefore needs the benefit.\(^\text{105}\)

\(^\text{105}\) The difference in this regard however is Botswana in which all citizens regardless of their status are entitled to the social assistance grants at the age of 65.\(^\text{106}\)

\(^\text{106}\) The similar situation obtains in Lesotho in which administrative and legal arrangements have been made and registering of people at the age of 70 or higher. The Lesotho government had recently begun paying old-age pensions at the rate of M150 per month.\(^\text{107}\)

\(^\text{107}\) See generally Old Age Pension Act No.3 of 2005
4.1 The SADC policy objectives on social security

The region is developing some policies and measures to encourage member states on matters of social security. One of the initiatives taken in this respect is the adoption of the SADC Social Charter. The Charter reiterates the objectives as enshrined in the SADC Treaty of which is to achieve development and economic growth.\(^{108}\) The Charter encompasses for this objective to be achieved, a comprehensive provision for social security throughout the region.\(^{109}\) It provides as follows:

“Member States shall create an enabling environment so that every worker in the Region shall have a right to adequate social protection and shall, regardless of status and the type of employment, enjoy adequate social security benefit. Persons who have been unable to either enter or re-enter the labour market and have no means of subsistence shall be entitled to receive sufficient resources and social assistance”.\(^{110}\)

Some important notable points have to be brought to the surface from this provision. First the Charter mandates that social protection should be afforded to every worker irrespective of both status and the type of employment. In other words regardless of whether a person earns a sufficient income or not such a person is entitled to social protection. Secondly those who are unemployed have to be given a social assistance. The long and short of this provision for social security is that member states are enjoined to make social protection provisions whether a person is an income earner or not. It is important to mention further that social protection is not exclusive to those unemployed and the employed as there are other categories covered. These, are the elderly upon retirement, and the people with disabilities in respect of their social and professional integration.\(^{111}\)

In addition, the region has a Draft Code on Social Security in the SADC which is pending. The essence of the Code in the region is to encourage member states to make sure that their social protection systems adequately integrate sufficient preventive and

\(^{108}\) See Article 5.
\(^{109}\) Olivier M.P (footnote no.1) p 386
\(^{110}\) See Article 10 (1) and (2).
\(^{111}\) See generally Articles 8 and 9.
(re) integrative measures and are not primarily compensation-based.\textsuperscript{112} In other words social security measures including both laws and policies should be crafted in such a manner that they incorporate the preventive measures of contingencies. It follows from this analysis that social security should not only be viewed as providing safety net when the risk occurs, but extended to the prevention of events that lead to the occurrence of the risk. The argument is canvassed that in modern social protection thinking and policy-making, social security is no longer seen as merely curative in the sense of providing compensation, but also as preventive and remedial in nature.\textsuperscript{113} Despite this policy approach, there are still areas of concern which present some challenges which the region has to work on in terms of fostering the social security that is comprehensive. It is these challenges that I now turn to consider.

4.2 Social security and labour standards: challenges in the region

4.2.1 Extending social protection to migrant workers

Although there has been some progress in terms of taking some initiatives to bring social security to recognition by the legal instrument, the region still has some challenges to address. In the pool of these challenges, affording migrant workers coverage has presented a difficulty within the region. The preceding discussion in this paper has revealed that migration has been in existence in the region from time immemorial. Within the social security coverage context, this has engendered the debate as to the appropriateness of covering this group in view of the fact that they are non-citizens. Olivier submits that exclusion of migrant workers raises serious questions of public international law and constitutional nature.\textsuperscript{114} Lack of protection granted to these people in the field of social security is one of the root causes of social exclusion in Southern Africa.\textsuperscript{115} The reason behind this exclusion is that social security arrangements in most

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{112}Olivier M.P. et al, ‘Prevention and Integration as Social Security Imperatives: Constitutional Perspectives from South Africa’, Paper prepared for presentation at the 2006 EISS Conference, held at Roskilde University, Denmark,(28-29 September 2006) p 27
\item \textsuperscript{115} Ibid p 191
\end{itemize}
\end{footnotesize}
SADC countries are dissimilar and often nationality or citizenship-based\textsuperscript{116}. In other words, it is grantable to those who are the citizens of a given country. The territoriality nature of social protection has the implication that there is loss of entitlement the moment a person crosses the border.\textsuperscript{117} What this boils down into is that the region has to work towards formulating coordinated rules that will address this issue. Some countries have attempted to deal with this challenge by entering into some bilateral agreements. South Africa signed an agreement with Mozambique in respect of which payment is to be made in relation to employment injuries and diseases in Mozambique.\textsuperscript{118} This appears to be a good start although its effectiveness has received some criticism. This arrangement is defective because payments are said to be rarely reaching the beneficiaries.\textsuperscript{119} It would seem that the problem lies with the proper monitoring of the pensions. Another example is the Zambia-Malawi bilateral agreement regarding the social protection of each other’s national. There is a Zambia/Malawi Joint Permanent Commission which is the committee meant to monitor the settlement of pension and other benefits rights of Malawian nationals that had worked in the Zambian public and private entities.\textsuperscript{120} However, generally at the regional level there is absence of co-ordination of social security which would enable those who migrate within the region to retain their social security entitlements except with the few examples stated above.\textsuperscript{121}

4.2.2 Marginalization of coverage

Another challenge which currently faces the majority of the member countries in the region is extending coverage to certain groups within a given country. The most vulnerable groups are the people working in the informal sector. Generally coverage of targeted populations in SADC tends to be narrow leaving the most vulnerable across the region, in particular those in rural areas without any social protection.\textsuperscript{122} For example, it has been reported that in Tanzania the existing social insurance schemes are said to cover

\begin{itemize}
\item See Olivier M.P and Kalula E.R (footnote no 113) p 5
\item Ibid
\item Olivier and Mpedi, ‘The extension of social protection to non-formal sector workers-Experience from SADC, the Caribbean and South Pacific’ paper presented at the 5th Asian Regional Congress of the International Industrial Relations Association (IRRA) in Seoul, Korea (23-26 June 2004) p 7
\item Ibid
\item Chisupa N, Zambian Country Report, (2003) par 2.3
\item Olivier and Mpedi (footnote 118) p 7
\item Olivier and Mpedi (footnote 118) p 5.
\end{itemize}
only 5.4 per cent of the labour force of 16 million people. \(^{123}\) Probably because these are the people largely exposed to the poverty and its effects. Another aspect of this is that most of these people are informally employed and cannot afford to join some of the social security schemes due to high rates of contribution. This is more so in social insurance schemes most of which are privately run. This is apparent in Beattie’s argument that, informal economy workers have little or no security of employment. \(^{124}\) By and large social security system in Southern Africa restricts their coverage to those who work in the formal sector. \(^{125}\) Consequently it is seen as meeting the interests of the working elite to the exclusion of the needy segment of the population. \(^{126}\) Informal social security has as a result been considered a viable option to resort to in addressing this problem. Kaseke opines that because of the employment-based social security in the region, many unemployed people in both urban and rural areas are forced to rely almost exclusively on informal social security. \(^{127}\) Social assistance on the other hand faces some pitfalls since it depends on the provision of the government through taxes. The problem is worsened in situations where there is high rate of unemployment. The problem is prevalent in the majority of the countries in the region. The down-side of this is that it compromises the number of people who have to contribute on the tax revenue. This ultimately has financing implications since it affects the state budget for social assistance provisioning.

4.2.3 Institutional problem

One other challenge facing some members in the SADC region is the establishment of institutions capable of carrying out the mandate for the implementation of the social security laws and policies. Olivier submits that an analysis of the relevant measures and the accompanying institutional frame work in SADC member states reveals the un -and underdeveloped state of social protection in most of the states and the lack of


\(^{125}\) See Olivier and Kalula (footnote 113) p 8

\(^{126}\) Ibid

coordination in the region. For this reason institutional inefficiency in the area of social security delivery is apparently a major obstacle to the social security development. The situation in Malawi illustrates this problem as it has been reported that this country does not have a formally institutionalised social security system. However it must be noted that there are some exceptions of member states whose institutional framework is efficient.

4.2.4 Rethinking the ILO concept of social security

The majority of the member countries in the SADC region which have the social security provisioning have followed the ILO model or conceptualisation of social security. The contribution-tax based social security which is operating in the SADC region has raised some issues amongst some social security scholars in the region. The argument which has been put forth is that the ILO understanding which seemingly has been borrowed in the formulation of social security in the region is narrow in the sense that it follows a risk-based approach. This ultimately concerns itself with the future contingencies that may or may not happen. This does not live up to the expectations of Africans for they are concerned with the here and now. Thus, they are concerned primarily with their day-to-day survival. The concern about the future, therefore, is of secondary importance. An additional weakness of the traditional approach is that it narrowly focuses on individual risks and so neglects co-variant risks, such as floods and drought, which occur frequently in the region and impact negatively on human welfare. For this reason social security as understood from the ILO has the result of excluding certain types of contingencies for coverage peculiar to the region.

