

# SADC ENVIRONMENTAL LAW AND THE PROMOTION OF SUSTAINABLE DEVELOPMENT

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## Abstract

One of the objectives of the Southern African Development Community (SADC) is to promote sustainable and equitable economic growth and socio-economic development that will ensure poverty alleviation in the region. Furthermore, SADC aims to achieve the sustainable utilisation of natural resources and effective protection of the environment. SADC environmental law consists of a myriad of provisions scattered all over its legal framework, namely the SADC Treaty, the SADC Protocols, and other SADC legal instruments. This paper sketches the most relevant environmental instruments within the SADC legal framework and, by referring to relevant cases, outlines how enforcement of these instruments is being handled. The critical role and the current status of the SADC Tribunal are reflected on, and a connection is established to cross-cutting regimes such as the Southern African Customs Union; the East African Community (EAC), the Common Market for Eastern and Southern Africa (COMESA) and SADC (EAC – COMESA – SADC) Tripartite Initiative; and the association among Brazil, Russia, India, China and South Africa (BRICS), before elaborating on particular issues pertaining to SADC climate change policy.

## I Introduction

The Southern African Development Community (SADC) Treaty, which is the supreme law in SADC, clearly states in Article 5 that part of its objectives include promoting ‘sustainable and equitable economic growth and socio-economic development that will ensure poverty alleviation’ in the region, as well as achieving ‘sustainable utilisation of natural resources and effective protection of the environment’.

The wealth of natural resources in southern Africa can only promote sustainable economic growth and contribute to poverty alleviation if there is an effective legal framework for environmental protection in place. It is important, therefore, to investigate whether the SADC (environmental) legal regime can ensure the well-being of present and future generations of the region. The spirit of this article is eloquently encapsulated in the message of United Nations Secretary-General, Ban Ki-moon, as delivered in May 2011:<sup>1</sup>

For most of the last century, economic growth was fuelled by what seemed a certain truth: the abundance of natural resources. The world mined its way to growth and burned its way to prosperity. Those days are gone. In the twenty-first century, supplies are running short and the global thermostat is running high. Climate change is showing us that the old model is more than obsolete. It is in fact

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<sup>1</sup> Ban Ki-moon speech (delivered by Jean Christophe Bouvier) at the Fourth Nevsky International Ecological Congress, Saint Petersburg, Russian Federation, May 2011; available at <http://www.un.org/News/Press/docs/2011/sgsm13576.doc.htm>, accessed on 12 June 2011.

extremely dangerous. How do we lay the foundation for future growth? How do we lift people out of poverty while protecting the planet and ecosystems that support economic growth? How do we regain the balance? All of this requires rethinking. We have to be prepared to make major changes – in our lifestyles, our economic models, our social organisation, and our political life. We have to connect the dots between climate change and issues such as water, energy and food. The challenge is great – but, so too, is the opportunity. The sustainable development agenda is the growth agenda for the twenty-first century.

SADC offers an opportunity to harness political devotion to regional integration to the cause of environmental protection and, thus, to sustainable development in the region. In other words, the relationships between trade, regional integration and environmental protection can contribute towards sustainable development in SADC. In order to achieve this, however, political will and commitment to the environment is necessary. In view of other recent political failures in SADC (reference will be made to the case of Mike Campbell and the latest developments around the SADC Tribunal), it will be highlighted that regional integration in SADC needs to become more effective in future.

Moreover, and in the context of a changing climate, the potential effects on environment law and sustainable development will be discussed with reference to other existing and emerging regional regimes such as the Southern African Customs Union (SACU), the COMESA – EAC – SADC Tripartite Initiative – made up of the Common Market for Eastern and Southern Africa (COMESA), the East African Community (EAC), and SADC – as well as the BRICS Partnership comprising Brazil, Russia, India, China and South Africa, and the BASIC Group, namely Brazil, South Africa, India and China.

## II Sustainable Development, Environmental Protection and Regional Integration

The United Nations General Assembly specifically proclaimed ‘poverty eradication as an overriding theme of sustainable development for the coming years’.<sup>2</sup> Poverty is a major factor to consider when formulating workable legal frameworks – specifically in a region such as SADC. Most of the population residing in SADC member states live on ‘less than 1 US\$ per day on average’, and more than half of the people of the region live in ‘absolute poverty’.<sup>3</sup> Poverty alleviation is a goal included in SADC’s vision for the region:<sup>4</sup>

The people of southern Africa ... call for a desirable future in which the region has a healthy population that is developing sustainably, both socially and economically, and is at an acceptable level and rate of growth with an overall commitment to achieving the eradication of poverty.

So far, Africa remains poor regardless of its high concentration of natural resources. Susswein identifies ‘ineffective and inefficient, as well as narrowly

<sup>2</sup> Resolution on Programme for the Further Implementation of Agenda 21 GA Res 19/2, UN Doc S-19/2 (1997) par 27.

<sup>3</sup> Southern African Development Community ‘Southern African Vision for Water, Life and Environment in the 21st Century’ [undated]; available at [http://www.sadc.int/files/8012/9846/8648/Southern\\_African\\_Vision\\_for\\_Water\\_Life\\_and\\_Environment.pdf](http://www.sadc.int/files/8012/9846/8648/Southern_African_Vision_for_Water_Life_and_Environment.pdf), accessed on 28 August 2012 (hereafter SADC undated).

<sup>4</sup> Ibid.

focused, economic and environmental policies' as the culprits in increasing poverty and environmental degradation.<sup>5</sup>

The SADC legal framework could play a vital role in regulating sustainable poverty alleviation strategies across the region, but eventual success seems unattainable without national governments' dedication to achieving the same goal. Regional integration is an essential precondition for more effective regional environmental policy because the environment knows no national boundaries. Regional integration is a path towards gradually liberalising the trade of developing countries and integrating them into the world economy.<sup>6</sup> At first glance it appears that the promotion and protection of the environment is not within the focal range of a regional economic community (REC) like SADC. However, this article intends to reflect that environment-related matters play a vital role for SADC: a role which is greater than simply its commitment to a variety of provisions in its mandate that have an impact on the environment and sustainable development. The interrelationship between environmental protection and economic development has become closer over the past few years due to increasing discussions in the world community on the issue.<sup>7</sup> This interconnection can be seen as a two-way relationship in so far as economic development is obliged to respect the environment in a democratic society. Conversely, environmental protection can be given more effect through economic growth, as one outcome of economic growth is the increasing availability of resources, resulting in the reduction of poverty and a higher standard of living. Here the Principle of Sustainable Development comes into play, which aims at embracing and balancing ecology, economy, conservation and utilisation. It is the governing political leitmotiv for environment and development and can be broadly understood as a concept that is characterised by –<sup>8</sup>

- (1) the close linkage between the policy goals of economic and social development and environmental protection;
- (2) the qualification of environmental protection as an integral part of any developmental measure, and vice versa; and
- (3) the long-term perspective of both policy goals, that is the States' inter-generational responsibility.

On the one hand, SADC is endowed with numerous natural resources, including fisheries, and minerals.<sup>9</sup> On the other, its environmental challenges include climate change, land degradation, poor land use and management, overexploitation of natural resources, water scarcity, and loss of biodiversity. In this regard, poverty and challenges of governance often collide with

<sup>5</sup> PM Susswein 'The use of market based economic instruments for sustainable environmental management in Africa: A case study of the SADC Region' in B Chaytor & KR Gray (eds) *International Environmental Law and Policy in Africa* (2003) 297, 303 (hereafter Susswein 2003).

<sup>6</sup> H Andresen, H Brandt & H Gsänger 'Promoting regional integration in SADC' 2001 *German Development Institute (GDI) Reports and Working Papers* No. 5/2001 at 3.

<sup>7</sup> OC Ruppel 'Third-generation human rights and the protection of the environment in Namibia' in N Horn & A Bösl (eds) *Human Rights and the Rule of Law in Namibia* (2008) 101, 116.

<sup>8</sup> U Beyerlin 'The concept of sustainable development' in R Wolfrum (ed) *Enforcing Environmental Standards: Economic Mechanisms as Viable Means?* (1996) 95, 95 – 121.

<sup>9</sup> Cf P Sands *Principles of International Environmental Law* 2 ed (2003) 263.

different interests in society and political pressures.<sup>10</sup> The words of the former Executive Director of the United Nations Environmental Programme (UNEP), Klaus Töpfer, resonate in this context:<sup>11</sup>

[S]ustainable development cannot be achieved unless laws governing society, the economy, and our relationship with the Earth connect with our deepest values and are put into practice internationally and domestically.

### III SADC Environmental Law

SADC<sup>12</sup> was established in Windhoek in 1992 as the successor to the Southern African Development Coordination Conference (SADCC), which was founded in 1980. SADC currently counts 15 states among its members, namely Angola, Botswana, the Democratic Republic of the Congo (DRC), Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, the Seychelles,<sup>13</sup> South Africa, Swaziland, Tanzania, Zambia, and Zimbabwe. The heterogeneity of SADC member states is not only reflected by their land surface area, population figures, the size of their domestic markets, their per capita incomes, their endowment with natural resources, and their social and political situations, but also by the variety of legal systems they apply.<sup>14</sup> Conversely, in the states of sub-Saharan Africa, for example, the concept of *legal pluralism* is predominant.<sup>15</sup> Thus, in view of the legal heterogeneity within SADC, it is of increasing significance for SADC member states to harmonise the law by means of implementing and transforming SADC

<sup>10</sup> PC Kameri-Mbote & C Odote 'Courts as champions of sustainable development: Lessons from East Africa' (Fall 2009) X(1) *Sustainable Development Law and Policy* 31, 37.

<sup>11</sup> K Töpfer 'Preface' in D Zaelke, D Kaniaru & E Kruzikova (eds) *Making Law Work* (2005).

<sup>12</sup> For more detail on SADC, see <http://www.sadc.int/>, accessed on 14 September 2011.

<sup>13</sup> The Seychelles was a member of SADC from 1997 to 2004; it rejoined SADC in 2008.

<sup>14</sup> See K Ruppel-Schlichting & OC Ruppel 'Applicable law and jurisdiction on the local, national and regional level: Facets of legal and judicial pluralism in Namibia' in OC Ruppel & G Winter (eds) *Justice from Within: Legal Pluralism in Africa and Beyond. Liber amicorum Manfred O Hinz in Celebration of his 75th Birthday* (2011) 287, 305 – 7.

<sup>15</sup> This was exemplarily reflected by the excellent presentations at the Jubilee Conference on African Legal Pluralism held at the University of Cape Town in September 2011. Many papers relevant to the discussion on legal heterogeneity were presented, including the following: M van den Berg 'The regulation of petroleum in South Africa and the protection of community rights'; S Greenen 'Mining governance and the relation between artisanal and commercial mining in South Kivu, DR Congo'; G Viljoen 'Water as a public property – Sub-theme: Water resources management'; B van Koppen, P van der Zaag, E Manzungu et al 'Roman water law in rural Africa: Dispossession, discrimination and weakening state regulation?'; K Eiman & E van den Schyff 'The legal interpretation of custodianship in the South African water law'; A Nkhata, C Breen & D Hay 'The contribution of property rights to cooperative approaches in water resource management in South Africa'; W Kozanayi, R Wynberg & F Matose 'The politics of policy formulation and resource users' reactions: Governance of the baobab tree using customary and statutory systems in Chimanimani District of Zimbabwe'; F Venter 'Globalization, religious pluralism and constitutionalism'; F Lombe 'Land conflicts and laws in Malawi: A hidden symbiotic relationship'; O Zenker 'Land restitution and the transition to justice in post-apartheid South Africa'; M Makonese 'Legal pluralism and property relations in the context of Zimbabwe's Fast Track Land Reform Programme (FTLRP)'; F Mutenzer 'The complementary relation of every day and ritual knowledge in contesting locally managed marine areas: Conservation, ethnicity and resource claims on Madagascar's southwest coast'; E du Plessis 'Protection of traditional knowledge in South Africa: Does the 'Commons' provide a solution?'; H Smit 'Customary law and mining'; H Strydom 'Access to and disposal of natural resources: The case law of the African Commission on Human and Peoples' Rights and the Inter-American Court on Human Rights'; W Wicomb 'The clash of internal customary governance structures with a positivist external environment as a clash between common law ownership and customary property rights';

Protocols that aim at reducing or eliminating the differences between national and SADC community law. In founding SADC, environmental protection was explicitly included in the community law, and member states undertook not only to harmonise their political and socio-economic policies and plans towards this aim, but also to push forward the institutional development of environmental protection.

