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OCCUPATIONAL HEALTH AND SAFETY IN THE SADC REGION: EXPLORING AN ECONOMIC APPROACH

ZOLOMPHI NKOWANI

Occasional Paper
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University of Cape Town

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Zolomphi Nkowan

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Abbreviations

AEC	African Economic Community
AU	African Union
ECOSOCC	Economic, Social and Cultural Council
EU	European Union
HIV	Human Immunodeficiency Virus
AIDS	Acquired Immunodeficiency Syndrome
FDI	Foreign Direct Investment
ILO	International Labour Organisation
ILS	International Labour Standards
OAU	Organisation of African Unity
OSH	Occupation Safety and Health
REC	Regional Economic Community
SADC	Southern African Development Community
SADCC	Southern African Development Coordination Conference
SHDSP	Social and Human Development and Special Programmes
TNCs	Transnational Corporations
UNCTAD	United Nations Commission for Trade and Development
WHO	World Health Organisation
WTO	World Trade Organisation

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For Kwima, Tawonga and Wanangwa

Occupational Health and Safety in the SADC Region: Exploring an Economic Approach

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Abstract

“Only decent work for all—that is carried out in conditions of freedom, equity, security and human dignity—can provide the social foundations for the global economy.”

Juan Somavia, Director General, ILO¹

Occupational Safety and Health (OSH) is viewed by most people as one of the unattractive areas of policy and practice. States view it as machinery that scares off potential investors by increasing their production costs. Enterprises see it as a dent on their profit margin. Third parties see it as their only shield against the negative social spill-over of economic enterprise. However without a strong OSH regime such hopes are lived only in dreams. Of late the tide has been changing as the social and economic cost of occupational injuries and illnesses becomes visible.² Advances in industrial processes and the resulting phenomenal extent of disasters that would potentially follow, not to mention the loss of face, and control mechanisms such as the use of civil and criminal law sanctions, have all helped to force policy makers to rethink OSH and its role in economic policy and practice. In this discussion we investigate the extent to which OSH is perceived as part of a regional policy blue print for the Southern Africa Development Community (SADC)'s integration programme and argue for a case for an economic approach to its regulation.

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Part I AN OVERVIEW OF OSH IN THE SADC REGION

1.0 Introduction

The Southern African Development Community [SADC] is going through exciting times with social, economic and political reforms of unprecedented scope and depth taking place. One area where this is taking place is in relation to regulation. The organisation's economic structure has now for some time been undergoing phenomenal re-alignment so as to facilitate the attainment of the organisation's strategic goals³ i.e. raising the standards of living of the people in the area.⁴ One channel of achieving this is through the medium of trade and investment, in particular Foreign Direct investment [FDI]. Trade and investment is viewed in the region as a better alternative to donor aid.

SADC was created to provide for deeper economic co-operation and integration in the region, to provide for cross-border investment and trade, and freer movement of factors of production (these include labour), goods and services across national borders. It was also a desire of the founders of the organisation to be a conduit for common economic, political and social values and systems, enhancing enterprise and competitiveness, democracy and good governance, respect for the rule of law and the guarantee of human rights, popular participation and alleviation of poverty in the region.⁵ What is clear is that though the surface language and mission of the organisation is political,⁶ i.e. liberation from foreign rule, the deeper aim has always been economic,⁷ i.e. regional economic integration. One of the objectives of the organisation's predecessor, the Southern African Development Coordination Conference (SADCC), was to reduce economic dependency on the then apartheid South Africa, by achieving economic self sufficiency.⁸ The founders envisioned a common future, in a regional community that ensures economic well-being, improvement of the standards of living and quality of life, freedom and social justice and peace and security for the peoples in the region.⁹ Trapped in this are the human machines that turn the wheels of the economy whose welfare, health and safety is a matter of paramount concern and an indispensable part of the economic equation. More than ever OSH is now receiving increased attention in both regional¹⁰ and multilateral organisations setups.¹¹ However the message on paper has not translated well on the ground. In this part of the discussion we look at the SADC OSH policy and its rationale.

1.1 A Point of Departure

OSH is primarily about workplace health and welfare and secondly about health, safety and welfare of third parties impacted upon by work environment, making a marriage between environmental concerns and occupational practices a happy one. However health issues associated with the workplace are rarely recognised as health matters by policy makers. This notwithstanding its toll on the public purse,¹² productivity and efficiency,¹³ shareholder value,¹⁴ individual regression and derailment of poverty eradication efforts is enormous. One possible explanation for the invisibility of OSH is that many other health issues compete with it for scarce funding. Governments and policy makers are more concerned with problems of unemployment, malnutrition, and infectious diseases and these often blur the social

and economic costs of OSH related injuries and illnesses. For SADC, as is the case with most developing countries, HIV/AIDS over shadows other health issues such as OSH. In part II we will look at how to make visible the invisible cost of under-investment in OSH. In this part we will be exploring the SADC OSH agenda.

2.0 The Early Days

OSH has been recognised by SADC since its establishment in 1992,¹⁵ but it is relatively recent that in policy terms it is being perceived as part of a blue print for the organisation's functional regional integration agenda. Several factors account for this. These include the changing global dynamics in which trade unions are more vocal than before on labour issues, the intensification of Safe Work Programmes by multilateral organisations such as the International Labour Organisation (ILO),¹⁶ International OSH campaigns such as the World day for Safety and Health at work, which have all helped to catapult OSH to policy frontline. The emergence of a knowledge based global economy in which the region economic reconstruction endeavors are played out means that enterprises and policy makers are turning to economic statistics,¹⁷ economic forecast and market surveillance and these make visible, the social and economic cost of OSH injuries and illness,¹⁸ and its impact on efficiency and productivity.¹⁹

Another factor is the post cold war acceleration of democracy (all SADC states except Swaziland, which is still a monarchy, have embraced democratic systems of governance) which has given labour rights campaigners extra teeth and a new lease on life. The jurisprudence of collective bargaining and the politics of labour and industrial relations depend on social dialogue among social partners, anchored on industrial democracy and social justice. For this reason, SADC saw the need to involve the people of the region centrally in the process of development and integration, particularly through the guarantee of democratic rights, observance of human rights and the rule of law.²⁰ Further, as tariff barriers to trade are coming down, followed by less state intervention in economic management, markets are becoming increasingly transparent and any enterprise that wants to stay in the market has to continuously improve its competitiveness. Three factors determine the competitiveness of an enterprise, namely (1) its capacity for innovation, (2) the quality of its products and (3) its productivity. It is, therefore, not surprising that these three factors have become an obsession for modern enterprises that want to remain competitive.²¹

The search for new relationships with clients and suppliers, as factors for production, is nothing new in business strategy. What is new, however, is the emergence of a new 'invest in the worker culture'. This culture requires investing both in the workers' training and in the improvement of their working conditions and in this culture OSH is not only a regulatory requirement but also a means for improving productivity and competitiveness.

The original treaty in article 5 (1) states that one of the organisation's objectives is to achieve development and economic growth, alleviate poverty, *enhance the standard and quality of life of the people* [emphasis supplied] in the region through regional integration. Enhancing the standard and quality of life requires improving the health

and welfare of the people which includes their occupational lives and the working environment. In Article 6 of the treaty member states undertake to adopt adequate measures to promote the achievement of the said objectives and further undertake to refrain from taking any measure likely to jeopardise the sustenance of article 4 (its principles) and the achievement of its objectives, outlined in article 5, that form the springboard for the region's OSH. Of interest for OSH is article 4(c) in which member states pledge to conduct their business in accordance with human rights, democracy and the rule of law. It can safely be submitted that labour rights are human rights and that 'racing to the bottom' labour standards such as OSH is not only a human rights violation but derogation from one of the foundational principles of the organisation.

Due to the supranational nature of the issues that the organisation has to tackle, the size of costs and variety of skills and expertise required, cooperation was sought to achieve a viable working scheme. Article 21 of the treaty sets out priority areas for cooperation but sadly, OSH is not a priority area. However the treaty, as amended in article 21, expands the list of priority areas to include social and human development²² which encompasses OSH. According to Article 21(2), the primary aim of the cooperation is coordination, rationalisation and harmonisation of macro-economic policies, strategies, programmes and projects in the areas of co-operation. The reason for harmonisation is to assist in the free movement of people, goods and services in the region. As tariff barriers to trade are coming down, OSH can effectively act as a technical non-tariff barrier to trade, through its effect on commodity prices and production, a fact that can be mitigated by harmonisation of OSH policy across the region. The process of implementing the treaty is through protocols.²³ SADC has since concluded a number of protocols some of which have an impact on OSH. In this discussion we classify these policy initiatives into packages and we look at them in turn.

2.1 The First Package of Measures

These are initial measures aimed at recognising OSH as part of the blue print for regional integration and are contained in article 5 (1) (a). In this article there is recognition of the dualism of social and economic policy in a functional regional integration programme. In trying to achieve development and economic growth the region undertakes to balance social progress and economic growth and views the two as complimentary to each other. There is a tacit acknowledgement that the occupational wellbeing of people in the region is fundamental, as healthy people make better economic actors and healthy workers are likely to promote efficiency and production in an enterprise.²⁴

In 1999 SADC adopted a protocol on Health²⁵ whose objective was to provide a framework for identification, promotion, co-ordination and support of those *activities that have the potential to improve* the health of the population within the Region.²⁶ Member states are to identify those activities that have the potential to negate the health of the population in the region such as OSH injuries and illnesses. The lead article for OSH is article 24 which not only recognises the effect of OSH on social and human development and economic growth but also its cross-sectoral nature. It enjoins member states to assist each other in the development and delivery of

integrated occupational health services and co-operate in reducing the prevalence of occupational injuries and diseases. There is a recognition of the connection between the wider environment, environmental health and OSH so that in article 23 of the protocol, member states undertake to collaborate, and to co-operate and assist each other in a cross-sectoral approach in addressing regional environmental health issues and other concerns, including toxic waste, waste management, port health services, pollution of air, land and water, and the degradation of natural resources.

OSH is also dealt with in the context of mining under the protocol on mining.²⁷ In this protocol member States agree to cooperate in improving the practices and standards of OSH in the region's mining sector.²⁸ On account of cost, complexity of OSH problems and hazards associated with mining, there is introduced an element of cost sharing through which member states agreed to sharing training and any promotional facilities related to occupational health and mining safety in the region.

OSH is also covered in Article 16 of the Trade Protocol where it is addressed in the context of sanitary and phytosanitary measures which refer to plant and animal health. Whether article 16 is viewed as such by practitioners and policy makers in the region remains to be seen but in practice animal health includes human health and sanitary and phytosanitary measures protect both animal, human and plant health. This is critical for a majority of SADC states whose economies are predominantly agro-based, where the agricultural environment also provides the living environment for a majority of the population. These protocols are directly linked to the earlier initiative under the treaty and address OSH in the context of their overall framework. However there are other policy instruments that have been adopted to deal with OSH and these form the second package.

2.2 The Second Package of Measures

Collectively the policy initiatives comprise a six-pact outfit i.e. the protocol on health,²⁹ the social charter,³⁰ a code of practice on the safe use of chemicals³¹ and the code of conduct on HIV/AIDS and employment.³² This is not the same as saying that these are the only or most important sources of OSH policy documents in the region, rather they represent SADC's own efforts to give meaning and effect to its treaty undertakings. Of these the milestone is the Charter of Fundamental Social Rights. The lead article for OSH is article 12. The Charter is the first instrument that specifically addresses OSH.³³ A discussion of the charter is beyond the scope of this paper, suffice it to say that the region's OSH policy has been clearly spelt out in the Charter. Together with other measures, they represent a policy shift from an economically driven social policy to a stand alone social policy equally weighted with the region's economic policy.

2.3 The Reform Programme

SADC was set up to promote economic and social development in the region³⁴ and for the establishment of common ideals and institutions as infrastructures to support its goal.³⁵ Development, poverty alleviation and living standards³⁶ were the initial priority areas for cooperation,³⁷ in order to foster regional development and

integration.³⁸ Under the organisation's Regional Indicative Strategic Development Plan, responsibility for OSH has been given to the directorate of Social and Human Development and Special Programmes³⁹ (SHDSP) that has responsibility for development, promotion and harmonisation of employment policies and labour standards in the region. The change is a response to structural and institutional limitations inherited from its predecessor and to re-position the organisation for the social-economic challenges confronting the region.⁴⁰

Current reforms are an alignment of the organisation's aspirations and the mechanism of realising the same. They are part of the organisation's evolution from a 'coordinating conference' to a 'development community' that is responsive to global and regional shifts in economic perspectives.⁴¹ This should not just be seen in regional terms, but more wider than that. On the continental stage the Organisation of African Union (OAU) was on 9th July 2002 transformed into an African Union (AU).⁴² Fundamental to OSH, has been the abandoning of the principle of non-interference in internal affairs of member states,⁴³ which in the past had been responsible for the organisation's complacency over human rights abuses in member states. As indicated earlier, human rights include both social and economic rights such as OSH. Following continental changes the African Charter (1963) establishing⁴⁴ the OAU and the treaty of Abuja, establishing the African Economic Community 1993,⁴⁵ have been synthesised into a single document, the Constitutive Act (The Act).⁴⁶ The significance of this development is that continental social and economic policies have now been recognised as two sides of the same coin.⁴⁷ This is in contrast to the past policy conception that wrongly viewed social progress and economic growth in the region as a by-product of a political agenda i.e. liberation from foreign rule for which one of the casualties has been policies on OSH. The AU Act is a deconstruction of Africa's regional policy, which has raised new hopes for OSH.

