

AFRICAN SOCIAL OBSERVATORY PILOT PROJECT

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TABLE OF CONTENTS

FOREIGN DIRECT INVESTMENT IN AFRICA	29
SOUTH AFRICA (METSO MINERALS)	46
GHANA (WOOLWORTHS)	63
ZAMBIA (SHOPRITE).....	80
ZIMBABWE (SHOPRITE)	102

**Literature Review of Corporate Accountability
Frameworks:**

TOWARDS A SOCIAL OBSERVATORY OF MNC'S IN AFRICA

**For the Naledi Research Project:
Social Observatory on Multinational Corporations in Africa**

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TABLE OF CONTENTS

LIST OF TABLES:	3
INTRODUCTION.....	3
MNC'S IN AFRICA.....	3
CORPORATE SOCIAL RESPONSIBILITY	4
OVERVIEW OF RESEARCH ON LABOUR STANDARDS IN MNC'S	6
PRACTICAL RESEARCH: SOME SUCCESS STORIES:	8
LABOUR STANDARDS AND MONITORING OF MNC'S	9
THE INTERNATIONAL ARENA	9
LABOUR STANDARD CODES	14
MONITORING.....	15
EXPERIENCE	15
SAFEGUARDS.....	16
ENVIRONMENTAL STANDARDS AND MONITORING OF MNC'S.....	17
VOLUNTARY AGREEMENTS AND OTHER STRATEGIES	17
PROBLEMS WITH VOLUNTARY AGREEMENTS.....	18
EXPERIENCE	18
SAFEGUARDS.....	18
FOCUS FOR THE AFRICAN SOCIAL OBSERVATORY.....	18
AFRICAN PECULIARITIES	19
ORGANISATIONAL CAPACITY AND THE NEED FOR ALLIANCE BUILDING.....	20
HOW THE MONITORING CAN BE DONE?	20
LEGISLATION.....	20
CAMPAIGNS	20
BIBLIOGRAPHY:	24
WEB PAGES	28

List of Tables:

<i>Coca-Cola:</i>	8
<i>Bridgestone:</i>	9
<i>Nike:</i>	9
<i>MNC Codes of Conduct</i>	14
<i>Recent campaigns - Africa:</i>	21
<i>Recent campaigns - International:</i>	22

1. Introduction

The need for a social observatory on Multinational Corporations (MNC's) in Africa is raised in the Naledi project proposal. In short the motivation is that MNC's, while being the drivers of globalisation, have not been held accountable for their actions mainly because there is very little social control over them. This is especially the case in Africa with weak government regulatory frameworks and the sparse capacity of African trade unions to monitor and gather information on MNC's. Weak links among trade unions in various countries compounds this problem.

Internationally there has been a growth of organisations monitoring MNC's using certain established labour codes as a basis for this monitoring. This review attempts obtaining from existing literature the character of these organisations, what codes and monitoring mechanisms are used and the ability and obstacles to enforce and ensure compliance by MNC's of these codes. In addition a brief examination of pollution control and MNC's is included, to illustrate the similarity between these two issues.

An important question has emerged through the international experience with developing labour codes – is it a workers tool or a PR ploy? (Wick 2003) The literature on this question is not reviewed extensively here and will hopefully be taken up in the future so that together with the experiences in Africa a contribution to the broader debate on approaches to establishing frameworks and mechanisms for corporate accountability can be made. Suffice to say that the purpose of establishing a social observatory on MNC's in Africa is to build the capacity of trade unions to organise and campaign against violations of workers' rights by MNC's.

It is important to raise some peculiarities of the African context that will impact on the focus of a social observatory here and how it should view its work. A brief overview of research on labour, environmental standards and corporate social responsibility is provided to highlight the issues raised by this research. This is accompanied by a brief overview of recent civil society campaigns, both internationally and in Africa.

2. MNC's in Africa

Multinationals have been operating in Africa long before the wave of independence swept through Africa in the 1960s. While independence severed direct control by

European powers over African countries, existing political and economic structures remained largely intact. This was important for maintaining the process of accumulation and securing the interests of multinational companies in Africa. They played this role either through direct ownership, licensing agreements with governments or by being the sole buyer of particular primary goods produced in Africa.¹

The growth of FDI and the number of MNC's is one of the characteristics of globalisation. However Africa's share of the total FDI inflows has not increased during the 1990s, despite the numerous measures adopted to encourage these flows. Africa had a 2.3% share in 2001 which is only slightly higher than the 2% share received in the early 1990s. The number of MNC's operating in Africa is also very low compared to other developing countries. Privatisation is one of the major sources of FDI inflows to Africa and it remains debatable whether this is really the best way of attaining FDI.² There are, in addition, concerns that privatisation has resulted not only in job losses but also in the declining ability of people to access services. As the state loses control over public companies, its ability to deliver services and create jobs is greatly reduced.