#### (a) The SADC Treaty

SADC was established by signature of its constitutive legal instrument, the SADC Treaty. SADC envisages –<sup>16</sup>

... a common future, a future in a regional community that will ensure economic well-being, improvement of the standards of living and quality of life, freedom and social justice, and peace and security for the peoples of southern Africa. This shared vision is anchored on the common values and principles and the historical and cultural affinities that exist between the peoples of southern Africa.

To this end, SADC's objectives include the achievement of development and economic growth; the alleviation of poverty; the enhancement of the standard and quality of life; support of the socially disadvantaged through regional integration; the evolution of common political values, systems and institutions; the promotion and defence of peace and security; and achieving the sustainable utilisation of natural resources and effective protection of the environment.<sup>17</sup> Amongst other issues, food security, land and agriculture as well as natural resources and the environment have been identified as areas of cooperation by the SADC Treaty.<sup>18</sup>

In terms of SADC community law, the SADC Treaty is the highest source of law within SADC's legal framework. In its Preamble, the Treaty determines, inter alia, to ensure, through common action, the progress and well-being of the peoples of southern Africa, and recognises the need to involve the peoples of the SADC region centrally in the process of development and integration.

#### (b) The SADC Protocols

Besides the aforementioned provisions and objectives in the SADC Treaty, the SADC legal regime becomes responsive to environmental concerns in various other legal instruments as well. One category of such documents constitutes the SADC Protocols. The Protocols are instruments by means of which the

R Wynberg, R Chennells & D Schroeder 'The governance of traditional knowledge: Is access and benefit sharing a misfit?'; JM Pienaar 'Land claims and national parks: Considerations and implications'; RK Mor 'Right to development: A subjective right'; AM Mangu 'The judiciary, constitutionalism, and democracy in African Union member states'; M Mulumba 'TRIPS, compliance and social welfare: The implications of intellectual property law reform for Uganda's socio-economic development'; G Cocchiari 'Affirming bio-cultural rights – Community protocols as a bridge between customary and national/international law'; and OC Ruppel 'Children's rights and legal pluralism in Namibia: Between human rights and customary law?'.  
<sup>16</sup> For SADC's vision, see <http://www.sadc.int/>, accessed on 12 October 2011.  
<sup>17</sup> These are some of the SADC objectives laid down in Article 5 of the SADC Treaty.  
<sup>18</sup> Article 21.3, SADC Treaty.



SADC Treaty is implemented, and they have the same legal force as the Treaty itself. A Protocol comes into force after two thirds of SADC member states have ratified it. The Protocols which are of most relevance with regard to the environment are listed in Table 1 and are briefly explained in alphabetical order below.

**Table 1: SADC Protocols of relevance to the environment**

Protocol	Date of entry into force
Protocol on Energy	17 April 1998
Protocol on Fisheries	8 August 2003
Protocol on Forestry	17 July 2009
Protocol on Health	14 August 2004
Protocol on Mining	10 February 2000
Protocol on Shared Watercourse Systems	28 September 1998
Revised Protocol on Shared Watercourses	22 September 2003
Protocol on Tourism	26 November 2002
Protocol on Trade	25 January 2000
Protocol on Transport, Communications and Meteorology	6 July 1998
Protocol on Wildlife Conservation and Law Enforcement	30 November 2003

*(i) The Protocol on Energy*

The Protocol on Energy strives to outline means of cooperation in the development of energy to ensure a secure and reliable energy supply and a minimisation of costs. The Protocol requires the development and use of energy to be environmentally sound.<sup>19</sup> To achieve this objective, the Protocol provides for, inter alia, cooperation in the development and utilisation of energy in the sub-sectors of wood fuel, petroleum and natural gas, electricity, coal, new and renewable energy sources, and energy efficiency and conservation. The Protocol formulates the intention to promote increased production of new and renewable sources of energy in an economically and socially acceptable manner, including biogas, windmills, mini-hydroplants, passive solar design of buildings, photovoltaic, solar thermal, and solar stoves and water heaters. The development of national energy efficiency and conservation plans is encouraged. Article 4 establishes an Energy Commission, consisting of the Committee of Ministers, the Committee of Senior Officials, the Technical Unit, and Subcommittees. The Energy Commission is responsible for implementing the Protocol. Annex 1 to the Protocol contains guidelines for cooperation in the Energy Commission.

<sup>19</sup> Article 2.8.

On the basis of the Treaty and the Protocol on Energy, the SADC Energy Corporation Policy and Strategy (1996); the Energy Action Plan (1997), and the Energy Sector Activity Plan (2000) have since been drafted in order to –<sup>20</sup>

... position the energy sector such that the region can derive maximum benefits from a rationalisation of resources and facilities in the region, and to develop initiatives that contribute to building the capacity of energy institutions in the region to participate effectively in future liberalisation of the energy sector, as well as in the regional economy.

Energy is a defining issue and is closely linked to key contemporary global challenges in the SADC region, including social development and poverty alleviation, environmental degradation, climate change, and food security. Energy efficiency plays an important role in sustainable growth and development. Better energy efficiency can produce substantial benefits for both global economic growth and poverty reduction, as well as for mitigating climate change. In the household sector, improved energy efficiency can directly reduce household expenditure on energy services and, therefore, directly help to reduce poverty. Laws and policies governing sustainable energy development and supply cut across many sectors – including mining, forestry, agriculture, the environment, water, industry, electricity, and petroleum – and, hence, require coordination. This is a complex challenge that is not easily overcome: the energy sector and the provision of electricity for southern Africa's population and industries comprise a complex issue – even without incorporating the influence of climate change into the equation. If SADC intends reducing its carbon dioxide and other greenhouse gas emissions, a transition to sustainable energy is inevitable. This requires redefining its competitive advantage from attracting energy-intensive sectors on the basis of non-renewable energy (e.g. coal) to building a new advantage around climate-friendly technology and energy. What remains a challenge, and this needs to be researched more intensely, is how emerging regional and national legislation can harmonise and coordinate the work around the issues of sustainable energy. Cross-sectoral coordination and responsibilities need to be streamlined in order to ensure decision-making promotes energy security in the region through more effective energy trade mechanisms in future. In the same context, policymakers and government officials need to be capacitated to translate international policy to national and local levels, and vice versa. Further research needs to emphasise linking national, regional and international policymaking, especially in relation to all emerging climate-change-related issues, such as the Green Climate Fund.<sup>21</sup>

## (ii) *The Protocol on Fisheries*

Considering that fisheries are essential for the social and economic well-being and livelihood of the region's peoples, with regard to food security and the

<sup>20</sup> SADC 'Technical Report: Review of the Southern African Development Community (SADC) Energy Sector Activity Plan' (2009 online); available at <http://www.satradehub.org/energy-sector/sath-content/activities/regional-integration/energy-sector/review-sadc-energy-activity-plan>, accessed on 10 October 2011.

<sup>21</sup> Cf infra VI on SADC Climate Change Policy.

alleviation of poverty, the Protocol on Fisheries provides for cooperation and integrative actions in order to optimise the sustainable use of the living aquatic resources within SADC. Thus, the objective of the Protocol is to promote the responsible and sustainable use of living aquatic resources and aquatic ecosystems in order to enhance food security and human health, safeguard the livelihood of fishing communities, generate economic opportunities for citizens, and alleviate poverty.

The Protocol recognises the United Nations Convention on the Law of the Sea (UNCLOS) and takes into account the Food and Agriculture Organisation of the United Nations' Code of Conduct for Responsible Fisheries. The Protocol's objective is to promote the responsible and sustainable use of living aquatic resources and aquatic ecosystems. The Protocol defines a *fish* as any aquatic plant or animal, and *resources* as all aquatic ecosystems. The Preamble emphasises the necessity for joint cooperative and integrative actions at regional level as well as awareness and support of national initiatives to implement international conventions on sustainable use, and recognises the unique transboundary character of SADC's aquatic resources and ecosystems and the need to cooperate in their management.<sup>22</sup>

Legal measures provided for in the Protocol to achieve this objective include the protection of resources against overexploitation, the transfer of skills and technologies to other member states to enhance effective regional cooperation, and the exchange of information on the state of shared resources, the levels of fishing efforts, measures taken to monitor and control exploitation of shared resources, plans for new or expanded exploitation, and relevant research activities and results. The Protocol envisages the integration of systems to monitor resources, joint fish stock assessment programmes, agreed scientific methodologies, and the preparation of best scientific advice on sustainable levels of exploitation. Of specific importance with regard to environmental protection relating to fisheries is the requirement in Article 12 to balance the needs of industrial enterprises, artisanal fishers, subsistence fishers, recreational fishers, and aquaculture practitioners, in a politically, environmentally and economically sustainable manner, and the provision in Article 14 for the protection of aquatic ecosystems, including their biodiversity and unique habitats. The harmonisation of legislation has been taken up by Article 8, asking for cooperation with regard to establishing region-wide penalties for illegal fishing by SADC and non-SADC-flag vessels in member states' waters. Annexed to the Protocol are not only a list of international forums, conventions and agreements the states parties to which are to establish common positions and undertake coordinated and complementary actions, but also a list of international bodies particularly relevant to the Protocol. Appendices 3 and 4, respectively, list international declarations on integrated coastal zone management and agreements on international rivers.

<sup>22</sup> OC Ruppel & S Bethune *Review of Namibian Policy and Legislative Support to the Sustainable Use of Wetlands in the Zambezi Basin. Report for the World Conservation Union, IUCN* (2007); available at [http://www.ramsar.org/features/features\\_namibia\\_review.pdf](http://www.ramsar.org/features/features_namibia_review.pdf), accessed on 14 October 2011 (hereafter Ruppel & Bethune 2007).



*(iii) The Protocol on Forestry*

Forests cover 357 million ha of the SADC region, corresponding to about 33 per cent. The basic regional policy for sustainable management of forests in the SADC region is the Protocol on Forestry. It is a set of rules or principles agreed upon by SADC member states on how to integrate and cooperate among themselves in order to commonly conserve and manage SADC forests and woodlands for the benefit of the region's peoples. The Protocol recognises the transboundary nature of these forests, the importance of transboundary management strategies, the vital role of forests in protecting water catchments – particularly of shared water courses, and understands that potential harm to these forests is not limited by national boundaries. One of the objectives of the Protocol is 'effective protection of the environment' and the ways listed to achieve the objectives include 'harmonising approaches to sustainable forest management, forest policy, legislation and enforcement'.<sup>23</sup> The guiding principles include the obligation to states parties to 'facilitate, promote and continually improve policy and legal frameworks that promote sustainable forest management'.<sup>24</sup>

Forests are home not only to a rich biodiversity, but also to the millions of people live who within them and who utilise the woodlands directly to support their livelihoods. Among the many forest products from which populations benefit are charcoal, honey, bush meat, and construction materials. Thus, the transboundary conservation and management of forests are essential contributions to the protection and conservation of the environment and its biodiversity, and ultimately, to poverty alleviation. Regional approaches for policy harmonisation, transboundary forest conservation and concepts of *sustainable use* are important mechanisms in attaining regional integration. Recognising the essential role which forests play with regard to maintaining the earth's climate, controlling floods and erosion, and as sources of food, wood and other forest products, the Protocol's primary objective is to promote the development, conservation, sustainable management and utilisation of all types of forests and forest products in order to alleviate poverty and generate economic opportunities. To this end, the Protocol inter alia addresses issues of common concern, including deforestation, genetic erosion, climate change, forest fires, pests, diseases, invasive alien species, and law enforcement.

Furthermore, states are called upon to facilitate the gathering and monitoring of information as well as the sharing and dissemination of information, expertise and technology concerning forests; and to harmonise approaches to sustainable forest management, forest policy, legislation and enforcement, and issues of international concern. Trade and investment are to be promoted based on the sustainable management and utilisation of forests, and the rights of communities are to be strengthened by facilitating their participation in forest policy development, planning, and management. The Protocol emphasises that traditional forest-related knowledge is to be protected, and

<sup>23</sup> Article 3(1)(f) of the Protocol.

<sup>24</sup> Article 4(4) of the Protocol.

that mechanisms are required to ensure the equitable sharing of benefits from forest resources. To this end, SADC is currently in the process of drafting a SADC Regional Forestry Strategy and implementation plan.

*(iv) The Protocol on Health*

The Protocol on Health was primarily adopted in order to enhance cooperation through effective regional collaboration and mutual support in addressing the health problems and challenges facing member states. As a clean environment can best provide for the health of the region's population, states parties undertake to cooperate 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 (Article 23).

Health largely depends on a minimum protection from diseases and unhealthy lifestyles. Many people in southern Africa are particularly vulnerable with regard to health threats as these are usually greater for poor people in rural areas, particularly children, women and indigenous groups, due to malnutrition, insufficient access to health services, and a lack of clean water and other basic necessities.<sup>25</sup>

*(v) The Protocol on Mining*

The SADC region is extremely rich in natural resources, including minerals, which can contribute to accelerating economic and social development and growth. The Protocol on Mining strives to harmonise national and regional policies and strategies related to the development and exploitation of mineral resources through developing human and technological capacity, including collaboration between the mining industry and training institutions.

