

# Role of Trade Union Movement to Improve Regional Labor Standards within SADC

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*In the era of globalization and regional economic treaties trade unions have not involved in a significant debate about what can be done to react. Most trade unions still follow their own historical approach and strategies. If employers can operate freely across national borders through multi-national companies, the trade unions cannot just function within their own national jurisdictions. A new collective interest would be the starting point for a transnational role of trade unions. Globalization and regionalism have altered the balance of power between capital and labor to the disadvantage of labor. This article explores whether the trade union movements within SADC are actively playing a role in combating the effects of regional globalization on labor.*

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## **Transnational Labor Relations**

We live in an age of transnationalism, where transnational legal norms move around the globe. To some extent these legal norms have been codified by international treaties, whether of a binding or nonbinding nature. Shaffer (2012) maintains that the source of these transnational legal norms may be an international treaty, international soft law, privately created codes or standards, a foreign legal model that is promoted by a transnational actor, or a combination of them. Globalization and the increasing movement of capital and labor across international borders, with the exception of migrant workers who are facing major obstacles by immigration laws, are creating a situation where laws in general and labor laws in particular are obtaining an international character. Internationally the problem of movement of labor is the asymmetric structure between capital and labor in regard to the freedom of movement. In view of increasing globalization, the Conventions of the International Labor Organization (hereafter the ILO) have assumed greater prominence in recent years. Internationalization and globalization have

had a growing impact in many areas especially on legal and economic relations (Smit, 2010).

There has been a rapid growth in the role of international agreements and supranational authority over the past 40 years that regulate economic, social, communications, environmental and human rights behavior (Simmons, 1998). The original concept of transnational relations encompasses almost everything in world politics, except inter-state relations. This has led to a situation where many sovereign nation-states were forced to choose a side in establishing their political, economic, social, and cultural relations and operations, which, in itself, again led to regionalism.

Transnationalism and all its different facets have a major influence on all the different role players in Transnational Companies (TNC's) and especially the employment relationship. Dickmann, Müller-Camen & Kelliher (2008) reported that not only does a TNC need to integrate various human resource principles and policies to create cohesion and they support the view held by Gennard (2008) that a TNC will have to implement transnational human resource management (THRM) practices.

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It becomes problematic where employment or labor decisions that are

taken in one area of the world have an effect on employment relations somewhere else in the world. It is apparent that transnational relationships of actors have become so intertwined that it is almost impossible to understand the strategies of actors within one country without referring to the events and strategies of actors in other countries (Lillie & Greer, 2007). It would seem as if transnational capital plays national environments against each other but at the same time attempts to create a genuinely global business environment (Lillie & Lucio, 2012). Greer and Hauptmeier (2008) stated that the globalization of markets and firms has had a profound impact on labor relations and they defined labor transnationalism as: "The spatial extension of trade unionism through the intensification of co-operation between trade unionists across countries using transnational tools and structures".

Research on labor transnationalism is becoming more important due to the rapid growth in TNCs. Political entrepreneurs can play a vital role in the development of labor transnationalism. Political entrepreneurs should have the vision to look at transnational strategies and the leadership skills to impact on their own constituencies. International (or global) framework agreement (IFA) which is an instrument negotiated between a multinational enterprise and a Global Union Federation (GUF) in order to establish an on-going relationship between the parties and ensure that the company respects the same standards in all the countries where it operates also impacted on the research

on labor transnationalism. Helfen and Fichter (2013) is of the opinion that: “academic research is only beginning to deal with what we would define as an emerging arena of transnational labor relations.”

It would appear that transnational labor relations are still in an emerging, formative phase considering institutionalization, projecting a very fragmented, diverse and mixed picture of development. Lillie and Lucio (2012) have identified that there are two dominant trends in transnational labor relations research; namely the optimists who show how it can work in specific situations, and then there are pessimists who stress labor’s vulnerability against management-devised competitive frameworks.