3.0 Scope of OSH Regulation

The nature and scope of OSH regulation is set by the very definition of what OSH is. Since 1950, ILO and WHO have shared a common definition of occupational health. It was adopted by the Joint ILO/WHO Committee on Occupational Health at its first session in 1950 and revised at its twelfth session in 1995. Untypical of standard definitions, OSH is defined in relation to its aims. The definition reads:

"Occupational health should aim at the promotion and maintenance of the highest degree of physical, mental and social well-being of workers in all occupations; the prevention amongst workers of departures from health caused by their working conditions, the protection of workers in their employment from risks resulting from factors adverse to health; the placing and maintenance of the worker in an occupational environment adapted to his physiological and psychological capabilities; and, to summarise, the adaptation of work to man and of each man to his job."

OSH is a cross-disciplinary area concerned with protecting the safety, health and welfare of people engaged in work or employment. As a secondary effect, OSH may also protect co-workers, family members, employers, customers, suppliers, nearby communities, and other members of the public who are impacted by the workplace

environment. The primary reason for establishing OSH standards is moral. An employee should not have to expect to be injured at work, nor should others associated with the work environment.

A further factor that favours OSH is economic. Many governments realise that poor OSH performance results in cost to the State (e.g. through social security payments to the incapacitated, costs for medical treatment, and the loss of the "employability" of the worker). Employing organisations also sustain costs in the event of an incident at work (such as legal fees, fines, compensatory damages, investigation time, lost production, lost goodwill from the workforce, from customers and from the wider community). Finally OSH makes a good political case. Industrial disquiet resulting from appalling OSH standards can lead to labour unrest and electoral loss. Labour unrest can also scare away potential investors and therefore it would be true to say that the scope of OSH goes beyond preventing work related accidents and illness, but encompasses the causes and consequences of occupational injuries and illness and affects not only workers, but also third parties.

3.1 A Case for OSH

As the imperatives of current economic undertakings create new work arrangements, production processes, cultivate complex supply chains, and facilitate rapid movements of capital and production units, workers often suffer from the quantum leaps and falls of the global economy and labour standards are designed to absorb some of the social shocks of this economic turbulence. The concept of labour standards, let alone OSH, is controversial and often misunderstood. Efforts to domesticate OSH regulations have sometimes been seen as 'anti-business,' 'investment disincentive', 'a regulation that has no place in the free market', and 'as a hindrance to competitiveness'. Initiatives to include this concept in trade discussions have earned it labels like "a non tariff measure," 'a job killer', and 'a western protectionist measure'. Some simply call it 'market rigidity' and 'a desirable incentive without empirical basis'.⁴⁸ However attitudes are beginning to change.⁴⁹ Codes of conduct and corporate social responsibility initiatives covering human rights, environmental protection, and workers' rights have emerged. In an ILO *International Labour Review*, an econometric study concluded that "no solid evidence is found in support of the view that foreign investors favour countries with lower labour standards, indeed all evidence of statistical significance points in the opposite direction".⁵⁰

These findings point to the centre stage that International Labour Standards (ILS) are taking and the weakening of the comparative advantage in labour argument for those opposed to a social clause in international commerce. The jurisprudence of ILS and human rights makes it hard to sustain the case for comparative advantage as no one can be allowed to have a comparative advantage in human rights [abuse]. For purposes of our discussion, two cases can be made out for promoting and enforcing OHS at national and enterprise level. First is the economic case. Labour standards improve economies.⁵¹ Many developing countries argue that keeping labour costs low is their only comparative advantage in manufacturing and services. This is incorrect as it does not take into account the productivity-increasing effect of ILS. Lack of respect for basic workers' rights has a negative impact on development

and perpetuates the circle of poverty.⁵² Second, there is a governance case for OSH. Good governance demands that labour standards be set and enforced. Respecting labour standards, in whatever form, has a number of positive governance benefits; for example, it (i) builds respect for the law,(ii) increases respect for human rights,(iii) promotes decent work,(iv) improves dialogue between social partners, and (v) improves prospects for exports as importing countries increasingly demand respect for ILS including CLS.

In the case of SADC, a number of rationales for a policy on occupational health⁵³ and safety for SADC can be advanced. The starting point is the impact of globalisation and liberalisation of the global economy, which has led to increased trade and investment mobility.⁵⁴ Globalisation is having both positive and negative effects of relevance to OSH. On a positive note increased trade has been beneficial to the SADC economy and is the best alternative to donor aid. On the negative side increased trade for instance in agricultural inputs like agro-chemicals has brought new hazards and risks that SADC economies are ill-equipped to handle.⁵⁵ The technological gap between the producing developed countries and consuming SADC is one reason, while high illiteracy and innumeracy levels in the region provides a justification for regulatory intervention to mitigate the erosion of social standards in the name of free trade and liberal investment schemes.⁵⁶ This would enhance the protection of the workforce and communities especially where living and working environments are basically the same such as agricultural and mining establishments. Faced with serious institutional limitations in the area of social protection and the impact of OSH on integration, it is in SADC's interest to improve its record in this area if its collective economic gains are not to be wiped off by adverse social consequences of work related injuries, ill-health and fatalities.⁵⁷

Another factor that needs to be appreciated is changes in the global economic tectonic plates. China has joining the WTO and more Chinese TNCs are looking to Africa as a potential investment destination. China's role in Sub-Sahara Africa has been rising fast since the start of the decade,⁵⁸ both directly – through investment, bilateral trade and aid – and indirectly – through the impact of Asian demand on high commodity prices over the past three to four years.⁵⁹ Due to a number of countries in the region relying on exports of primary commodities, China's strong growth and demand for commodities has not only had a positive impact on the region's economic outlook but has also seen an import of China's labour standards as part of the investment package in the region⁶⁰ and, as is well-known, China's record on labour standards is less than impressive,⁶¹ and this provides the reason for the region to have a strong and effective regime for labour standards such as OSH. The accident in Zambia where at least fifty workers were killed and several others injured in a blast at the Chinese-owned plant which supplies explosives to local copper mines is a good example.⁶² In view of such trends SADC needs, not only to be receptive to FDI, but also to improve its institutional infrastructure for safely and sustainably dealing with the socio-economic consequences of the scramble FDI in the region.

Granting that everyone has a right to health, which includes a right to safe working and living conditions,⁶³ it is imperative for SADC, in the context of its economic integration, that the jurisprudence of human rights provides some of the reasons why

OSH is economically efficient and an indispensable part of the integration equation. National and international human rights instruments also emphasise the 'indivisibility' of civil, political, economic, social, and cultural human rights,⁶⁴ i.e. that the objective of individual self-determination and self-development requires not only 'negative' freedoms but also 'positive' economic and social rights, enabling citizens to acquire the economic resources and social means necessary for actually using their human rights.⁶⁵ Modern economic theory emphasises the instrumental role of human rights for economic and personal development, e.g. as incentives for savings and investments, as legal preconditions of professional freedom and transfer of property rights in an exchange economy, and as defensive rights promoting the 'internalisation of external effects' through contractual agreements or court litigation. 'Freedoms are not only the primary ends of development, they are also among its principal means ... Political freedoms (in the form of free speech and elections) help to promote economic security. Social opportunities (in the form of education and health facilities) facilitate economic participation. Economic facilities (in the form of opportunities for participation in trade and production) can help to generate personal abundance as well as public resources for social facilities.

Freedoms of different kinds can strengthen one another.⁶⁶ Hence, 'only with political freedoms can people genuinely take advantage of economic freedoms. Rights make human beings better economic actors. You can not legislate good health and jobs. You need an economy strong enough to provide them and for that you need people economically engaged. People will work because they enjoy the fruits of their labour: fair pay, education, and health care for their families and so forth. Thus economic and social rights are both the incentive for and the reward of a strong economy. When individuals are acknowledged as an important part of the system they tend to take responsibility for it and make efforts to maintain and improve it.'⁶⁷ Under-investment in health and safety is not an acknowledgement of the value of labour and it is unlikely to inspire a sense of responsibility and improved efficiency and productivity. Recognition of human rights, such as freedom of producers and consumers, gives rise to market competition and calls for legal rules enabling mutually agreed market transactions (e.g. liberty rights, contract law, property rights), limiting abuses of market power (e.g. by means of consumer protection law), and promoting monetary stability and undistorted competition (e.g. by means of monetary, securities, and competition laws). Besides the human rights argument other reasons can be given why OSH is crucial to SADC or for that reason any integration programme. Firstly is the integrationist rationale premised on the fact that harmonisation of laws and social values are the cornerstone of any functional regional integration. For the integration process to move forward, member states need to find common ground in their national policies and plans.⁶⁸ Emerging social problems with a regional dimension⁶⁹ may stimulate further intergovernmental co-operation. These include those associated with OSH⁷⁰ and HIV/AIDS⁷¹ and cross border drug running⁷² and other cross-cutting issues. Secondly common OSH standards assist economic integration, since products can not circulate freely within the region if prices for similar items differ in various member states because of variable OSH costs imposed on business.⁷³ In other ways harmonisation of OSH standards in the region would assist the process of economic integration.

By OSH standards we refer to two distinct types of standards. First are the standards concerning labour. These define the general conditions of OSH in the workplace. The objective in harmonising these standards is to prevent social dumping i.e. the comparative advantages that are derived from lower production costs at the expense of standard working conditions in the enterprise. By harmonising these standards, we seek social integration in the process of economic integration and liberalisation, in a way that economic growth, achieved through economic integration and liberalisation, is accompanied by social progress. Second, are standards concerning product safety. As tariffs are eliminated or reduced, non-tariff technical barriers acquire more significance in international trade.⁷⁴ Technical standards, particularly those relating to product safety, can block international trade as effectively as high tariffs and for this reason harmonisation of product safety standards must be viewed as a prerequisite for any functional economic integration.

A reduction of human, social and economic costs of accidents and ill health borne by the workforce will not just bring huge financial savings⁷⁵ but also increased productivity and quality of life for the region.⁷⁶ The health status of the workforce in every country has an immediate and direct impact on national and world economies and has political implications. In the case of Malawi the constitutional measure of the success or failure of government policies is rural standards of living.⁷⁷ From this we can safely say that there is a political case for improving OSH at domestic and regional levels. For SADC, the last century has brought new and complex technologies into the region from the industrialised world. With these has been an importation of risks that attend to such technologies in a region that lacks infrastructure to support and maintain them safely and sustainably.⁷⁸ Economically, SADC states, like other developing countries, offer TNCs a competitive advantage in labour. Companies located in most developing countries have access to cheap labour and lower operating costs than their counterparts in developed countries, but there is often little incentive to promote environmental ethics, safety procedures and community investment.⁷⁹ Firms typically find it more economical to avoid compliance and pay the penalties than to meet statutory requirements.⁸⁰ On account of resources and a skills gap between the developed home states and developing host states, the only realistic prospect of effectively regulating or enforcing OSH is through collective action within regional frameworks for OSH regulation.

The total economic losses due to occupational illnesses and injuries are enormous.⁸¹ Such losses are a serious burden on economic development.⁸² Thus, apart from health and safety considerations, the improvement of working conditions is a sound economic investment.⁸³ The International Labour Organisation (ILO) estimated that in 1997, the overall economic losses resulting from occupational diseases⁸⁴ and accidents⁸⁵ were approximately 4% of the world's gross national product. In 1992, in European Union countries, the direct cost paid out in compensation for work-related diseases and injuries reached 27 000 million ECUs. In 1994, the overall cost of all work accidents and work-related ill health to the British economy was estimated between £6 000 million and £12 000 million were estimated to be US\$171 000 million, surpassing those of AIDS and on a par with those of cancer and heart disease. In the USA, health care expenditures are nearly 50% greater for workers who report high levels of stress at work.⁸⁶ The introduction of more efficient work practices brings about increased productivity and better industrial

relations, which is essential for a smooth functioning of the economy which is vital for economic integration. It would be safe to say that there is both a political and economic case for OSH in the region as it is elsewhere. The need for SADC to take a lead arises from the fact that regulation of certain risks such as those arising from massive explosions, should be harmonised at a supra-national level on account of the scale for resource costs because any disparity in the substance and application of health and safety laws and regulations produces distortions of competition and affects products prices.⁸⁷

The other explanation for spelling out a social policy within SADC as exemplified by the charter would be that economic trends clearly indicate that issues of poverty and inequity are paramount concerns in the region. Unemployment, underemployment and poverty are manifestations of employment and developmental problems of the region. These problems require comprehensive strategies, including social protection measures, alongside economic- and regional integration, addressing specific contingencies such as sickness, maternity, employment injury, unemployment, disability, old age and death; the provision of medical care; and the provision of subsidies for families with children. Other new or indirect contingencies such as poverty, lack of food and water, transport, energy and education also need to be addressed on the regional level. Historically, economic integration has provided a rationale for the promotion of social rights in order to guarantee a level playing field and to avoid distortions of competition.⁸⁸ In the case of the European Union integration has been conceived as a safeguard of the welfare state, thus it is a new forum in which social rights no longer viable at national level are reintroduced.⁸⁹ Though it is true that regional integration is economic, it is not to be seen to be exclusively so. It needs to be complimented by some form of political integration that incorporates a system of social protection such as effective OSH regulation.