128 Olivier M.P (footnote 1) p 380
129 Ibid
131 South Africa, Mauritius, and Namibia to mention a few examples.
132 See Olivier and Kalula (footnote 113) p 2
133 Ibid
134 Ibid
136 Ibid
One other argument is that the nature of the traditional definition of social security has the effect of overlooking other forms of social security. The reason advanced for this view is that it makes reference to public measures and therefore excludes other forms of social security like informal social security which is most prevalent in the African continent. Informal social security systems are a major source of social protection for the majority of the people in the Eastern and Southern Africa. This form of social security is delivered in a specific context where people have something in common and reflects the principle of solidarity which is part and parcel of the African community. The paramount issue is therefore whether the region should have a specific understanding of social protection to total exclusion of the ILO model or this should be part of the region social policy.

It is clear therefore from this discussion that the region still has to take other necessary measures to address these problems. The ILO incidentally has ushered-in the concept of decent work for all with a view to strengthening the already existing measures in the world of work and socio-economic dimensions. The important point for consideration is how this concept can be of significance and relevance in fostering the social protection within the SADC region. But prior to dealing with this aspect there is need to analyse in some detail labour standards and conditions challenges in the region. It is this issue which follows in the next below.

4.3 Labour Standards and conditions: challenges in the region

Labour standards are rules that govern working conditions and industrial relations. They range from fundamental human rights such as freedom from forced labour and freedom of association to more specific rights such as health and safety, maternity leave or minimum wages. Formal labour standards maybe established at the national level, in

137 See Olivier and Kalula (footnote 113) p 2
141 Ibid
the form of laws or regulations, or at the international level through global or regional institutions. \textsuperscript{142} Labour standards in the SADC region are not immune from challenges that still need to be addressed. This is to say that fundamental principles of rights at work, employment and income opportunities, and social dialogue are issues which should be dealt with in a serious light. Subsumed under the fundamental principles of rights at work are the core labour standards. Fenwick points out that that labour law in SADC region is formulated on the basic principles of labour law as understood in the industrialized market economies. \textsuperscript{143} For this reason it makes provision for a floor of minimum rights contained in a piece of legislation, comprising wages, working hours, leave, health and safety at the work place. \textsuperscript{144}

The fundamental principles and rights which are the subject of the 1998 ILO Declaration seek to enable people to claim freely and on the basis of equality of opportunity their fair share of the wealth which they have helped to generate and to achieve fully their human potential. \textsuperscript{145} Freedom of association and the effective recognition of the right to collective bargaining are the foundation for a process in which workers and employers make claims upon each other and resolve them through a process of negotiation leading to collective agreements that are mutually beneficial. \textsuperscript{146} Within the SADC region context, there still some challenges regarding effective freedom of association. While trade unions in Southern Africa differ in roots and history, they share a history of shortage of freedom of association, worker rights and a democratic framework under which to operate. \textsuperscript{147} In Zimbabwe for example, while in theory there exists a tripartite structure, it is the government which sets the agenda for tripartite consultations. \textsuperscript{148} While the Zimbabwe Congress of Trade Unions (ZiCTU) and the Employers Confederation of Zimbabwe (EMCOZ) have a right to be consulted, the government has, and exercises the right to do

\textsuperscript{142} Ibid
\textsuperscript{143} Fenwick C and Kalula E.R (footnote 25) p 21
\textsuperscript{144} Ibid
\textsuperscript{146} Ibid
\textsuperscript{147} See, http://www.africa.upenn.edu/Newsletters/zmno19.html, University of Pennsylvania - African Studies Center, Zimbabwe News Online (19) - 4/27/98 (accessed on 15.01.07)
\textsuperscript{148} Ibid
as it pleases.\textsuperscript{149} According to the ILO office in Harare, the Zimbabwean government consults the parties only if it wishes.\textsuperscript{150} This therefore works in conflict with the idea that workers and employers have the right to be involved in the formulation of the labour policy as part of the freedom of association. It is said that in Angola workers have the right to form and join trade unions but need government approval to do so.\textsuperscript{151} This in effect means that freedom of association does not exist in this country. Discrimination against union members is prohibited; however, in practice this law is not enforced.\textsuperscript{152} Not only is it ineffective recognition of freedom of association but the country also lacks of social dialogue processes. Some SADC countries have experienced trade union fragmentation. The situation in Lesotho provides a clear example where there have been fractional divisions of trade union movements.\textsuperscript{153} Consequently this had rendered tripatism ineffectual in terms of participation in tripartite consultation.\textsuperscript{154} However, there are some countries in the region which are exception in this instance. An example is South Africa. The South African constitution and labour laws provide workers with rights to organize and participate in the decisions that affect them.\textsuperscript{155} There are also provisions which guarantee equality of opportunity and treatment for all women and men in the work place.\textsuperscript{156} This is seen as part of decent work agenda especially to the extent that laws are being given effect to.

The fundamental principles and rights further are also against worst forms of child labour and forced labour. Some SADC countries, in spite of the ratification of the related Conventions still have child labour practices existing. One reason attributed to this is the low level of economic development and growth in some member countries. This has given rise to low levels of job opportunities. As a result children are bound to work at early stages to combat the adverse effects of poverty. Another reason is imputed to

\begin{itemize}
  \item \textsuperscript{149} Ibid
  \item \textsuperscript{150} Ibid
  \item \textsuperscript{151} Internationally Recognised Core Labour Standards in Angola, Report for the WTO General Council Review of the Trade Policies of Angola, Geneva, (14 and 16 February 2006)
  \item \textsuperscript{152} Ibid
  \item \textsuperscript{154} Ibid
  \item \textsuperscript{155} See the speech by the South African Labour Minister at APO Round Table Conference for the Promotion of Productivity Movement in Africa on the 28 August 2006.available online at http://www.labour.gov.za (accessed on the 28/09/2006) p 2
  \item \textsuperscript{156} Ibid
\end{itemize}
ineffective legal monitoring. Research has pointed out that the Angolan General Labour Act provides for minors to carry out light work which does not entail major physical effort and is not likely to harm their health or their physical and mental development, and which allows an apprenticeship or training to take place. However provisions are not well enforced and many children under 14 work on family farms, as domestic servants or as street vendors.

Labour migration policies in the region need to cover a wide range of policy instruments to meet the diverse concerns of countries involved. Countries of destination and of origin have a number of distinct concerns and policy objectives. Countries of origin are concerned with maintaining equilibrium in labour market that might be due to excess supply of labour. This is done through curbing illegal migration on the insistence of countries of destination. Further by maximising economic benefits of migration, such as from remittances which form a sizeable GDP share in some countries. Finally by ensuring the welfare of migrant workers in countries of destination, and their families especially those left behind. On the other hand, countries of destination are concerned with sustaining economic activities due to shortage of labour in domestic market. Protecting their labour market to allow priority to nationals, and ensuring fair and competitive labour markets, for example by making sure that migrant labour is not less costly than nationals.

The existence of these challenges in the region indicates that there is need for action to be taken. This is to address the problems as has been discussed previously. For this reason it is important to find out how decent work approach may be useful in this regard. However before dealing with this it is necessary to provide meaning, content and social dimension of decent work. This is the discussion which follows in the next section.

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158 Ibid
Section Five:
5.0 Decent Work: A Brief Overview

It is important before proceeding with the following discussion to give an insight into what the concept of decent work entails. This is more so for purposes of appreciating the nature and content of this discussion.

5.1 The Historical Evolution of the Concept

The concept of decent work is an ILO initiative to fulfill its mandate in the world of work and attainment of social justice. This concept was recently introduced in one of the conferences which the ILO periodically convenes. It is in this conference where the ILO makes reports on its achievements and weak areas that need to be improved. In thinking through what should be done in improving labour standards, the organization considered decent work as important concept to contribute in what it strives to achieve. Fields observes that decent work is a new and welcome way through which the ILO achieves its historic task for it has shifted the focus to the outcomes on what kind of work people are doing, how remunerative and secure the work is, and what rights workers enjoy in the work place. The concept is gradually gaining recognition among member states as the ILO is from time to time working towards its full realization and implementation. Mwamadzingo suggests that decent work is now an impetus to the ILO’s conviction that a broad-based strategy to poverty reduction, employment creation and environmental protection is necessary. From this observation, it is interesting to note that decent work is intended to cover and address a wide spectrum of issues. It is therefore important to consider the definition ascribed to this concept by looking at its meaning and content.

5.2 Decent Work: Its meaning and content

A simple approach in finding out what this concept means may start from looking at what the words *decent* and *work* refer to. In English the word *decent* has quite a specific meaning. It is used to denote a positive expression for instance to say someone has a decent job and income.\(^{162}\) However it is not exaggerated as it falls within the reasonable aspirations of reasonable people.\(^{163}\) The word is used to capture the combination of sufficiency and desirability. Work on the other side is a bit wider. It is wider than employment or a job.\(^{164}\) It encompasses not only wage employment but also self employment and home and or informal work.\(^{165}\) In other words, decent work is no way confined to, say, wage employment in the formal employment.\(^{166}\) It reflects a broader notion of participation in the economy and community.\(^{167}\) Thus decent work in a sense speaks to a situation in which decency is maintained regardless of the type of work the person is engaged in. Therefore decent work cannot be viewed in the light of the work that falls exclusively in the formal economy.