The expansion of transnational labor relations and the establishment of regional labor standards would require trade unions to reassert their main objectives in a contemporary language so that they can effectively function in flexible labor markets and different workplaces (Taylor, 1999). There are obvious obstacles that stand in the way of development of a realistic and permanent transnational labor relations system as transnational trade union federations must decide on strategies to confront the countless challenges from increasing globalization. The development of transnational labor relations and regional labor standards are of great importance as it can assist organized labor to mobilize and enhance its power through international agreements across national borders.

The fundamental norm of international law is *pacta sunt servanda* – treaties are to be obeyed, the compliance with international treaties and law is therefore also a very important normative process. Anecdotal evidence suggests that especially African countries tend to negate on their obligations as parties to international treaties or in terms of international law. The question can thus rightly be asked: why some countries do not comply? Chayes and Chayes (1993) stated that the non-complying behavior can be attributed to the following factors:

- i. Ambiguity and indeterminacy of treaty language as it varies in its determinacy.
- ii. Limitations on the capacity of parties to carry out their undertakings. Apart from the political will to comply, the choices that must be made domestically require scientific and technical judgment which states, especially in developing countries, may be lacking.
- iii. All treaties require a period of transition before mandated changes can be accomplished. Changing conditions and underlying circumstances require a shifting mix of regulatory instruments to which state behavior cannot instantly respond. Treaties are not just “aspirational”, the ultimate goal is to start a process that will over time bring states into greater congruence with treaty ideals.

The traditional model of industrial relations that are limited to the borders

of nation states is increasingly becoming problematic, with the opening of and merging of labor markets, of which the European integration process is a very good example (Seifert, 2012). The use of international labor standards in domestic law must be based on the legal materials available to states under its domestic laws. These materials include, international customary law, the manner in which a state's constitution articulates with international law. Cheadle (2012) maintains that international labor standards provide a rich and authoritative source for the development of labor law and national level that can ensure consistency between the different systems of law and at the same time ensuring state compliance with international obligations.

### **Establishment & Original Aims of SADC**

Current members of SADC are: Angola, Botswana, Democratic Republic of Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, Republic of South Africa, Swaziland, Tanzania, Zambia and Zimbabwe. These member states have a combined population of almost 300 million.

SADC was originally founded in April 1980 as the Southern African Development Coordination Conference (SADCC) by leaders of the so-called Frontline States in Southern Africa. The original aim was to create a mechanism whereby member states could formulate and implement projects of common in-

terest in select area in order to reduce their economic dependence, particularly, but not only on the Republic of South Africa. Nogongola (2012) avers that SADC was conceived as an economic dimension of the struggle of liberation from colonial and white minority rule and the economic domination of the sub region by the apartheid regime in South Africa.

**SADC was conceived as an economic dimension of the struggle of liberation from colonial and white minority rule**

The founders were clear that trade and market integration were not its priorities, the desire was for genuine and equitable regional integration. Trade liberalization and market integration became part of the SADC common agenda when SADCC became SADC under the Windhoek Declaration and Treaty of 1992. This treaty provided for Regional Economic Communities (REC's) for the different sub regions of Africa and SADCC had to be repositioned as the REC for the Southern African sub region and by including South Africa as a member and prioritizing trade liberalization and market integration. A protocol on trade was signed by eleven member states, excluding Angola, in 1996, providing for the establishment of a free trade area (FTA). This protocol came into force in January 2000 when it was ratified by two thirds of the members (Nogongola, 2012).

SADC member states are encouraged to ensure the harmonization of po-

litical and socio-economic plans, to develop economic, social and cultural ties, to participate fully in the implementation of SADC projects, developing policies that can lead to the elimination of obstacles to the free movement of people, labor, capital, goods and services and to promote the development of human resources and also the development, transfer and mastery of technology. Eight areas of cooperation have been identified and each area is administered by a protocol. A protocol enters into force if it has been ratified by at least two thirds of the member states and a protocol is only binding on a member state that has ratified it (Nogongola, 2008).