4.0 The Nature of OSH

Over the years there has been a change in the nature of the standards created by labour legislation and the sanctions through which they are enforced. There has been a tendency to pass from the "thou shalt not" to "thou shalt".⁹⁰ Legislation on maximum hours,⁹¹ on Sunday and holiday work, on the employment of women, children, and young persons is prohibitive or negative. OSH legislation has always been different in that it is positive in nature. It says to the employer: "thou shalt," for example, ensure that dangerous machinery is securely fenced⁹² or that ladders do not slip." Obligations imposed by such "protective" legislation are generally imposed by OSH law, on the employer not as an employer, but occupier of premises. The geographical scope of application of such legislation depends on the wording and definition of 'premises'.⁹³ Such obligations are managerial and essentially act as restrictions on the rule, and decision-making powers of management. Legally however what matters are the consequences of this approach to management. For example, if a worker is injured in an accident due to the employer's failure to properly dangerous machinery a claim for compensation will lie not for a breach of the contract of employment,⁹⁴ but for the breach of a general statutory duty imposed by the law upon the occupier of the premises for the benefit of all those who have entered them lawfully.⁹⁵

OSH is enforced through civil and criminal sanctions. For instance the UK has corporate manslaughter legislation creating the offence of corporate manslaughter in England and Wales and corporate homicide in Scotland for prosecuting companies and other organisations where there has been a gross failing, throughout the organisation, in the management of health and safety with fatal consequences.⁹⁶ The legislative intervention has been as a result of the low success rate of common law prosecutions of the offence.⁹⁷ Prosecutions have, for example, been made against the National Rail Track for the Paddington rail disaster. The difficulty so far has been that the success rate of such prosecutions is low due to problems of attributing criminal intent to a corporation.⁹⁸ In the civil courts OSH legislation is enforced through the law of tort and not generally through the law of contract.⁹⁹ To rely on such legislation a person injured in an accident does not have to show that there is any contract between him and the occupier, but that, owing to a breach of statutory duty incumbent on the occupier,¹⁰⁰ the occupier is liable. The same is the case with subcontractors.

5.0 Continental Framework

SADC exists in a web of regional as well as continental organisations that have and continue to shape its social and economic policies. On the continental SADC traces its socio-economic policy to the charter of the African Union (The Charter).¹⁰¹ Article 2 of the charter was a commitment by member states to coordinate and intensify cooperation in order to achieve a better life for the peoples of Africa. Under article 2 (2) (e) of the charter member states further undertook to coordinate and harmonise policies in their areas of economic cooperation. This was to be carried out within the framework of the UN Charter, and the Universal Declaration of Human Rights.¹⁰² Economic cooperation needed an institutional framework and the first step in this direction came on 3rd June 1991 when the Abuja Treaty¹⁰³ was adopted establishing the African Economic Community aimed at the creation of an African Economic Community (AEC)¹⁰⁴ that would foster economic, social and cultural integration of the African continent.¹⁰⁵ The AEC was to be predicated on the rule of law¹⁰⁶ human rights,¹⁰⁷ accountability,¹⁰⁸ economic justice and popular participation in development.¹⁰⁹ One of its objectives was the promotion of cooperation in fields such as employment as a way of raising continental *standards of living*¹¹⁰ (emphasis supplied). The same language is replicated in article 3(k) of the Constitutive Act of the AU.¹¹¹ This is recognition that improved living standards enhance economic stability, foster close and peaceful relations among member states and contribute towards socio-economic progress, development and regional integration.¹¹²

At institutional level the treaty provides for an economic and social commission¹¹³ charged with responsibility of preparing programmes, policies and strategies for cooperation in areas of economic and social development among African countries and the international community. One avenue for realising this goal was through regional economic communities (RECs) such as SADC and COMESA¹¹⁴ and, where none existed, to encourage their establishment.

Although the OAU has been superseded by the African Union (AU),¹¹⁵ its ideals have been re-enacted into the Constitutive Act which was adopted on 11th July, 2000 in Lomé, Togo.¹¹⁶ Unlike the OAU, the AU has a more-expanded agenda¹¹⁷ and is a

step towards streamlining and rationalisation of a continental framework that is fit for the purpose of 21st century challenges the continent is facing. The text of the Act combines in a single text the charter and the treaty of Abuja establishing the AEC. The significance of this paradigm shift is that a social agenda in the AU is no longer a by-product of a political and economic agenda, as had been the case in the past, but is now part of the continental blue print for regional integration.¹¹⁸ The elevation of the social side of integration is a giant step forward for OSH.

Article 5 (h) of the AU Act, as read with article 22, establishes an economic, social and cultural council (ECOSOCC) as an advisory organ of the Union.¹¹⁹ This sets the road map for a continental socio-economic policy that balances economic priorities with social protection. This requires social dialogue between social partners in the various RECs and the ECOSCC provides that forum and it is here that civil society organisations involved with OSH can make a difference to the region's OSH status and agenda. The question is whether there is dialogue between SADC and continental Africa? To answer this, we need to examine SADC instruments of relevance to OSH and how this fits into the overall continental agenda.

5.1 Regional Framework

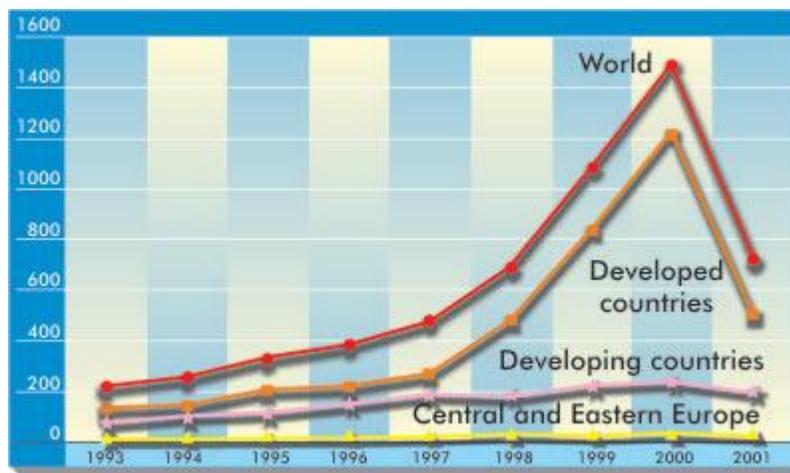
The cornerstone for achieving SADC's aims generally has been its *Framework and Strategy for Building the Community*, adopted as a major policy guideline in January 1993. It identifies issues to be addressed, measures to be taken and the process to be followed to implement the Treaty. Crucial to the operationalisation of the treaty has been its Regional Strategic Indicative Plan which identifies priority intervention areas for the redeeming of the organisations objectives. According to the plan, the main goal of the organisation is poverty eradication. One of the strategies for poverty eradication is through social and human development.¹²⁰ Eradicating poverty requires that opportunities be created for the poor to create wealth for themselves. This entails building up the capital assets of the poor, redistributing natural assets, constructing and maintaining infrastructure and promoting knowledge and *health in poor areas; protecting the environment* and reducing economic inequalities. In the area of social policy the road map is its social charter¹²¹ adopted by the summit in Dar es Salaam, Tanzania on 26th August, 2003. Any discussion of OSH in the region has to proceed from a consideration of the source documents such as the treaty and its subsidiary instruments. This approach dispels fears that OSH standards are a species of an alien legal order imposed on sovereign states by multilateral agencies such as the UN and the ILO. As we all know an externally imposed legal order is likely to be met with hostility in target states that would affect its effectiveness and its domestication. Tracing such a policy from the organisation's source documents portrays a picture of a home grown legal order which should be easy to incorporate into domestic legal systems as it eliminates any hostile perceptions on the part of implementing states.

By article 5 (1) (a) of the treaty, the region seeks economic and social policies that improve *living standards* in the region. Since in the case of SADC there is hardly a fine line separating living and working environment, overall OSH ought to assume a heightened measure of importance on its menu. This is strengthened by increased trade and investment flows¹²² into the region. Increased trade and investment into

the region entails increased and new occupational hazards with the potential of becoming public health concerns, for example agrochemicals.¹²³ To appreciate this fact see Fig.1 below on the global flow of investment although in global terms the flow of FDI to the SADC region is small, in terms of regional share there has been a steady increase in the flow towards developing countries generally.¹²⁴ What is essential is not the percentage of FDI, rather the fact that global investment flows to developing countries on the whole as of 2001 had shown a steady increase. This increase has implications for OSH which requires policy harmonisation and cooperation as a cost sharing measure for the region and efficient utilisation of human and financial resources.

Graph 1:

Global inflows of Foreign Direct Investment 1993-2001 USD billions, by group of countries.



Source: UNCTAD Division on Investment, Technology and Enterprise Development

Note: Graph 1 shows a sharp decline in global FDI flows especially for the period 2000-2001. This shows the response of business to international political climate. Terror attacks in the USA on 9th September sent global economic shocks as shown by corresponding flows to developed countries. Developing countries were not as badly affected, and individually developing countries continued to experience increased trade and investment flows.¹²⁵

Article 4 (C) of the treaty presents SADC as a rule based organisation that upholds the rule of law and as an international organisation that conducts its external relations within the confines of international law.¹²⁶ The protocol on the tribunal empowers the tribunal to apply the treaty, protocols made under article 22 of the treaty, and subsidiary instruments adopted by the summit or any organ of the community.¹²⁷ Further the tribunal is required to develop its own jurisprudence having regard to applicable treaties, general principles and rules of public international law and principles of the law of states.¹²⁸ A similar formula is found in the trade protocol that seeks to conduct SADC trade within the framework of World Trade Organisation law.¹²⁹ Article 12 of the Social Charter specifically makes ILO

convention 155 on OSH part of the charter. This flows from article 3 of the charter on basic human rights and organisational rights. The article provides that the charter embodies the recognition by social partners in the region of the indivisibility of basic human rights proclaimed in instruments such as the United Nations Universal Declaration of Human Rights, the African Charter on Human and People's Rights, the constitution of the ILO, the Philadelphia Declaration¹³⁰ and other relevant international instruments. All these are sources for the region's OSH policy. SADC's determination for a better standard of living for its people is clear from its preambular language especially in paragraph three of the treaty.¹³¹ SADC affirms its determination to ensure, through common action, the progress and well being of the people of the region. Article 4 sets down the organisations governing principles, which include human rights,¹³² democracy and the rule of law [Art.4 (c)]. These are requisites for an inclusive and participatory political and industrial democracy. The right to health implies the right to a safe and health working and living environment.¹³³ It is important that SADC introduces itself as rule-based organisation¹³⁴ as it sets out the parameters within which it will conduct its business i.e. within the framework of the rule of law.

Rule of law might mean different things to different people depending on the context and usage.¹³⁵ However in the context of SADC as would be the case with all international organisation, fundamentally it includes international economic law as applied in its external economic relationship in the process of regional integration. The philosophical rationale for a rule-based organisation is that based on past history for the region, human rationality, morality and dignity calls for rule-oriented rather than power-oriented behaviour. Rule of law has been described by Plato as a moral and legal prerequisite for democratic self-government and individual self-development.¹³⁶ Contrary to his earlier recommendation of a government by philosophers, Plato emphasised in his later writings that person-oriented 'political ethics' needs to be supplemented by general legal rules and institutional safeguards so as to protect citizens from arbitrary abuses of power and transform their 'natural freedom' (based upon physical power) into 'legal freedom' (based upon general legal rules and mutual respect).¹³⁷ These freedoms according to Plato thrive well in a liberal political environment predicated on the rule of law.¹³⁸ Article 5 of the treaty sets out the organisation's objectives. As stated earlier on, at the top of the list is the achievement of development¹³⁹ and economic growth, alleviation of poverty, *enhancement of the standards and quality of life of the people of the region* (emphasis supplied) and to support the socially disadvantaged through regional integration. How it sets out to achieve this in practical terms is crucial.