SADC states are required to ensure there is a balance between mineral development and environmental protection, including conducting environmental impact assessments (especially in shared systems and cross-border projects) and sharing information on environmental protection and rehabilitation (Article 8). According to the "fixed stock paradigm", mining is unsustainable because the resource being mined will eventually be exhausted.<sup>26</sup> According to the "opportunity cost paradigm", however, mining can be sustainable because the costs caused by resource depletion will be counteracted by new technology and future developments.<sup>27</sup> With regard to the latter argument, foreign investment certainly plays a key part in developing SADC's mining sector. In addition, effective mining policies and

<sup>25</sup> United Nations Development Programme *Fighting Climate Change: Human Solidarity in a Divided World* (2008).

<sup>26</sup> JE Tilton 'Is mineral depletion a threat to sustainable mining?' Unpublished paper presented at the International Conference on Sustainable Mining, Santiago de Compostela, Spain, held on 17 April 2009, at 7.

<sup>27</sup> Ibid.

legal frameworks need to ensure the best possible outcomes in terms of the sustainability of this sector.<sup>28</sup>

(vi) *The Revised Protocol on Shared Watercourses of the Southern African Development Community*

The Revised Protocol on Shared Watercourses of the Southern African Development Community repeals and replaces the 1995 Protocol on Shared Watercourse Systems.

This Revised Protocol recognises that there is international consensus on a number of concepts and principles related to water resource development and management in an environmentally sound manner. The policy acknowledges the Helsinki Rules, the United Nations Convention on the Law of the Non-navigational Uses of International Watercourses, and Agenda 21 concepts, and facilitates the establishment of shared water agreements.<sup>29</sup>

The scarcity of water restricts 'economic development and social upliftment' within SADC.<sup>30</sup> Thus, managing water resources in southern Africa successfully will contribute towards reaching SADC's vision of sustainable development for the region:<sup>31</sup>

The people of southern Africa call for a desirable future in which the region's environment is conserved among all the competing uses of water, recognising the constraints inherent in natural ecosystems so that the environment can be sustainably improved, used and managed in the spirit of social and environmental justice.

The Revised Protocol aims to foster closer cooperation for the judicious, sustainable and coordinated management, protection and utilisation of shared watercourses, and to advance the SADC agenda of regional integration and poverty alleviation. In order to achieve these aims, the Revised Protocol, by virtue of Article 2, seeks to promote and facilitate the establishment of agreements and management institutions that relate specifically to shared watercourses; advance the sustainable, equitable and reasonable utilisation of such watercourses; promote the coordinated, integrated, and environmentally sound development and management of shared watercourses; promote the harmonisation and monitoring of legislation and policies for planning, development, conservation and protection of shared watercourses, as well as the allocation of the resources thereof; and promote research and technological development, information exchange, capacity-building, and the application of appropriate technologies in shared watercourses management.

Recognising the principle of the unity and coherence of each shared watercourse, SADC states undertake to harmonise water uses in shared watercourses, ensure that all the necessary interventions are consistent with the

<sup>28</sup> C Frick 'Direct foreign investment and the environment: African mining sector' Unpublished paper presented at the Conference on Foreign Direct Investment and the Environment: Lessons to be Learned from the Mining Sector, Organisation for Economic Co-operation and Development (OECD) Headquarters, Paris, France, held from 7 to 8 February 2002, at 2.

<sup>29</sup> See Ruppel & Bethune (2007) op cit note 22.

<sup>30</sup> SADC (undated) op cit note 3.

<sup>31</sup> Ibid.

sustainable development of all watercourse states, and observe the objectives of regional integration and harmonisation in SADC's socio-economic policies and plans. The utilisation of shared watercourses – including agricultural, domestic, industrial, navigational and environmental uses – within SADC is open to each watercourse state in respect of the watercourses within its territory, and without prejudice to its sovereign rights, in accordance with the principles contained in the Revised Protocol.

States parties are obliged to respect the existing rules of customary or general international law relating to the utilisation and management of the resources of shared watercourses. According to Article 3.4 of the Revised Protocol, states parties commit themselves to maintain a proper balance between resource development for a higher standard of living for their people, and conservation and enhancement of the environment to promote sustainable development.

Watercourse states in their respective territories undertake to utilise a shared watercourse in an equitable and reasonable manner, taking into account the interests of the watercourse states concerned, and consistent with adequate protection of the watercourse for the benefit of current and future generations. Watercourse states also commit to participating in the use, development and protection of a shared watercourse in an equitable and reasonable manner. Such participation includes both the right to utilise the watercourse and the duty to cooperate in its protection and development, as provided in the Revised Protocol. Furthermore, the Revised Protocol states that states parties have to take all appropriate measures to prevent significant harm being caused to other watercourse states. Where significant harm is caused to such other state, the state whose use causes such harm is to take all appropriate measures to eliminate or mitigate such harm and, where appropriate, to discuss the question of compensation. Disputes which are not settled amicably between states parties regarding the interpretation or application of the provisions of the Revised Protocol are to be referred to the SADC Tribunal under the SADC Treaty.

The Revised Protocol establishes several SADC Water Sector Organs – namely the Committee of Water Ministers, the Committee of Water Senior Officials, the Water Sector Coordinating Unit, and the Water Resources Technical Committee and Subcommittees – and Shared Watercourse Institutions. The Committee of SADC Water Ministers met in Maseru, Lesotho, in September 2011, where it was stated that –<sup>32</sup>

... climate change has also seen us facing more intense and frequent extremes of weather such as droughts and floods, thus necessitating coordinated management of our shared [watercourses] and resources. For the SADC region with its multiplicity of shared watercourses, issues of cooperation and joint planning and management of the development and utilisation of our shared resources is of paramount importance.

<sup>32</sup> Joao Caholo 'Opening Remarks' SADC Ministers Responsible for Water Meeting and the Regional Strategic Water Infrastructure Investor/Donors Conference, held in Maseru on 22 September 2011; available at [http://www.sadc.int/files/1013/1678/2942/REMARKS\\_BY\\_DES\\_AT\\_SADC\\_MINISTERS\\_OF\\_WATER\\_MEETING\\_and\\_DONORS\\_CONFERENCE\\_MASERU\\_SEP\\_2011\\_22h00.pdf](http://www.sadc.int/files/1013/1678/2942/REMARKS_BY_DES_AT_SADC_MINISTERS_OF_WATER_MEETING_and_DONORS_CONFERENCE_MASERU_SEP_2011_22h00.pdf), accessed on 28 August 2012.

Various bilateral and multilateral water commissions within the SADC region have been established,<sup>33</sup> including the following:

- The Permanent Joint Technical Commission (PTJC) was founded by an agreement between the governments of the People's Republic of Angola and the Republic of Namibia. The agreement endorses and affirms previous agreements between the colonial powers – Portugal and South Africa – in order to re-establish the PJTC and the Joint Operating Authority on the Kunene/Cunene River in the names of the by then independent Angolan and Namibian territories.
- The Joint Permanent Water Commission (JPWC) was established by an agreement between the governments of the Republic of Botswana and the Republic of Namibia. The agreement relates to water matters of common interest. The JPWC concentrated its activities associated with the Policy and Legislative Review of Wetland Use and Management in Namibia, mostly on the Kwando – Linyanti – Chobe river system, a tributary of the Zambezi River that forms the border between Botswana and Namibia in the eastern part of the Caprivi Region in Namibia, and included work on the Okavango River. The Commission became inactive due to the Kasikili/Sedudu Island border dispute between Botswana and Namibia and because the Permanent Okavango River Basin Water Commission (OKACOM), established in September 1994, took over the responsibility of advising the respective governments party to the agreement on the Okavango River's development. The negotiations leading to the establishment of the Zambezi River Commission (ZAMCOM) further reduced the need for the JPWC to meet because the Kwando – Linyanti – Chobe River system is a tributary of the Zambezi River, and can thus be included under ZAMCOM.
- The Permanent Water Commission (PWC) was established by an agreement between the governments of the Republic of Namibia and the Republic of South Africa. The PWC deal with water matters of mutual interest to the two countries, concentrating at present on the lower Orange River. The PWC is responsible for the development of the lower Orange River, where it forms the common border between South Africa and Namibia.
- The Vioolsdrift and Noordoewer Joint Irrigation Scheme was established by an agreement between the governments of the Republic of South Africa and the Republic of Namibia on the Vioolsdrift and Noordoewer Joint Irrigation Scheme on the lower Orange River. The agreement provides for the establishment of a Joint Irrigation Authority responsible for the management of the scheme by each party at their respective offices at Noordoewer in Namibia and Vioolsdrift in South Africa.
- The Permanent Okavango River Basin Water Commission (OKACOM) was established by an agreement between the Governments of the Republic of Angola, the Republic of Botswana, and the Republic of Namibia. OKACOM's objective is to render technical advice to the parties concerned on matters relating to the conservation, development and utilisation of

<sup>33</sup> For more information see Ruppel & Bethune (2007) op cit note 22.



water resources of common interest to them, and to perform such other functions pertaining to the development and utilisation of such resources as the parties may agree to assign to it. OKACOM's vision is to develop an integrated management plan for the Okavango River Basin.<sup>34</sup>

- The Orange – Senqu River Commission (ORASECOM) was established by an agreement between the governments of the Republic of Botswana, the Kingdom of Lesotho, the Republic of Namibia, and the Republic of South Africa. ORASECOM renders advisory services to the parties concerned as regards development of the Orange River Basin.
- The Zambezi River Commission (ZAMCOM) was established by an agreement between the governments of the Republic of Angola, the Republic of Botswana, the Republic of Malawi, the Republic of Mozambique, the Republic of Namibia, the United Republic of Tanzania, and the Republic of Zimbabwe. In order to promote the equitable and sustainable utilisation of the water resources of the Zambezi watercourse as well as the efficient management thereof, the Commission's functions include promoting, supporting, coordinating and harmonising the management and development of the water resources of the Zambezi watercourse; collecting data on the Zambezi River; providing member states with advice on the planning, management, utilisation, development, protection and conservation of the Zambezi watercourse; and cooperating with SADC institutions and national and international organisations.

(vii) *The Protocol on Tourism*

Considering that the tourism sector is one of the largest and fastest-growing industries in the region, the SADC Protocol on Tourism was adopted primarily to increase regional tourism trade and to utilise the wide range of natural, cultural and historical sites in the region as a means to achieve sustainable social and economic development. In order to achieve these objectives, the Protocol requires member states to use their resources optimally through collective efforts and cooperation, and in an environmentally sustainable manner. The Protocol requires that environmentally and socially sustainable tourism development based on sound management practices is to be promoted. The Protocol also emphasises the preservation of the natural, cultural and historical resources of the region (Article 11).

(viii) *The Protocol on Trade*

The primary objective of the Protocol on Trade is to liberalise intraregional trade in goods and services to ensure efficient production within SADC, reflecting the dynamic comparative advantages of its member states; contributing towards the domestic, cross-border and foreign investment

<sup>34</sup> The Future Okavango (TFO) Project analyses ecosystem functions and services within this transboundary basin, focusing, inter alia, on the influence of existing economic, legal, and social institutions on individual or collective action in land, forest, pasture, wildlife, and water management in the Okavango River Basin; see [http://www.future-okavango.org/subproject\\_SP07\\_tfo.php?PHPSESSID=pmd19856fi9q6lrd7pj1h8j2o3](http://www.future-okavango.org/subproject_SP07_tfo.php?PHPSESSID=pmd19856fi9q6lrd7pj1h8j2o3), accessed on 20 October 2011.

climate; and enhancing the development, diversification and industrialisation of the region. Environmental conservation is integrated into the Protocol in that it provides for general exceptions to the given principles in order to ensure the conservation of exhaustible natural resources and the environment (Article 9(h)). Furthermore, member states undertake to make compatible their respective standards-related measures, so as to facilitate trade in goods and services within SADC, but without reducing the level of protection of human, animal or plant life or health, or of the environment (Article 17).

Regional trade can be a powerful source of economic growth. But trade does not automatically mean economic growth – let alone poverty reduction or sustainable development. The ability to benefit from regional trade and foreign investment is dependent on a number of factors, particularly the quality of the policies and institutions on the ground. Thus, trade should be considered as a means to an end, but not as an end in itself. An effective SADC trade regime should, first and foremost, be friendly to the environment, should reduce poverty, and should promote sustainable development.