The ILO has sought to put across its understanding of this concept. Somavia defines decent work as the promotion of opportunities for men and women to obtain decent and productive work in the conditions of freedom, equity, security and human dignity.\(^{168}\) A closer look at this definition reveals that work in which women or men are discriminated against in one way or another in terms of working conditions, runs contrary to the very essence of the concept of decent work. Decent work involves better prospects for personal development, social integration and freedom for people to express their concerns and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men.\(^{169}\) It underscores the productive work in which rights are protected\(^{170}\). Sufficient work relates to situation where all workers should have full

\(^{162}\) Rodgers G, *Decent work as a goal for the global economy*. International Labour Organisation, Geneva.

\(^{163}\) Ibid

\(^{164}\) Ibid

\(^{165}\) Ibid

\(^{166}\) Ibid

\(^{167}\) Ibid

\(^{168}\) Somavia J, Director General of the ILO. This definition appears in his Report to the International Labour Conference held in (1999).


\(^{170}\) See the Director General’s Report, (footnote 89)
access to income earning opportunities.171 Thus income inequality does not meet the requirement of decent work. There has to be a generation of adequate income with adequate social protection.172 Graeme succinctly puts the meaning of decent work based on this proposition to be referring to some means to cover basic needs in old age or in unexpected emergencies.173 Thus social protection is the basic component of decent work since the objective of most social schemes is to provide income insecurity in cases of contingencies.174 It would seem that over and above encouraging work that fulfills the aspirations of people, decent work goes further to call for measures to be taken even outside working conditions. Somavia described decent work as productive work in which rights are protected which generate adequate income with adequate social protection.175 It further means a sufficient work in the sense that all should have full access to income – earning opportunities.176 It marks a high road to economic and social development; a road in social standard.177 It appears that the ILO’s perception of the concept of decent work is wide. It is a concept that embraces a variety of notions which the ILO typically subscribes to. The ILO encourages and promotes protection of both the employees’ and the employers’ rights at the workplace. Decent work comprises freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all men and women.178 This is echoed in the Report for Decent Work in which it is described in terms of opportunities for women and men to obtain decent and productive work in conditions of freedom, equity, security, and human dignity.179

It is worth mentioning that not only is it necessary that rights are protected, but it is important that possible measures are taken for purposes of enhancing both the economic and social development. There are a number of factors which impede economic

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171 Ibid
172 Ibid
174 Building a society for all ages, ‘Decent Jobs: Social Inclusion and Social Protection’ Second Assembly on Ageing, Madrid, Spain, (8-12 April 2002)
176 Ibid
177 Ibid
178 Busser E, (footnote 169)
179 See the 1999 Report, (footnote 89)
development such as unemployment, poverty, and income inequality, to mention a few. Measures should be put in place to cater for these eventualities. For this reason, social protection is a basic component of decent work.\footnote{Graeme expresses a similar view when suggesting that decent work relates to a situation of having some means to cover basic needs in old age or in unexpected emergencies.} One submits on the basis of the foregoing that the fulcrum upon which the concept of decent work is built is the protection of rights at work and beyond. In other words the concept of decent work recognises the importance of giving effect to social security.

5.3 Decent Work: Its Translation into Policy Framework

There are four broad strategic objectives on which the concept of decent work is based. These are fundamental principles of rights at work; employment and income opportunity for men and women, social dialogue and social protection.\footnote{All of these objectives are interwoven in that one informs another for its full realization. However for purposes of the present discussion, regard shall be had to the ILO’s perception of social protection and decent work.} The ILO adopted the Declaration on Fundamental Principles and Rights at work.\footnote{See the Conference Report (1999) (footnote 89)} The Declaration is meant to ensure the respect, promotion and realization of the principles and rights pertaining to

5.3.1 Fundamental Principles of Rights at Work

Every worker is entitled to enjoy certain rights regardless of the type of employment such a worker is engaged in. This holds true even if such work is organized or not, formal or informal economy, at home, in community or in the voluntary sector.\footnote{The concept of work is itself wide. It encapsulates all forms of economic activity including self employment, unpaid family work and wage employment.} The ILO adopted the Declaration on Fundamental Principles and Rights at work.\footnote{The Declaration is meant to ensure the respect, promotion and realization of the principles and rights pertaining to}
freedom of association and the effective recognition of the right to collective bargaining. Further, it is intended to address the elimination of all forms of forced labour or compulsory labour, and effective abolition of child labour and the elimination of discrimination in respect of employment and occupation.\textsuperscript{186} Work in conditions of freedom as described by the ILO as constituting decent work, suggests that work should be freely chosen and not forced on individuals.\textsuperscript{187} Simply put, this means an elimination of all forms of child labour and slave labour in line with the applicable international Conventions.\textsuperscript{188} The international labour standards system based on the adoption and ratification of Conventions and Recommendations coupled with supervisory and complaints mechanisms has influential role on the national law and practice all over the world. Thus, this contributes to development of the legal framework for the realisation of the goal of decent work for all.\textsuperscript{189} This view is reflected in a Report in which it was stated that the effective implementation of the Declaration amounts to a step forward in terms of truly global accomplishment of the basic rights.\textsuperscript{190} The ILO’s contribution in this regard however, should be to concentrate its efforts and to explore new approaches.\textsuperscript{191} It is interesting to note therefore that the advent of decent work for all is one such fresh approach for the full realization of the fundamental principles of rights at work. Put differently, compliance and implementation of the fundamental principles and rights at work constitutes decent work for all.

5.3.2 Employment and income opportunities

Employment is an important aspect of dealing with social and economic challenges. This explains why a person who is unemployed is subject to social exclusion. Employment is a weapon with which people fight and escape poverty and social exclusion.\textsuperscript{192} The ILO is alive to the fact that employment is at the core of its mandate.\textsuperscript{193} In its view, in the

\textsuperscript{186} Ibid
\textsuperscript{187} Anker R. (footnote 184)
\textsuperscript{188} Ibid
\textsuperscript{190} See the 1999 Report (footnote 89)
\textsuperscript{191} Ibid
\textsuperscript{192} Casale G et al, (footnote 189) p 2
\textsuperscript{193} 1999 Report (footnote89)
absence of productive employment, the goals of decent living standards, social and economic development and personal fulfillment remain illusory\textsuperscript{194}. It is therefore imperative that employment should be at the heart of policy formulation in virtually every country. It is worth mentioning that the ILO does have policies on employment issues. There is however lack of consensus about the policies most likely to create jobs.\textsuperscript{195} Despite this, the ILO is of the opinion that equipping men and women with more training for skills development will ultimately improve the chances for productive employment, by enhancing equal access to decent jobs.\textsuperscript{196} Indeed qualifications enhance job prospects, earning potential and employment aspirations, as well as access to more rewarding types of employment.\textsuperscript{197} However creating employment opportunities should not only be the primary aim. It must be worked through in line with policies encouraging and promoting income opportunities. The basis for this is that, for many people, the most characteristic of work is pay\textsuperscript{198}. Income is important for people in order to ensure their economic well-being and security for their households.\textsuperscript{199} The national economic and social policies of the signatory states should be focused primarily on the goal of adequate employment and the creation of productive, appropriately paid work. This must be done in observance of the fundamental rights of workers and the participation of employers and the employees in the formulation of employment policies.\textsuperscript{200} It must be made in such a way that all people who want to work have the opportunity to get decent work.\textsuperscript{201} The ILO sees the creation of work and appropriate payment for work as a leading instrument for overcoming poverty and fostering social exclusion.\textsuperscript{202} Employment policy is important for income distribution.\textsuperscript{203} When there are employment policies there is likelihood that ways in which jobs are to be created become an important issue thus creating chances for

\textsuperscript{194} Ibid
\textsuperscript{195} Ibid
\textsuperscript{196} See Mwamadzingo. M (footnote 161) p 3.
\textsuperscript{197} ‘Decent Work for Women: An ILO proposal to accelerate the implementation of the Beijing Platform for Action’. International Seminar, Gender Mainstream in Technical Cooperation Projects: For the Labour and Social Spheres, St Petersburg, (2000)
\textsuperscript{198} Anker R et al. (footnote 184) p 157
\textsuperscript{199} Ibid.
\textsuperscript{201} Ibid
\textsuperscript{202} Ibid
\textsuperscript{203} See the 1999 Report (footnote 89)
people to earn income. Income inequalities are also an impediment in the labour market. This is as a result of gender differences especially against women. Women tend to be concentrated in the lower status and lower paid jobs and are more likely to be out of jobs.\footnote{Ibid} To overcome unemployment it is necessary to be attentive to these basic structural problems.\footnote{Ibid} Therefore employment and income opportunities become the necessary corollary of decent work. Anker maintains the same view that one dynamic aspect of decent work is whether individuals are able to maintain or improve their work and income in the future through training and further education.\footnote{Anker R at al. (footnote 184) p 157} It is instructive to note that since decent work covers a wide range of employment, any person engaged in any type of employment is entitled to an appropriate income. The income should be paid in compliance with the legal requirements. In other words a person should not be underpaid.