Article 6 sets out the strategy it will adopt for realising its objectives. One way was to be through harmonisation of political and socio-economic policies and plans of member states.¹⁴⁰ The other is through the encouragement of people of the region and their institutions to take initiatives to develop economic, social and cultural ties, and to participate fully in the implementation of regional programmes and projects.¹⁴¹ Member states also cooperate in areas necessary to foster regional development and integration on the basis of balance, equity and mutual benefit.¹⁴² Finally, member states are supposed to, through appropriate institutions, coordinate, rationalise and harmonise their overall macro-economic and sectoral policies and strategies, programmes and projects in the areas of co-operation.¹⁴³ Areas of

cooperation include industry, trade, investment, finance, agriculture and social welfare.¹⁴⁴ This envisages the involvement of civil society in policy formulation and implementation in the region.¹⁴⁵ The extent to which this has been the case is a matter for debate, what is clear is that at domestic level there has been a mushrooming of civil society organisations of varying sophistication and degrees of independence. This has been possible because of political reforms that swept through the region in the 1990s. Most countries in the region have embraced some form of democratic governance. The impetus, ironically, for change in the region has not been from SADC but rather from external forces such as the end of the cold war, which saw governance issues taking centre stage in international relations. The conditioning of aid on Human Rights and the impositions of economic sanctions led to a collapse of social and economic structures in a number of countries with autocratic regimes at the time such as was the case for a number of SADC states. The collapse of social and economic structures led to social disquiet that was a catalyst for political reforms.¹⁴⁶

Questions could be asked whether this in itself is a manifestation of policy failure or merely a failure of policy implementation. To answer any such question we need to look at developments in the region and within the organisation itself. The restructuring of SADC indicates that institutional weaknesses within the organisation have impeded the effective realisation of its goals. The debate surrounding a comprehensive community social policy, now expressed in the SADC Charter of Fundamental Social Rights (The Charter),¹⁴⁷ on the modelled on the European social Charter,¹⁴⁸ is a sign that the community now realises the need for a clear blue print on social policy if it is to realise a functional integration of the region.

Recall that the political thinking in SADC from its inception had been for an economically driven social policy, where economic growth was naturally expected to translate into social progress. Development was conceived in economic terms with the social aspect as its by-product. The thinking was clearly misconceived. The historical context in which SADC was born is important. Its origin in the Frontline States (FLS) meant that political ideals, such as independence from colonial rule influenced the organisation philosophical outlook. Though the FLS in its vision had social and economic strategy, along the way the two seem to have been sidelined.¹⁴⁹ After independence, it was time to turn glory into tangible economic and social gains. The choice settled for was that of development and economic growth. The political systems at the time did not encourage popular participation and in most countries authoritarian rule was the order of the day. Social dialogue, let alone industrial democracy suffered. This partly explains the slow development of a self-standing stand social policy in the region. This policy vacuum explains the absence of a coherent policy over OSH at regional level and each member state has been left to formulate its own policy on OSH. The Mushrooming of OSH legislations in member states formulated in isolation of the regional benchmark smacks in the face efforts for harmonisation of OSH policies and regulations in the region. The region's social charter is a milestone as it provides a comprehensive and coherent policy blue print on the region's OSH.

6.0 Conclusion

With SADC's adoption of the Charter as community blue print on social policy, more visibility has been given to OSH. Prior to the Charter there existed a plethora of instruments, developed independent of each other, dealing with aspects of OSH but lacking coherence and coordination in terms of content, development and application.¹⁵⁰ Their piecemeal and reactionary or knee-jerk development meant that there was no policy coherence in the past in relation to such instruments and OSH was treated as a Cinderella body and, at worst, plan 'B'. OSH is and ought to be plan 'A'. This is fortified by the fact that the cumulative effects of occupational disease and accidents can potentially make economic gains of integration illusory. The problem is further compounded by SADC's lack of an organising philosophy for OSH and how it relates to its economic agenda of integration. Increased trade and investment flows in the absence of a coherent social policy that encourages corporate social responsibility cannot bring about meaningfully improved working and living standards of life in the region and would be counter to the spirit of article 5 of the Treaty. The Charter provides a framework for OSH regulation and development in the region. What needs to be done is for the directorate to give policy guidance to member states' civil society organisations on OSH.

As the situation stands at present civil society's role in SADC's activities, despite there being an avenue in the treaty for their involvement, institutionalising the same is slow and patchy. These need to improve if the policy goals laid out in article 12 of the charter are to be of any value.

The above task needs to filter down to member states legislative agenda. Legislation as a species of governance requires policy input and debate which would benefit from civil society involvement in national debates on the issues. On the positive side developments in OSH at SADC level are indicative of a realisation of the central role OSH has in trade and investment and ultimate social and economic integration of the region. The challenge is how to exploit these in ways that deliver development, decent work and improved working and living standards in the region.

Until the signing of the SADC charter on 26th August 2003¹⁵¹ there had never been a coherent policy at a community level providing for an effective supranational response to supranational social demands of globalisation and its economic agenda. The result had been a mushrooming of domestic regulatory responses of varying degrees of sophistication and effectiveness in the region. It is interesting that the executive secretary in his pre-summit press briefing in commenting on the Charter said that key provisions of the draft charter¹⁵² include freedom of association and collective bargaining,¹⁵³ freedom of movements,¹⁵⁴ equal treatment of men and women¹⁵⁵ as well as improvement of working and living conditions.¹⁵⁶ Conspicuous by its absence on the list of key provisions was Art.12, which is the lead article for health and safety. The silence might either have been deliberate or unintentional. Whatever the case may be it displays some attitudes towards OSH among policy makers in SADC. However, the fact that art.12 is now a blue print of the issue is encouraging.

Whereas in the EU issues of OSH are high on government agendas and there is no shortage of public support for such policies as evidenced by the call in some EU countries such as the United Kingdom for the strengthening of corporate homicide legislation and its enforcement,¹⁵⁷ SADC as a region has a different set of priorities. Their priority, according to one official at the secretariat, speaking off the record, is HIV/Aids and food insecurity. For this reason the optimism has to be a measured one. However an economic policy that takes cognisance of this fact will compliment the deficit in terms of result and contribution towards working and living standards in the region. Politically, liberal economic policies the region has embarked on will lack social legitimacy, unless it can be seen that they are capable of translating into improved living and working standards of the people of the region through poverty reduction, improved living and working conditions. The statistics on OSH in the region, let alone agriculture, which employs over 70% of region's population, does not paint a good picture. SADC needs to realise that OSH are politically deliverable and economically sustainable. The onus is on SADC to offer policy guidance, and for governments in the region to implement the policy. The moral case for OSH in the region needs no emphasis. OSH issues are also human rights issues and as mentioned elsewhere in this discussion human rights are economically efficient. Labour in the region has suffered from political repression in the past such that the need for human rights for the region needs no emphasis. Industrial democracy and human rights are an economic good.¹⁵⁸ The above are important factors that cannot be left out in the region's integration equation. SADC has never had a self-standing social policy. What it has had was an economically driven social policy premised on the wrong assumption that economic growth in member states would naturally translate into social progress.

Developments in sectors of international commerce such as chemical and pesticides present us with some explanation for the linking OSH with international trade and investment. The creation of '*the international right to know*' in the form of the Prior Informed Consent¹⁵⁹ points to an international jurisprudence in favour of social regulation of global economic activities.¹⁶⁰ This is also an indication of the center-stage occupational health safety and environmental issues ought to be occupying in a global economy warranting the linking of trade investment and labour as an aspect of good practice in international economic relations.

Part II AN ECONOMIC APPROACH TO OSH

'In the last quarter of a century, economists and legal scholars, using economics have turned their attention to many areas of the law to supplant the traditional legal analysis. Their basic premises are that legal rules and institutions should be designed to facilitate economic efficiency, that they should make the greatest use of competitive markets and that in the absence of such markets, should 'mimic' what competitive markets would do'.

M.Polinsk¹⁶¹

7.0 Background

In part one, we had a holistic look at OSH in SADC from a policy stand point, highlighting why OSH is good for the region. In this section we carry on the discussion with an emphasis on methodological conceptualisation of OSH regulation in the region. We try to make out a case for an economic approach to OSH that would be desirable for policy design, measurement and impact assessment.

7.1 Introduction

The statement above speaks volumes, and to those unfamiliar with the jurisprudence of economic reasoning in the study of law only serves to make the whole exercise unattractive. This is understandable if one considers the traditional approach to a lawyer's training. Oliver Wendell Holmes once said that 'for a logical study of law, a black-letter man is a man of the present, but a man of the future is the man of statistics and economics'.¹⁶² It appears that the future he spoke about has arrived with a basket full of solutions and problems.¹⁶³ However it would be naïve to dismiss this approach wholesale and the way forward is to examine the contributions the man of statistics and his tools can bring to the logical study of law.¹⁶⁴ Any student embarking on the study of law and economics will discover that the most interesting aspect of this approach is its inspiration to place the study of law on a scientific basis, with coherent theory, precise hypotheses deduced from the theory, and empirical tests of the hypotheses.¹⁶⁵ In this discussion we intend to highlight some of these benefits in as far as they relate to the world of work in the SADC region.¹⁶⁶ Law is a social institution of enormous antiquity and importance and there is no reason why it should be amenable to scientific inquiry. In the same vein 'economics' is the most advanced of the social sciences and the legal system generally, and OSH in particular, contains many parallels to, and overlaps, with the systems that economists have successfully studied. While there have been many studies that apply economic analysis to regulation¹⁶⁷ and in particular in the area of OSH,¹⁶⁸ there has been a scarcity of a comprehensive economic study of OSH.¹⁶⁹ In broad terms, there are three big questions that need to be addressed, i.e., how to give more visibility to the economic role of OSH within the enterprise,¹⁷⁰ how to respond to the dramatic changes taking place in the world of work; and how to extend OSH research, advocacy and intervention to the developing world.¹⁷¹ Within the enterprise the two obstacles to be overcome are the identification of the invisible, or indirect, costs of ill-health and the allocation of these costs to the activities that generated them so that they do not appear as overheads.¹⁷² Society's task is to internalise as much of the external cost as is practicable, so that the incentives for

the firm correspond more closely to the needs of society i.e. decent work.¹⁷³ While the general framework is clear, the details of how these goals are to be pursued are not, and would require further research.¹⁷⁴ These are some of the questions that we will be reflecting on in this discussion.

8.0 Conceptual Framework

Economics, so it is alleged by commentators like Richard Posner, seem to have found a vacant niche in the intellectual ecology of law and is rapidly filling it.¹⁷⁵ It is usually maintained by adherents of the Chicago school of thought that even when the surface language of judicial opinions is not overtly economic, the underlying rationale of [common] law adjudication is economic in nature.¹⁷⁶ According to this reasoning, common law doctrines form a system for inducing people to behave *efficiently*, not only in explicit markets, but across the whole range of social interactions. In settings in which the cost of voluntary transactions is low, common law doctrines create incentives for people to channel their transactions through the market. In settings in which the cost of allocating resources by voluntary transactions is prohibitively high making the market an infeasible method of allocating resources, the common law prices behaviour in such ways to mimic the market.¹⁷⁷ Put the other way, the true basis for legal prohibition is economic efficiency and not some other normative conception.¹⁷⁸ By extension one can then safely say that the law punishes a thief, not because theft is in some non economic sense *wrong*, but in order to persuade the thief to use the market.¹⁷⁹

In relation to OSH the concept of efficiency should be considered in relation to a system of regulation. A system is a set of elements that operate in harmony with one another towards achieving an aim. Each element has certain defined functions (i.e., the type of activities it is to carry out) and certain defined relations with the other elements in the system.¹⁸⁰ These relations may be hierarchical or functional (including coordination relationships). If hierarchical relations are weak or non-existent, adequate operation of the system will depend on coordination relationships, such that the governing principle of a hierarchical system comes to be a principle of 'harmony of action'.

A system element is *efficient* if it makes best use of the resources at its disposal in order to carry out its functions. A system is efficient if its design (the types of elements and their inter-relations) is appropriate and if each of its elements is in turn efficient. A system or any one of its elements is *effective* if it produces the desired results (in relation to its objectives). It should be noted that a system can be efficient but ineffective if it does not have available the required resources (in terms of quality and/or quantity). A system may have sub-systems within it. Each sub-system is a system within the main system that aims to carry out one of the latter's essential functions. Criteria of efficiency and effectiveness are equally applicable to any sub-system. The 'harmony' of the system depends on how well sub-systems complement each other and how well their actions are coordinated. A system is self-controlled if it can modify (plan) its actions in line with changes in its field of operation, i.e., if it can adapt to change in order to optimise its effectiveness. Obviously, for this to hold true the system must be able to obtain information about its field of work and to assess it (frame a 'situation diagnosis'). Gathering and

assessing information is therefore an essential function of a self-controlled system. Using the system concept SADC can design its health, safety and environmental policy in line with its resources¹⁸¹ to compliment its goals of improving the living and working standards in member states.¹⁸²

One possible criticism that can be laid at the door of the economic school of thought on law is that it ignores the foundational basis of law. The purpose of the institution of law is not simply to attempt to mimic the perfect market in order to achieve the most economically efficient result. Any action of the legal system must import strong notions of justice, fairness and morality, especially in judicial decision making. Such notions should have a greater bearing on judges who set the wheels of the legal machine in motion, than some abstract goal of maximising social wealth. The lack of consideration of fairness and morality, tenets of a legal system designed to protect fundamental rights, is a serious flaw of the economic analysis of law.