*(ix) The SADC Protocol on Wildlife Conservation and Law Enforcement*

SADC's Protocol on Wildlife Conservation and Law Enforcement aims to establish – within the framework of the respective national laws of each state party – common approaches to the conservation and sustainable use of wildlife resources and to assist with the effective enforcement of laws governing those resources.

The Protocol applies to the conservation and sustainable use of wildlife, excluding forestry and fishery resources. Each state party has to ensure the conservation and sustainable use of wildlife resources under its jurisdiction, and that activities within its jurisdiction or control do not cause damage to the wildlife resources of other states or in areas beyond the limits of national jurisdiction.

In line with Article 4 of the Protocol, appropriate policy, administrative and legal measures have to be taken to ensure the conservation and sustainable use of wildlife and to enforce national legislation pertaining to wildlife effectively. Cooperation among member states is envisaged to manage shared wildlife resources as well as any transfrontier effects of activities within their jurisdiction or control. To achieve its overall objectives, the Protocol promotes the sustainable use of wildlife; harmonises legal instruments governing wildlife use and conservation; enforces wildlife laws within, between and among states parties; facilitates the exchange of information concerning wildlife management and utilisation, and the enforcement of wildlife laws; assists in building national and regional capacity for wildlife management and conservation and the enforcement of wildlife laws; promotes the conservation of shared wildlife resources through the establishment of transfrontier conservation areas; and facilitates community-based natural resource management practices for the management of wildlife resources.

The Protocol establishes the Wildlife Sector Technical Coordinating Unit; the Committee of Ministers responsible for Food, Agriculture and Natural Resources; the Committee of Senior Officials; and the Technical Committee. The Wildlife Conservation Fund is established by Article 11.

(x) *The SADC Protocol on Transport, Communications and Meteorology*

In this Protocol, member states acknowledge that they are members of the World Meteorological Organisation (WMO) and, through their national meteorological services, constitute an integral part of the regional and global system or network of the WMO's programmes and structures, in particular the World Weather Watch programme (Article 12.1). Within the WMO's regional and international system of cooperation, members are encouraged to provide adequate legal frameworks and appropriate financial support to their national meteorological services to establish an integrated network of observation, data processing and communications systems; and enhance the provision of meteorological services for general and specialised applications in the region and internationally (Article 12.2). This Cooperation Framework obliges member states to, inter alia, strengthen their weather and climate monitoring systems, improve public and specialised weather services, promote sustainable development with the emphasis on climate change and protection of the environment, and strengthen meteorology research capacity in the region. The Protocol emphasises that sustainable development is to be promoted, with an emphasis on climate change and protection of the environment. These aims are to be achieved by means of strengthening the capabilities of national meteorological centres in climate applications and advice; enhancing existing environmental monitoring activities; optimising the use of regional structures; and fostering an awareness of the contributions that can be made by national meteorological centres in respect of planning sustainable development in agriculture, forestry and related areas (Article 12.7).

On 7 October 2011, the SADC Committee of Ministers responsible for Transport and Meteorology met in Centurion, South Africa, to review progress in the implementation of the transport and meteorology programmes and projects as espoused by the SADC Protocol on Transport, Communications and Meteorology. During this meeting, the —<sup>35</sup>

[m]inisters noted progress made in the Meteorology Sector both in the region and internationally: [i]n particular the formation of African Ministers Conference on Meteorology (AMCOMET), achievements of the Meteorological Association of Southern Africa (MASA) and SADC Climate Services Centre in the provision of critical products for sustainable socio-economic development, including successful organisation of Southern African Regional Climate Outlook Forums (SARCOFs) for which they directed that the Secretariat ensure necessary resources for its sustainability. In addition, Ministers noted that further resources needed to be mobilised for improving the capacity of the national Meteorological Services and SADC Climate Services Centre in order to deliver on climate information, prediction and application services for the benefit of multi-sectoral socio-economic development. This will especially enable the latter to meet its expanding mandate as envisaged in

<sup>35</sup> See <http://www.trademarksa.org/news/sadc-ministers-transport-and-meteorology-resolutions>, accessed on 28 August 2012.

the implementation of the United Nations Global Framework of Climate Services[,] among other things[,] which would provide benefits to the region.

(c) Other SADC legal and institutional instruments relating to the environment

(i) *The Regional Indicative Strategic Development Plan*

Apart from its Treaty and Protocols, SADC also provides other instruments at different levels. These are not binding, and do not require ratification by SADC member states. In March 2001, the Heads of State and Government met at an Extraordinary Summit in Windhoek and approved the restructuring of SADC institutions by means of the RISDP. The RISDP reaffirms SADC member states' commitment to good political, economic and corporate governance entrenched in a culture of democracy, full participation by civil society, transparency, and respect for the rule of law. With regard to monitoring the implementation of the RISDP, the Summit exercises an oversight function, using progress reports from the SADC Secretariat.<sup>36</sup>

The focal point of the RISDP is, thus, to provide strategic direction with respect to SADC programmes and activities, and to align SADC's strategic objectives and priorities with its policies and strategies for achieving long-term goals. The RISDP is indicative in nature, merely outlining the necessary conditions that should be realised in the pursuit of achieving those goals. The purpose of the RISDP is to deepen regional integration in SADC. The RISDP has identified gaps and challenges in the current policies and strategies, and has used them to reorient those policies and strategies. In view of the identified gaps and challenges, Chapter 4 of the RISDP focuses on a number of priority intervention areas of both a cross-sectoral and a sectoral nature that are critical for achieving SADC's objectives, particularly in promoting deeper regional integration, integrating SADC into the world economy, promoting equitable and balanced development, eradicating poverty and promoting gender equality, protecting the environment, and strengthening sustainable development.

In order to attain these goals, SADC will, inter alia, need to harmonise policies and legal and regulatory frameworks for the free movement of factors of production, and to implement policies to attain macroeconomic stability and build policy credibility. Although it has to be emphasised that the RISDP it is not a binding instrument, at every Summit in recent years member states reaffirmed their commitment to regional integration as per the RISDP, which identifies the environment and development as cross-sectoral priority intervention areas. Indeed, the environment and sustainable development present opportunities for the region to advance its programme of action in environment and natural resources management, and to forge the

<sup>36</sup> Cf 'Introducing SADC'; available at <http://www.sadc.int/index/browse/page/106>, accessed on 14 September 2011.

harmonisation of and compliance with environmental policies, standards and guidelines by pursuing the strategic objectives outlined in the RISDP.<sup>37</sup>

With regard to the environment and sustainable development, the RISDP elaborates the following areas of focus:

- Creating the requisite harmonised policy environment as well as legal and regulatory frameworks to promote regional cooperation on all issues relating to environment and natural resources management, including transboundary ecosystems
- Promotion of environmental mainstreaming in order to ensure the responsiveness of all SADC policies, strategies and programmes for sustainable development
- Regular assessment, monitoring and reporting on environmental conditions and trends in the SADC region
- Capacity-building, information-sharing and awareness-creation in respect of problems and perspectives in environmental management, and
- Ensuring a coordinated regional position in the negotiations and implementation of multilateral environmental agreements and other agreements.<sup>38</sup>

(ii) *The SADC Declaration on Agriculture and Food Security*

With the 2003 Declaration on Agriculture and Food Security, Heads of State and Government gave substantial means to some specific objectives laid down in Article 5 of the SADC Treaty, namely the promotion of sustainable and equitable economic growth and socio-economic development to ensure poverty alleviation, with the ultimate objective of its eradication, and the achievement of sustainable utilisation of natural resources and effective protection of the environment. With this Declaration, SADC member states committed themselves to promoting agriculture as a pillar of strength in national and regional development strategies and programmes, in order to attain their short-, medium-, and long-term objectives on agriculture and food security.

The Declaration covers a broad range of human-rights-relevant issues, including the sustainable use and management of natural resources and human health. This is commendable because increasing temperatures and declining precipitation in the region resulting from climate change are likely to reduce yields for primary crops in the next few decades – changes that will have a substantial impact on food security in SADC, although their extent and nature is still uncertain.<sup>39</sup> Periods of droughts and floods will have an impact on

<sup>37</sup> Cf 'Regional Indicative Strategic Development Plan' (2001 online); available at <http://www.sadc.int/index/browse/page/104>, accessed on 13 September 2011, at 66ff.

<sup>38</sup> Ibid.

<sup>39</sup> MI Boko, I Niang, A Nyong et al 'Climate change impacts, adaptation and vulnerability' in ML Parry, OF Canziani, JP Palutikof et al (eds) *The Fourth Assessment Report of the Intergovernmental Panel on Climate Change* (2007) 433 – 67 (hereafter Boko, Niang, Nyong et al 2007).



food availability, food access, and on nutrient access.<sup>40</sup> It is predicted that the impacts of climate change such as sea-level rise, droughts, heat waves, floods and rainfall variation could push millions of people into a state of malnutrition and increase the number of people facing water scarcity.<sup>41</sup> Increasing temperatures and declining precipitation resulting from climate change are likely to reduce yields for primary crops in the next two decades. Again, these are changes that will no doubt have a substantial impact on food security in SADC.<sup>42</sup>

### (iii) *The SADC Charter of Fundamental and Social Rights*

The 2003 Charter of Fundamental and Social Rights in SADC, although not legally binding, is an important human rights document that specifies the objectives laid down in Article 5 of the SADC Treaty for the employment and labour sector. The Charter enshrines the right to a safe and healthy environment, amongst other things. To mobilise the policy value – and, indeed, the legal force – of a right to a safe and healthy environment in the SADC regime requires the consideration of possible human rights impacts and outcomes. Specific rights potentially affected by climate change include the rights to food, water, shelter, and health. The rights of women, children and indigenous peoples in particular need to be addressed in this context as these groups are most vulnerable to the negative effects of climate change. The right to a safe and healthy environment becomes highly relevant to the design and implementation of approaches to adverse environmental effects in policy and legal terms. This dimension includes arguments based on SADC members' human rights obligations under a variety of international law instruments. An example of such obligations is the integration of human rights into country strategies in terms of priority entitlements or more procedural rights that are relevant to the design and implementation of national policies, such as the right to information, participation, or access to decision-making. Recognition of the link between the abuse of the human rights of various vulnerable communities and related damage to their environment is expressed in the concept *environmental justice*.<sup>43</sup> Internationally, the experience of courts that have been asked to decide on cases with regard to environmental rights shows that the judiciary is crucial when it comes to interpreting existing law and policy in a way that takes into account environmental concerns. In the South African case in 2009 of *Lindiwe Mazibuko and Others v City of Johannesburg and Others*, O'Reagan J held that –<sup>44</sup>

<sup>40</sup> G Ziervogel, A Nyong, B Osman et al 'Climate variability and change: Implications for household food security' (2006) *AIACC Working Paper No. 20*; available at [http://www.aiaccproject.org/working\\_papers/Working%20Papers/AIACC\\_WP\\_20\\_Ziervogel.pdf](http://www.aiaccproject.org/working_papers/Working%20Papers/AIACC_WP_20_Ziervogel.pdf), accessed on 21 August 2011.

<sup>41</sup> United Nations Development Programme *Fighting Climate Change: Human Solidarity in a Divided World* (2008).

<sup>42</sup> Boko, Niang, Nyong et al (2007) op cit note 39.

<sup>43</sup> OC Ruppel 'Environmental rights and justice in Namibia' in A Bösl, N Horn & A du Pisani (eds) *Constitutional Democracy in Namibia: A critical analysis after two decades* (2010) 323 – 60.

<sup>44</sup> *Lindiwe Mazibuko and Others v City of Johannesburg and Others* CCT 39/09 [2009] ZACC 28.

[t]he purpose of litigation concerning the positive obligations imposed by social and economic rights should be to hold the democratic arms of government to account through litigation. In so doing, litigation of this sort fosters a form of participative democracy that holds government accountable and requires it to account between elections [for] specific aspects of government policy. When challenged as to its policies relating to social and economic rights, the government agency must explain why the policy is reasonable ...

The aforementioned reasoning does not only apply to the domestic level; thus, in future, it should also be considered on the regional level. This will become clearer in the next passage, which deals with SADC law enforcement and relevant case law.

#### (d) SADC Law Enforcement and Relevant Case Law

SADC provisions other than those of the Treaty and the Protocols are beyond any doubt important mechanisms for practically improving the state of the environment within SADC. However, given that, in the legal sense, only provisions of a binding nature can be enforced, the SADC Treaty and its Protocols are pivotal to enforcing environmental provisions within the region.

