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The Role of SADC's Legal Infrastructure in Unlocking Women's Economic Empowerment for the Advancement of Regional Trade and Development

1.1. Introduction

The African Union (AU) recognises eight regional economic communities (RECs). These are: The Arab Maghreb Union (UMA), Common Market for Eastern and Southern Africa (COMESA), Community of Sahel–Saharan States (CEN–SAD), the East African Community (EAC), Economic Community of Central African States (ECCAS), Economic Community of West African States (ECOWAS), Intergovernmental Authority on Development (IGAD) and the Southern African Development Community (SADC).¹ The latter was established in 1992 by the SADC Declaration and Treaty.² The Declaration extols the aspirations of increased economic well-being, improved standards of living, and freedom and social justice for all of the people in the region. It pronounces that the Community shall be the instrument for the achievement of these goals; through its spearheading of deepening regional integration. Most impressively, the Heads of States and Government bequeath the people in the region to partner with them by contributing to the attainment of these ends. This shows a recognition that progress cannot come merely from governmental integration, but that all sectors and demographics of the Community must also play their part to ensure that the ends are met. Indeed, government is a facilitator; it is individuals (humans and corporations) that need to take advantage of facilitated environments to engage in activities that will bring the desired changes about.

The SADC Treaty contains identical themes as the Declaration. For example, it mimics the same developmental goals. The number one objective of the Community, as stated in the treaty, is:

to achieve development and economic growth, alleviate poverty, enhance the standard and quality of life of the people of Southern Africa and support the socially disadvantaged through regional integration³

Secondly, it also exhorts the organization's membership to involve the people in the region in the achievement of development through regional integration.⁴ Beyond these broad stipulations, Article 22 of the treaty empowers the members to create protocols on specialised

¹ <https://au.int/en/organs/recs>.

² Of August 17, 1992, as amended in 2001.

³ Article 5(1)(a)

⁴ This appears in the Preamble and Article 5(2)(a).

areas of cooperation. Protocols are instruments of implementation of treaty objectives in narrow areas of cooperation. On the basis of this article, SADC members have gone on to conceive approximately thirty protocols on a wide range of issues.⁵ The concern of this paper is whether the legal infrastructure that has been installed through the treaty and the protocols is sufficient for unlocking the integration of women in trade, for their own self-actualisation, as well as to empower them to contribute to development through regional integration, as the Declaration and the Treaty both speak of the need for inclusivity in the achievement of their stipulated goals.

According to United Nations Women, ‘economic empowerment,’ in the context of women, encompasses enabling women to participate, equally with men, in economic activities. This includes ensuring them access to, and control over, productive resources. It also encompasses removing barriers to their autonomy and giving them a voice in decision-making at all levels of society.⁶ ‘Trade,’ in the context of this paper, means the exchange of goods and services, specifically under instruments and arrangements that are instituted by the Community. For the purposes of this paper, these instruments will be limited to the protocol on trade in goods⁷ and the protocol on trade in services.⁸ Lastly, ‘development’ is to be understood in the sense of the United Nations sustainable development goals (SDGs), as a cross-cutting concept that incorporates not only economic development, but also social, political, and other facets.⁹

According to the World Bank, women made up 50.2% of the population in Sub-Saharan Africa in 2022.¹⁰ However, they only contributed, on average, 33% to the Gross Domestic Product (GDP) of their countries.¹¹ This figure makes sense when we consider that women’s participation in SADC economies is largely relegated to the informal sector or to micro, small and medium enterprises (MSMEs).¹² Furthermore, socio-cultural and legal obstacles continue to hold them back from greater participation. The situation of women remains thus despite SADC’s expounded intention to inclusively increase regional integration for the sake of development for all; including the achievement of meaningful impact on the livelihoods of the region’s people.

This paper’s central argument is that there cannot be successful economic integration or development under the prevailing circumstances where women are marginalised from fully participating in trade to the extent of their desires and capabilities. It considers the foremost regional trade agreements that have been agreed upon by the SADC Member States, with the

⁵ SADC protocols can be found here: <https://www.sadc.int/sadc-protocols>.

⁶ United Nations Women, <https://www.unwomen.org/en/what-we-do/economic-empowerment/facts-and-figures>.