The main sections within the SADC institutional framework are:

*i. Summit*

The Summit is made up of all SADC Heads of States or Government and meets twice a year. The Summit is the ultimate policy and decision making body of SADC, responsible for policy direction and the overall control functions of SADC.

*ii. Council of Ministers*

The Council of Ministers consists of Ministers from Foreign Affairs and Economic Planning or Finance of all member states. The Council oversees the functioning and development of SADC and ensures that SADC's policies are properly implemented. It is the Council's responsibility to manage SADC's affairs and to advise the Summit on matters of

overall policy. The Council is the second highest level of authority and the highest functioning level in SADC and meets four times a year.

*iii. Standing Committee of Officials*

The Standing Committee of Officials, a technical advisory committee to the Council of Ministers, meets twice a year. It consists of one Permanent/Principal Secretary, or an official of equivalent rank from each Member State, preferably from a ministry responsible for economic planning or finance.

*iv. Secretariat*

This is the principal executive body of SADC. The Secretariat is responsible for the day-to-day activities, co-ordination, strategic planning and management.

*v. Tribunal*

The Tribunal, which is no longer functional, was established in Windhoek, Namibia with the signing of a protocol during the 2000 Ordinary Summit. The main aim for the establishment of the Tribunal was to ensure adherence to and implementation of the provisions of the SADC Treaty and contributory instruments. Article 15 of the Treaty states that the Tribunal also has jurisdiction over disputes. The Tribunal derives its power and legal status from the SADC Treaty.

**Summary**

The institutional framework of the organization was previously oriented on a

cooperative, and not on an integration approach. There is still a huge gap between SADC regional initiatives and the member states' national objectives. Regional integration is high on the priority list of SADC and the initial agenda was to establish a Free Trade Area in 2008, a Customs Union in 2010, a Common Market in 2015, a Monetary Union in 2016 and regional currency in 2018. This regional integration agenda is very ambitious under the current environment and it is clear that it is not achievable. Some progress has been made towards the establishment of a Free Trade Area and a Customs Union but there are still major differences between member states regarding the implementation.

### **Fundamental Social Rights**

The overall objective of the Fundamental Social Rights in SADC Charter is to facilitate through close and active consultations amongst social partners, a spirit conducive to harmonious labor relations within the region.<sup>1</sup>

The Southern Africa Trade Union Co-ordination Council (SATUCC) played a major role in the drafting and eventual acceptance by the SADC Employment and Labor Sector (ELS) thereof in 2001.

The Labor Resource and Research Institute, also known as the LaRRI (2001), states that SATUCC represents all major trade union federations within the Southern African region and was initially launched in March 1983 in Gaborone, Botswana. Some of the main aims of SATUCC were to:

- i. To co-ordinate union activities in the region;
- ii. To contribute towards economic and social liberation of the region;
- iii. To develop democratic and free trade unions and to assist the oppressed black trade unions, at that stage in South Africa and Namibia;
- iv. To intensify worker education on matters related to social security and international labor standards.

In January 1995 the SADC Council of Ministers decided to create a new SADC Employment and Labor Sector (ELS) and SATUCC was recognized as the representative regional trade union body. As time went by SATUCC became politically visible and were reporting on economic and employment conditions and were also making suggestions to SADC (LaRRI, 2001). The trade union movements within SADC were concerned that the economic focus of SADC states had overridden the political aspirations of regional integration. Several workshops were organized by SATUCC to address amongst other issues, the following:

- i. The development of a plan to regulate the free movement of labor within SADC until greater economic equality is achieved;
- ii. The role unions can play within SADC to ensure that minimum labor standards apply to all workers;
- iii. The need for an integrated policy of industrial and human resource development;

<sup>1</sup> www.sadc.int downloaded on 6 January 2014.

- iv. The development of a Social Charter with minimum labor standards that should be applied to protect workers.