The supreme judicial institution within SADC is the SADC Tribunal, which was established in 1992 by Article 9 of the SADC Treaty. The inauguration of the Tribunal and the swearing in of its members took place on 18 November 2005 in Windhoek, Namibia. The Council also designated the Seat of the Tribunal to be in Windhoek. The judicial body began hearing cases in 2007. The Tribunal has the mandate to adjudicate disputes between states, and between natural and legal persons in SADC. Furthermore, the Tribunal has jurisdiction over all matters provided for in any other agreements that member states may conclude among themselves or within SADC, and that confer jurisdiction to the Tribunal.<sup>45</sup> In this context, the Tribunal also has jurisdiction over any dispute arising from the interpretation or application of environmentally relevant Protocols. The Tribunal was primarily set up to resolve disputes arising from closer economic and political union.<sup>46</sup> However, recent cases before the Tribunal<sup>47</sup> have demonstrated that it can also be called upon to consider other implications of economic policies and programmes.

#### (a) Mike Campbell: An environmentalist

In 2005, the Constitution of Zimbabwe was amended by the Constitutional Amendment (No. 17) Act 2005. This amendment allows the government to seize or expropriate farmland without compensation, and it bars courts from adjudicating over legal challenges filed by dispossessed and aggrieved farmers. The practical implications of the Amendment Act resulted in farm seizures, where the majority of the approximately 4 000 white farmers were forcibly evicted from their properties, with no compensation being paid for the land. On 11 October 2007, Mike Campbell (Pvt) Ltd, a Zimbabwe-registered

<sup>45</sup> Article 15(2), Protocol on Tribunal and Rules of Procedure Thereof.

<sup>46</sup> F Viljoen *International Human Rights Law in Africa* (2007) 503.

<sup>47</sup> *Mike Campbell and Another (PVT) Limited v The Republic of Zimbabwe* SADC (T) 2/2007.

company, and others instituted a case with the SADC Tribunal to challenge violations by the expropriation of agricultural land in Zimbabwe by that country's government.<sup>48</sup> Mike Campbell had purchased the farm in question on the open market in 1980 – after Zimbabwe's Independence.<sup>49</sup>

On 28 November 2008 the SADC Tribunal, in its final decision, ruled in favour of Mike Campbell and other white commercial farmers.<sup>50</sup> The Tribunal held that the Republic of Zimbabwe was in breach of its obligations under Articles 4(c) and 6(2) of the SADC Treaty and that the applicants had been denied access to the courts in Zimbabwe;<sup>51</sup> the applicants had also been discriminated against on the ground of race, the Tribunal found.<sup>52</sup> The Tribunal further directed the Republic of Zimbabwe to take all necessary measures to protect the possession, occupation and ownership of the lands of those applicants who had not yet been evicted from such lands, and to pay fair compensation to those who had already been evicted. The ruling was considered to be a landmark decision that was to influence the legal landscape in the SADC region.<sup>53</sup> However, despite the rule that the Tribunal's decisions are final and binding,<sup>54</sup> the Zimbabwean government never accepted the Tribunal's judgement in the *Campbell* case.<sup>55</sup> Subsequently, Mike Campbell's

<sup>48</sup> For more information on the *Campbell* case, cf OC Ruppel 'SADC land issues before the SADC Tribunal – A case for human rights?' in B Chigara (ed) *Southern African Development Community Land Issues: A New, Sustainable Land Relations Policy* (2012); OC Ruppel 'Mike Campbell verstorben: Und das SADC Tribunal?' *Allgemeine Zeitung* 20 April 2011, available at <http://www.az.com.na/afrika/mike-campbell-verstorben-und-das-sadc-tribunal.125669.php>, accessed on 14 October 2011; OC Ruppel 'Regional economic communities and human rights in East and southern Africa' in A Bösl & J Diescho (eds) *Human Rights in Africa* (2009) 275 – 319, available at [http://www.kas.de/upload/auslandshomepages/namibia/Human\\_Rights\\_in\\_Africa/9\\_Ruppel.pdf](http://www.kas.de/upload/auslandshomepages/namibia/Human_Rights_in_Africa/9_Ruppel.pdf), accessed on 14 October 2011; OC Ruppel 'The Southern African Development Community (SADC) and its Tribunal: Reflexions on regional economic communities' potential impact on human rights protection' (2009) 2 *Verfassung und Recht in Übersee* 173 – 86; OC Ruppel, 'The SADC Tribunal, regional integration and human rights: Major challenges, legal dimensions and some comparative aspects from the European legal order' (2009) 2 *Recht in Afrika* 213 – 38; OC Ruppel 'Das SADC Tribunal: Eine juristische Zwischenbilanz' *Allgemeine Zeitung* 5 February 2009, available at <http://www.az.com.na/afrika/das-sadc-tribunal-eine-juristische-zwischenbilanz.80234.php>, accessed on 14 October 2011 (hereafter Ruppel 2009); OC Ruppel & F-X Bangamwabo 'The mandate of the SADC Tribunal and its role for regional integration' in A Bösl, W Breydenbach, T Hartzenberg et al (eds) *Yearbook for Regional Integration* (2008) 179 – 221, available at [http://www.tralac.org/cause\\_data/images/1694/MRI2008WithCover20090415.pdf](http://www.tralac.org/cause_data/images/1694/MRI2008WithCover20090415.pdf), accessed on 14 October 2011.

<sup>49</sup> Mike Campbell then built up Mount Carmel, a productive farm. He had cattle and grew mangoes for the local and export markets as well as citrus and maize. He also reintroduced wildlife into the area and built safari lodges on the banks of the river. Mount Carmel provided more than 200 people with employment, and about 500 people with a home; cf Mike Campbell Foundation (2012) 4 *Newsletter No. 1*.

<sup>50</sup> *Mike Campbell (Pvt) Ltd and Others v The Republic of Zimbabwe* SADC (T) 2/2007.

<sup>51</sup> *Ibid.*

<sup>52</sup> The issue of racial discrimination was decided by a majority of 4 to 1. Judge OB Tshosa, in his dissenting opinion, concluded that 'Amendment 17 does not discriminate against the applicants on the basis of race and therefore does not violate the respondent obligation under Article 6(2) of the Treaty'. He argues that 'the target of Amendment 17 is agricultural land and not people of a particular racial group and that – although few in number – not only white Zimbabweans have been affected by the amendment'; cf *ibid*, dissenting opinion of Hon. Justice Dr Onkemetse B Tshosa.

<sup>53</sup> Cf Ruppel (2009) op cit note 48.

<sup>54</sup> Article 16(5), SADC Treaty.

<sup>55</sup> On 28 February 2009, Zimbabwe's President Robert Mugabe said that '[t]here is no going back on the land reforms', and that '[s]ome farmers went to the SADC tribunal in Namibia but that's nonsense, absolute nonsense, no one will follow that ... We have courts here in this country that can determine the rights of people. Our land issues are not subject to the SADC tribunal'; *The Namibian* 2 March 2009, available at [http://www.namibian.com.na/index.php?id=28&tx\\_ttnews%5Btt\\_news%5D=52931&no\\_cache=1](http://www.namibian.com.na/index.php?id=28&tx_ttnews%5Btt_news%5D=52931&no_cache=1), accessed on 29 August 2012.

farm was invaded.<sup>56</sup> This raised the question of how the Tribunal's judgements were to be enforced. In early April 2011, the South African advocate Jeremy Gauntlett filed an urgent application before the SADC Tribunal on behalf of Mike Campbell and another against the Summit of the Heads of State and Government of SADC, the Presidents of its 15 countries, the SADC Council of Ministers, and the Republic of Zimbabwe. The application requests an order that ensures that 'the [SADC] Tribunal continues to function in all respects as established by Article 16 of the Treaty'.<sup>57</sup> On 9 April 2011, South Africa's *Sunday Times* bore the following headline:

Mike Campbell, 78, the commercial farmer who made legal history when he took President Mugabe to the Southern African Development Community (SADC) Tribunal in 2007 and won the case a year later, died at his temporary home in Harare this week.

It was further reported that –<sup>58</sup>

Campbell never recovered from the abduction and brutal beatings meted out to him, his wife Angela and son-in-law Ben Freeth by ZANU – PF thugs ... The 78-year-old farmer sustained severe head injuries, which resulted in brain damage, broken ribs and damage to his lower limbs ...

In March 2012, the African Commission on Human and Peoples' Rights decided to register and consider a complaint about the suspension of the SADC Tribunal. The claimants requested the African Commission to refer their communication to the African Court of Justice so it could order the SADC Summit and its member states to lift, with immediate effect, the Tribunal's suspension; to reappoint the Tribunal's judges; and to give the Tribunal the funding it needed to get on with its work.

The dealings around the *Campbell* case reflect that the rule of law is in a state of flux in SADC, and the recent dissolution of the SADC Tribunal is most obviously linked to the continued Zimbabwean non-compliance with the Tribunal's judgments. At present, the SADC Tribunal is no longer operational. At the recent 32th Session of the Summit of SADC Heads of State and Government held in Maputo, Mozambique, on 17 and 18 August 2012, it was, *inter alia*, concluded as follows:<sup>59</sup>

24. Summit considered the Report of the Committee of Ministers of Justice/Attorneys General and the observations by the Council of Ministers and resolved that a new Protocol on the Tribunal should be negotiated and that its mandate should be confined to interpretation of the SADC Treaty and Protocols relating to disputes between Member States.

The restraint contained in this resolution says it all. It limits – if not paralyses – the competence of a “new SADC Tribunal” as the “old Tribunal” was

<sup>56</sup> On 25 February 2009, Michael Campbell and his wife had to leave the farm in fear of their safety after a group in two vehicles led by Peter Chamada, nephew of Cabinet Minister Nathan Shamuyarira, claiming to be from the Lands Office, came to the farm and said that they did not care about the law or the police, and that they had come to take over the land; cf 'Campbell flees farm invasion in Zimbabwe' *The Namibian* 27 February 2009.

<sup>57</sup> See <http://www.radiovop.com/national-news/5978-new-application-to-sadc-tribunal-makes-history.html>, accessed on 4 April 2011.

<sup>58</sup> See <http://www.timeslive.co.za/sundaytimes/article1010628.ece/Farmer-who-took-Mugabe-to-court-dies-from-injuries>, accessed on 9 April 2011.

<sup>59</sup> Available at [http://www.sadc.int/files/3713/4581/9330/Final\\_32nd\\_Summit\\_Communique\\_amended\\_on\\_Agust\\_19\\_2012.pdf](http://www.sadc.int/files/3713/4581/9330/Final_32nd_Summit_Communique_amended_on_Agust_19_2012.pdf), accessed on 1 September 2012.

provided with the competence to deal with proceedings initiated by private parties against either the community or member states. This option does not seem sensible, as private parties' access to the Tribunal lays a cornerstone for its further impact. Without the competence to deal with proceedings initiated by private parties, the "new" SADC Tribunal will most likely become unemployed since basically all proceedings before the "old" SADC Tribunal had so far been initiated by natural or legal persons. However, if one reflects on the above resolution in light of what happened – or rather, what did not happen – after the *Campbell* decision and how this was seen in SADC, the resolution does not really come as a surprise.

It will be interesting to see if the SADC leadership will be progressive enough to take appropriate initiatives to ensure judicial stability in the region. With regard to the question of whether or not it can still realistically be expected that SADC will at some point take appropriate action against Zimbabwe, one can only refer to the late Mike Campbell and conclude without reservation that justice delayed is justice denied. Mike Campbell was an environmentalist, as has been eloquently reflected in the following press passage:<sup>60</sup>

Campbell was an early conservationist, and after Zimbabwe gained independence in 1980, the purchase of a neighbouring farm provided the space to introduce giraffe, impala and eland. Wildlife drew visitors to the family's Biri River safari lodge. He grew tobacco and maize and raised a resilient herd of Mashona – Sussex cattle, while mangoes from the 40,000 trees generated foreign currency from sales in British supermarkets. The government-sanctioned invasion of white-owned commercial farms began in earnest two decades after independence. Mugabe promised a 'fast-track' redistribution of 3,000 farms to landless black people. Mount Carmel was a plum target. ... The documentary *Mugabe and the White African* (2009), which won a British independent film award, depicts Campbell and his wife enjoying a sundowner as a farm worker comes to warn that an armed gang is headed for the house. In a moment worthy of Sir Francis Drake on Plymouth Hoe, he tells his wife, Angela, he will deal with them 'when I have finished my drink'. Campbell refused to hand over his farm to the so-called war veterans (few were old enough to have featured in the war), and instead gave them a shed to live in, as he did not want them 'chopping down trees to build your huts'. The invaders moved to Bruce's house, and in time burned down the safari lodge, poached the wildlife and slaughtered or rustled the cattle. Not even a warthog remained, he said later.