⁷ SADC Protocol on Trade. Concluded in Maseru, Lesotho on 24 August 1996.

⁸ SADC Protocol on Trade in Services. Concluded in Maputo, Mozambique on 18 August 2012.

⁹ United Nations General Assembly, Resolution A/Res/70/1, “Transforming our world: the 2030 Agenda for Sustainable Development,” adopted on 25 September 2015.

¹⁰ <https://data.worldbank.org/indicator/SP.POP.TOTL.FE.ZS?locations=ZG>.

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¹² Table 5.2 of the SADC Demographic and Social Statistics (2019) reflects that women are more likely to be in informal employment than their male counterparts. p.148.

aim of stimulating trade and development. It analyses the extent to which these devote focus on women and on the installation of arrangements that will capacitate them in trade. It concludes that the instruments are lacking in these and that this has contributed to the failure to stimulate women's participation in regional trade. It also considers the role of the Protocol on Gender and Development in ameliorating these failings. It offers policy recommendations towards improving women's empowerment in trade, in the interests of greater regional integration and development.

1.2. A Socio-Economic Overview of Women in SADC

Women make up half of the population in the Southern African Development Community (SADC). However, they bear the brunt of poor outcomes in socio-economic indicators. By way of example, the United Nations Organization reports that women suffer more from poverty than men in Sub Saharan Africa.

Globally, there are 122 women aged 25-34 living in extreme poverty for every 100 men of the same age group. Extreme poverty numbers are slightly higher for the sub-Saharan Africa region, where there are 127 women aged 25-34 living in extreme poverty for every 100 men.¹³

Poverty negatively affects women's economic outcomes. This is because a person who is facing poverty lacks the resources that are necessary to cater for their basic needs, let alone to invest in profitable enterprises. In addition, the adult literacy rates in many of the SADC countries exhibit poorer outcomes for women as opposed to men.¹⁴ Without literacy, women are held back from participating in commercial activities, including in trade. A third example is unemployment. Table 5.3 in the SADC Demographic and Social Statistics (2019) outlines unemployment rates by sex (%) across SADC States between 2006 and 2019. With a few exceptions, the general trend is that it is women who are most likely to suffer from unemployment than men.¹⁵ This shows that they participate less than men in their respective economies. They are not economically active. This is despite SADC leaders having pronounced, in the Declaration and Treaty, that they will honour inclusive participation in the attainment of economic development.

High inflation is often seen in African countries.¹⁶ Inflation is detrimental to savings, and savings are critical for income for business and trade. Although inflation is gender-neutral in that when it is high it is high for both men and women, it impacts women the hardest. This is because women generally earn lower incomes than their male counterparts on account of discrimination (the gender pay gap)¹⁷ and also because they are the primary purchasers in the

¹³ United Nations Women, Sustainable Development Goals Factsheet: Sub-Saharan Africa, p.2.

¹⁴ SADC Demographic and Social Statistics, Table 2.2.1. "Adult Literacy Rate in SADC by Sex (%)" 2010 – 2019. p.33

¹⁵ p.144.

¹⁶ Trading Economics captures data on inflation in Africa. There are extremely high rates for some SADC countries including: 10.8% in Zambia, 11.75% in Madagascar, 12.12% in Angola, 28.4% in Malawi, and hyper-inflation of 77.2% in Zimbabwe. <https://tradingeconomics.com/country-list/inflation-rate?continent=africa>.

¹⁷ Goedele Van den Broeck, Talip Kilic and Janneke Pieters found that, in Sub Saharan Africa, women earn 40% to 46% less than men in urban areas. This gap is more pronounced in rural areas. Van den Broeck G, Kilic T,

family. Thus, inflation hits women most because they spend most expenditure on household essentials. This keeps them in poverty and precludes them from being able to invest in commercial activities. A final example of a socio-economic trend that is observed within SADC States is that of a low participation rate of women in leadership positions in the private sector. Statistics gathered by SADC on the percentage of women Chief Executive Officers (CEOs) and board members in the top five private corporations indicate rates of between a low of 11% (for Lesotho) and a high of 35.7%, (in South Africa), with an average of 21.8%.¹⁸ This statistic also highlights the diminished participation of women in economic activities.