The second problem of the normative application of the economic model to law is that whereas perfect markets flourish in a highly decentralised environment, law requires a highly centralised mechanism (the state) for its efficacy. Despite such criticisms it does provide a valuable tool in understanding corporate response to regulation and it richly informs policy formulation in the area of regulation. Wholesale disregard of the economic analysis of law would be tantamount to throwing away the baby with the bath water.

Consider for a moment one of the classical definitions of law:

*'Law is an obligation backed by a state sanction'*¹⁸³

Others such as Allot¹⁸⁴ take the view that law is a system of rules and that in the juristic world in which we live these rules are restricted to rules about behaviour and to avoid an over-extension of the term of law, the behaviour meant is the behaviour of persons in a political society, and to avoid legitimating the illegitimate, only rules made by a competent and legitimate authority within that society may be called rules of law.¹⁸⁵ The debate as to what law means is unceasing and so is the ensuing confusion.¹⁸⁶ We will not venture into that debate as it is outside the scope of this discussion. Suffice to say that lawyers and jurists would approach such a question by consulting intuition and available facts.¹⁸⁷ In this definition it is apparent that law has a contextual definition i.e. largely influenced by the context in which it used. However a common denominator ought to be maintained, i.e. legitimacy derives from a political society.¹⁸⁸ The distinguishing feature from other social norms, according to the positivists view is the use of sanctions to back up an obligation¹⁸⁹ transmitted by legal rules.¹⁹⁰

Reflecting further on the concept of law a word or two might be in order. The term law has many meanings depending on the context in which it being used.¹⁹¹ In common law traditions (of which most SADC states share) it refers to state law maintained through state institutions.¹⁹² This law is seen as a normative and institutional system, which is distinguishable from other social phenomena.¹⁹³ In other systems, such as the African legal system, law includes state law, custom and customary law and other social codes¹⁹⁴ that have from time immemorial been

reputed to be responsible for enhancing social cohesion.¹⁹⁵ In this formula law not only has a social feature but also a psychological element i.e. people have a sense of being bound not for fear of sanction but rather as a social imperative and the validity of the said law is accepted unquestionably. This clarification is crucial for any theorising on how best to adapt common law to African legal systems. It also throws light on why a wholesale transplant of foreign law into areas such as SADC may be an unhelpful exercise. For the present discussion law is used here to refer to any set of observed social norms, thus the law of the state, international law as well as community law, in as far as these incorporate local social norms.¹⁹⁶

8.1 Methodology

Lawmakers and Judges often ask, '*how will sanctions affect behaviour?*' If punitive damages are imposed upon a maker for a defective product, what will happen to the safety and price of the product in future? Lawyers would answer this in 2006 as they did 201 BC - by consulting intuition and any available facts. Economics provide a scientific theory to predict the effect of legal sanction on behavior. For economists sanctions look like prices and presumably people respond to these prices by consuming less of the expensive goods and so presumably people respond to sanctions by doing less of the sanctioned activity. This sounds too simple an assumption.¹⁹⁷ Its value to a legal inquiry lies in its provision of a scientific theory for forecasting response to law. This is no less pivotal in economic law as it is in business forecasting. For these reason it is possible to resort to methodologies of economics for a rational theorising on issues of law and regulation. For instance, suppose a manufacturer knows that his product will sometimes injure consumers. How safe will he make the product? The answer will depend on two costs. First, the actual cost of safety which depend in turn upon facts about, design and manufacture, and the implicit price of injury to consumers imposed through the manufacturer's legal liability.¹⁹⁸

Liability is a sanction for injuring others. In other words it is the device society uses as a means of reducing the risk of harm, by threatening those who are potential injurers with having to pay for the harm they cause.¹⁹⁹ In this the producer will need the help of lawyers to estimate the implicit price of the harm caused. After obtaining the needed information, the producer will compare the cost of safety with the implicit price of accidents.²⁰⁰ To maximise profits the manufacturer will adjust safety until the actual cost of additional safety equals the implicit price of additional accidents. This helps us understand how companies respond to legislation and regulation. Such an understanding is vital for policy formulation as well as legislative forecast in terms of achieving the desired goals.

Economics provide a behavioural theory to predict how people respond to changes in law.²⁰¹ This theory surpasses intuition, just as science surpasses common sense. In addition to a scientific theory of behavior, economics provides a useful normative standard for evaluating law and policy. Laws are not just arcane technical arguments; they are instruments for achieving important social goals. The economic perspective on OSH standards and practices encompass both causes and consequences. The role of economic factors in the epidemiology of workplace ill-health and the effects this has on the economic prospects for workers, enterprises,

nations, and the world as a whole. It is therefore a very broad perspective, but it is not complete, because neither the causation nor the human significance of OSH can be reduced to its economic elements. The task in any such inquiry should be to indicate the contributions economic analysis can make to the understanding and management of OSH and how this can complement the same in the SADC region as it moves towards economic integration.²⁰²

Economics means one thing to those instructed in the discipline and another to the uninstructed. When most people hear the word *economics*,²⁰³ they think it has to do with the management of money. In particular, "the economics of OSH" suggests for many little more than "how can better working conditions be made profitable for business?" Economics is a social science i.e. a systematic study of human actions in a social context. It is distinguished from other social sciences, such as political science, psychology and sociology, by the kinds of actions and social institutions with which it is concerned. Briefly, the actions that economics is concerned with are the choices people make when faced with scarcity and the social context are the rules, laws and customs that tell which choices are permitted and which are forbidden.²⁰⁴ Economics has two general features that distinguish it from other social sciences such as law. First it focuses primarily on the economy, the ways in which individuals and communities produce, distribute and consume goods and services. Economists generally assume that all decisions are made in a "rational" manner, where rationality [usually bounded rationality] has a very specific meaning. To be economically rational, a decision-maker is:

- (a) Outcome-oriented, basing his or her choices entirely on predicted consequences of each action, and
- (b) Systematically calculating, estimating the probability of each possible outcome and assigning each a positive or negative value.²⁰⁵

Because of this, the calculus of costs and benefits plays a central role in economic reasoning. Of course, this is not an entirely accurate account of how decisions are made in the real world, and in many situations, calculations of costs and benefits play a minor role. This calls for a holistic approach that encompasses a sociological approach that treats law as a social phenomenon and studies it in its social milieu. Proponents of this school of thought such as Roscoe Pound²⁰⁶ and Marx Webber view law as an instrument of social engineering and assert that human behaviour is to a large extent shaped by social norms of which law is the highest. We will shortly discuss these concepts as they bear on OSH.

As will become apparent, while conventional economics does not provide a complete explanation of human behaviour, its explanations will be more effective where market competition is increasingly producing direct consequences for OSH. The calculus of OSH will help map out a way of resolving the dilemma over profit, investment and work place health and safety in the region as it takes steps toward integration.

9.0 Benefits of an Economic Approach

Broadly speaking, there are three general purposes that economics can serve for OSH. First, identifying and measuring the economic costs of occupational injury and disease can motivate the public to take these problems more seriously. This is true at all levels, from the enterprise that may be only dimly aware of the toll that worker ill-health takes on its performance to national governments that may not realise the impact of OSH problems on economic growth and development and the usual government budgetary constraints that it imposes, let alone the burden that the tax payer bears through health and other social provisions.²⁰⁷ In effect taxpayers may find themselves subsidising private economic actors who create OSH hazards, through public health and asocial security services.

Secondly, understanding the connections between the way firms and markets function and types of OSH problems that arise is crucial for the success of policy formulation and implementation at any level of socio-economic engagement. This is crucial in the wake of economic liberalisation where non-state actors such as TNCs are directly responsible for a significant portion of economic management, once the preserve of the nation-state. Why conditions are better in some sectors or regions than others, and why are particular groups of workers at greater risk? What is the likely effect of changes in social insurance coverage, government regulation, or, for that matter, new international patterns of trade and investment? As the pace of economic change picks up throughout the world, these questions need to be addressed on a continuing basis and the economics of health and safety plays a crucial part. Finally, as important as the protection of worker health and well-being is, it is not the only objective of modern society. Economic analysis can help show when safeguarding working conditions is complementary to other social goals, and it can illuminate the tradeoffs when it is not.

10.0 The Cost Element

For all of these goals, a central concept is that of costs. On the one side, we have the costs of improving the conditions of work, in order to reduce the incidence of occupational injury and disease. On the other, we have the costs of *not* doing these things.²⁰⁸ In a world of scarcity,²⁰⁹ it is rare to get something for nothing. The key cost concept in economics is that of *opportunity costs* – the cost of doing something as measured in terms of the value of lost opportunity to pursue the best alternative activity with the same time or resources. In some cases the opportunity cost of doing something can be measured in terms of money out the pocket. In other activities with no money measurements, opportunity cost could be measured in terms of lost times. For instance the time spent for occupational injuries and ill health is the loss of the opportunity to spend the same time on production. For this reason economic analysis can play a vital role in understanding and formulating OSH regulations and legislation. For purposes of the present discussion we will not go into analytical discussion of the cost concept, as that would be outside the scope of our present discussion. Suffice to say that there are many kinds of costs, whose distinctions are important for our present discussion. Let us take a quick look at some of the costs that could be associated with OSH.

10.1 Economic vs. Non-economic Costs

Economic costs are those that can be expressed in monetary units. They include the costs paid or expected to be paid by individuals and organisations acting within the economy, as well as the monetary values implicit in activities undertaken or foregone. Economic costs are no less real, but for one reason or another cannot be captured in monetary terms. In the case of injury and disease, the non-economic costs are above all the subjective costs of pain, fear, and loss suffered by the victims, their families, and their immediate communities. For shorthand they are referred to as the "human costs" of ill health or premature death. In addition, it should be recognised that the loss of life and health is often opposed for reasons that are not reducible to their cost in either the economic or non-economic sense. This is particularly the case when standards of social justice are violated: what may make a particular injury unacceptable, for instance, may not be (only) its cost, but also the fact that it could have been prevented but wasn't, due to the employer's obsession with making the greatest possible profit.

10.2 Private vs. Social Costs

If the costs of worker ill health, to whomever they might accrue, could be added up; this sum would be the full social cost. "Society" has traditionally been thought of as equivalent to the nation, but it makes increasing sense to think of the entire world as our society and indeed, it is not uncommon to talk of a global village in the face of increasing economic integration. Within this overall accounting, however, costs fall on different parties. The particular portion of the cost paid by any one individual or organisation is called the private cost, and this is the cost relevant for decision-making on that level in so far as the decision-maker is economically rational. Three points should be borne in mind.

First, private costs do not necessarily enter into the social cost, because they may be offset by benefits to other members of society. Suppose, because of a catastrophic industrial accident, a firm loses half its market share. This constitutes an enormous private cost to the firm, but if the sales are taken up by other firms this is not a component of social cost. If the firm suffering the accident were more efficient than its competitors, however, the increase in the cost to society of supplying the goods (a much smaller sum) would qualify as social. Second, not all social costs appear as private costs. For instance, a significant portion of the medical cost of occupational injury and disease in the industrialised countries is indemnified by social [compulsory in countries like Malawi] insurance systems. Who pays this cost and how? Some of it can ultimately be traced to specific contributors, but the cost may be so spread out as to be invisible at the private level. Imagine that the insurance system borrows money to finance the extra cost, and that the ultimate effect is to reduce the funds available for other projects--how would this be allocated to particular individuals and organisations? Rather than pursue such hopeless investigations, it is safe to simply say that the cost is social. Third, the possibility for social costs to be borne by one group or another gives rise to the concept of *cost shifting*. A firm, for instance, may try to reduce its exposure to OSH costs by shifting some of them to their workforce, to other firms, or to society as a whole.

10.3 Financial vs. Implicit Cost

Earlier, it was suggested that all economic costs could be expressed in monetary units, but not all take the form of actual money changing hands. When monetary payments are made, we can speak of a financial (or out-of-pocket) cost, but these are often dwarfed by costs that can be inferred from their effects and given estimated monetary values. Consider, for example, an accident to a worker that results in medical treatment as well as damage to a machine. The firm may pay "real" money to the health care provider; this is a financial cost. But if the useful life of the machine is reduced by two years, and if there is no other factor to attribute this to other than the accident, the increased depreciation is also a cost, just as real despite being an inference. Ultimately, from an economic point of view, financial costs are potentially deceptive, since, as we have seen, they may be more or less than true social cost. Only the inferred cost of an event in terms of all its impacts on society, based on full information and careful analysis, can be a satisfactory basis for social cost. Economists refer to this as the *opportunity cost*- the difference between the value of the goods and services available to society with or without the event, decision, etc. Mostly costs of occupational injury and disease to workers and those who care about them are non-economic. There is no need for economic calculation to replace the deep human emotions that arise when life is unnecessarily shortened or impaired.