#### (b) Swissbourn and the Lesotho Highlands Water Project<sup>61</sup>

This case is also relevant to a discussion of the SADC Tribunal, the environment and the common economic goals of the SADC region. The case was heard in the High Court and Court of Appeal of Lesotho as well as the High Court of South Africa. Nine years after it was first heard, it was brought before the SADC Tribunal. On 25 January 2011, the South Africa-based Josias van Zyl and the Swissbourn Group filed an application with the SADC Tribunal to set aside the SADC Summit decision to suspend the Tribunal. The Swissbourn Group claimed that Lesotho, South Africa and Zimbabwe were facing massive financial claims resulting from their respective international law violations stemming from a case which the Swissbourn Group launched against the Kingdom of Lesotho for compensation and damages suffered following the

<sup>60</sup> Cf <http://www.guardian.co.uk/world/2011/apr/24/mike-campbell-obituary>, accessed on 14 October 2011.

<sup>61</sup> *Swissbourn Diamond Mines & Others v The Kingdom of Lesotho* SADC (T) 04/2009.



expropriation of its mineral rights in the execution of the Lesotho Highlands Water Project (LHWP) Treaty. The 1986 Treaty is a contractual agreement governing the design, construction, operation, and maintenance of the LHWP, as well as the export of water to South Africa.<sup>62</sup> The suspension of the SADC Tribunal brought the Swissbourn Group's case to a halt<sup>63</sup> and, in May 2011, it was decided that the SADC Tribunal would be dissolved until August 2012. Thus, the case has not yet been resolved. According to the recent resolution by the SADC Heads of State and Government, the Tribunal will remain inactive, until a new Protocol has been negotiated. It can be expected that this process will take several months at least.

#### IV SADC and SACU

Having celebrated its 100th anniversary in 2010, the Southern African Customs Union (SACU) is the world's oldest.<sup>64</sup> SACU has five members, namely South Africa, Botswana, Lesotho, Namibia, and Swaziland. All five member states are also members of the SADC configuration. One objective of SACU is to facilitate the cross-border movement of goods between the territories of the member states. In order to achieve trade liberalisation, the free movement of domestic products is part of the SACU Treaty (Article 18). Goods grown, produced or manufactured in the Common Customs Area are generally free of customs duties and quantitative restrictions within that Area. However, member states have the right to impose restrictions on imports or exports in accordance with national laws and regulations for the protection of health of humans, animals or plants, the environment, intellectual property rights, and exhaustible natural resources.

In 2006, SACU signed an FTA with European Free Trade Area (EFTA) states Iceland, Liechtenstein, Norway and Switzerland.<sup>65</sup> SACU and the EFTA states have laid down in Article 28 of the Free Trade Agreement on Investment that 'it is inappropriate to encourage investment by relaxing health, safety or environmental standards'. The broad nature of the scope of environmental protection is reflected in the somewhat vague formulation of Article 31, which provides that the conservation of the environment has to be taken into account in the 'implementation of assistance in the various sectors to which it is relevant'.

As a first step towards the creation of an FTA between the *Mercado Común del Sur* (MERCOSUR)<sup>66</sup> and SACU, SACU signed a Preferential Trade Agreement (PTA) with MERCOSUR countries in 2009.<sup>67</sup> Trade liberalisation is at the focus of this agreement and, read together with its annexes, specific

<sup>62</sup> See <http://www.lhwp.org.ls/overview/treaty.htm>, accessed on 21 April 2011.

<sup>63</sup> See C Sasman 'SADC Tribunal suspension to be challenged' *The Namibian* 21 April 2011.

<sup>64</sup> For further details on SACU, see OC Ruppel 'SACU 100: The Southern African Customs Union turns 100' (2010) 2 *Namibia Law Journal* 121 – 34.

<sup>65</sup> For the text of the Agreement, which came into force in 2008, see <http://www.sacu.int/docs/tradeneg/efia-fta2006.pdf>, accessed on 20 May 2010.

<sup>66</sup> Common Market of South America, consisting of Argentina, Brazil, Paraguay and Uruguay.

<sup>67</sup> For the text of the Agreement, see [http://www.tralac.org/cause\\_data/images/1694/1\\_Texto\\_Principal.pdf](http://www.tralac.org/cause_data/images/1694/1_Texto_Principal.pdf), accessed on 24 March 2011.

preferences are granted from MERCOSUR to SACU and vice versa. The PTA refers only indirectly to environmental concerns, noting the general exceptions provision in Article XX of the General Agreement on Tariffs and Trade (GATT).

In 2008, SACU<sup>68</sup> and the United States signed a Trade, Investment and Development Cooperation Agreement (TIDCA) in order to 'to promote an attractive investment climate and to expand and diversify trade between SACU and the United States'.<sup>69</sup> As laid down in the Preamble, the parties to TIDCA recognise –

... the importance of protecting and preserving the environment in accordance with each Party's environmental laws, and desiring to ensure that trade and environmental policies are mutually supportive in the furtherance of sustainable development.

## V SADC and emerging regimes

### (a) The Tripartite Initiative

In October 2008, the Heads of State and Government in SADC, the EAC and COMESA negotiated a communiqué as the basis of their tripartite partnership. In the communiqué, the Heads of State and Government – representing all three regional economic communities – agreed that the communities should merge into a single market in order to promote the rapid social and economic development of the COMESA-EAC-SADC area.<sup>70</sup> With the 2011 Second Tripartite Communiqué, the respective Heads of State and Government adopted a developmental approach to the tripartite integration process that –<sup>71</sup>

... will be anchored on three pillars ...: Market integration based on the Tripartite Free Trade Area (FTA); Infrastructure [d]evelopment to enhance connectivity and reduce costs of doing business[; and] ... Industrial development to address the productive capacity constraints ... .

According to the Second Communiqué, the tripartite initiative incorporates 26 countries – which is almost half of the African Union, with 600 million people – and a gross domestic product (GDP) of approximately US\$1 trillion. A Tripartite FTA is envisaged by 2016. The negotiations are expected to take place in two phases: the first phase will address trade in goods and the free movement of businesspeople, while the second phase will discuss trade in services, intellectual property rights, competition policy, trade development, and competitiveness. The outcomes of both phases have great significance for the environment in the single market. Environmentally relevant issues that could be addressed in the first phase could, for example, deal with trade in environmental goods, i.e. goods to measure, prevent, limit, minimise or

<sup>68</sup> For the text, see <http://www.sacu.int/docs/tidca/agreement.pdf>, accessed on 24 March 2011.

<sup>69</sup> Article 1, TIDCA.

<sup>70</sup> Cf First Communiqué of the COMESA – EAC – SADC Tripartite Summit of Heads of State and Government (2008); available at <http://www.comesa-eac-sadc-tripartite.org/sites/default/files/documents/Final%20Communique%20-%20The%20Tripartite%20Summit%202008.pdf>, accessed on 19 October 2011.

<sup>71</sup> Cf Second Communiqué of the COMESA – EAC – SADC Tripartite Summit of Heads of State and Government (2011); available at <http://www.comesa-eac-sadc-tripartite.org/sites/default/files/documents/Communique%20of%20the%202nd%20Tripartite%20Summit%20-%20English%20-%202012.06.2011.pdf>, accessed on 29 August 2012.

correct environmental damage to water, air and soil, as well as problems related to waste, noise and ecosystems. Within the second phase, at least one topic to address would be trade in environmental services, such as cleaner technologies and services that reduce environmental risk and minimise pollution. It remains to be seen if the tripartite initiative will also bring prosperity to the people that have so far been left behind in sub-Saharan Africa. Transforming society will require comprehensive legal, political, social and economic reforms, as well as development initiatives such as investing more in education, public services and infrastructure; enhancing participation in trade; and protecting the environment for present and future generations. Moreover, it also remains to be seen if the tripartite initiative will push the regional integration agenda to include empowering the poor and reducing pressures such as underdevelopment, unemployment, environmental neglect, health emergencies, and strife.

The approach of the 2010 Draft Agreement Establishing the COMESA, EAC and SADC Tripartite Free Trade Area, i.e. to protect the environment, is congruent with that followed by the WTO. Environmental interests are considered within the system of general exceptions. In its Article 40, the Draft Agreement provides for a number of general exceptions to the basic principle of non-discrimination to allow countries in certain circumstances to take account of economic and/or non-economic interests and values that compete with free trade. Amongst other things, these exceptions justify certain measures that are necessary to protect human, animal or plant life or health, as well as measures relating to the conservation of exhaustible natural resources, provided that –<sup>72</sup>

... such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade.

In addition, the Draft Agreement follows the WTO approach with regard to the system of dispute settlement. According to Article 38 of the Draft Agreement as well as Annex 13 to the Tripartite Dispute Settlement Mechanism, a panel is to be established for the purposes of dispute settlement where an amicable resolution is not achieved for disputes dealing with the implementation of the provisions of the Agreement.

#### (b) The BRICS Partnership and the BASIC Group

On 14 April 2011 in Sanya, China, the leaders of the five BRICS states – Brazil, the Russian Federation, India, China and South Africa<sup>73</sup> – signed a joint declaration on the global economy, international financial issues, and

<sup>72</sup> Article 40 of the Draft Agreement Establishing the COMESA, EAC and SADC Tripartite Free Trade Area.

<sup>73</sup> Prior to South Africa's first attendance of the summit in 2011, the group was named *BRIC* – for Brazil, the Russian Federation, India and China. In 2010, China formally invited South Africa to join. The first BRIC summit was held in 2009 in Yekaterinburg, Russia; the second was in 2010 in Brasília, Brazil.

developmental affairs.<sup>74</sup> With South Africa joining BRICS, the grouping's commitments become relevant for the entire SADC region – at least indirectly.

The BRICS partnership is economically and politically important in many ways, and their economies are predicted to become a much greater force in the world economy.<sup>75</sup> The five BRICS members together make up more than a quarter of the world's land surface area, and almost the half of the world's population. The Sanya Declaration<sup>76</sup> contains various linkages with regard to trade and the environment. The Declaration emphasises that, 'in the economic, financial and development fields[,] BRICS serves as a major platform for dialogue and cooperation'. The group has agreed to continue further expanding and deepening economic, trade and investment cooperation among its members.

Furthermore, by signing the Declaration, the BRICS countries have committed themselves to ensuring that –<sup>77</sup>

... they will continue to enjoy strong and sustained economic growth supported by our increased cooperation in economic, finance and trade matters, which will contribute to the long-term steady, sound and balanced growth of the world economy.

The Declaration refers to environmental matters with climate change leading the way as 'one of the global threats challenging the livelihood of communities and countries'. In this regard and pointing out the principle of equity and common but differentiated responsibilities, BRICS leaders have committed themselves to working –<sup>78</sup>

... towards a comprehensive, balanced and binding outcome to strengthen the implementation of the United Nations Framework Convention on Climate Change and its Kyoto Protocol [and to enhance] practical cooperation in adapting our economy and society to climate change.

Moreover, cooperation has been envisaged in order to –<sup>79</sup>

... reach new political commitment and achieve positive and practical results in areas of economic growth, social development and environmental protection under the framework of sustainable development.

According to the Declaration, BRICS is generally committed to supporting a strong, open, rule-based multilateral trading system embodied in the WTO, and a successful, comprehensive and balanced conclusion of the Doha Development Round. Yet, after more than ten years of repeated negotiation failures, the Doha Development Round is unlikely to be concluded in the near

<sup>74</sup> 'Sanya Declaration' (2011); available at <http://www.bricsindia.in/thirdSummit.html>, accessed on 8 April 2012 (hereafter Sanya Declaration).

<sup>75</sup> D Wilson, AL Kelston & S Ahmed 'Is this the "BRICS Decade"?' (May 2010) 10/03 *BRICS Monthly*; available at <http://www.goldmansachs.com/our-thinking/topics/brics/brics-reports-pdfs/brics-decade-pdf.pdf>, accessed on 29 August 2012.

<sup>76</sup> Sanya Declaration op cit note 74.

<sup>77</sup> Ibid.

<sup>78</sup> Ibid.

<sup>79</sup> Delhi Declaration.

future. Some even proclaim that the ‘WTO risks its future by keeping Doha alive’.<sup>80</sup>

As regards excessive volatility on commodity prices, BRICS supports the international community in strengthening cooperation not only to ensure stability and development of physical markets by reducing distortion, but also to further regulate financial markets. BRICS considers safe nuclear energy as an important element in future energy supply, and supports the development of renewable energy as being a part of the future energy mix in BRICS countries. Accelerating sustainable growth in developing countries is a major global challenge; therefore, BRICS sees growth and development as central to addressing poverty and to achieving the United Nations Millennium Development Goals. Infrastructure development in Africa and its industrialisation within the framework of the New Partnership for Africa’s Development (NEPAD) is another major objective for BRICS members.