1.3. Contributing Factors to Women's Status in Trade in the Southern African Development Community

Women's lack of access to economic opportunities perpetuates their disempowerment and prevents them from fully contributing to the further integration of the region and to its development. SADC cannot reach the objectives that it aims at without catering for the increased participation of women. There are several reasons why women in Southern Africa suffer from poor socio-economic outcomes and, hence, cannot participate meaningfully in trade. Firstly, gender inequality is rife in the region. Gender inequality is measured using the Gender Inequality Index (GII). This is a composite metric that measures inequality with reference to three dimensions:

1. reproductive health,
2. empowerment, and
3. the labour market.¹⁹

A low GII value is indicative of a low rate of inequality between women and men, while a high GII value is indicative of a high rate of inequality. In other words, the closer the index is to 0, the higher the equality, or the lower the inequality. The gender inequality rate in SADC countries ranges from a low of 0.369 in Mauritius to a high of 0.655 in the Democratic Republic of Congo (DRC).²⁰ Where inequality between the genders is high, it means that women cannot fully access services that are critical to their empowerment for trade, such as access to educational opportunities and to finance.

Secondly, impediments within the domestic legal systems contribute to the marginalisation of women. Fourteen constitutions of the SADC countries contain pronouncements of equality and non-discrimination. However, despite this, some practices of discrimination remain. Some of these arise under customary law. Tarisai Nyamweda and Colleen Lowe Morna report on some of these and note that

Pieters J. Structural transformation and the gender pay gap in Sub-Saharan Africa. PLoS One. 2023 Apr 7;18(4):e0278188. doi: 10.1371/journal.pone.0278188. PMID: 37027364; PMCID: PMC10081774.

¹⁸ SADC Gender and Development Monitor 2022: Women in Politics and Decision-Making, Table 7.1., p.93

¹⁹ United Nations Development Programme, <https://hdr.undp.org/data-center/thematic-composite-indices/gender-inequality-index#/indicies/GII>.

²⁰ SADC Demographic and Social Statistics, Table 4.1, Gender Inequality Rate in SADC (2010-2018) p.124.

Social Institutions and Gender Index (SIGI) 2019 classified Madagascar, Malawi and Tanzania as having high levels of discrimination embedded in customary laws, social norms, and practices and by inappropriate legal protections against gender discrimination in all dimensions of social institutions. In South Africa, Traditional Courts Bill was approved by the National Assembly in March 2018 marginalises women's voices, shifting the balance of power more towards male household heads and traditional leaders. The legislation around traditional leadership affects single women, particularly those without male family members, who have little status in the eyes of some traditional leaders and structures.²¹

The above reflects that women face social and cultural discrimination. These become barriers in their attempts to engage in all commerce. Examples of the manifestations of this discrimination can be seen in the challenges that they experience in attempting to balance their multiple roles in their families (nuclear and extended), communities, and in business. They are often primary caretakers of children, the elderly, and the infirm. They are often expected to be the responsible for all household responsibilities, such as cooking and cleaning. This leads to them being time poor and unable to devote time and energy to business. Cultural stigmas can also limit where, when, how, and with whom women can be. These mobility constraints further impede their ability to be economically active. Financial barriers further compound these difficulties. Women generally struggle to access finance, particularly from formal financial institutions. This is partly due to their lack of collateral for loans. Again, this may be related to socio-cultural pressures that lead to men often being identified as title holders of household property, such as land and immovable property. Further, they may need spousal consent to contract. At times they are told that they don't have credit scores to be able to calculate their creditworthiness. It is true that the introduction of mobile money has been somewhat of a saviour to women because it has assisted them to access some financial services, for example, through *Mpesa* etc.²² They have also been assisted by micro-savings providers. However, such services are not a replacement for formal financial services and cannot support the movement of women from their concentration in micro and small business into larger formal enterprises that can have, not only a significant domestic presence, but also an impactful regional footprint.