\section*{5.3.3 Social Protection}

Decent work is built around social protection. Basic social security and protection is the cornerstone of decent work.\footnote{See the paper on ‘Decent work for women: An ILO proposal to accelerate the implementation of the Beijing Platform for Action’, (footnote 197).} The main objective of the social protection in the current socio-economic context is to reduce insecurity in the world of work, to provide safe and decent conditions of work, to maintain incomes and ensure adequate access to care and social services for all.\footnote{Ibid} This objective under decent work concept is underpinned by the social security principles, both social assistance and social insurance. This is based on the understanding that there are some eventualities or risks in society besides those at work. These include \textit{inter alia}, unemployment, sickness, and retirement by virtue of old age, maternity, disabilities and many more. These eventualities are such that they have both the social and economic repercussions. For this reason there should be measures in place meant to take curb such kind of situation. According to the ILO, social protection is meant to offset the absence or substantial reduction of income from work resulting from various contingencies. It is meant to provide people with health care and benefits for

\begin{footnotes}
\item[204] Ibid
\item[205] Ibid
\item[206] Anker R at al. (footnote 184) p 157
\item[207] See the paper on ‘Decent work for women: An ILO proposal to accelerate the implementation of the Beijing Platform for Action’, (footnote 197).
\item[208] Ibid
\end{footnotes}
families with children.\textsuperscript{209} Sengenberger however warns that social security is not a luxury, but a requirement for dealing with risks or eventualities in the world of work and supporting economic adjustment process as well as socio-economic demands.\textsuperscript{210} The ILO indicates that regardless of where people live, they need a minimum level of social protection and income security defined according to the society’s capacity and level of development.\textsuperscript{211} The point which is being made here is that each country must develop through social dialogue, a national social protection system that addresses the needs of all people.\textsuperscript{212} In other words the issue of social protection should be collectively addressed by the relevant stakeholders for putting forth contributions for its enhancement. It must not be the sole responsibility of the state in terms of policy formulation. It suffices to note that the existence of policies and mechanisms for social protection satisfy the requirement for the provision of decent work for all.

Decent work advocates productive and remunerative employment. The essence of this is to enable people to have access to social protection measures since some of them are privately-run. Decent work further encompasses a broad perspective of work in terms of which not only paid work is included but also work at home forms its part.\textsuperscript{213} One of the essential features of the decent work approach is that every body is entitled to basic social protection.\textsuperscript{214} This means that not only should people who work in the formal economy be given social protection, even those in the informal economy must be included. The major challenge for the ILO and member states is to find ways to extend reasonable social protection to those sectors where it does not exist such as informal sector.\textsuperscript{215}

\textsuperscript{210} Sengenberger W. (footnote 200) p 40
\textsuperscript{211} See the Report (1999) (footnote 89).
\textsuperscript{212} Ibid.
\textsuperscript{213} ‘Social Security: Issues, Challenges, and Potential’, Report VI, Sixth item on the agenda, 89\textsuperscript{th} Session, International Labour Office, Geneva,(2001)
\textsuperscript{214} Ibid
\textsuperscript{215} Casale G et al, (footnote 189) p 2
5.3.4 Social Dialogue

The extent to which workers can express themselves on work-related matters and participate in determining their working conditions is an important dimension of decent work.\(^{216}\) It focuses on the mechanisms of information exchange, consultation and negotiation by which conditions of work and life are improved and the pursuit of reconciliation of divergence of interests and common aims.\(^{217}\)

In its report of decent work for all, the ILO recognised that one useful tool for fostering decent work is by engaging in social dialogue. This can be achieved by allowing social partners to participate in developmental programmes. According to the ILO, tripartism and social dialogue are the objectives in their own right which guarantee participation and democratic process.\(^{218}\) The forces of globalization necessitate the offering of opportunities from which all can benefit.\(^{219}\) But this must be grounded in participatory social institutions if they are to confer legitimacy and sustainability of economic and social policies.\(^{220}\) Moreover, the success of the social dialogue depends on the capacity and willingness of social partners to engage in a process responsibly with strength and ability to adjust to contemporary circumstances and exploit new opportunities.\(^{221}\) The State becomes a necessary impetus in full realization and feasibility of social dialogue. It has to create an affirming environment in which the contributions of the employer, workers, and other relevant groups are sought and valued.\(^{222}\) For this to be achieved, respect for freedom of association and facilitation of collective bargaining becomes a necessary requirement.\(^{223}\) If the basis for freedom of association and collective bargaining is not strong, then social dialogue, either in the form of tripartite or bipartite bodies, will not properly function.\(^{224}\) Normally these draw their existence from the domestic laws and the difficulty sometimes arises when national laws do not make provision for freedom of

\(^{216}\) Anker R et al (footnote 184) p 166  
\(^{217}\) Casale G, et al, (footnote 189)  
\(^{219}\) Ibid  
\(^{220}\) Ibid  
\(^{221}\) Ibid  
\(^{222}\) Ibid  
\(^{223}\) Ibid.  
association. The absence of these laws means that chances of achieving decent work for all are blurred.

5.4 Decent Work: Enhancing Social Dimensions and Policies

The concept of decent work has been developed not only to address labour matters but even a lot of social issues. It does not only seek to guarantee a minimum basis of rights but also to tailor development to values, principles of action and governance which combine economic and social justice. These social issues range from poverty, unemployment, child labour, to gender inequality, and many more. Economic and social objectives are interlinked and the development of one cannot be conceived without the other. The majority of social ills are barriers to both economic and social development. These require policy formulation that will appropriately deal with them in terms of attenuating their adverse effects to the society at large. Decent work provides new avenues that could lead to the dealing with some of these factors.

5.4.1 Decent work and Poverty Eradication

Poverty negatively affects economic growth and development. It manifests itself in various ways. People living in a state of poverty normally lack facilities with which they can sustain life. Poverty denies the enjoyment of practically all human rights. The reason is that a person living in state of poverty is deprived of the opportunity to effectively assert and enforce his or her rights for lack of the necessary means. Sengenberger makes this point clearly that the prevailing poverty in the world is essentially work income that is insufficient to cover a person’s basic needs. When there are job opportunities available, people are able to get income and combat the factors that cause poverty. Work is considered the best route out of poverty. It is interesting to

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226 Casale G et al, (footnote 189) p 3
228 Sengenberger W (footnote 200) p 43
note however that not only work is able to assist people to eradicate poverty *simpliciter*. The work given to people must be decent. In other words, it must not be the kind of work in which rights are violated. The ILO, in very clear terms, views decent work in the light of productive work in which there is human dignity.\(^{230}\) For this reason for many people decent work is primarily a route out of poverty.\(^{231}\) Honouring all the strategic objectives of the decent work may be one way to succeed in poverty alleviation. Trade unions, employers’ organizations and government departments, public agencies and local authorities as well as community or organization, have an important role to play in creating an environment in which increasing opportunities for decent work lead to social inclusion and improve livelihoods.\(^{232}\) It is the essence of decent work that poverty eradication invites a joint participation from all quarters.

### 5.4.2 Decent Work and Unemployment

Unemployment is a constituent of poverty. Unemployment causes poverty because jobless people are unable to fight the challenges of life caused by poverty. Decent work advocates that there is responsibility to promote the personal capabilities and expand the opportunities for people to productive work and to earn a decent living.\(^{233}\) This suggests that to fulfill the requirements of decent work there is need to make measures available for creation of employment. Only through pro-jobs and pro-poor policies can the increasing employment crisis be addressed and decent work be placed at the heart of the economic and social challenges.\(^{234}\) Thus the right to decent work implies the availability of both employment opportunities and the preconditions for income generation such as the availability of asserts credits and a favourable environment.\(^{235}\) Accordingly by placing emphasis on employment and its quality and appropriate social policies, promotion of decent work becomes important factor not only in justice and social

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\(^{230}\) See The Report of 1999 in which amongst others decent work was defined as constituting decent and productive work. (My emphasis underlined)


\(^{232}\) See Working out poverty Report of (2003) (footnote 90) p 81


\(^{235}\) ‘Poverty and Human Rights: UNESCO Anti-Poverty Projects’. (footnote 233)
cohesion but in economic performance. There is need not only to create employment but also to guard against the loss of employment. In others words there has to be measures in place for employment security. Employment security exits if there is a protection against unfair and arbitrary dismissal, and where workers can obtain redress if they are subject to unfair dismissal. Generally speaking this proposition speaks to the compliance with the core labour standards.

5.4.3 Decent Work and Child labour

One of the important principles which the ILO Declaration enshrines is the eradication of child labour. Apparently the basis for this is that child labour is an issue that involves a vulnerable segment of society in need of special protection. Children are impressionable and as such are likely to engage in hazardous pieces of work. However for most instances the driving force into the practicing of child labour is poverty. The ILO aptly recognizes that child labour is both the cause and a symptom of poverty. This is normally the case where the family is experiencing either unemployment or low income earning problem. To overcome these problems, families see it as an alternative solution to engage the child in work even before such a child could reach the legally recognized working age. Thus, the family income is a determining factor in parents’ decision whether or not the child has to work. Moreover the spread and effects of HIV/AIDS necessitate the working of children at an unlawfully early age. The point which is being made here is that the disease kills the parents whilst working thus leaving children destitute. The net effect of this is that children would be forced to work in order to survive and sustain live. Another cause that gives rise to child labour is mentality of some employers. Some entrepreneurs, especially small informal ones, use child labour to increase the productivity of their businesses as they cannot afford to pay skilled and adult workers. Besides children’s wages are low and are only meant to make ends meet.