11.0 Costs to Enterprise

It is a principle of health and safety management that the vast majority of accidents (and this would clearly include diseases as well) are attributable to the conditions of work, not the performance of work. In a sense, this is a semantic dispute, since even highly dangerous conditions might be regarded as "safe" if work were always performed with exacting attention and precision. But the goal of OSH management is to make the job appropriate to the capacities of the workforce, not to find ways to exclude most workers from most jobs. Hence it is customary to view the decisions of the employer concerning what production methods to use, how to implement them, and how to incorporate safety and health concerns as the decisive focus of OSH policy. From this perspective, the reason that we are interested in the economic costs of poor working conditions is that they provide the material incentives for improving those conditions. Not all costs will do, however. There has been considerable confusion surrounding how to classify the costs to firms, and economic theories distinguish between costs that do or do not enter into these incentives. In a nutshell, to provide effective incentives for the improvement of safety and health conditions, the costs of ill health must be economic, internal, variable, and routinely visible. For the present discussion we will not go into analytical details of these aspects of costs as this is beyond the scope of our discussion. What we have done is to indicate and set out a conceptual framework for the discussion of the role or place of OSH in SADC's economic integration agenda. One concept that is worth understanding is regulation. The whole idea of OSH is to regulate conditions of work for the benefit of the workforce, the environment and public health.

12.0 The Burden of Costs

There are two main economic costs that result from disability and premature death at work. The most important is the worker's lost wages during the period of absence from work and possible reduced wages after return to work, either of which may or may not be a social cost, depending on whether otherwise unemployed substitute workers are found to do the same tasks. Research for the United States has found that disability plays an important role in economic outcomes. Approximately one in every ten workers has a disability that limits the amount or kind of work that can be performed. The rate of participation in the labour force for disabled workers is about 2/3 that of the non-disabled, and only half of the likelihood of being in a full-time job.²¹⁰ While the ratio of disabled workers' earnings to those of the non-disabled varies from country to country and locality to locality, ominously for developing countries, the earnings ratio falls for workers with less education,²¹¹ Haveman and Wolfe (1990) found that disabled workers with eleven or fewer years of education made on average only 1/3 the wage of comparable non-disabled workers. Part of this employment and wage gap represents the diminished productivity of the worker following a disabling illness or injury, but a substantial part also represents discrimination.²¹² This bias is now almost religiously accepted as a human right wrong and illegal. This is covered by international law as well as domestic law in member states in the region.²¹³ From a social cost standpoint, it is often assumed that lost wages are a reasonable indicator of lost worker productivity.

The second major economic element is the cost of medical treatment and care during the period of disability, and rehabilitation. In countries with well-developed social and health insurance systems most of these costs are easy to measure, but there are also household costs that can escape detection. In one US sample (provided by Weiler), for instance, one in six injured workers needed some other family member to take care of him or her, and almost 2/5 required other family members to perform some or all of their household tasks. Even though these contributions of time and effort by the families of injured workers have no prices in the marketplace, they certainly represent economic costs.

We can expect that the invisible cost of care plays a much more important role in developing countries, and that failure to measure it leads observers to falsely conclude that the economic costs of poor health are low. Assigning prices to care by family members is not difficult in principle: we could either use the going rate for similar work in clinics, rest homes, etc. or we could estimate the opportunity cost of the time spent on care. This may sound simple in principle but in the case of the SDAC region a major obstacle would be illiteracy and innumeracy rates among the people concerned, let alone lack of resources on the part of states to carry out a disciplined quantification of such costs. This is particular true in the case of HIV/Aids that is exerting enormous pressures on productivity either through absenteeism due to sickness or funerals. The prevailing view unfortunately does not view HIV/Aids as an occupational issue. As a result it is easily left out of the economic equation for OSH.

Remarkably, this invisible medical cost has never been quantified nor is it taken into account by courts in work related personal injury cases. This would be an important

factor for the courts to take into account. The effect would be, to not only do justice to the victims, but it would also push insurance premiums up and in the process would make employers more careful as a cost cutting measure. These are not the only economic costs, however. In a fascinating study employing a unique data set drawn from workers in the U.S., Morse et al. (1998) compared social and economic outcomes between workers who had and hadn't reported work-related Musculoskeletal disorders (WRMSDs). Some of their results are reproduced below.

Table 1

Percentages of WRMSD Cases and Controls Reporting Socio-economic Outcomes

	WRMSD	Controls	Odds Ratio
Promoted	7.9	16.0	0.45
Divorce	7.1	3.9	1.91
Moved for financial reasons	6.4	2.8	2.41
Lost home	3.1	0.9	3.44
Lost car	4.4	1.9	2.45
Lost health insurance	6.6	3.5	1.91

The odds ratio in the fourth column indicates the relative likelihood of a worker with WRMSD reporting the outcome, relative to a worker in the control group. All of these ratios were significantly different from 1 (equal odds) at the 95% level, except for the last one (health insurance), which was significant at 94%. All of these outcomes are economically important. Failing to be promoted is a source of lost income (as would be divorce, especially for women), while being forced to move, losing one's home or car, or losing health insurance can lead to increased current or future expenses. Not all of these could be given dollar values, but clearly some of them can. Considered as a group, these typically hidden costs of chronic occupational injury may even outweigh the direct costs in foregone wages due to absence from work.

Even more alarming is the relationship between occupational injury and dependence on public assistance. Quinlan and Mayhew (1999) cite two studies, one for Australia, the other for British Columbia, that show nearly a fourth of all recipients of workers compensation ultimately ending on the welfare rolls, making this the third most important route to welfare (after being a single mother and being unemployed).²¹⁴ This represents a tragedy for the workers involved and also suggests that part of the economic costs is being shifted from the workers compensation system, which is employer-funded, to the general taxpayer. Presumably the role of welfare is even greater for victims who, due to lack of coverage or for some other reason, never received an award from workers compensation in the first place.

Given the substantial economic costs imposed on the victims of occupational injury and disease, as well as their family and those in their immediate community, who is likely to pay them? As we have seen, the worker unavoidably pays many of these costs, but lost wages and medical costs are often reimbursed, in whole or part, by workers compensation²¹⁵ or a similar social security arrangement. It could be said, in fact, that, from an economic point of view, the coverage and adequacy of workers compensation is the single most important determinant of who bears the cost burden of occupational ill health. In addition to bearing the human costs of ill health at work, workers and their families shoulder much of the financial cost as well. This cost takes easily measured but also easily overlooked forms, and it falls with particular force on the most exposed segments of the workforce: migrant workers, women, children, and workers in precarious or non-standard employment. The ILO has promulgated the principle that the employer should pay for the economic costs of occupational injury and disease, but because of the shortcomings of workers compensation, this principle is increasingly violated.

13.0 Conclusion

It is clear that an understanding of how firms and TNCs respond to regulation is crucial to the configuration and formulation of enforcement strategies for OSH at all levels of economic engagement. Since OSH is an aspect of the social regulation of the market, it is crucial for policy makers to bear in mind that firms and corporations exist primarily for profits²¹⁶ and not as charities. For this reason a sensible balance must be maintained between trade and investment retention and public protection. From such an understanding it will be difficult to play down the economics of occupational health and a safety at any level of economic engagement.

Economic actors such as TNCs are aware that they benefit from the protection of the law in host states and that law is a collective expression of society's expectations and goals, which it intends to achieve, i.e. social harmony and well-being,²¹⁷ and health and safety which in this regard ranks high on a priority list. This understanding will facilitate the tripartism in industrial politics. This would be reinforced by the realisation of the knock on effect on efficiency and productivity of occupational injuries and ill health. Health and safety is an indispensable part of an integration process and an economic perspective on social issues would invaluablely inform policy debates.

The question of cost in OSH is equally important. When people become aware of the costs forced on them in whatever form, they might take initiative towards the promotion of OSH either singularly or collectively as civil society²¹⁸. Finally the methodology of economics has a valuable contribution to make to an understanding of OSH law and its development in the region.

ENDNOTES

1. Available at http://66.102.9.104/search?q=cache:95whumJ1bXMJ:209.225.62.100/Documents/Events/2002/Core_Labor_Standards/pelce.pdf+%E2%80%9COnly+decent+work+for+all&hl=en&ct=clnk&cd=19Last accessed 7 December 2007).
2. Z Nkowani 'Injury Unto Death , Occupational Health and Safety Regulation: The case of Malawi' *Comparative and International law Journal for Southern Africa*, Vol 41, Issue 1, 2008, Ali Taqi, *Globalisation of Economic Relations: Implications for OSH An International View*, XIVth World Congress on OSH Madrid, 23 April 1996.
3. Para.1, of the executive summary to the organisation's regional Indicative Strategic Plan [RISP] available at http://www.sadc.int/content/english/key_documents/risdip/SADC_RISDP_Summary_en.pdf (last accessed 7 December 2007).
4. Article 5 (1) of the SDAC Treaty, Available at http://www.sadc.int/english/documents/legal/treaties/amended_declaration_and_treaty_of_sadc.php, (Last accessed 7 December 2007).
5. See SADC Declaration Productivity (1999) para. 2 and 3 of the preamble, available at http://www.sadc.int/key_documents/declarations/productivity.php, (last accessed 10 December 2007).
6. SADC developed as an outgrowth of the Frontline States.
7. Southern Africa: Toward Economic Liberation - A Declaration by the heads of Governments of Independent States of Southern Africa, made at Lusaka, on the 1st April, 1980, Available at http://www.issafrica.org/AF/RegOrg/unity_to_union/pdfs/sadc/SADCcom8092.pdf(last accessed 7 December 2007) See also Barron Boyd, Jr. 'A Subsystemic Analysis of the Southern African Development Coordination Conference' *African Studies Review*, Vol. 28, No. 4 (Dec., 1985), pp. 46-61.
8. As above.
9. Available at http://www.sadc.int/key_documents/risdip/chapter1.php (last accessed 7 December 2007).
10. The SADC Charter of Fundamental Social Rights is one example. See articles 11 and 12 of the Charter. http://www.sadc.int/key_documents/charters/social_rights.php, (last accessed 7 December 2007).
11. ILO's Safe work Programme, available at <http://www.ilo.org/public/english/protection/safework/intro/> (last accessed 7 December 2007).
12. Wright, F.B. 'Directors' Responsibilities for Health and Safety' - a peer review of three key pieces of published research, Health and Safety Executive, 2006, p.1.
13. In *Promoting Health and Safety as a key goal of the Corporate Social Responsibility agenda* Prepared by Technopolis Ltd and Emerging Market Economics Ltd for the Health and Safety Executive, 2005 research Report, 339 it was said that 'currently of the approximate 42 million working days lost through injury and ill health in the UK, 9 million are due to injury and 33 million through ill health. Of the 33 million lost through ill health, 13 million were due to stress.

14. Above note 2.
15. The Southern African Development Co-ordination Conference, SADCC, the forerunner of the SADC, the Community, was established in April 1980 by Governments of the nine Southern African countries of Angola, Botswana, Lesotho, Malawi, Mozambique, Swaziland, Tanzania, Zambia and Zimbabwe. SADCC was transformed in August 1992, into SADC by the Declaration and Treaty establishing the new SADC. The transformation was a realisation that although the co-ordination conference had served well and had demonstrated the crucial need to cooperate in their development efforts; time had come to give the Organisation a legal and more formal status. There was also a need to shift the focus of the organisation from co-ordination of development projects to a more complex task of integrating the economies of member States. Hence the Treaty, which is the blueprint for building a Community of Southern African states.
16. Available at <http://www.ilo.org/public/english/protection/safework/> (last accessed 7 December 2007).
17. Above note 10.
18. Generally see, Peter Dorman *The Economics of Safety, Health, and Well-Being at Work: An Overview* Geneva, May 2000.
19. According to the ILO every year more than 2 million people die from occupational accidents or work-related diseases. By conservative estimates, there are 270 million occupational accidents and 160 million cases of occupational disease. Available at [www.ilo.org/global/Themes/Safety and Health at Work/lang--en/index.htm](http://www.ilo.org/global/Themes/Safety_and_Health_at_Work/lang--en/index.htm), accessed 16/05/2007.
20. Above note 5, para. vi of the preamble.
21. Generally see Alberto López-Valcárcel *New challenges and opportunities for OSH in a globalized world*, (2002) ILO Geneva.
22. Article 21 (3) (d).
23. Above note 4, Article 22 of treaty.
24. Para. 3 of the preamble to the SADC Protocol on Health.
25. Available at <http://www.sadc.int/english/documents/legal/protocols/health.php#article24> (last accessed 10 December 2007).
26. Article 3 of the Protocol.
27. Available at <http://www.sadc.int/english/documents/legal/protocols/mining.php#article9>, last accessed 7 December 2007).
28. Article 9 (1) of the Protocol on Mining (1997) available at <http://www.sadc.int/english/documents/legal/protocols/mining.php>, (last accessed 7 December 2007).
29. SADC Protocol on Health (1999) available at <http://www.sadc.int/english/documents/legal/protocols/health.php>, (last accessed 7 December 2007).
30. Available at www.iss.co.za (last accessed 7 December 2007).
31. Copies of this are available from the SADC Employment and Labour Sector Coordinating Unit, Lusaka, Zambia.
32. As above.