BRICS is neither an international organisation nor a trade bloc in terms of a regional (or preferential) economic community. So far, BRICS has merely served as a forum, but it is believed it will become an economic powerhouse in future, considering the enormous population that it encompasses; and while China and India are considered to be “the world’s factory” and “the world’s office”, respectively,<sup>81</sup> Russia has become known as “the world’s gas station”, and Brazil as “the world’s farm”. In this context, South Africa could serve as the “the gateway to Africa” and, inevitably, its rich store of natural resources.<sup>82</sup>

In its fourth declaration, signed in New Delhi in March 2012,<sup>83</sup> BRICS states again emphasised their commitment towards enhancing sustainable development by including a focus on environmental protection, specifically pointing out that –<sup>84</sup>

... sustainable development should be the main paradigm in environmental issues, as well as for economic and social strategies.

In the Declaration, the BRICS states furthermore affirm their commitment to the implementation of the UNFCCC and the CBD, amongst other things. Notably, the Delhi Declaration points out the commitment of the BRICS states to environmental protection and the respective multilateral environmental agreements as well as the achievement of the United Nations Millennium Development Goals, but the Declaration is also very clear regarding the responsibilities of developed nations and the need to ensure that growth in non-developed countries is not affected.

<sup>80</sup> Cf <http://www.taipeitimes.com/News/editorials/archives/2011/12/31/2003522031>, accessed on 3 January 2012.

<sup>81</sup> M Fujita ‘The coming age of China-plus-One: The Japanese perspective on East Asian production networks’ (2006); available at [http://siteresources.worldbank.org/INTCHIINDGLOECO/Resources/Fujita\\_Hamaguchi\\_draft2\\_ACCEPT\\_ALL.doc](http://siteresources.worldbank.org/INTCHIINDGLOECO/Resources/Fujita_Hamaguchi_draft2_ACCEPT_ALL.doc), accessed on 29 August 2012.

<sup>82</sup> S van den Bosch ‘Development: African LDCs won’t benefit much from BRICS arrival’ (2011); available at <http://www.ipsnews.net/news.asp?idnews=54296>, accessed on 19 October 2011.

<sup>83</sup> See ‘Delhi Declaration’ (2012); available at <http://www.bricsindia.in/delhi-declaration.html>, accessed on 9 April 2012.

<sup>84</sup> Delhi Declaration par 32.



After all, most foreign direct investment attracted by African states relates to natural resources.<sup>85</sup> Two of the three sub-Saharan states currently receiving the largest amount of investment from China are South Africa and the DRC.<sup>86</sup> Both of these African countries are members of SADC. South Africa is China's second-largest source of imports, which are dominated by mineral resources.<sup>87</sup> Since Chinese and African populations together constitute about one fourth of the global community,<sup>88</sup> several aspects of their relationship impact sustainable development on a global scale. It is vital for SADC to have effective policies, laws and regulations in place not only to propel development, but also to provide protection against 'overuse, abuse and pollution' of non-renewable natural resources by foreign investors.<sup>89</sup>

Moreover, in the context of climate change, it is worth mentioning that, since 2009, the so-called BASIC Group – Brazil, South Africa, India and China – have embarked on cooperation in international climate change negotiations.<sup>90</sup>

Carried by the weight of their increasing economic and geopolitical influence, the BASIC countries – both individually and collectively – are rapidly moving to the centre stage of international politics. Their increased influence in international climate diplomacy was clearly seen for the first time at the Copenhagen Climate Conference (COP 15). ... The foundation of the BASIC cooperation can be traced back to a common 'third world' identity formed during several decades in the G77 group of developing countries, in which the four BASIC countries have each played leading roles. ... Since COP 15, BASIC ministers responsible for climate-related issues have met quarterly, suggesting that the group is committed to continued cooperation. From the joint statements issued after the meetings, two clear patterns emerge: first, a call for a second commitment period of the Kyoto Protocol; and, second, an effort to build bridges with and show support for the rest of the G77. The discussions thus seem to generate agreement on a few broad principles, but have so far been unable to settle the finer details needed to articulate concrete contributions for the international negotiating process.

Although South Africa is the only SADC member in the BASIC Group, the region may still benefit from the latter's cooperation, especially since SADC countries often rely on South Africa's capacity to engage.

## VI SADC Climate Change Policy

Among the many interrelating issues pertaining to climate change and sustainable development are water stress, land degradation, food security, forced migration and environmentally induced migration.<sup>91</sup> As such, the negative effects of climate change – and, thus, climate change adaptation and mitigation – need to be analysed against the backdrop of SADC environmental law in its entirety. Although the number of climate-change-related programmes

<sup>85</sup> LM Marafa *Africa's business and development relationship with China: Seeking moral and capital values of the last economic frontier* (2009) 13 (hereafter Marafa (2009)).

<sup>86</sup> D Scissors 'China's investment overseas in 2010' (2011) 3133 *WebMemo*, available at <http://report.heritage.org/wm3133>, accessed on 29 August 2012. See also S Van der Lugt, V Hamblin, M Burgess et al *Assessing China's Role in Foreign Direct Investment in Southern Africa* (2011).

<sup>87</sup> Marafa (2009) op cit note 83 at 10.

<sup>88</sup> Marafa (2009) op cit 8.

<sup>89</sup> Susswein (2003) op cit note 5 at 297, 309.

<sup>90</sup> K Hallding, M Olsson, A Atteridge et al *Together Alone: BASIC Countries and the Climate Change Conundrum* (2011).

<sup>91</sup> U Grote & K Warner 'Environmental change and migration in sub-Saharan Africa' (2010) 2(1) *Int. J. Global Warming* 17 – 47.

and initiatives is increasing in SADC, as will briefly be outlined by some examples below, much still needs to be done in SADC when it comes to policy and law.

The SADC region is particularly vulnerable to the impacts of climate change, as it is one of the poorest in the world and has experienced unusual weather patterns over the past few years in terms of drought and flooding.<sup>92</sup> This has led to, inter alia, the loss of crops, livestock and settlements, as well as to displacement and a concomitant increase in poverty. As far back as 2007, in its Climate Change Synthesis Report, the Intergovernmental Panel on Climate Change (IPCC) already noted the following in regard to Africa:<sup>93</sup>

By 2020, between 75 and 250 million ... people are projected to be exposed to increased water stress due to climate change. By 2020, in some countries, yields from rain-fed agriculture could be reduced by up to 50%. Agricultural production, including access to food, in many African countries is projected to be severely compromised. This would further adversely affect food security and exacerbate malnutrition. Towards the end of the 21st century, projected sea level rise will affect low-lying coastal areas with large populations. The cost of adaptation could amount to at least 5 – 10% of GDP. By 2080, an increase of 5 to 8% of arid and semi-arid land in Africa is projected under a range of climate scenarios.

In its 2007 *Assessment Report*, IPCC Working Group II reflects on impacts, adaptation and vulnerability:<sup>94</sup>

New studies confirm that Africa is one of the most vulnerable continents because of the range of projected impacts, multiple stresses and low adaptive capacity ... However, ... advances in the science of adaptation to climate change and variability, including both contextual and outcome vulnerabilities to climate variability and climate change, show that these adaptations may be insufficient to cope with future changes of climate.

Predicted impacts associated with temperature increases include a further rise in sea levels, changes in precipitation patterns, and the resultant threat to food security and sustainable development in general, with more people being caught in the poverty trap – especially in developing countries whose economies are particularly sensitive and vulnerable.<sup>95</sup>

It is also expected that the ‘water side’ of climate change is likely to generate a significant impact on national and global economies, and it is not unlikely that this will result in increased local and international conflict.<sup>96</sup> The interconnectedness and interdependence of water, energy, national welfare and international economies becomes clearer as climate change takes its toll around the world.

<sup>92</sup> A Haensler, S Hagemann & D Jakob ‘Climate history of Namibia and western South Africa’ in U Schmiedel & N Jürgens (eds) *Biodiversity in Southern Africa. Volume 2: Patterns and Processes at Regional Scale* (2010) 2.

<sup>93</sup> Intergovernmental Panel on Climate Change *Synthesis Report: Contribution of Working Groups I, II and III to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change* (2007); available at [http://www.ipcc.ch/publications\\_and\\_data/publications\\_and\\_data\\_reports.shtml#1](http://www.ipcc.ch/publications_and_data/publications_and_data_reports.shtml#1), accessed on 19 August 2011.

<sup>94</sup> Ibid.

<sup>95</sup> Ibid.

<sup>96</sup> W Scholz ‘The promotion of regional environmental security and Africa’s common position on climate change’ (2010) 1 *African Human Rights Law Journal* 1 – 25.

At the 32nd SADC Energy Ministers Meeting, held in Gaborone, Botswana, in May 2011, Hon. Isak Katali of Namibia emphasised that —<sup>97</sup>

... the SADC region needed to seriously address the challenges of the diminished surplus power generation capacity. He also stated [in the context of climate change] ... that there was need to ensure that the solutions that are pursued will result into sustainable energy development in the region.

The SADC Climate Services Centre (CSC) is placed under the SADC Secretariat in Gaborone. Its mandate is to contribute to mitigating the adverse impacts of extreme climate variations on socio-economic development. Through the CSC, SADC organised the Fifteenth Southern Africa Regional Climate Outlook Forum (SARCOF – 15), in Windhoek, Namibia, in August 2011. The SARCOF process continues to evolve into an effective and reliable source of climate information and prediction services in order to fully exploit their potential for enhancing multisectoral, social and economic development. SARCOF-15 is a collaborative effort between the CSC, SADC's Disaster Risk Reduction Unit, the World Bank – Global Facility for Disaster Reduction and Recovery (GFDRR), the WMO, the Food and Agriculture Organisation of the United Nations, the International Strategy for Disaster Reduction, the United Nations Office of Coordination of Humanitarian Affairs, and other partners.<sup>98</sup> However, although it organises the SARCOF, the CSC is still very weak in terms of capacity, and lacks the resources to adequately carry out its mandate.<sup>99</sup>

In the forest sector, SADC member states have decided on to participate in developing a programme that addresses the common problems of deforestation and degradation in the region, to formulate joint climate change mitigation measures in order to contribute to the sustainable management of SADC forests, and to promote poverty reduction and sustainable development. To this end, SADC ministers responsible for environment and natural resource management approved the 'SADC Support Programme on Reducing Emission from Deforestation and Forest Degradation (REDD+)'<sup>100</sup> during the SADC Ministerial Meeting in Windhoek, Namibia, on 26 May 2011. The Programme supports SADC member states in their efforts to combat climate change and achieve their development goals through reduced emissions in the forestry sector. A comprehensive framework for the region to actively participate in and benefit from the carbon market is provided, which will contribute to the social and economic development in the member states.

At its 31st Ordinary Summit of SADC Heads of State and Government held in August 2011 in Luanda, Angola, the Summit —<sup>101</sup>

<sup>97</sup> See <http://www.sadc.int/news/32nd-sadc-energy-ministers-meeting/>, accessed on 12 October 2011.

<sup>98</sup> See <http://www.sadc.int/news/sarcof-15-announcement/>, accessed on 12 October 2011.

<sup>99</sup> Such was the message of SADC official B Garangonga at the First Climate Change and Development in Africa (CCDA – I) Conference organised by the United Nations Economic Commission for Africa, the African Union Commission, and the African Development Bank, in Addis Ababa, Ethiopia, from 17 to 19 October 2011.

<sup>100</sup> See <http://www.sadc.int/REDD/index.php/document-bank/documents/>, accessed on 18 October 2011.

<sup>101</sup> See <http://www.sadc.int/news/communique-of-the-31st-sadc-heads-of-state-and-government-summit/>, accessed on 12 October 2011.

... underscored the importance of the multilateral dialogue in addressing challenges posed by climate change. Summit urged SADC member states to support the African common position. Summit pledged its support to South Africa in hosting the United Nations Framework Convention on Climate Change COP 17. ... Summit noted with deep concern the evolving famine situation in Somalia caused by internal strife and drought conditions in the Horn of Africa and noted that this has resulted in a severe humanitarian disaster affecting over 12 million people, including 1.5 million internally displaced people requiring food, water, medical, clothing and shelter supplies and provisions.