The repercussions which these causes of child labour have on the children, society and

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239 Ibid p 23
240 Ibid p 24
241 Ibid
the economic development cannot be allowed to pass unnoticed. Child labour is detrimental to individual children preventing them from enjoying their childhood; hampering their development and sometimes causing lifelong physical or psychological damage. Its adverse effects also manifest themselves to families, communities and to society as a whole. It undermines national development by keeping children out of education thereby preventing them from gaining skills that will enable them as adults to contribute to the economic growth and prosperity. A well-educated and healthy workforce is of vital importance to secure wealth and prosperity. It suffices to mention therefore that child labour dents the good economic growth and vibrant labour market.

The concept of decent work is structured in such a manner that causes leading to child labour may be overcome. It provides useful ideas whose effective use may culminate in the elimination of child labour. Social dialogue is one of the strategic objectives with which decent work can be achieved. It entails involvement of various stakeholders in the wiping out of social problems such as child labour. Thus by working with employers, unions, teachers and NGOs and directly with communities where child labour is prevalent, local action groups are formed to design and implement programmes specific to their needs. The elimination of child labour forms one of the principles under the Declaration on fundamental principles of rights at work. Pursuant to this there came into being, the Convention that deals with the elimination of worst forms of child labour. Ratification and implementation of this Convention to achieve the elimination of child labour is important for countries that effectively wish to deal with this problem. In that way the goal of decent work for all can be achieved since it is based on creating conditions of work in which rights of all people are respected. Freedom from child labour is inalienable right. In order words decent work concept is human rights-based.

243 Ibid
244 Ibid
245 See the Report of the Director-General, Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work ( foot note 145)
247 See generally, Worst Forms of Child Labour Convention (No.89) of 1999.
248 See Working out Poverty Report (footnote 90) p 71
249 Ibid p 60
A sustainable and comprehensive approach therefore has to place concern about child labour in the broader framework of a country’s development to live up to decent work for all-requirement.  

5.4.4 Decent Work and Gender Inequality

One of the defining features of decent work for all is that it speaks to the equality of opportunity and treatment for all men and women in conditions of work. A closer look of this proposition will reveal that decent work frowns at the working environment in which there is gender discrimination. The initial step for the ILO to deal with this problem was to promulgate the Convention which addresses the right to equality of opportunity and treatment in respect of employment and occupation. Gender inequality has socio-economic consequences. It leaves some units of the population especially women in poverty situation if they are denied the right and opportunity to decent and remunerative work. Gender inequality is omnipresent and intersects with economic deprivation to produce more intensified forms of poverty especially for women than men. World Bank study has concluded that gender inequality slows growth and makes policies ineffectual while gender equality enhances development. Hepple submits that equal access to job opportunities requires that national and local action increasingly emphasize positive and inclusive duties to promote equality and not just negative duties to avoid discrimination. System of regulation in this regard comprises inter alia, the involvement or empowerment of the disadvantaged groups. The most important approach to promote equality in the labour market is the active involvement of trade unions, employers’ organizations, and other stakeholders in challenging discrimination and proposing constructive remedies. Social dialogue therefore plays a pivotal role in fostering gender equality for living up to the requirement of decent work for all.

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250 Ibid
251 Busser E, *(footnote 169)*
252 See generally, Discrimination (Employment and Occupation Conventions) No 111 of 1959.
253 Working out Poverty, *(footnote 90)* p 63
256 Working out Poverty Report *(footnote 90)* p 63
5.5 Decent Work and Globalization: Burning Issues and Possible Avenues

A divergence of opinion has been brought to the fore regarding the effects of globalization, be it positive or negative. From the positive perspective, globalization has widened opportunities for great prosperity and development for some economies. Economies and individuals that have been able to take advantage of expanding global marketplace have benefited considerably. Consequently many see globalization as an instrument of progress.\textsuperscript{257} For some globalization has generated wealth and welfare.\textsuperscript{258} The reason is it has brought job opportunities. Others however see it as a source of persistent inequality and social exclusion.\textsuperscript{259} Globalization and economic restructuring favour flexible modes of employment. Many of these lie beyond the reach of labour legislation and social protection and are characterized by low incomes and high insecurity.\textsuperscript{260} While both men and women are affected by these trends women find themselves in a more vulnerable position than their male counterparts.\textsuperscript{261} The underlying reason is the occupational segregation with women finding themselves in the least protected sectors of the economy.\textsuperscript{262} The current globalization process has deepened inequality and disparities between countries and continents as well as within societies.\textsuperscript{263} The creation and concentration of wealth have now increased but so too have poverty and social exclusion, to an alarming and more widespread extent.\textsuperscript{264} The main proponents and beneficiaries of globalization have been the multinational companies and capital not workers or citizens.\textsuperscript{265} In other words it is a source of poverty, unemployment and many other social ills. The ILO estimation from the world of work is that more than a billion of men and women are unemployment, underemployed or what people term the working poor.\textsuperscript{266}

\textsuperscript{257} Levin M. ‘Globalisation, Decent Work and Ownership: The ILO Perspective,’ The ILO Cooperative Branch.
\textsuperscript{258} Ibid p 6
\textsuperscript{259} Ibid
\textsuperscript{260} See the (1999) Report (footnote 89)
\textsuperscript{261} Ibid
\textsuperscript{262} Ibid
\textsuperscript{264} Ibid
\textsuperscript{265} Ibid
\textsuperscript{266} Levin M, (footnote 257)
The meaning of decent work however within the whole range of these burning issues surrounding globalization is that it must not exclude anyone.\textsuperscript{267} Necessary steps and measures must be taken to deal with the acrimonious debate on the effects of globalization. If Globalization is to be accepted it must benefit everyone involved. At least a common ground must be found to level the playing field. Vital opportunities of globalization should not be discarded and as such there is need to explore the potential benefits of decent work agenda to help bridge the conflicting views of globalization.\textsuperscript{268} Social dialogue is mandatory, consensus and partnership at the international level and willingness to look transcendental to the immediate concerns and interests towards the institutional framework which can support the interests of all in the global economy.\textsuperscript{269} There is necessity for a rule-based international system that is fair to all. This means that new routes towards the governance of globalization must emerge.\textsuperscript{270} Governance does not solely vests in the government but it also becomes the responsibility of the society.\textsuperscript{271} Promoting decent work also calls for an integration of core labour standards in the global economy. International standards are policy tools setting basic principles and objectives covering decent work.\textsuperscript{272} Basically the approach of decent work is that core labour standards and other social policies need to be part of a coherent development strategy in which the response to global opportunities depends on an integrated view of interdependent economic and social objectives.\textsuperscript{273} It is through this that the inequality, poverty, unemployment, child labour and underemployment engendered by globalization, may to a certain extent, be successfully dealt with.

However there is a need to reform international policies to make them more supportive and responsive to growth, enterprise development, poverty reduction and the creation of decent work for all.\textsuperscript{274} It is noteworthy that more coordinated international policies are essential to improve the prospects for achieving decent work for all in the global economy.

\begin{footnotesize}
\begin{itemize}
  \item \textsuperscript{267} Ibid
  \item \textsuperscript{268} ‘Reducing Decent Work Deficit: A global Challenge’, (footnote 231) p 51
  \item \textsuperscript{269} Ibid
  \item \textsuperscript{270} Ibid
  \item \textsuperscript{271} Ibid
  \item \textsuperscript{273} Reducing Decent Work Deficit (footnote 231).
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All countries, whether developing or industrialized, have an obligation to adopt fair and responsible trading policies and domestic policies which are fiscally responsible to provide adequate social protection and adjustment assistance. As long as countries, however poor they may be, can afford to collect taxes and contributions, they can manage to secure some levels of social protection as a result of which they may deserve international support. For the accomplishment of this, steps should be taken to strengthen a sense of common responsibility and to reinforce mutual support across borders. The main international organizations and other actors concerned should get fully involved in this developmental assignment.

5.6 The ILO and Social Protection: Finding the Legal Genesis

The ILO has, before the ushering in of the concept of decent work, made its stance clear on issues of social protection. This proposition finds support in the view that social security has been the core element of the ILO’s mandate virtually since its creation in 1919. This was made clear in the International Labour Conference in which it (ILO) enshrined its recognition of the need to provide an adequate level of social protection. This became evident upon adopting a Convention. It was meant to address issues of social security. As a result of this the notion of social security has gained much acceptance as a basic human right and is being progressively developed in various forums and Conventions. The right of every human being to social security is the fundamental element of the view of the world that emerged from the World War II. The war left some members of the society impoverished. From a human right angle, everyone as, a member of the society has the right to social security. Under this right to social security

275 Ibid
276 Ibid
277 Ibid
278 Ibid
280 The 26th Session of the International Labour Conference in Philadelphia in 1944.
282 See Cichon et al, supra (footnote 279)
283 ‘Social Security For All: A Right that Emerged from the Second World War’,,(2006) 27 Comparative Labor Law & Policy Journal p 140
284 Universal Declaration of Human Rights of 1948.Article 22
is subsumed the provisions of social insurance. There are also a number of rights relating to social protection and assistance for families, and special protection for mothers before and after child birth and for children, such as the right to an adequate standard of living including adequate food, clothing and housing and to be free from hunger and the right to health. These are all the rights and the categories of people who are entitled to them the realization and implementation of which live up to affording social security as human rights based principle. It is important to note however that the above trend of social security as a right is binding only on member states which have signed and ratified this Covenant.