The Social Charter was adopted by SATUCC and presented to the Southern African Labor Commission (SALC) in Lusaka in March 1992 and was also further discussed at the SALC Conference in Maseru in 1995 (LaRRI, 2001). The Charter was also discussed by the ELS of SADC over many years. Initially governments were reluctant to adopt the Charter and many disagreed with the idea of free movement of people in the region, employers also delayed the adoption and demanded that the right to lock-out should be entrenched as a basic right.

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In 2003 the Council of Ministers of SADC adopted the Charter on Fundamental Social Rights which amongst others seeks to provide a framework for regional labor standards. It obliges member states to create an enabling environment, consistent with ILO core conventions, to prioritize ILO core conventions and take the necessary action to ratify and implement these standards. The Charter further requires member states to create an enabling environment to ensure equal treatment for men and women, and for the protection

of children and young people (van Niekerk et al, 2012).

The main objectives of this Charter are to:

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

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

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

The article on freedom of association and collective bargaining requires Member States to create an enabling environment consistent with ILO Conventions on freedom of association, and the right to organize and collective bargaining (Art.4). SATUCC is of the opinion that this right should be entrenched in the Constitution of every individual member state of SADC.

The article on the Conventions of the International Labor Organization (Art.5) requires Member States to establish a priority list of ILO Conventions which shall include Conventions on Abolition of Forced Labor (Nos. 29 and 105), Freedom of Association and Collective Bargaining (Nos. 87 and 98), Elimination of Discrimination in Employment (Nos. 100 and 111), and the Minimum Age of Entry into Employment (No. 138). Member States must take the necessary steps, as a priority, to ratify and implement the core ILO Conventions.

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

The protection of children and young people in line with ILO Convention 138

deals with employment age, remuneration of children and young people and vocational training (Art.7).

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

The treatment of persons with disabilities in the work place and their access to training and social security are contained in art. 9 of the Charter.

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

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

Every employee in SADC has the right to a healthy and safe working environment (Art.12).

Member States are also required to create an enabling environment so that industrial and workplace democracy is promoted (Art.13).

From the above it is clear that the Charter aims to create or establish a broad framework of basic labor and or social rights and this can be interpreted as a Transnational Labor Relations framework for SADC.

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

### **SADC Employment & Labor Protocol**

In August 2014 the Heads of State of all SADC Member States approved and signed a new *Employment and Labor Protocol* stating that they are “desirous of realizing the aspirations of regional cooperation and integration in the employment and labor sector” (SADC, 2014)<sup>2</sup>. The specific objectives of the protocol are as follows:

- (a) Setting minimum standards on employment and labor, social security, safety and health at work place and related matters.
- (b) Providing a framework for harmonization of policies and legislation on employment, labor and social security, safety and health standards at the work place and enhancing cohesion and common approaches to labor market challenges.
- (c) Providing a framework for regional co-operation in the collection and dissemination of labor market information.
- (d) Promoting gender equality in the

employment and labor sector, in particular equal treatment and opportunities for men and women;

- (e) Promoting the development of institutional capacities, and vocational and technical skills in the Region.
- (f) Promoting employment and income-generating opportunities for all, and in particular for vulnerable groups as a basis for achieving full, freely chosen, productive and decent employment within the Region.

This protocol is an expansion on the SADC Social Charter and the core conventions of the ILO and if ratified, implemented and complied with will go a long way towards the establishment of regional labor standards in the region. As yet the protocol has not been ratified by any member state and the possible implications and effects of this protocol on regional labor standards within SADC are thus excluded for purposes of this paper.

### **Role of Trade Union Movement to Improve Labor Standards**

SATUCC has played a major role at SADC with the drafting and implementation of the SADC Charter on Social Rights and was also a key player in the negotiations which culminated in the adoption and signing of the Protocol on Employment and Labor at SADC. It would however appear that SATUCC, even though active at SADC Head Office level, has no real influence and a very limited role in the trade union movement within the individual member states of SADC.