Lastly, we may cite gender-based violence (GBV) as a factor that perpetuates negative socio-economic outcomes for women and also impacts their ability to trade. Women are at risk of domestic violence, sexual harassment, and assault. They are also primary targets for human trafficking. Left unchecked, these security risks contribute to their side-lining from business and continued impoverishment. Nyamweda and Morna report that

“Although legislation on GBV is in place, criminal justice system responses to GBV remain weak throughout SADC. Online violence against women has become endemic, further limiting the voice and choice of women and girls as these new forms of

²¹ Tarisai Nyamweda and Colleen Lowe Morna, *State of Women in SADC*, p.5

²² Njuguna Ndung'u, *A Digital Financial Services Revolution in Kenya: The M-PESA Case Study*, African Economic Research Consortium, 2021.

harassment often spill into the real world. GBV has cost implications to the economy of a country and to individuals.²³

1.4. SADC Architecture for Trade, Development and Regional Integration

This section considers the main frameworks for trade, development, and regional integration in the Southern African Development Community (SADC). These are:

1. The SADC Treaty,
2. The SADC Trade Protocol, and
3. The SADC Protocol on Trade in Services.

The section outlines the purpose of the instruments and how they aim to lead improvements in trade, development, and regional integration. It questions whether women are considered in these frameworks and argues that, if they are not, then they cannot be successful in achieving their objectives. Regional integration has been described as “a multifaceted process, whereby sovereign nation-states establish common political, legal, economic, and social institutions for collective governance.”²⁴ It is meant to liberalise the flow of goods, services, capital, and people. This is with the ultimate aim of stimulating growth and development.

1.4.1. Southern African Development Community Treaty

When the Southern African Coordinating Conference (SADCC) was transformed into the Southern African Development Community in 1992, this was with a view to prioritise economic integration over political coordination. The first treaty that was created towards this end by the member states was the founding SADC treaty. The treaty preamble stipulates that the intention to “involve the people of the Region centrally in the process of development and integration, particularly thorough the guarantee of democratic rights, observance of human rights and the rule of law.” These sentiments are buttressed by other articles, such as Article 4 which stipulates that the Community is based on the founding principles of “human rights, democracy and the rule of law”²⁵ as well as “equity, balance, and mutual benefit.”²⁶ This positioning would seem to augur well for the participation of women in regional integration because it communicates that all persons shall have a role and a stake in regional integration. Further, that Member States and the Community will take concerted action to safeguard against discrimination.²⁷ Section 1.3, above, has highlighted how discrimination can impede women from participating in business and trade.

The objectives of the Community are listed in Article 5 (1) of the Treaty. Two bear mentioning. The first is the desire to “achieve development and economic growth, alleviate poverty, enhance the standard and quality of life and support the socially disadvantaged through

²³ Tarisai Nyamweda and Colleen Lowe Morna, *State of Women in SADC*, p.8.

²⁴ S.J. Hix, in *International Encyclopedia of the Social & Behavioral Sciences*, 2001, pp 12922 – 12925.

²⁵ Article 4 (c).

²⁶ Article 4 (d).

²⁷ This is bolstered by Article 6. Which contains general undertakings. Article 6(2) is an undertaking to avoid discrimination. It prohibits discrimination by the organization, and its members states, against any person, on several grounds, including gender.

regional integration.”²⁸ The next is to “promote and maximise productive employment and utilisation of resources of the Region.”²⁹ Section 1.2, above, has reflected that these aims are not being met as far as women are concerned. Their poverty condition is not being alleviated nor are they benefiting from employment opportunities. The limitations of the Treaty in contributing to unlocking benefits for women in trade is that it is not specific enough about the issue. Beyond the rhetoric that is found in the principles, objectives and undertakings, there are no concrete commitments that are expressed. Even though this is an umbrella instrument, it is argued that it still could have contained some critical substantive commitments that would have contributed to supporting women in regional integration. For example, the institutional provisions, in Part 5, could have alluded to the importance of gender inclusivity in the work of the organization. Article 12 provides the scope for the establishment of Commissions “to guide and coordinate operation and integration policies and programmes in designated sectional areas.” It would have been prudent for there to have been mention of equitable gender-representation in this body. When women are part of key institutions, they are able to influence its deliberations and work programmes. This could contribute to the emergence of more gender-friendly instruments and programmes in SADC and, thus, more impact on the lives and livelihoods of women.

1.4.2. The Southern African Development Community Trade Protocol

Article 21 of the SADC Treaty enjoins members to cooperate on various areas. One of these is on trade.³⁰ The following article, Article 22, provides that the mechanism for concluding arrangements on these areas of cooperation is by way of protocols. Based on this, the SADC members have concluded two trade protocols, one on trade in goods and another on trade in services. The question is whether these protocols devote any attention to the special circumstances, challenges and needs of women, in so far as their participation in trade is concerned.