The ILO’s conception of social protection is on the other side, both Recommendation and Convention-based. The ILO adopted two recommendations. This was in pursuance of the special importance it attached to social security as guidelines for its extension in practice. The whole idea behind the adoption of the Convention and its Recommendations was to put in a legally documented instrument rules and principles brought forth in the Declaration of the Philadelphia. In the same way as the human rights international instrument are put into feasibility, the conventions are open to signing and ratification by the party states. The Convention is based on nine branches of social security all of which are defined. These branches are medical care, sickness benefit, unemployment benefit, old-age benefit, employment injury benefit, family benefits, maternity benefits, invalidity benefits and survivors’ benefits. On the basis of this social protection must be viewed in the light of these branches. The

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286 See Article 10.
287 See Article 11
288 See Article 12
289 See the Income Security Recommendation (No 67) and the Medical Care Recommendation (No 69).
290 There are however other Recommendations over and above these two.
291 See Footnote 25 supra p 140
292 See Articles 7 to 12
293 See Articles 13 to 18
294 See Articles 19 to 24
295 See Articles 25 to 30
296 See Articles 31 to 38
297 See Articles 39 to 45
298 See Articles 46 to 52
299 See Articles 53 to 58
300 See Articles 59 to 67
Convention puts a certain minimum level of protection for each one of these nine branches depending on the population covered and the benefits guaranteed. Thus, it suffices to argue that it (Convention) takes on board the economic and social disparities of an individual state. Indeed the research shows that at the preparatory stage of the draft of the Convention, the committee of expert had an intention to create a document that would define two groups of standards. These were minimum standard to accommodate underdeveloped countries and an advanced standard for the relatively developed countries in terms of wealth. The basis for this was to give encouragement to countries whose economy was stagnating to move gradually and progressively towards meeting the minimum standards set by the Convention. Even within these standards it is clear that a developing country whose economy and medical facilities are insufficiently developed can avail itself of temporary exceptions when applying for ratification. In a nut-shell the Convention does not impose a hard and fast rule once a country has made a ratification in terms of which social protection measures are to be put in place.

5.7 Social Protection and its integration into decent work: Towards Policy Feasibility

Despite the number of problems discussed above concerning the proper social protection, there are available policies their formulation and purpose of which is to address the challenges faced by the social protection. The basis of these policies forms the avenue through which decent work may be achieved. These policies range from, strategic adjustment, statutory revision, engagement into social dialogue, pluralistic approach, and delegation of responsibility. The content of these policies is briefly analysed below.

5.7.1 Strategic Adjustment

When making strategies for social protection, careful consideration must be made of the surrounding circumstances. Social protection strategies need to adjust to contemporary circumstances. In other words there is need for avoidance of static policies due to the

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301 See Footnote 25 p 141
302 Ibid p142
303 Ibid.
305 Ibid
dynamic nature of the socio-economic changes. Many societies have undergone radical change in the composition and size of families, in the age structure of populations, in the balance between urban and rural populations, and in the composition of employment.\textsuperscript{306} There have also been fundamental shifts in values, particularly towards those that emphasize the importance of the individual and that demand full gender equality.\textsuperscript{307} These transformations have implications for social protection and require strategies that are accommodative.\textsuperscript{308}

\section*{5.7.2 Statutory Revision}

Social security systems now face new demands triggered by factors such as the need to extend coverage to the world’s poorest people.\textsuperscript{309} In many poor countries, some of which are the developing ones, the main issue is very low coverage of social protection.\textsuperscript{310} According to the ILO conventional systems of social security apply to less than 20 per cent of the labour force in most developing countries, and to less than 10 per cent in much of sub-Saharan Africa.\textsuperscript{311} In developing countries it has been assumed that statutory social security systems would steadily be extended to cover many more people, but this has not happened.\textsuperscript{312} What this calls for is that the drafting of the statutory provisions should be such that no segment of population is left uncovered by the social security laws. However it merits a significant mention that since this problem is prevalent in the developing countries, non coverage may be due to poor economic reasons as opposed to intentional exclusion of members of the population.

\begin{flushleft}
\textsuperscript{306} Ibid \\
\textsuperscript{307} Ibid \\
\textsuperscript{308} Ibid \\
\textsuperscript{310} See the 1999 Report (footnote 89) \\
\textsuperscript{311} Ibid \\
\textsuperscript{312} Ibid
\end{flushleft}
5.7.3 Social Dialogue

In its advocacy of the decent work for all, the ILO indicated that tripartism and social dialogue are both objectives in their own right, guaranteeing participation and democratic process, and a means of achieving all the other strategic objectives. The reason is that the evolving global economy offers opportunities from which all can gain, but these have to be grounded in participatory social institutions if they are to confer legitimacy and sustainability on economic and social policies. Everybody, regardless of where they live needs a minimum level of social protection and income security, defined according to their society's capacity and level of development. This will not happen automatically, however experience has shown that it is insufficient to rely solely on economic and democratic development. Each country must develop through social dialogue a national social protection system that addresses the needs of its entire people. This particularly goes to women and excluded groups working in the informal economy. The proponents of social dialogue argue that as an element of economic democracy and codetermination, it is a goal unto itself and at the same time the means to formulate and enforce labour and social policy. It is submitted that contribution from other social partners is of great importance as ideas are provided on how best social protection can be improved for the benefit of all. Trade unions could be encouraged in this regard to develop alliances with community organizations that represent other segments of the working class, including the unemployed and workers in the informal economy and bring this power of representation to the negotiating table. This suggests that the role of trade unions should now be extended to cover social issues. Thier role must not exclusively deal with improvement of the conditions of work.

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313 Ibid
314 Ibid
315 Ibid
316 Ibid
317 Ibid
318 Sengenberger W. (footnote 200) p 40
5.7.4 Pluralistic Approach

Some countries will be able to achieve this by restructuring their existing social security system and extending its coverage.\textsuperscript{320} Other countries, however, will have limited scope for extension.\textsuperscript{321} Instead, they will need a more pluralistic approach.\textsuperscript{322} By this approach reference is made to the devising of complementary measures that embrace those not covered.\textsuperscript{323} Ginneken points out that the research and experience in many countries had shown that people who are excluded by social security measures are interested in joining social insurance schemes that are tailored in accordance with their needs.\textsuperscript{324} The areas of preference there being health care and protection in the event of death and disability.\textsuperscript{325} Each country must set priorities according to local resources and circumstances.\textsuperscript{326} It will need the proportional allocation of the resource to the extent possible. Thus the availability of the resources will determine the extent to which the cover will be afforded. Developing countries may make different choices from industrialized ones.\textsuperscript{327} Thus, while richer countries are more preoccupied with income security in old age, poorer countries may accord higher priority to adequate health care and to insurance against the risks of incapacity and death.\textsuperscript{328}

5.7.5 Delegation of Responsibilities

Where formal systems of social security are restricted the best way to ensure legitimacy, equity and efficiency may be to delegate responsibility to local communities.\textsuperscript{329} This would also help widen participation, particularly among the groups most at risk of exclusion, especially women, the disabled and others with special needs.\textsuperscript{330} This is because community areas are where people of different economic statuses reside. This

\textsuperscript{320} See the 1999 Report (footnote 89)
\textsuperscript{321} Ibid
\textsuperscript{322} Ibid
\textsuperscript{323} Ibid
\textsuperscript{325} Ibid
\textsuperscript{326} See the 1999 Report (footnote 89)
\textsuperscript{327} Ibid
\textsuperscript{328} Ibid
\textsuperscript{329} Ibid
\textsuperscript{330} Ibid
more pluralist approach has advantages, but it also raises many serious questions.\textsuperscript{331} One such question is whether these dispersed systems sustain social solidarity, by sharing responsibility across all social groups.\textsuperscript{332} For example, the question is who will underwrite small-scale non-governmental schemes so as to offer protection in the event of catastrophic failure.\textsuperscript{333} Another issue is participation in decision-making and in the management of such schemes for their proper function in the interest of the community members.\textsuperscript{334} Will they have representation from workers, employers, beneficiaries and other stakeholders?\textsuperscript{335} All of these issues need a careful consideration since conferring responsibilities may be advantageous as the needs and personal circumstances of individuals can be easily addressed.

5.7.6 Effective Labour Market Policy and Regulation

Societies at all levels of development face the challenge of organizing systems to provide social security.\textsuperscript{336} This is mainly against contingencies such as sickness, accidents, death of the main breadwinner, disability, old age, maternity and unemployment that make individuals, families and communities vulnerable to poverty.\textsuperscript{337} Social protection systems transfer income to the sick and others who cannot earn their living.\textsuperscript{338} Labour and employment policies seek to increase the number of decent jobs. These two sets of policies should be complementary.\textsuperscript{339} A country that offers adequate social protection will be reducing open unemployment as well as easing necessary adjustment in the labour market. A country that pursues a full employment policy will be reducing the demands on its system of social protection.\textsuperscript{340} But there can also be negative forms of feedback. If, for example, labour market policies encourage early retirement or offer generous invalidity conditions, they will also increase dependency ratios and pension costs and may

\textsuperscript{331} Ibid
\textsuperscript{332} Ibid
\textsuperscript{333} Ibid
\textsuperscript{334} Ibid
\textsuperscript{335} Ibid
\textsuperscript{336} See Working Out of Poverty (\textit{footnote 90}) p 53
\textsuperscript{337} Ibid
\textsuperscript{338} See the ILO Report (1999) (\textit{footnote 89})
\textsuperscript{339} Ibid
\textsuperscript{340} Ibid
overstrain social protection budgets. Furthermore policy formulation is mandatory for job securities in order to enable people to have income for purposes of joining or forming social protection schemes. In which case the labour laws should be strengthened enough to protect those who are already in the employment. These and many other interconnections demand that labour market and social protection policies be considered together.