COMESA, the EAC and SADC have already initiated discussions on the establishment of a COMESA-EAC-SADC Tripartite Climate Change Programme to facilitate their long-term vision of working together.<sup>102</sup>

This was announced by the EAC Deputy Secretary General, Productive and Social Sector Mr Jean Claude Nsengiyumwa at the 4th Special Africa Ministerial Conference on Environment (AMCEN), held in Bamako[, Mali], on 15 – 16 September 2011. Mr. Nsengiyumwa added that climate change programming focusing on policy negotiations and programmatic [activities] by the three Regional Economic Communities (RECs) [is] currently [under way] through the Tripartite arrangement. The COMESA – EAC – SADC tripartite initiative was lauded by the meeting as being in line with the overall AMCEN vision that seeks to have the whole of Africa speak with one voice at [climate] change fora. The main objective of the Fourth Special Session of AMCEN was to provide a platform for African countries to further consolidate and enhance Africa's common negotiating position for the 17th United Nations Framework Convention on Climate Change (COP 17), to be held in November/December 2011 in Durban[, South Africa]. The special session provided an opportunity for Ministers to discuss the Climate Green Fund and Africa's preparations for Rio+20, including the transitioning towards a Green Economy and the need to strengthen international environmental governance in the context of institutional framework for sustainable development. The need to include agriculture in climate change negotiations was emphasised. [Speaking earlier] at an experts preparatory meeting, COMESA [climate] change advisor Dr Melay Kanyangarara outlined decisions made by the joint COMESA Ministers of Agriculture and Environment held in Swaziland in June this year ... [p]ointing out among other things [that] the Ministers had decided that Ministers of Agriculture should proactively engage in the ongoing climate change discussions ... to ensure a decision is reached on agriculture which is responsive to the African Situation. The African Ministerial Conference on Environment (AMCEN) was established in December 1985, following a conference of African ministers of environment held in Cairo, Egypt. Its mandate is to provide advocacy for environmental protection in Africa; to ensure that basic human needs are met adequately and in a sustainable manner; to ensure that social and economic development is realised at all levels; and to ensure that agricultural activities and practices meet the food security needs of the region. COMESA and other RECs that have a climate change programme have been participating in AMCEN meetings as building blocks of the African Union that have a stake in ensuring that Africa's interests are advanced at continental level as well as in different international fora ...

Durban, South Africa, was in the international limelight from 28 November 2011 to 9 December 2011 as the stage for global climate negotiations. The goal of discussions was to advance the implementation of the UNFCCC and the Kyoto Protocol, and to advance on previously agreed action plans (Bali) and agreements (Cancun).<sup>103</sup> The 17th Conference of the Parties (COP 17) to the UNFCCC and the 7th Session of the Conference of the Parties serving as the Meeting of the Parties (MOP 7) to the Kyoto Protocol were, however, only partially successful. For example, the United States and China were

<sup>102</sup> See <http://europafrica.net/2011/10/10/eac-official-calls-for-involvement-of-regional-blocs-in-climate-change-initiatives/>, accessed on 29 August 2012.

<sup>103</sup> See further newspaper coverage on COP 17 by the author; available at <http://www.eikestadnuus.co.za/10494/news-details/topic-too-complex>, <http://www.eikestadnuus.co.za/11060/news-details/sense-of-urgency-needed>, <http://www.eikestadnuus.co.za/11060/news-details/sense-of-urgency-needed>, <http://blogs.sun.ac.za/news/2011/11/24/expert-shares-insights-on-climate-change/>, <http://www.dieburger.com/Suid-Afrika/Nuus/Krisis-raak-net-erger-20111129>, all accessed on 23 December 2011.

reluctant to sign binding targets: each waited for the other to move first. This refusal by the two biggest polluters had repercussions for the negotiations; consequently, Canada, Japan and Russia refused a second commitment period due to the lack of legal restriction on the world's largest polluters. This clearly reflects that an agreement that is optimal for the world (and SADC) and its future generations may not be optimal for some national economies that would probably have to bear a large burden for significant domestic emissions reductions, and which are not among those nations most gravely threatened by climate change. Consequently, SADC and the African continent need to push the opportunities presented under climate change negotiations to enhance the success rate of their development aspirations.<sup>104</sup>

Climate change prompts significant questions about justice and distribution, also within the SADC region.<sup>105</sup> In this context, the Draft Decision CP.17 known as the *Durban Platform for Enhanced Action by the Conference of the Parties* recognises that –<sup>106</sup>

... climate change represents an urgent and potentially irreversible threat to human societies and the planet and thus requires to be urgently addressed by all Parties, and [the COP acknowledges] that the global nature of climate change calls for the widest possible cooperation by all countries and their participation in an effective and appropriate international response ... .

Strong criticism of the Durban outcome was warranted by the fact that the agreement to cooperate on a new binding legal instrument is only an agreement to negotiate another, future agreement. Yet, from a SADC perspective, one major accomplishment of the Durban Conference was the agreement that negotiations should be concluded no later than 2015 and that new arrangements will be implemented by 2020. Moreover, the new Green Climate Fund, as the financial mechanism under the UNFCCC in regard to mitigation and adaptation in developing countries, was moved forward: several European countries pledged more than US\$50 billion in seed money to establish the Fund, and this amount is expected to rise to US\$100 billion every year until 2020.

Durban also produced several other agreements that could eventually be helpful in implementing a more comprehensive international solution to climate change. These are agreements on technology transfer, reference standards to be used in the programme to reduce greenhouse gas emissions from deforestation and degradation (REDD+), sources of funding for REDD+,

<sup>104</sup> OC Ruppel, S Grimm & S van Wyk 'COP 17: Addressing climate change in a changed world – Chinese and African positions' (2011 online); available at <http://www.ccs.org.za/wp-content/uploads/2011/12/COP17.pdf>, accessed on 23 December 2011; OC Ruppel 'Climate change policy positions in the AU and SADC' (2012) II(1) *SADC Law Journal – Special Edition* 14 – 35; OC Ruppel & KG Ruppel-Schlichting 'Climate change and human security: Relevant for regional integration in SADC?' in T Hartzenberg, G Erasmus & A du Pisani (eds) *Monitoring regional integration in Southern Africa: 2011 Yearbook for Regional Integration* (2012) 32 – 71, available at <http://www.tralac.org/files/2011/08/MRI-Yearbook-2011-Finalweb-20120419.pdf>, accessed on 29 August 2012.

<sup>105</sup> OC Ruppel & S van Wyk 'The effects of climate change on human security and human rights in Africa' (2011 online); available at [http://www.ccs.org.za/wp-content/uploads/2011/10/China\\_Monitor\\_OCT\\_2011\\_final.pdf](http://www.ccs.org.za/wp-content/uploads/2011/10/China_Monitor_OCT_2011_final.pdf), accessed on 23 December 2011.

<sup>106</sup> Text available at [http://unfccc.int/files/meetings/durban\\_nov\\_2011/decisions/application/pdf/cop17\\_durbanplatform.pdf](http://unfccc.int/files/meetings/durban_nov_2011/decisions/application/pdf/cop17_durbanplatform.pdf), accessed on 23 December 2012.



an extension of the Kyoto Protocol for a second commitment period, and procedures on national climate adaptation planning.<sup>107</sup>

## VII Conclusion

SADC's vision for the southern African region includes a 'common future' that will ensure the economic and social well-being for all its peoples.<sup>108</sup> The objectives of the SADC Treaty in particular include the –<sup>109</sup>

... promotion and equitable economic growth and socio-economic development that will ensure poverty alleviation with the ultimate objective of its eradication.

Although a basic legal framework is in place, these objectives stand largely unfulfilled at present. Unsustainable development in SADC is a reality due to –<sup>110</sup>

... economic and sectoral policies which are too narrowly conceived and focused and which neglect the negative consequences on the people and the environment.

Other obstacles to sustainable development in SADC include –<sup>111</sup>

... duplication and fragmentation of authority ... [and] institutional failure ... caused by policies that are not backed up by legislation and therefore cannot be legally enforced.

The SADC legal framework provides for a broad bandwidth of provisions with high relevance for environmental protection. It cannot be overemphasised that the rule of law, good governance and the protection of the environment play an essential role in economic development, which in turn contributes to growth, productivity and employment creation – all being essential for sustainable reductions in poverty. However, a major part of any successful legal strategy towards sustainable development includes enforcement. The rule of law means nothing without effective access to justice, and without compliance with and enforcement of judgments made by legitimate courts. With regard to the recent dissolution of the SADC Tribunal, the legal fraternity in the region responded as follows:<sup>112</sup>

Heads of State from the Southern African Development Community (SADC) have unlawfully sabotaged the SADC Tribunal and undermined the right of citizens to access justice ... by violating regional laws and acting unconstitutionally ...

The only conclusion to reach, therefore, is that the current dissolution of the SADC Tribunal violates the right to a fair trial, non-discrimination, access

<sup>107</sup> Cf United Nations Framework Convention on Climate Change (UNFCCC) 'Establishment of an Ad Hoc Working Group on the Durban Platform for Enhanced Action, Draft Decision -/CP.17' (2011); available at [http://unfccc.int/files/meetings/durban\\_nov\\_2011/decisions/application/pdf/cop17\\_durbanplatform.pdf](http://unfccc.int/files/meetings/durban_nov_2011/decisions/application/pdf/cop17_durbanplatform.pdf), accessed on 28 December 2011; UNFCCC 'Green Climate Fund – Report of the Transitional Committee, Draft Decision -/CP.17' (2011); available at [http://unfccc.int/files/meetings/durban\\_nov\\_2011/decisions/application/pdf/cop17\\_gcf.pdf](http://unfccc.int/files/meetings/durban_nov_2011/decisions/application/pdf/cop17_gcf.pdf), accessed on 29 August 2012; UNFCCC 'Durban decisions' (2011) available at <http://unfccc.int/2860.php>, accessed on 28 December 2011.

<sup>108</sup> Cf SADC; available at <http://www.sadc.int/index/browse/page/715>, accessed on 19 August 2011.

<sup>109</sup> Article 5, Amended Declaration and Treaty of SADC 1992.

<sup>110</sup> Susswein (2003) op cit note 5 at 297.

<sup>111</sup> Susswein (2003) op cit 303.

<sup>112</sup> See <http://www.thezimbabwean.co.uk/news/zimbabwe/35444/sadc-leaders-undermine-regional-tribunal.html>, accessed on 20 August 2011.

to justice and effective remedies. Yet, in the words of Archbishop Emeritus Desmond Tutu, '[i]njustice and oppression will not have the last word'.<sup>113</sup> In this respect, the decision by the African Commission on Human and Peoples' Rights to register and consider a complaint about the suspension of the SADC Tribunal is commendable and further jurisprudence in this regard is eagerly awaited.

Overall, the SADC regime needs to be strengthened – even at the cost of national sovereignty. This is particularly true with regard to environmental protection in the region, as the environment knows no boundaries or frontiers made by humankind. The fear of losing state autonomy, the lack of vision, and the unwillingness to compromise are obstacles that need to be overcome if SADC adheres to promoting the regional community in future. The acceptance of a legal instrument such as the SADC Treaty involves a transfer of a certain amount of decision-making authority away from states and towards the regional community. This is exactly why sovereign nations agree to such treaty: the benefits of cooperative action will be greater than the circumstances that exist otherwise.

Thus, it remains to be seen how the promotion of sustainable development and the protection of the environment in SADC will benefit from further regional integration and cross-fertilisation with other existing and emerging regimes. From the research conducted in writing up this paper, what is clear now already is that SADC seems to be fully in line with Achim Steiner's recent policy statement made at the opening of the 12th Special Session of the United Nations Environment Programme's Governing Council/Global Ministerial Environment Forum, held in Nairobi, Kenya, on 20 February 2012.<sup>114</sup>

We have built up a diverse array of policy instruments for addressing the complex range of environmental challenges of today ... The currently observed changes to the earth are unprecedented, and, despite our efforts, several critical global, regional and local thresholds have been exceeded. The impacts affect human security, health, natural assets, food security and the provision of ecosystem services. ... [C]limate change remains a serious challenge and threatens overall development goals. Pressures on land resources are increasing; the drivers are economic growth, population growth, consumption patterns and global markets, which cause deforestation, land conversion, land degradation and urbanisation. Gains have been achieved in access to safe drinking water, but the limits of sustainability of water resources have already been surpassed. ... The challenge of achieving environmental sustainability is far greater than we ever imagined. The economic costs of inaction are far higher than we thought. We are crossing planetary boundaries far beyond the Earth's carrying capacity. The scarcity of resources from increasing consumption and continued environmental degradation are becoming a threat to peace and security.

In light of the aforementioned it is hoped that, in future, SADC will deliberate more effectively on regional sustainable development challenges, opportunities, concerns and priorities, also in the context of Rio+20 – the United Nations Conference on Sustainable Development held in Brazil in June 2012, 20 years after the Rio Declaration on Environment and Development was adopted.

<sup>113</sup> D Tutu 'Foreword' in B Freeth *Mugabe and the White African* (2011) ix.

<sup>114</sup> See [http://www.unep.org/gc/gcss-xii/docs/ED\\_POLICY\\_STATEMENT\\_2012\\_Lores\\_fa.pdf](http://www.unep.org/gc/gcss-xii/docs/ED_POLICY_STATEMENT_2012_Lores_fa.pdf), accessed on 13 April 2012.