South African MNC's have established themselves during the 1990s as big players on the continent, especially in the mining, energy, telecommunications, retail, media, information technology, transport, construction, and banking sectors. South Africa is now the largest FD investor in Africa with an annual average of \$1.4 billion since 1991³. This has raised questions about the role of South Africa in Africa. South African capital appears to follow the common international pattern of lower wages and labour standards in foreign operations⁴.

Given Africa's poverty statistics it can be expected that unemployment is extremely high and wages very low in Africa. According to the ILO, only "twelve Sub-Saharan African economies calculate unemployment rates, with many in the high double digits".⁵ The ILO notes, furthermore, "that real wage information for sub-Saharan Africa shows a general downward trend".⁶ Africa also has a high percentage of its labour force located in the agricultural sector (over 60%) which is a low paying sector with conditions of employment often much worse than in other sectors.

The objective of the social observatory is, therefore, to empirically verify what rights workers have and whether these rights can be used by workers to further their interests. The next section reviews literature on research of labour standards and the issues this literature touches on and shows how research linked to codes of conduct can develop into successful campaigns.

3. Corporate Social Responsibility

Corporate Social Responsibility (CSR) is where companies actively seek to fulfill civic and social responsibilities and conduct their operations in ethical and environmentally sustainable fashion. It is seldom initiated by the company concerned and is usually driven by civil society and underpinned by public pressure. Over 75% of those polled in surveys in the US and Canada in 2002 expected corporations to pursue civil and

¹ See Davidson. (1992: 162-242), Mafeje (1992: 30-41)

² Ilrig (1999)

³ Naidu & Lutchman (2003)

⁴ Miller (2002)

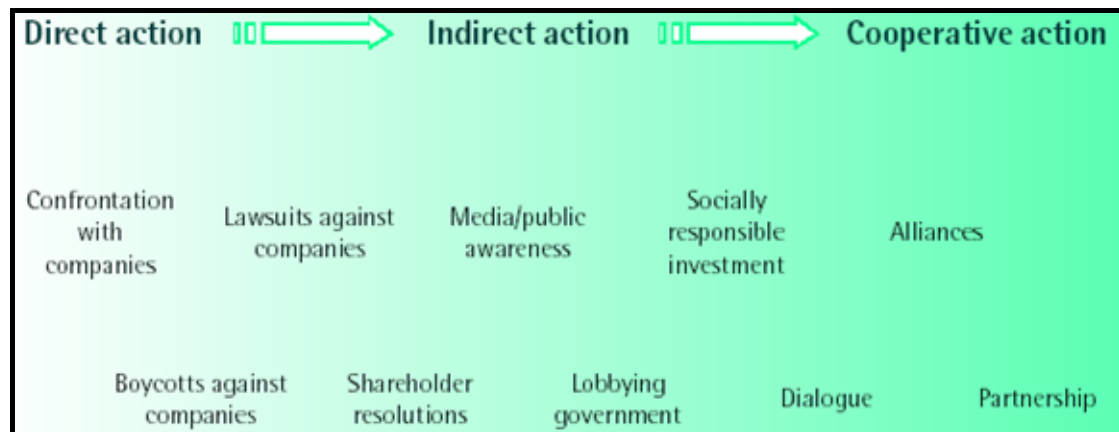
⁵ ILO – <http://www.ilo.org/public/english/employment/strat/kilm/kilm08.htm>

⁶ ILO – <http://www.ilo.org/public/english/employment/strat/kilm/kilm15.htm>

social responsibilities.⁷ However, even with the spread of CSR awareness amongst corporations, activists argue that it is unlikely that the majority of corporations will act responsibly, and so regulation by governments and international institutions can ensure social responsibility. CSR change is often driven by civil society pressure through various NGO's, sometimes working with the corporation to design monitoring systems and CSR priorities, but often working from the outside to actively pressurize the corporation into adopting CSR. As institutions that work on a profit motive, social responsibility is not inherent to a company's motivations.

A representation of how civil society organizations promote CSR activities is shown below. The tactics are those often used in structured campaigns against specific corporations or economic sectors (e.g. apparel sector). Examples of recent campaigns are given later in this review.

Figure 1: How civil society promotes CSR



Source: Oliviero and Simmons, 2002

Investor action can also lead to change. Socially responsible investing, as encouraged by investor pressure groups, can influence company behaviour. Pension funds and institutional investors can wield significant power over boardroom decisions. In recent years socially responsible indexes have sprung up in the UK and US to cater for those investors who want a guaranteed ethical investment⁸. The performance of these indexes has often been above the rest of the stock market. Investors either screen out 'bad' companies or actively locate 'good' ones⁹. The move to ethical investment has continued growing, with a Europe-wide structure for ethical investment, European Sustainable and Responsible Investment Forum (Eurosif) was launched in 2001. The campaign against investment in South Africa during Apartheid is a good example of the pressure that can be brought to bear and the results that can be achieved.