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33. For an extensive discussion of the Charter see Nkowani, Z. 'When Elephants Dance, The SADC Charter of Fundamental Social Rights: A Beacon of Hope or Confusion Compounded', *Commonwealth Law Bulletin*, Vol. 33 (1), 2007, available at <http://www.informaworld.com/smpp/content~content=a781141820~db=all~order=page>, (last accessed 21 December 2007).
 34. Article.5 (1) (a) of the Treaty.
 35. As above, article 9.
 36. Above note 33.
 37. As above article 21.
 38. Above note 33.
 39. SADC Annual Report for 2001/2002, p.43.
 40. As above, pp10-11.
 41. Para.5 of the preamble to the Constitutive Act of the AU.
 42. Available at www.african-union.org, (Last accessed 7 December 2007).
 43. Article.1 of the African Charter, now Article.3 (b) of the Constitutive Act of the African Union.
 44. As above, article.2.
 45. Above note .10, para.2.
 46. Available at http://www.africa-union.org/root/au/AboutAU/Constitutive_Act_en.htm, (last accessed 10 December 2007).
 47. Article 3 (j) and (k) of the Constitutive Act, available at http://www.africa-union.org/root/au/AboutAU/Constitutive_Act_en.htm, (last accessed 21 December 2007).
 48. Available at <http://www.adb.org/Documents/Handbooks/Core-Labor-Standards/Part1-Introduction.pdf>, (last accessed 7 December 2007).
 49. Available at <http://www.ituc-csi.org/spip.php?article491>, (last accessed 7 December 2007).
 50. Available at www.ilo.org/public/English/support/publ/revue/sommaire/141-1-2.htm (last accessed 10 December 2007).
 51. D. Kucera. 2002. 'Core labour standards and foreign direct investment', in *International Labour Review*, Vol. 141, No. 1-2 (2002), pp. 31-70.
 52. See Para.5 of C187 *Promotional Framework for OSH Convention, 2006*. Sadly at the time of writing no country had yet ratified this convention, vindicating our earlier view that OSH is not everyone's cup of tea. Since minimum of two ratifications are required for it to come into force, and there is no for this convention, its not yet in force.
 53. The ILO convention 155 on OSH states that the term health, in relation to work, indicates not merely the absence of disease or infirmity; it also includes the physical and mental elements affecting health which are directly related to safety and hygiene at work.
 54. Loewenson R, Nhachi C, Murambiwa W and Gona P , *Epidemiology of the health impact of pesticide use in developing countries: epidemiological research in Zimbabwe* , Mimeo, Harare,(1991)
 55. Above note 20. In countries like Malawi there has been increased abuse of agro-chemicals that has resulting in poisoning and self poisoning. These chemicals are sold on the black markets by street vendors with the full knowledge of the government and public health officials.

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56. See Memorandum on The Economic Viewpoint in OSH supervision, Ministry of Social Affairs and Health Department for OSH ampere, Finland 1999 International Publications.
 57. Ali Taqi, *Globalization of Economic Relations: Implications for OSH An International View*, XIVth World Congress on OSH Madrid, 23 April 1996.
 58. *The Chinese in Africa*, a Channel 4 report of 4th July, 2005 available at <http://www.channel4.com/news/special-reports/special-reports-storypage.jsp?id=310>, (last accessed 7 December 2007).
 59. *Global Affairs: 'China in Sub-Saharan Africa'*. (June 2007), available at <http://gaffairs.blogsome.com/2007/06/14/china-in-sub-saharan-africa/>, (last accessed 10 December 2007).
 60. Garrett D. Brown, Dara O'rourke, 'The Race to China and Implications for Global Labor Standards' *International Journal of Occupational Environmental Health*, Vol 9, No. 4, October/December 2003.
 61. See 'ZHI SU, OSH Legislation and Implementation in China', *International Journal of Occupational Environmental Health*, 2003; 9:302–308.
 62. See 'Dozens killed in Zambia explosion' The BBC, (Thursday, 21 April, 2005), 10:21 GMT 11:21 UK available at <http://news.bbc.co.uk/2/hi/africa/4466321.stm>, (last accessed 10 December 2007).
 63. Generally see for example UDHR, ILO.C.155 and article 13 as read with article 31 of the Constitution of Malawi, available at <http://www.sdn.org.mw/constitut/dtindx.html> (last accessed 11 December 2007).
 64. J. Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press 1999), e.g. 113-20.
 65. Article 22 of the *UDHR*: 'Everyone, as a member of society, has the right to social security and is entitled to realisation, through national effort and international co-operation and in accordance with the organisation and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality'.
 66. A. Sen, *Development as Freedom* (New York: A. A. Knopf 1999), at pp10-11.
 67. *Human Development Report 2000* (UNDP 2000), at iii and 57, available at <http://hdr.undp.org/en/reports/global/hdr2000/>, (last accessed 10 December 2007).
 68. Article.21 of the treaty.
 69. See our discussion on the effects of globalisation on OSH.
 70. Occupational health also includes occupational hygiene, occupational medicine. See s.1 of the South African OSH Act. Act No.85 of 1993.
 - 71 . Article.12 of the Treaty as amended available at www.sadc.int, (last accessed 10 December 2007).
 72. Bob Deacon, *The Social Dimension of Regionalism: A constructive alternative to neo-liberal globalisation?* Project Report for Globalism and Social Policy Programme (GASPP). See the Executive summery available at <http://www.stakes.fi/gaspp>"), (last accessed 7 December 2007).
 73. Frank B. Wright (1997) *Law of Health and Safety at Work*; Sweet and Maxwell, London, pp.32-33.

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74. Kenneth SL. (1994). *Health and Safety Regulations*. Boston, Kluwer Publishers.
 75. American Society of Safety Engineers White Paper addressing the return on investment for safety, Health, and Environmental (SH&E) Management Programs, available at <http://www.asse.org>, (last accessed 10 December 2007).
 76. See report of the tripartite meeting on moving to sustainable agricultural development through the modernisation of agriculture and employment in a Globalised economy. Geneva, 18-22 September 2000, available at <http://www.ilo.org/public/english/dialogue/sector/techmeet/tmadn00/tmadn.htm>, (last accessed 11 December 2007).
 77. Article.13 (e) of Constitution.
 78. Bowonder, B., Kasperon, J. and Kasperon, Roger E. 1994. "*Industrial Risk Management in India Since Bhopal*" printed in Jasanoff, S. Learning From Disaster. University of Pennsylvania Press: Philadelphia. (p.67)
 79. The Case of Bhopal is a classical example. On December, 3rd, 1984, just after midnight, the Bhopal agricultural pesticide plant released approximately 40 metric tons of methyl isocyanate (MIC) into the atmosphere, resulting in the death of as many as 3000 and injuries to thousands more. The plant was operated by Union Carbide of India, Limited (UCIL), a company controlled (via 50.9 percent stock ownership) by the Union Carbide Corporation (UCC), an American chemical company. UCC provided the basic design of the plant, supervised its engineering and defined operating procedures to run it. Prior to the catastrophe, the Bhopal plant had been losing money for several years due to the weak demand in India for pesticides. This resulted in major personnel reductions, particularly in regard to production and maintenance. At the time of the accident, the plant had been shut down for over a month for a complete maintenance overhaul. Important safety devices were out of commission and staffs with no MIC training were in supervisory roles. Consequently, when a large amount of water entered the MIC tank, the ensuing reaction caused a leak. This was quickly identified, but defects in the MIC unit and staff inadequacies prevented any containment.
 80. Morehouse, W. and Subramaniam, M. 1986. *The Bhopal Tragedy*. Council on International and Public Affairs: NY. (p.3).
 81. *The Burden of occupational Illness*; Press Release WHO/318 June 1999, available at <http://www.who.int>, (last accessed 21 Decembr 2007).
 82. Biddle, Jeff, Karen Roberts, Kenneth Rosenman, and Edward Welch. 1998. *What Percentage of Workers with Work-Related Illnesses Receive Workers' Compensation Benefits?* Occupational and Environmental Medicine. 40(4): 325-31.
 83. In 2003, the International Labour Conference had adopted a *Global Strategy on OSH (OSH)* in order to tackle the enormous humanitarian and economic cost of work-related accidents and diseases globally. The promotion of a national preventative safety and health culture, and a systems approach to OSH were central to this strategy, which covered five key areas for action: (1) the promotion of OSH through awareness raising and advocacy (of which the annual World Day for Safety and Health was an example); (2) ILO instruments; (3) technical assistance and cooperation; (4) knowledge development, management and dissemination; and (5) international collaboration. He

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- reported that, since 2003. When the issue came for discussion at the ILO's ninety-fifth Session, in Geneva, (2006) there had been 49 ratifications of OSH Conventions and several countries had expressed their intention to ratify the OSH Convention, 1981 (No. 155), and others. There had also been significant progress in developing strategic approaches for the sound management of chemicals and the ILO *Guidelines for OSH management systems (ILO-OSH 2001)* which as of that date was available in 21 language versions. This indicates the global appreciation of the cost of occupational health and safety injuries and accident on productivity and how it set back development.
84. The term occupational disease covers any disease contracted as a result of an exposure to risk factors arising from work activity. Article 1 of the ILO protocol 155 to convention 155, on OSH.
 85. The term occupational accident covers an occurrence arising out of or in the course of work, which results in fatal or non-fatal injury.
 86. See WHO reports at www.who.org, (last accessed 21 December 2007).
 87. Above note 74, p.32.
 88. Maduro Mi, (2000) 'Europe's social self: the sickness unto death' in J O Show (ed) (2000) *Social law and Policy in an evolving European union*; Hart publishing, Portland at p.325.
 89. Lo Faro, A (2003) *Regulating social Europe: Reality and myth of collective bargaining in the EC legal order* available at <http://arc.cs.odu.edu>, last accessed 11 December 2007).
 90. See Otto Kahn-Freund (1972) *Regulatory Legislation' in labour and the Law*, London, Stevens & sons, pp.29-44.
 91. EU Council Directive No.93/104/EC of 23rd November 1993 and The Working Time Regulations of 1998(as amended), available at <http://www.incomesdata.co.uk/information/worktimedirective.htm>, (last accessed 21 December 2007).
 92. Factories act (UK) 1961, s. 14; cf Factories Act (Malawi).
 93. See the definition under the Malawi act, Factories Act etc. S.2.
 94. *Matthews v. Kuwait Bechtel Corporation* [1959] 2 GD. 57 (C.A).
 95. *Lubbe v. Cape*, [2000] 4 All E.R. 268, *Groves v. Lord Wimborne* [1898] 2 GD. 402 (C.A.). cf *Hunter v Hanley* (1955) slt 213 (Court of Session) s 305.
 96. The Corporate Manslaughter and Homicide Act 2007, Chapter 19, available at http://www.opsi.gov.uk/acts/acts2007/ukpga_20070019_en_1, (last accessed 21 December 2007).
 97. The House of Lords laid down a four stage test for involuntary manslaughter by means of a grossly negligent act or omission in *R.v. Adomako (1995) 1 AC 171*: Did the defendant owe a duty of care towards the victim who has died? , If so, has the defendant breached that duty of care? , has such breach caused the victim's death? (The law of negligence must be applied to ascertain whether or not there has been a breach of the duty); If so, was that breach of duty so bad as to amount, when viewed objectively, to gross negligence warranting a criminal conviction? .Consideration of those questions will involve the application of legal principles which are usually regarded as forming part of the civil law of tort, not the criminal law.
 98. (*P & O European Ferries (Dover) Ltd (1991) 3 Cr App R 72*)

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99. *Donaghey v. Bolton & Paul Ltd.* [1968] 1 A.C. 1. much depends on the facts. See *Mulready v. Bell* [1953] 2 G.D. 117 (c.a.). The House of Lords in this case disapproved some of the reasoning in the *Donaghey* case.
 100. *Smith v. Cammell Laird* [1940] 1 A.C. 242 (shipyard). cf *Wingrove v. Prestige* [1954] 1 All E.R. 576 (C.A.). See also *Lavender v. Diamints Ltd.* [1949] 1 K.B. 585, and affirmed by the House of Lords in *Wrigley v. British Vinegars Ltd* [1964] 1 A.C. 307.
 101. http://www.africa-union.org/root/au/Documents/Treaties/text/OAU_Charter_1963.pdf, (last accessed 21 December 2007). Now superseded by the Constitutive Act of the African Union ,
 102. As above, Article 2 (10 (e) of the Charter.
 103. Available at http://www.africa-union.org/root/au/Documents/Treaties/Text/AEC_Treaty_1991.pdf, (last accessed 21 December 2007).
 104. <http://www.dfa.gov.za/foreign/Multilateral/africa/aec.htm>, (last accessed 21 December 2007).
 105. Para. 8 of the preamble to the treaty.
 106. Article.3 (e).
 107. Article.3 (g).
 108. The treaty did not define accountability, however the common understanding would be that it meant political accountability which until recently was visibly absent in most member states.
 109. Article.3 (h).
 110. Article.4 (c).
 111. Above note 48.
 112. This is particularly true if considered in view of some of the flash points in Africa. The problems in Zimbabwe have more to do with social exclusion than the tabloid politics.
 113. Above note 104, article.7 (d).
 114. As above, article.28 (1).
 115. www.africa-union.org, (last accessed 21 December 2007).
 116. Above note 48, article.2.
 117. As above, article.3. cf Article.2 of the Charter.
 118. See also para.2 to the preamble to the AU Act.
 119. Above note 48, article.5 (h) as read with article 22. Available at http://www.africa-union.org/root/au/AboutAU/Constitutive_Act_en.htm, (last accessed 21 December 2007).
 120. Available at <http://www.sadc.int/english/documents/risd/index.php> (last accessed 21 December 2007).
 121. Each of the charter's 18 Articles, which set out individuals' rights or freedoms, is taken from a "precursor" text. This can be another charter, a convention, a treaty or jurisprudence.
 122. See World Investment Report TNCs and Export Competitiveness. September 17, 2002.
 123. See the background to the code on the safe use of chemicals in SADC,
 124. UNCTAD World Investment Report, 2001.