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<sup>2</sup> The complete SADC (2014) Employment and Labor Protocol is available on the SADC website.

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At the recent 13<sup>th</sup> Triennial Delegates Congress of the Botswana Federation of Trade (BFTU) the executive secretary of SATUCC, Austin Muneku has lamented poor unionisation of the working class in Botswana as it hinders consolidation of the working class for common and collective action to advance and defend the rights of workers. He further stated that as a regional trade union umbrella, SATUCC aims to unite the working class, the poor, the voiceless against exploitation, injustice and oppression through providing a dynamic inclusive and sustainable platform to influence regional policy in favor of the working populations and the poor (Muneko, 2013). These ambitious aims of SATUCC do not seem to filter through and impact on the operations of individual trade unions in the member states of SADC.

Ntawala Mwilima (undated) of the University of Kwazulu – Natal is of the opinion that the trade union movement in Southern Africa, in order to deal with globalization, must come up with strategic responses and initiatives which can counteract against the process of globalization, by strengthening their own capacity. These initiatives should include influencing policies which is geared towards deregulation of the economy and the labor market. Trade union movements

should thus embark on an educational campaign to raise awareness of workers on issues that affect them, there should be a shift from their organizational focus by extending their horizons to attract new members especially from the informal sector of the economy. One of the most effective ways organised labour can respond towards globalization is by forming alliances and affiliations with other trade unions. Tim Harcourt (1999) of the Australian Council of Trade Unions have identified four strategies that must be adopted by trade unions to effectively respond to globalisation, namely;

- i. Insist on the incorporation of a “social clause” and labor standards in all international trade agreements;
- ii. Implement domestic industrial campaigns on globalization to make workers aware of the impact thereof;
- iii. Domestic labor markets should respond timely on globalization;
- iv. International labor co-operation.

One of the original aims of SADC was economic integration. Robinson (2002) avers that this economic integration process was driven by transnational capital’s campaign to open up the markets within the SADC region. Member States must be active to build regional structures and trade unions can struggle for it, but the States are the actors who have the power to construct them and develop them. SATUCC seems to be hampered by independent dynamism and effective leadership, which also reflects on the weaknesses of some national trade unions within SADC.

The SADC region has one of the highest levels of inequalities in the world and the statistics about per capita incomes hide the poverty of the majority behind the wealth of a small elite (Jauch, 2003).

The strongest trade union federation in SADC is COSATU but COSATU does not participate directly in any institutional body of SADC, even though another perspective might be that COSATU is represented in the institutional bodies of SADC through SATUCC. Former secretary-general of COSATU, Zwelinzima Vavi, in a speech at a COSATU meeting on globalization in 2001 stated:

“Collective bargaining, a unified worker’s movement, and the international cooperation is needed to implement labor rights in neighboring countries. We cannot win if unions within the SADC region remain weak. At the centre of a successful collective bargaining strategy is international worker solidarity and the need to build a new world where there is decent employment opportunities for all”<sup>3</sup>

SATUCC and COSATU should make efforts to have a greater participation in the SADC structures and shape it according to the interests of Southern African workers. Neither SATUCC nor COSATU organized mobilizing actions regarding the regional integration process. It is imperative that trade unions have to dialogue with the blocs if they

are in favor of the regional integration process. It would appear that the trade union movements within SADC are too pre-occupied with their own national interests and on obtaining membership fees from members to be able to play a significant role in the establishment of regional labor standards for SADC.

Article 25 (5) of the new Employment and Labor Protocol requires State Parties to submit bi-annual reports to the Council in terms of progress made as far application and implementation of the requirements of the protocol. Article 27 of the protocol stipulates that where disputes arise regarding the application, interpretation and implementation of the protocol, State Parties must endeavor to resolve these disputes themselves and any dispute that cannot be resolved may be referred to the SADC Tribunal in terms of Article 16 of the Treaty. The protocol however fails to spell out if the trade union movement, as one of the social partners, can play any role in this dispute settlement process.