The preamble to the protocol on trade recognises the significant contribution of trade to regional integration. This view is supported by this research which argues that, expanded trade will create linkages between producers, traders, and consumers from across all Member States, and that this will strengthen regionalisation. Secondly, the preamble pronounces recognition that integrated regional market will create opportunities for regional businesses. However, this work argues that this is not given. Integration has not created equal opportunities for men and women to benefit therefrom. Lastly, it states the desire to build a framework for trade that is based on equity. The question is, what did the substantive portions of the protocol do to ensure these lofty ideals in the preamble, in the interests of facilitating the participation of women in commerce in the region? The answer is that, unfortunately, the protocol adopts a gender-neutral approach to trade liberalisation. It addresses barriers that are encountered by traders, such as

²⁸ Article 5(1)(a).

²⁹ Article 5(1)(f).

³⁰ Article 21(30)(c).

tariffs,³¹ non-tariff barriers (NTBs),³² and quantitative restrictions.³³ It also provides for the implementation of trade facilitation measures.³⁴ Such barriers raise the costs of trade and diminish opportunities for trading because they restrict market access. However, these barriers will affect men and women differently; some with a disproportionately higher effect on women traders and women-owned/led businesses. For example, women traders and women-owned and led businesses suffer from low access to credit. This means that they can scarce afford trade costs, such as tariffs. Besides, the general obligation to reduce, and eventually eliminate tariffs, the article could have given expedited elimination of tariffs on products that are most typically traded by women, such as agricultural products, textiles and clothing. This would have ensured that women reaped greater benefits from the infrastructure. Article 14, when read with Annex III to the protocol enjoin Members to install measures to facilitate trade by reducing documentary and procedural requirements. Again, this is a measure that will benefit all traders, but more so women traders. As was seen in section 1.2 of this work, women suffer from low literacy and education rates. Thus, they struggle to meet stringent documentary requirements in trade. Furthermore, they are time poor, and cannot afford the burden of time-consuming long procedural requirements at borders. Thus, facilitating trade will be most beneficial to them. However, the annex could have gone further and provided for other trade facilitation measures that would address the challenges of women, in particular, that dissuade them from trading. On example would be improving access to trade-related information. Women, in particular, are challenged in accessing trade information. This is because sometimes the information is not publicly available. Or because it is disseminated through consultations with business associations, which tend to not have much membership of women traders and MSMEs. Or, lastly, information in the public domain may not be in a local language. Having a transparency commitment to make all trade-related information publicly available, including in the local language, would have gone a long way in assisting women to become better at trading. Thus, they would have become better integrated in trade and more significant contributors to regional integration.

Opportunities for addressing the challenges of women were also missed in coining Article 25 and Article 26 of the protocol. Article 25 recognises the need for Member States to address unfair business practices and uncompetitive behaviour. These are important to address because of their negative impact on fairness, equity, and inclusivity in commerce. However, the article could have specifically mentioned the need to address such practices especially in favour of MSMEs. This is because smaller businesses are the ones that suffer from uncompetitive market conditions. MSMEs are also the type of businesses that most women traders use to engage in trade. Thus, this omission to recognise the special context of such businesses has failed women. Article 26 binds members to adopt measures to promote trade. Again, mention could have been made of the need to pay particular attention to the adoption of measures that would assist the most disadvantaged demographics in trade. This would include women. Leaving this gap

³¹ Article 4 on import tariffs and Article 5 on export tariffs.

³² Article 6.

³³ Article 7 on import quotas and Article 8 on export quotas.

³⁴ Article 14.

means that Member States will continue to create neutral trade measures that don't consider the special position of women, thus failing to support their integration in regional trade.