Partnerships are also formed between CSO's and corporations to advance social responsibility. Although seen as limited by some activists due to the inclusion of industry, the partnerships allow the CSO's to combine their independent monitoring and publicising ability with the industry association's relationships with corporations.

⁷ Oliviero and Simmons (2002)

⁸ The amount invested has risen in the US from \$40bn in 1985 to \$2.2 trillion in 2000 (Social Investment Forum). The UK value is 430bn Pounds under pension funds that use social responsibility.

⁹ Dow Sustainability Group Index, FTSE4 Good Index, Domini 400 fund

This allows for more comprehensive design and enforcement of preventative programmes.¹⁰ Multilateral examples of this include the World Bank's Business Partners for Development and the UN's Global Compact.

The issue of corporate social responsibility (CSR) has an impact on the promotion of labour and environmental standards, with corporations often accused of using CSR to cover over or counter balance their less socially responsible practices. Research done by Hamann and Bezuidenhout (2003) highlights the fact that large South African companies in the mining sector often feel driven to adopt CSR and improve their image as a result of their increased international exposure. Allied to this is a desire to keep responsibility for standards limited to the more visible companies, without assuming responsibility for the entire value chain. A gap also still exists between corporate 'greenwash'¹¹ and operations on the ground (Hamann & Bezuidenhout: 2002).

An interesting aspect to SCR in South Africa is that companies prefer to describe their funding activities as Corporate Social Investment (CSI). This removes the potentially political label of 'responsibility' from companies that are usually largely white. It also allows them to highlight only the investment itself and not the methods which produced it – which is the more traditional focus of CSR. CSR in South Africa is also largely focused on education, with environmental issues seen as secondary.

Initiating, monitoring and enforcing of CSR has led to the creation of codes of conduct and voluntary agreements as noted below, with the codes promoted by CSO's and the voluntary agreements promoted largely by corporations.

4. Overview of Research on Labour Standards in MNC's

Research on labour standards (wages, industrial relations, conditions of work) have been done both by unions and organisations that monitor MNC's. The ICFTU prepares annual country studies that survey violations of trade union rights in particular countries (www.icftu.org). The Mexican survey reveals that certain aspects of the labour legislation is problematic – especially regarding legislation that allows only one union to organise in the civil service. It also raises problems of the violations of workers rights and legislation in the maquiladoras – low wages and poor working conditions, and few benefits. The Vietnam survey reveals that there is no trade union independence from the ruling party and there are many restrictions on the right to strike. Many MNC's in Vietnam do not abide by the labour regulations in any case without any action being taken against them. The Cameroon survey reports that unions are denied the right to organise in export processing zones and that companies operating in these zones are exempted from certain labour legislation. In addition, government interferes in the affairs of unions and has even established a rival union federation after the traditional federation opposed austerity measures being imposed by the government.

One of the critical issues that emerge in the literature on developing countries is whether labour standards are being imposed on them through trade and other multilateral agreements, for example, the negotiations between South Africa and the USA on a free trade agreement in which the USA is demanding that SA complies with core labour standards. (South African Labour Bulletin 2003) While organisations

¹⁰ E.g. the Ethical Trading Initiative in the UK

¹¹ Greenwash is an attempt to disingenuously portray the company as environmentally or socially responsible, without attempting to adjust internal policies, so as to portray an environmentally responsible public image.

like the Fair Labour Association adopt a position of universalizing core labour standards to prevent a “race to the bottom” other views exist that either refute this or argue that there needs to be a development approach to labour standards. The latter view basically argues that given the development challenge of developing countries, they need to approach labour standards within this framework and ensure that they bolster rather than undermine development potential. There is also an argument that the imposition of labour standards on developing countries is merely used as a protective barrier by developed countries, thereby making developing countries wary of adopting labour standards in line with this. (Singh & Zammit 2000)

In southern Africa, regional integration has led to processes of harmonization on trade and investment regulations as well as financial and competition regulations. There has not been progress in the Southern African Development Community on labour standards harmonisation; however, key trends are unfolding in what Edward Webster (2001) calls the “evolving labour relations system in southern Africa” that poses serious challenges to the labour movement. Liv Torres (1998) produced a research report that covers the following topics in the southern African labour market: employment, child labour, minimum wages, social security and minimum standards, HIV/Aids, migration, women workers, etc. She concludes that no country in the SADC region has reliable national labour market statistics and there is a need to make improvements in this area.