It is apparent from the above discussion that some policies or approaches may be fruitful in the light of attaining decent work for all for achieving a sound social protection system and a sound social policy in the region. The next and important issue to consider is evaluation of these approaches in view of their both adoption and implementation in the SADC region. Put differently, the extent to which decent work idea can foster the region’s social protection and policy as a whole.

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341 Ibid
Section Six:

6.0 Putting decent work and social policy into perspective: Implications for SADC

The preceding discussion has revealed that one of the challenges facing the region is to adopt policies that will ensure that those who have been excluded are covered. These encompass both the migrant workers and other groups in the countries. Extending social security coverage therefore constitutes an important aspect of ensuring decent work. Ghai opines that social security serves to meet people’ urgent subsistence needs and to provide protection against contingencies and as such is an important aspect of decent work. To put decent work into perspective for social security coverage in SADC region is by making a revision of some policies and or laws in order to accommodate those who have been excluded. The ILO stated succinctly that of highest priority are policies and initiatives which can bring social security to those who are not covered by the existing schemes. It important to mention that exclusion comes into being due to the nature of the policies. An example can be drawn from legal provisions which specifically state that a certain social security mechanism is meant for employees. The proper legal interpretation of the employee will mean that those who are self-employed are not eligible for the benefits accruing from such social security mechanism. In the final analysis these have the effect of denying some segments of the population entry into the social security systems.

Another aspect which underpins the concept of decent work is social dialogue as has been discussed previously. It is the involvement of the social partners in terms of making contribution of ideas for developmental purposes. Decent work can be best pursued when employers, workers, governments and other relevant actors in the society work together to address key obstacles and offer balanced responses. The argument is that social dialogue is important in social security matters as it is considered to be in issues of working conditions. This simply suggests that the functions of trade unions should be widened to incorporate involvement pertaining to social security matters rather than being exclusive to counteract the inequalities between the employers and the employees.

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344 ‘Reducing the decent work deficit: A global challenge’, Report of the Director General,(footnote 231) p 6
Although the primary aim of organizing has been to bargain for better wages and conditions of work, organizations play, at different levels, an important role in the economic, social and political development of their communities and countries as a whole. They also provide important services to their members, ranging from welfare and social security to technical assistance and representation at different institutional levels of the economy and society.

Social dialogue exists in the region but its concentration has been on promoting labour market stability, protection of the rights, compliance with the core labour standards, modernization of dispute settlement and promoting prevention of dispute settlement strategies. It is submitted that the policy consideration in the light of this approach fulfills the requirements of decent work but is too specific and has the tendency of excluding social security matters. Social dialogue may be fruitful as it may invite categories of those excluded to be part of the policy formulation on how social security can best be improved in the region. In South Africa, the statutory social dialogue body, the National Economic Development and Labour Council (NEDLAC), originally established constituting government, organized labour and business, extended its membership to include Community Constituency specifically to allow for representation of community organization within the social dialogue process. It suffices to submit that issues of social security should not solely be left in the domain of the government owing to the dynamic nature of the socio-economic challenges.

Integration of social security and labour market policies has an important role to play in the development of comprehensive social security system in the SADC region. It would appear appropriate to broaden the scope of labour law into more comprehensive social law approach covering both those included and excluded in the formal employment. In other words there is need to create more jobs to enable them join social security schemes.

346 Ibid
348 Frye I et al, (footnote 319) p 193
There should not only be a quantity of jobs but quality jobs to live up to the requirements of decent work. Labour laws should be protective enough so as to provide job security for those in the labour market. Most laws in the region should reconsider the need for early retirement. Even though this is good for production in the work place, it may result in the increase of dependency ratios to the detriment of the economic capacity. This is more so in countries which do no have social security mechanisms like unemployment insurance fund.

Early in this discussion it was revealed that social security marginalization has culminated in those excluded joining informal social security due to the unaffordability of the social insurance requirements. Informal social security system is two-fold in that it is kinship-based support and community-based support.\textsuperscript{349} The former is normally support provided by and for family members, whereas the latter refers to support proffered by circumstances or communities.\textsuperscript{350} For example burial societies that need low contributions within members of a given community. The argument is that despite this system being inefficient when it comes to covering the major risks, their mutual assistance mechanisms undoubtedly help to relieve suffering and to help those who are poorest when they face hardship.\textsuperscript{351} For this reason it has been suggested that given the role these institutions play within the region, they must be given recognition and supported by the government.\textsuperscript{352} This will include among others, training of administrators or provision of set-up costs. There has to be a paradigm that will enable the integration of these institutions with the formal social security system in order to give solution in the non-coverage situation.\textsuperscript{353} In other words the region has to adopt a pluralistic approach in terms of taking complimentary measures.

\textsuperscript{350} Ibid
\textsuperscript{352} See Olivier and Kalula pp 10-11
\textsuperscript{353} Ibid
6.1 SADC Social Policy

6.1.1 Social charter

The region has been able, with a view to address the socio-economic challenges as revealed above, to put in place a social policy. One of the remarkable initiatives which the region has taken is the creation of the Social Charter. The main purpose of the Charter is to facilitate the accomplishment of sectoral objectives through close and consultations among government, employers and workers organizations and in the spirit conducive to harmonious labour relations. The Charter of Fundamental Rights of Workers in Southern Africa makes provisions for a framework of fundamental labour rights in the region. These rights range from the freedom of association and collective bargaining, equal treatment for men and women, protection of children and young people, elderly persons, persons with disabilities, social protection, improvement of working and living conditions, protection of health, safety and environment, information, consultation and participation of workers, employment and remuneration, and education and training. The very essence of the Charter in the light of this floor of rights is aptly described by Kalula in the following words;

“The Charter is of particular interest from both human rights and social protection perspectives. It is clearly a tool in labour market regulation, underpinning as it does the need to protect workers and other vulnerable groups...”

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356 Ibid
357 See Article 4
358 See Article 6
359 See Article 7
360 See Article 8
361 See Article 9
362 See Article 10
363 See Article 11
364 See Article 12
365 See Article 13
366 See Article 14
367 See Article 15
requires countries to take reasonable measures to enable workers to reconcile their occupational and family obligations. It gives priority to the protection of vulnerable groups such as people with disabilities.”

6.1.2 Social Security Code

Owing to a number of socio-economic challenges prevailing in the region, there have been some contingencies and or risks whose effects leave members of the society impoverished. The changing socio-economic and political environments in various countries have and are exposing inhabitants to insecurities and hardships. Consequently, social security measures have been thought a viable avenue with which to ward off these insecurities. Social Security is defined, “as the protection which the society provides for its members through series of public measures against the economic and social distress that otherwise would be caused by the stoppage or substantial reduction of earnings resulting from sickness, maternity, employment injury, unemployment, invalidity, old age, death of breadwinner, need for medical care and raising of children.” In the SADC region most of the member countries have just started introducing social security having attained political independence. The delay in the introduction of proper social security was and still is due to the limited resources and their distribution among the population.

6.2 Linking Decent Work and Social Policy in the Region

The preceding discussion has disclosed that the concept of decent work is founded upon four pillars. These comprise fundamental principles of rights at work, employment and income opportunities, social protection, and social dialogue. It suffices to mention that the region has to align itself with this trend to live up to the requirement of decent work for all. Fundamental principles at work are a decent work requirement which is underpinned by the Declaration on Fundamental Principles and Rights at work. What this suggests is that the region should adopt the Conventions espoused by this Declaration and ensure its implementation. It is significant to mention that the majority of the countries in the

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369 SADC Employment and Labour Sector Co-ordinating Unit (EL SCU)
370 Definition as provided by the ILO
SADC region have adopted the Conventions related to the fundamental principles and right at work. The level of ratification by the African countries of the eight fundamental Conventions is remarkably high.\textsuperscript{371} This is the result in part of the massive adherence to the campaign launched since 1999 to promote the fundamental Conventions with a view to their universal ratification.\textsuperscript{372} However the implementation has been a major concern as in some countries there are still poor working conditions. One research in Lesotho has revealed that workers are in industries are forced to work overtime sometimes for which they are not paid for.\textsuperscript{373} Moreover trade unions are shun out of the factories and workers are intimidated for joining trade unions as they could lose jobs if join trade unions.\textsuperscript{374} The situation is exacerbated by the fact that the ILO and the SADC region lack enforcement measures with which to ensure proper compliance of the Conventions and regional documents ratified.