Finally, like with the SADC Treaty, the institutional frameworks for the Protocol on Trade in Goods³⁵ neglects mention of equitable gender representation in any of the established organs. Further, it does not mention the pressing consideration to include gender implications in framing the work programmes of the organ. The protocol establishes the Committee of Ministers (CMT), which is responsible for supervising the implementation of the protocol. It does this based on reports made to it by the Committee of Senior Officials that are responsible for Trade Matters, which is responsible for monitoring implementation. It is informed by research conducted by the Trade Negotiation Forum (TNF). Finally, the Sector Coordinating Unit is required to engage with the private sector and identify needs and priorities in trade. These organs should be seeing the trend that trade and regional integration are not impacting women as much as men and they should have long reacted to with targeted measures to reverse the trend, if they are to truly support SADC's stated objectives of inclusively expanding regional trade for the benefit of the development of the region and of the livelihoods of its people.

1.4.3. The Southern African Development Community Protocol on Trade in Services

Trade in services is important in its own right because of its significant contribution to trade, Gross Domestic Product (GDP), employment and other economic outcomes. In addition, it is important for ensuring that trade in goods occurs efficiently. Goods trade could not exist without services, such as transport, communication, and finance. This is why, sixteen years after SADC Members created a protocol on trade in goods, they agreed to a protocol on trade in services. Article 2 of the protocol contains the objectives. One of which is to

promote sustainable economic growth and development, thereby raising the standard and quality of life of the people of southern Africa, supporting the socially disadvantaged and alleviating poverty through regional integration in the area of services.³⁶

Therefore, the protocol echoes the sentiments of the Treaty and goods protocol that came before it. Services trade liberalisation was meant, by the Community, to contribute to regional integration and development, as well as the development of the people in the region, while recognising the most vulnerable members. Of concern to this research is whether the contents of the obligations ensured that this objective would be reached.

Some of the provisions of the protocol can be classified as:

1. Those which are good for all traders, men, and women alike,
2. Those which may offer special advantages for women in particular, and
3. Failed opportunities for positively affecting the role of women in services trade, thus trade, regional integration, and development.

³⁵ Established in Article 31 of the Treaty.

³⁶ Article 2(2).

In the first category we have articles, such as: Article 14 on market access, Article 15 on national treatment and Article 20 on the right of free transfer. These will benefit all traders in the region, regardless of their gender. There are other articles that could potentially offer unique benefits to women, in particular. The first is Article 5 on the right to regulate to meet national policy objectives. Any Member State could raise this flexibility to instal domestic regulations that favour women in trade so as to expand their ability to participate in trade. Article 8 concerns transparency and requires every Member State to promptly publish all services trade-related measures.³⁷ The discussion on the Protocol on Trade in Goods elaborated on why transparency commitments may assist women more than men. Article 11 concerns the use of subsidies and allows members to implement them in their development programmes. Such programmes could be a basis for capacitating women in services trade. Finally, Article 12, read with Article 19, seeks to ensure the control of monopolies and exclusive service suppliers and unfair business practices. The discussion on the goods protocol elaborated why women traders and their businesses are exceptionally susceptible to such practices and why, the control thereof, would incidentally lead to the assistance of many women-owned/led businesses.

In the final category we have missed opportunities to specifically champion women in trade so that they can more ably contribute to integration and development. The first is Article 6 on domestic regulation. It provides that Member States have the right to regulate in order to achieve national policy objectives. Members could well take advantage of this flexibility and enact measures that are pro-women in trade. The article could have specifically alluded to this, inasmuch as its preamble declared support for the inclusion of disadvantaged sectors of society. Article 16 provides that services liberalisation will take place on phases. Phase one will involve liberalisation in six priority areas. These are: communication, construction, energy-related, financial, tourism and transport. This is a missed opportunity to have supported women in trade because, save for tourism, these are sectors where women have a very limited role. Construction, transport, and finance are male dominated in terms of business ownership and leadership. The implications are, thus, that women will not benefit much from this first round of services liberalisation because it primarily focuses on sectors in which they do not heavily participate. Finally, the institutional arrangements which are contained in Article 24 mirror those of the goods protocol and, thus, suffer from the same weaknesses.

1.5. SADC Legal Architecture: Gender Dimensions

It is undeniable that the SADC Member States prioritise gender equality and women's emancipation. This is seen thorough their participation in many multilateral instruments as well their own adoption of regional instruments that are geared towards dismantling gender discrimination in the region. There are many examples of both that can be pointed out. Multilaterally, they are parties to the Convention on the Elimination of All Forms of

³⁷ This is reinforced by an obligation to, at least annually, inform the TNF of any newly imposed laws, or changes to existing laws.