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125. At the time of writing this thesis the WIR for 2003 was not out. However a synopsis was available. It showed that it focuses on the Foreign Direct Investment (Foreign Direct Investment) downturn, its reasons and the role of national policies and international investment agreements (IIAs) to attract Foreign Direct Investment and benefit from it. Part One discusses the overall trends in Foreign Direct Investment. Foreign Direct Investment flows have dropped drastically. No rebound is expected in 2003. This question is discussed for the world as a whole, as well as by region. Part Two seeks to advance the understanding of host country policies and measures that are particularly important for attracting Foreign Direct Investment and benefiting from it. It then focuses on key issues that straddle national Foreign Direct Investment policies and international investment agreements, with a view towards bringing out the development dimension.
 126. Para.12 of preamble to the treaty as amended.
 127. Article 21 (b) of the protocol.
 128. As above Article 21 (a).
 129. Articles 16-21 of the Trade Protocol.
 130. www.ilo.org (last accessed 21 December 2007).
 131. See <http://www.SADC.int>.
 132. Ernst-Ulrich Petersmann (2001) 'Human Rights And International Economic Law In the 21st Century, The Need To Clarify Their Interrelationships' *Journal of International Economic Law* JIEL 2001.1(3).
 133. Article 12 (a) of the SASDC charter.
 134. Article 4 (c) of the treaty.
 135. See Gordon Woodman, above note.
 136. R. Popper, *The Open Society and Its Enemies*, Vol. I Plato (London: Routledge 1962), at p.123.
 137. See Ernst-Ulrich Petersmann (2001), Above note 132.
 138. SADC is an organisation based on the rule of law. See Article.4 (c) of the treaty.
 139. See. Article 22 (2) of the African Charter on Human and peoples' Rights (ACHPR).
 140. Art.5 (2) (a).
 141. Article 5 (2) (b).
 142. Article 21 (1).
 143. Article 21 (2).
 144. Article 21(3) of the treaty.
 145. See Article 23 of the treaty providing for NGOs.
 146. Minutes of Workshop SADC Preparatory Meeting for WSSD This workshop was the second in a series of regional workshops held in preparation for the World Summit on Sustainable Development in South Africa. It took place from the 29th September – 1st October 2001 at Kopanong Hotel, Benoni, South Africa. Nine out of the 14 SADC countries were represented.
 147. The Charter sets out in a single text, for the first time in SADC's history, the whole range of civil, political, economic and social rights of SADC citizens and all persons resident in the SADC.
 148. European Social Charter, Turin, 18 X 1961.

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149. Khadiagala, Gilbert M, *In Adversity: The Frontline States In Southern African Security, 1975-1993*, Ohio University Press, (1994).
 150. These include the code on the safe use of chemicals, code of practice on HIV/AIDS and Employment, Code of Practice on the employment of youth and women.
 151. Para.39 of 2003 SADC Summit Final Communiqué. The Summit of Heads of State and Government of the Southern African Development Community (SADC), met in Dares Salaam, Tanzania on 25 -2 6 August, and among other things Summit signed the SADC Charter on Fundamental Social Rights, which among other things, calls for creation of a conducive environment to facilitate closer and active consultations among social partners and in a spirit conducive to harmonious labour relations. www.sadc.int , see also SADC Leaders to sign Social Rights Charter at www.allafrica.com and Munetsi Madakufamba SADC Leaders approve mutual defence pact, charter on social rights, Southern African News at www.sardc.net/SADCsummit4.htm (last accessed 11 December 2007).
 152. The charter was later adopted without amendments.
 153. Article 4.
 154. Article 3. Though this right is not contained in its own article it is part of the universal civil and human right covered by Article.3 of the charter.
 155. Article 6.
 156. Article 11.
 157. Above note 97.
 158. Olivier,M and Kalula ,E , *Beyond Labour Market Regulation: Social Protection and Future of Labour Law in Southern Africa*, Rand Afrikaans University and University of Cape Town, South Africa.
 159. See the proceedings of the Conference of Plenipotentiaries on the Convention on the Prior Informed Consent Procedure for Certain Hazardous chemicals and Pesticides in International Trade, Rotterdam,10-11 September 1998,available at <http://www.jus.uio.no/lm/hazardous.chemicals.and.pesticides.prior.informed.consent.trade.rotterdam.convention.1998/pre.pre.html> (last accessed 11 December 2007).
 160. See generally Amy Bann 'Development of an International Right-to-Know: Towards Public Disclosure of Multi-national Corporations' Environmental Practices through Legal Transparency Measures'. Law, Social Justice and Global Development 2002, available at <http://elj.warwick.ac.uk/global/issue/2002-1>, (last accessed 11 December 2007).
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 167. *Infra n.9.*
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 169. *International Labour Conference 91st Session (2003) ILO standards-related activities in the area of OSH: 'An in-depth study for discussion with a view to the elaboration of a plan of action for such activities'* Sixth item on the agenda, Report VI International Labour Office Geneva p.35
 170. Peter Dorman (2000) *The Cost of Accidents and Diseases*, Preliminary Papers on the Economics of OSH 'Chapter 1' International Labour Office Geneva p.3
 171. Lings, Svend, Jørn Jensen, Søren Christensen, and Jens T. Møller. 1984. 'The Consequences to the Injured of occupational Accidents: A Follow-up Study of an Emergency Department Material'. *Scandinavian Journal of Social Medicine*. 12: 25-9.
 172. Above, see also Calabresi, G., *The Cost of Accidents* (1970).
 173. Decent work sums up the aspirations of people in their working lives. It involves opportunities for work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organise and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men. See ILO Director-General Juan Somavia '*Decent work - the heart of social progress*' at <http://www.ilo.org/public/english/decent.htm> (accessed 20th December 2007).
 174. Generally see Glass, Bill. (1999). 'Small Enterprises and OSH. Encyclopaedia of OSH'. Geneva: ILO, Dorman, Peter. 1996. *Markets and Mortality: Economics, Dangerous Work, and the Value of Human Life*. Cambridge: Cambridge University Press.
 175. Posner R. *Economic Analysis of Law* (4th edn) pp 251-2.
 176. For a critique of the economic analysis of law see J-P Warren Allan '*Liability Rules in Accident Law, Liberalism and the Economic Analysis of Law*' UCL Jurisprudence Review 2000, pp122-140.
 177. See Shavell, S. 'Strict Liability Versus Negligence', in Posner and Parisi (ed) *Law and economics* Volume II (1997).
 178. Bruce, C., *Applying Economic Analysis to Tort Law*, *supra*.
 179. J.W.Harris *Legal Philosophies* (2nd edn) (London,Butterworths,) p.49.
 180. José Luis Castellá, (2002) *Introductory Guide to National OSH* , ILO Working Document, In Focus Safe Work Programme , Geneva ,p.12 .
 181. Article 4(1)of ILO Convention 155 on OSH sets forth that 'Each Member[country] shall, in the light of national conditions and practice, and in consultation with the most representative organisations of employers and workers, formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working.

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182. Article 5 of the treaty.
 183. Lukes and Scull (eds.) (1983) *Durham and the Law*; Oxford, Martin Robertson. Pp.146-151. There is disagreement among legal philosophers some of which do not share the notion of sanction as a distinct mark of law. For instance Gaston Richard in '*The Origins of Law*' (p.4) alludes to guarantee and sociability as the trademark of law. He views law as an instrument society uses to fight egoism [the desire to live for oneself alone, to take cognisance only of one's own goals in the world (p.68)] and insociability which threatens social solidarity and according him sanction is a means of achieving the goal of social harmony and solidarity. Despite his stand, it is clear the idea of sanction is acknowledged. See M. Kulischer, *Annee Sociologique*, p.353, V, p.400.
 184. Allot, 1980, pp.6-7.
 185. cf Hart, *The Concept of Law*, Oxford, Oxford University Press.
 186. See Ross Harrison(ed) Jeremy Bentham on *A Fragment on Government*, Cambridge University Press, Hart, 'Definition and Theory in Jurisprudence', 70 LQR (1954).
 187. See generally Posner and Landes, *The Economic structure of Tort Law*.
 188. Bentham J. *An Introduction to the Principles of Morals and Legislation*, Burns and Hart (eds), 1970), (Oxford, Clarendon Press), chapters 1-5.
 189. See Austin. *The province of Jurisprudence Determined*, Lectures 1,22 and 23, Cambridge, University of Cambridge Press (1995).
 190. Kelsen, *General Theory of Law and State*, Cambridge, Harvard University Press, p 165.
 191. Anthony Allot (1980) *The Limits of Law*, Butterworths & Co, London p.11.
 192. Austin, (1954), *Supra*.
 193. Gordon R Woodman, *Customary Law in Common Law Systems*, University of Birmingham, UK p.1.
 194. Anthony Allot (1980) *The Limits of Law*, Butterworths & Co, London pp.23-26.
 195. See Chanock, M (1985), *Law, Custom and Social Order: The colonial experience in Malawi and Zambia*, Cambridge, UK, Cambridge Press.
 196. Hart, H.L.A *The Concept of Law* (2nd edn) Oxford University Press, Oxford, pp.51-71.
 197. For instance some criminal behaviour is motivated by non-economic considerations. Social and psychological factors in the real world may take precedence over the calculation of the price of ones actions.
 198. See *Wilson & Clyde Coal Co. Ltd v English* [1936] AC 57, The UK *Consumer Protection Act 1987* implementing provisions of the EU Directive of 25th July 1985 on the approximation of laws, regulations and administrative provisions of member states concerning liability for defective products.
 199. J-P Warren Allan: 'Liability Rules in Accident Law, Liberalism and the Economic Analysis of Law', *UCL Jurisprudence Review 2000*, p.123.
 200. The test of reasonable practicality in OSH Law is founded on such principle. It takes economic consideration by requiring the assessment of the cost of preventing the accident and what is economically sound practice. For a distinction between a duty qualified by the term *so far as is reasonably practicable* and one qualified by the term *reasonably practicable*, see *Edwards vs. National Coal Board* (1949) 1 All ER 743. The law was stated by Asquith LJ, this way '*reasonably practicable is a narrower term than 'physically*

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- possible' and implies that computation must be made in which the quantum of risk is placed one scale and the sacrifice involved in the measure necessary for averting the risk(whether , in money, time or trouble) is placed in the other and that if it be shown that there is a gross disproportion between them- the risk being insignificant in relation to the sacrifice, the defendant discharges the onus upon them' . See also to the similar effect Jeremy Stranks (2001) Health and Safety Law (4th edn), Prentice Hall, London, p.286.*
201. Weil, David. (1999). *The Economic Consequences of Work Injury and Illness: What We Know and What We Must Learn*. Invited conference paper for Functional, Economic, and Social Outcomes of occupational Injuries and Illnesses: Integrating Social, Economic and health Services Research, National occupational Research Agenda, National Institute for OSH, June 13-15, 1999, Denver.
 202. Economic integration is the merging to varying degrees of the economies and economic policies of two or more countries in a given region.
 203. The studies of human actions in a social context, especially those actions are directed toward the use of scarce resources to satisfy potentially unlimited wants. Edwin Dolan (1983) *Basic Economics* (3rd.Ed) The Dryden Press (New York) p.3.
 204. As above, p.3.
 205. As above. See also Christine Jolls, Cass R. Sunstein, and Richard Thaler “A Behavioural Approach to Law and Economics” Chicago, Law and Economics Working Paper No.55 (2D Series). P.7.
 206. Roscoe Pound. *Law and Liberty Lectures on the Harvard Classics. The Harvard Classics*, Harvard University Press. 1909–14.
 207. See our discussion below on the community burden of occupational injuries and diseases.
 208. Peter Dorman, *The Economics of Safety, Health, and Well-Being at Work: An Overview*, Geneva, May 2000.
 209. Something is said to be scarces if, at zero price, more is wanted than is available.
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215. For instance the Employers' Liability (Compulsory Insurance) Act 1969 (UK), Workers compensation Act of Malawi.
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217. Above note 4, Article 5.
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