### **The Empowerment of Local Actors**

Local actors, such as unions, women’s social movements, consumers, students, and human rights activists must have the necessary skills and knowledge to create awareness of the abuses of labor rights. Their role in the creation of public awareness of human rights, social rights, and labor rights can never be overestimated.

Within SADC, the strong trade union movement, as well as other human rights

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<sup>3</sup> Vavi, Z. (2001) South African Trade Unions face globalization. Speech at COSATU meeting. Johannesburg. [www.afrol.co./news2001/sa019\\_globalisation\\_lab.htm](http://www.afrol.co./news2001/sa019_globalisation_lab.htm). Downloaded 18 May 2015.

activist groups in South Africa, have played a major role in the dismantling of apartheid, and continues to have a major impact on the establishment of social and labor rights in South Africa. The political environment within South Africa is such that local actors can be a positive influence on the establishment of regional labor standards within SADC, as stated above. The same can, however, not be said for the local actors in Zimbabwe, Swaziland, Madagascar, and the DRC. These countries are marked by either internal conflicts and war or governments that do not recognize trade union rights, and there is no real democracy.

**The empowerment of the local actors in all Member States of SADC can contribute towards the establishment of regional labor standards for SADC.**

The empowerment of the local actors in all Member States of SADC can contribute towards the establishment of regional labor standards for SADC and here the trade union movement has a vital role to play as they are directly involved with the local actors in their respective countries.

### **Conclusions & Recommendations**

If a system of regional labor standards is established for SADC, it must take cognizance of differences between countries in terms of culture, language, history, the legal system etc. The proposed system of transnational labor relations for SADC should be a combination of the following:

- i. The SADC Treaty, certain SADC protocols, and the SADC Charter should be adapted, extended, and strengthened to make provision for minimum regional labor standards. This treaty on minimum regional labor standards should include, as a bare minimum, requirements of the ILO core standards, the UN declaration of Human Rights, and employees' rights at work. The domestic incorporation of the SADC Treaty, SADC Charter and SADC protocols into national laws can ensure ease of compliance by member states.
- ii. A code of best practices for TNCs should be established, providing minimum labor standards for any TNC and that wants to establish business enterprises in any SADC member state.
- iii. The local actors in all SADC Member States should be empowered through a process of training, so as to provide them with the necessary skills, knowledge, and expertise to create public awareness of human rights, social rights, and labor rights.
- iv. An independent monitoring system that brings governments, employers, TNCs to task for failure to comply with minimum regional standards should be established. The SADC Tribunal should become operational as soon as possible, and its mandate should be extended so that it can also act as a labor standards watchdog. The new tribunal should have the power to take appropriate steps against not only employers or TNCs,

but also against governments. These powers can include imposing fines on transgressors.

A regional labor standards regime for SADC is for all practical purposes already in existence, and it can assist in providing certain minimum protection and labor rights for millions of people. The SADC Charter, which has been signed by all member states and the ILO core conventions that have been ratified by all member states, and the new SADC Protocol on employment and labor, once ratified by all member states, provide the basis of a TNL system in SADC. For this system to be of any real value it is of the utmost importance to involve all role players from all the member states. These must include not only governments and politicians, but also employers' associations, trade unions, and other local actors. Rules are needed at the appropriate levels, so that economic principles and justice go hand in hand, and the standards and the issues at stake have a transnational or supra national character. Thus, SADC must have its own, unique social policy and, consequently, also its own full-fledged labor relations system. SADC must move away from a facilitating authority to an entity that will lead in creating standards and mechanisms that can be of benefit to all SADC citizens and become a truly transnational actor and in this regard the SADC Charter must form the basis.

It is proposed to establish a regional labor tribunal for SADC that specifically deals with labor relations issues and

transnational collective bargaining. The trade union movement within SADC can play a vital role in such a tribunal. The biggest challenge for trade unions within SADC will remain the monitoring of regional labor standards in the absence of a really independent tribunal.

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