Discrimination Against Women,³⁸ the Beijing Declaration and Platform for Action,³⁹ and the United Nations Resolution 1325 on Women, Peace, and Security.⁴⁰ These are in addition to the landmark general human rights instruments such as the United Nations Charter,⁴¹ United Nations Declaration on Human Rights,⁴² and the two international human rights covenants of 1966 that they are parties to.⁴³ At the continental level, SADC members are parties to the Solemn Declaration on Gender Equality in Africa,⁴⁴ the Dakar Platform for Action,⁴⁵ and the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (2003).

In 1997 SADC Member States adopted the Declaration on Gender and Development. Its addendum on the Prevention and Eradication of Violence Against Women and Children was adopted in 1998. The Declaration calls upon Member States to

1. increase women's participation in politics and decision making to at least 30% by 2005,
2. reform all discriminatory laws and social practices,
3. promote women's full access to, and control over productive resources such as land, livestock, and markets,
4. address, prevent and eradicate violence against women and children,
5. promote women and girls' access to education, and
6. cultivate and promote a culture of gender equality and respect for the human rights of women in the SADC Region.

SADC has committed at the highest level to implement the Declaration and its Addendum. It developed a Plan of Action on Gender in 1999. This was subsequently reviewed in 2005 to update it, address implementation challenges, and to align it with the Regional Indicative Strategic Development Plan (RISDP).⁴⁶ The next plan is to develop a Regional Gender Policy to provide strategic direction to the organization, and its Member States. The SADC Protocol on Gender and Development was concluded in 2008 to, *inter alia*

provide for the empowerment of women, to eliminate discrimination and to achieve gender equality and equity through the development and implementation of gender responsive legislation, policies, programmes and projects.

³⁸ Adopted and opened for signature, ratification, and accession by General Assembly Resolution 34/180 of 18 December 1979. Entry into force 3 September 1981. All SADC states are parties to the convention.

³⁹ The Declaration was adopted at the Fourth World Conference on Women that was held in Beijing, China, in September 1995.

⁴⁰ Adopted by the Security Council at its 4213th meeting, on October 31, 2000.

⁴¹ Of 14 August 1941. Entered into force on 24 October 1945.

⁴² Of December 10, 1948. Entered into force on September 3, 1953.

⁴³ The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

⁴⁴ Adopted by the AU Assembly in 2004.

⁴⁵ This was adopted by African Ministers at the Fifth Regional Conference on Women, that was held at Dakar, Senegal from 16 to 23 November 1994.

⁴⁶ The consolidated document is called the Regional Strategic Implementation Framework on Gender and Development (2006-2010)

In 2019 SADC adopted a Regional Multi-Dimensional Women's Economic Empowerment Programme, aimed at promoting women's economic empowerment and gender-responsive development. However, the issue for this research is whether gender action is seen in the sphere of trade and development. It is one thing to address general barriers to equality and non-discrimination; it is another to ensure that these objectives correlates with objectives that are related to trade expansion and the progressive realisation of sustainable development. In the words of SADC's Executive Secretary, Mr Elias M. Magosi

it is not enough to simply implement Gender programs and assume that successful implementation equates to actual improvement in gender equality and women's empowerment. A relentless focus on the outcomes and actual impact are key in assessing whether and how the goals are being achieved over time.⁴⁷

Sections 1.2 and 1.3 of this work have highlighted that, despite these frameworks, women who make up half the population in SADC countries, continue to face discrimination and marginalisation in trade. This creates economic inefficiencies that perpetuate SADC's low rates of trade and development. Their exclusion from fuller participation in business and trade doesn't make economic sense. Economists will tell us that all resources should be applied towards economic development if we are to achieve real gains. However, these gender instrument have been unable to rectify gender-based trade disparities in the region.

The effect of the above is that women continue to bear the brunt of low rates of ownership and leadership in companies, they dominate in informal economic activities, where they receive little legal protections, and they cannot effectively plug into regional value chains (RVCs) and experience significant growth of their businesses and livelihoods. The sum effect is that they continue to suffer from disproportionately high rates of poverty. In turn, the entire region also fails to make significant strides in improving its development status.