Despite this the region has taken necessary steps to bring to the surface the importance of fundamental principles and rights at work. The Charter of Fundamental Social Rights in the SADC or Social Charter as has been discussed above provides evidence of creating decent work for all since it enshrines fundamental principles and rights at work. Moreover the region has a Child Labour Programme which encapsulates Draft Code of Conduct on Child Labour.\textsuperscript{375} This has been done in an effort to curb child labour and including the worst forms of child labour in the region.\textsuperscript{376} The Draft Code contains various components including ratification of international instruments relevant to child labour, development of national policies on child labour, national programmes of action, data banks on child labour, legislation and enforcement education and training, health, welfare and social protection and poverty alleviation and income generation.\textsuperscript{377}

Apart from this the region is experiencing gender inequalities which the concept of decent work clearly frowns at. The labour market of SADC is in no doubt confronted

\textsuperscript{372} Ibid
\textsuperscript{373} “Selling our people”: Summary Report on Garment Production in Lesotho’, available online at \url{http://www.cleanclothes.org/publications/lesotho.htm} (June 2001) (accessed on the 14/03/2006) p 4
\textsuperscript{374} Ibid
\textsuperscript{375} Chitambo A, (footnote 353) p 7
\textsuperscript{376} Ibid
\textsuperscript{377} Ibid
with gender inequalities in terms of employment opportunities in the member states.\textsuperscript{378} While some women are experiencing marginalization, in other states men are also in the similar situation. It is important to note that women generally are disadvantaged due to discriminatory policies, inadequate policies and paucity of enforcement mechanism of legislation.\textsuperscript{379} To ensure non-discrimination in the world of work, within the region and maximum utilization, Gender Policy for the SADC Employment and Labour Sector was formulated.\textsuperscript{380} The Policy aims at its implementation in the SADC Employment and Labour Sector which will operate throughout the sector and throughout the region.\textsuperscript{381} It also, works towards the encouragement of gender sensitivity in labour and employment policies and practices in the region.\textsuperscript{382} It further encourages the development and implementation of policies which promote gender equality.\textsuperscript{383} To effectively deal with issues of gender inequality and living up to the requirements of decent work, realistic and timely information is needed about the economic role of the women in the region, more particularly about those in the atypical forms of work and in vulnerable positions in the labour market.\textsuperscript{384} Moreover information is of utmost importance because women lack access to accurate information regarding conditions of work possibly due to lower levels of education and higher socio-cultural constraints.\textsuperscript{385}

Another important aspect which underpins decent work is employment and income opportunities. What this means is that the region has to ensure that it puts in place policies that will ensure that the population has decent work which generates income. Over and above the region has to make sure that it deals effectively with the income inequality. The issue concerning income inequality constitutes one other socio-economic challenge within the region. This issue speaks to the high differences in the earning capacities of some groups of working class. As Fenwick and another indicate, income inequality is the long-standing feature in the SADC region which is overlaid with racial

\textsuperscript{378} Ibid
\textsuperscript{379} Ibid
\textsuperscript{380} Ibid
\textsuperscript{381} SADC Employment and Labour Sector (ELS). Gender Policy, Lusaka, Zambia (July 2000) p 3
\textsuperscript{382} Ibid
\textsuperscript{383} Ibid
\textsuperscript{384} Ibid
\textsuperscript{385} Decent work for women (footnote 175)
differentiation.\textsuperscript{386} This of course is prevalent in countries that are multiracial like South Africa. The research reveals that the white population earns significantly higher proportions of national income than their black counterparts.\textsuperscript{387} The net effect of the structural income inequality is that it adversely affects the economic growth especially the poor.\textsuperscript{388} The implication of this is that low income level makes it difficult for those affected to take necessary measures to ward off the effects of poverty and other economic challenges.

Decent work for all encapsulates the idea that social dialogue is a pillar of support if all challenges facing attainment of what constitutes decent work is to be overcome. Amongst the most important social partners are the employees through trade unions, employers through employers association and the government. As long as the ILO defines social dialogue as “involving all types of negotiations, consultations, or exchange of information between or among representatives of employers and workers on issues of common interest relating to economic and social policy”, then democratically elected trade unions are the best vehicle for providing workers with “voice” or participation.\textsuperscript{389} However, in the absence of the principal-agent relationship alternative approaches need to be covered.\textsuperscript{390} It is of profound importance to mention that social dialogue is centrally based on the guarantee of the right of freedom of association and collective bargaining. It is noteworthy that the Social Charter makes provisions to ensure the retention of the tripartite structure of the three social partners, namely; governments, organisations of employers and organisations of workers.\textsuperscript{391} Generally, most of the tripartite machinery in the region share common albeit disabling characteristics namely their advisory nature which tend to discourage effective participation among the social partners, particularly trade unions.\textsuperscript{392} Thus trade unions in Southern Africa are confronted with a mammoth task in trying to achieve the goals set by the SADC Employment and Labour Sector Co-ordinating Unit. Structural Adjustment Programmes (SAPs) which have been introduced aimed at restoring macro-economic balance and controlling inflation and public deficits

\textsuperscript{386} See Fenwick C and Kalula E.R (footnote 25) p 11
\textsuperscript{387} Ibid
\textsuperscript{388} Ibid
\textsuperscript{389} Kuruvilla S (footnote 224) p 3
\textsuperscript{390} Ibid
\textsuperscript{391} See Article 2 (a).
\textsuperscript{392} Fashoyin T, (footnote 153) p 46
have resulted in thousands of people losing their jobs, worsening the already bad unemployment situation.

One last pillar on which decent work stands is social protection. Social protection is concerned with the social security measures. The SADC Social Charter enshrines social protection in the region in the following words:

“Member States shall create an enabling environment so that every worker in the Region shall have a right to adequate social protection and shall, regardless of status and the type of employment, enjoy adequate social security benefit. Persons who have been unable to either enter or re-enter the labour market and have no means of subsistence shall be entitled to receive sufficient resources and social assistance”.393

A sustainable social security policy and system requires an assessment of its impact on the labour market and employment generation, as well as its fiscal implications.394 The creation or extension of social security should take into account a number of factors. First, it must not become a barrier to employment. In other words as much as people are given grants to combat the effects of poverty, this should not stop any attempts to create jobs for people. Put differently creation or extension of social protection measures in the SADC region must try to avoid creating a state of permanent dependency in lieu of employment. Social safety nets should be aimed at providing support until people can obtain employment. To achieve decent work within the social protection in the region, social security needs to be implemented within the following framework:

- Social security and its extension for coverage should be linked to economic growth. Even if models of social security are borrowed from other countries, consideration must be given of the economic effects thereof. It must be consistent with the economic and social realities of each country. It should be considered within a broader national development strategy. Therefore, the ILO’s advice and

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393 See Article 10 (1) and (2)
policies on social security should go hand in hand with fiscal discipline and sound micro and macro economic policies.

- Private and employer-contribution based schemes of social security should receive equal consideration with other social security models. This should be considered along with informal types of social security because they are helpful to the disadvantage groups of the society. Since social security is a shared responsibility of society as a whole, ILO policies should not lead to employers being burdened with its major cost.

- An effective administration system to ensure delivery to beneficiaries should be built into a social security system. Earlier in this study it was revealed that there is a problem where there are social security bilateral treaties. This becomes problematic since there are no mechanisms which ensure that benefits reach the beneficiaries. Social security costs should not place an unfair burden on the current working population, especially in countries with an ageing population.

- Governments should be assisted in enacting a basic regulatory framework. Governments, employers and workers and the community as a whole should be provided with the requisite knowledge, information and training to discharge their respective roles in this regard. This therefore makes clear the point that a joint cooperation of social partners in the formulation of the comprehensive social protection in the region is very important.
Section Seven:
7.0 Conclusion
It is clear from the above discussion that socio-economic challenges continue to pose a threat in the region. The continuation of this disturbing situation has adverse impact on the economic development which is already negatively affected by other constraints. Although social protection with its varying components has been brought to practicality to assist in the region, the continuing of some socio-economic challenges hamper proper social security provisioning. This consists amongst others, creation of decent jobs that will enable some of the excluded members of the population in the region to have social security cover that best meet their needs. It merits a significant mention that one of the salient features the region has is the economic situation that is imbalance. In other words, some members of the region have a relatively better economic capacity as opposed to others. Therefore those whose economies are depressed like Lesotho, Zimbabwe and Mozambique, to mention a few, may take a long time to have a comprehensive social security. However some of the policy objectives underpinning decent work may be of importance if adopted and incorporated into national social security policies. The best way is to incorporate policies that specifically address certain needs and foster social protection. This is to avoid having policies that look good but have no purpose to serve. Policies must be feasible.

One notable important aspect is that the region seems to be having tendency to follow a model of social security as it was developed in Western Europe. The fundamentals are the same but the conditions are different. The implementation of social security in a developing region like SADC is different from the one of developed Western Europe. Different approaches are therefore necessary. Understanding social security beyond its Western conception means that the region will have to formulate policies that address contingencies that affect its population.

The way towards achieving a decent work for all is the creation of employment through which socio-economic challenges may be overcome. The fact that the region has regional agreements which are aimed at improving labour standards is not enough for improvement of working conditions. Proper institutions have to be set up which ensure that fundamental principles and rights are respected in a specific country. A regional
agreement has to be drafted and ratified by the SADC member countries which confer powers upon an institution so established to take action against a country which transgresses provisions which are meant to ensure decent work for all. This should be complimented by a regional reviewing committee on the labour matters which shall from time to time issue a compiled report of every country in matters of either compliance or non-compliance of the labour standards in the region. However the institutional function should take into account the economic circumstances of the country in question. The reason behind this is that non-compliance may be due to a stagnating economic development.
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