1.6. Conclusions and Recommendations

This paper has argued that women are marginalised from fully participating in trade in the Southern African Development Community (SADC). This, it has been argued, is an impediment to the achievement of development and deepening regional integration, which are both espoused as fundamental goals in many of SADC's instruments, including in its founding Declaration and Treaty. It analysed the impediments to gender inclusive regional integration and identified weaknesses of the current normative infrastructure in SADC in addressing same. Although the organization's instruments espouse that SADC is based on the founding principles of equity, balance, and mutual benefit women do not seem to be enjoying either of these. The regional infrastructure, which is meant to be an enabler of trade, has not offered them salvation from their economic exclusion and poverty. This is because these instruments are gender-neutral and do not address the unique challenges faced by women traders, in particular.

⁴⁷ SADC, Gender and Development Monitor, : Women in Politics and Decision-Making, 8th edition, 2022, p.4.

This research, therefore, concludes that the gender dimensions of trade and development have not been given adequate focus in the legal frameworks of the Southern African Development Community. Women continue to face social, economic, cultural, and political marginalization. They suffer from gender-based violence and discrimination. They are primary victims of terrorism, conflict, and fundamentalism. SADC cannot transform economically while leaving behind half the population due to deficient prescriptive and institutional arrangements. It offers the following recommendations:

1. All SADC Member States must urgently review their domestic laws and ensure the full removal of discrimination against women. This relates to all laws that hamper their ability to participate in business and trade. For example, do their constitutions recognise gender discrimination? What laws in corporate sector are not conducive to the inclusion of women in business and trade? This review should include that of customary laws and practices, where these are the source of the discrimination. Regulatory audits of the extent of gender mainstreaming should be regular and ongoing.
2. All States should ensure that they are parties to gender-related multilateral and regional agreements. Although membership of treaties has been shown to not be a panacea of all that ails women in trade, nevertheless it is a good first step because such instruments provide guidance and allow for accountability.
3. States should conduct institutional audits of public institutions that are critical in the implementation of reforms. This includes both domestic and regional institutions. To what extent is their role in facilitating the participation of women well conceptualised and captured in the establishing instruments? To what extent are the institutions capacitated to carry out those roles? How can they be better empowered for maximum effectiveness?
4. Concrete strategic plans must be developed, at the regional level, as well as at the domestic level, on what to do to reverse the situation; including allocating responsibilities for action and imbedding milestones. These plans should be shared with the people of the region, as well as with development partners, in the interests of inviting partnerships and also of ensuring accountability.
5. Women should be included at all stages of all plans: from the conceptualisation of reforms and interventions to their implementation, monitoring, and evaluation. There must be efforts to ensure that a wide cross-section of women are included: those in the informal sector, MSMEs, the formal sector etc.
6. The private sector must support efforts to accelerate the participation of women in trade. For example, banks must accommodate women through the provision of appropriate finance instruments for them. Banks need to be more open to giving women financial services, including depositing, savings, investment, and credit services. This includes individual women, companies, and associations of women, including MSMEs and even informal cross border traders. Further, they should be flexible with their requirements for women, taking cognisance of their unique circumstances. This should include appropriate costs of transacting, bearing in mind that we have shown the lack of financial capacity of women. High transaction costs will dissuade women from using financial services. While platforms such as *Mpesa* etc have assisted women's financial

inclusion, they may not be able to offer the plethora of services that a fully-fledged financial institution can. Therefore, banks must come on board and do what they can to assist women. A good example is the Zimbabwe Women's Microfinance Bank that was established in 2018.⁴⁸ It warrants remembering that the African Union Assembly declared the period 2020 to 2030 as the Decade on Financial and Economic Inclusion for African Women.

7. Civil society organizations must be brought on board in tackling these issues. This is because they are skilled at advocacy. Government and private sector interventions are not enough; we need to change hearts and minds. This is because many of the impediments that women face are imbedded in social and cultural norms.
8. The organization must strengthen regional cooperation and coordination mechanisms. This is because the Members all experience similar challenges. Thus, this requires concerted efforts. The sharing of best practice and advice will be useful to overcome common challenges.
9. Members States should also join in global pursuits to supplement regional and domestic ones. Global agreements may also offer prospects of technical capacity building.

⁴⁸ <https://www.womensbank.co.zw>.