Research on MNC’s in southern Africa during 1980s focused on their complicity with the apartheid government. (ICFTU 1981; Kibbe & Hauck 1988; Adler 1989; Budlender 1989). The research, therefore, did not survey labour standards except to mention that under apartheid certain rights were lacking and that in general black workers had poor working conditions and low wages. In line with the focus, the attempt was to expose companies doing business with the racist government in South Africa and thereby profiting from the apartheid system.

Initial research on labour standards emerged through research focusing on EPZs (Export Processing Zones) in southern Africa during the 1990s. EPZs were an attempt by governments in the region to attract foreign direct investment, specifically to enhance the exports of the region. Concerns were raised about worker rights, for example, the right to strike. Other concerns were around casualisation, low pay and benefits and the impact of EPZs on women. (Jauch, Keet & Pretorius 1996; Ilrig 1996) Subsequent research on EPZs revealed, in addition to poor labour standards and low pay, employment creation expectations have been dashed as companies adopt capital intensive measures. (Newman & Pape 1999)

Darlene Miller has done work on labour standards in Zambia and Mozambique with a focus on South African MNC’s in these countries. Her target company was Shoprite Checkers. At the store in Mozambique there was a strong sense that South African companies are exporting apartheid to Africa. This emerged from interviews of trade union members in which they highlighted the racial structure of management at the store. (Miller 2000) She also highlights the low wages, the lack of paid sick leave and abuses suffered by workers at work. Workers at the newest Manda Hill shopping centre in Zambia raised many grievances (Miller 2003): they are paid low wages, they are employed on a casual basis, there is continuous intensification of work and some workers are working over 60 hours a week. Miller concludes that regional integration may not live up to its promises, especially for workers who will see labour standards dropping.

Leon Pretorius (2000) has also done research on a South African MNC, Billiton (now based in London), operating an aluminum smelter in Mozambique. He finds that

workers at Billiton are paid higher than the national average and have better benefits than the required legislation. The company is also keen to maintain good industrial relations. Despite this there have been several cases of industrial action on the part of workers, mainly around wages and wanting to be paid on par with South African workers.

Other research done on the role of Trade Unions, specifically on the effects of their political affiliation, show that some countries in southern Africa, while having adopted ILO conventions, have national laws that are in contravention of these conventions. An example is the Botswana Employment Act of 1992 which excludes civil servants from joining trade unions even though Botswana has ratified the ILO convention 87 on the freedom of association and the protection of the right to organise. Another issue in Botswana is the complicated procedures necessary for embarking on a legal strike that makes it virtually impossible. (Dlamini 2002) Research done by LaRRI in Namibia also bears out the problems of EPZs but raises concern of a more recent phenomenon – labour brokers or labour hire companies. These companies employ workers on a contract basis and provide services to other companies, thus saving them from the responsibility of hiring and firing workers. LaRRI asks if this a new form of slavery? (Jauch 2002)

4.1 Practical Research: Some Success Stories:

Much of the research done in southern Africa has not yet led to vibrant campaigns. The examples below, however, show how research can be linked to codes of conduct and how successful campaigns can emerge. The literature also reveals some important lessons of this exercise.

4.1.1 Coca-Cola:¹²

This particular case study highlights how Coca-Cola failed to act where gross human rights violation occurred at companies associated with it but had to accede once pressure mounted. A licensed bottler of Coca-Cola in Guatemala, owned by an American businessman, was involved in violent labour practices and union bashing. Workers were denied the right to organise and bargain collectively. During 1979 and 1980, a number of unionists and workers employed at the plant were murdered, with the help of government forces, to suppress their demand to renegotiate a collective bargaining agreement. Coca-Cola refused to take responsibility arguing that the bottler was an independent company. Furthermore an independent investigation by Coca-Cola failed to link the owner with the current violence at the plant.

Action Taken: From January 1980, IUF engaged Coca-Cola at their head-office demanding it sell the plant and license. They also made the following demands: unions to be recognised; collective bargaining in good faith; no victimisation. Coca-Cola took no concrete action. From April 1980, IUF then campaigned for worldwide trade union support. This resulted in protest action by workers at other Coca-Cola plants in over 30 countries. By October 1980, Coca-Cola submitted to mounting international action and subsequently took over the management of the plant. Furthermore, the company acceded to the other demands of workers as well as establishing a fund to assist the families of murdered workers.

¹² Based on the Secretariat Report (1980) to the International Metalworkers' Federation (IMF) central committee and a series of extracts from the newsletter of the International Union of Food and Allied Workers' Association (IUF), which formed part of the report.

Lessons: A united international campaign comprising mainly of workers successfully pressurised the company to establish sound industrial relations and ended the murder and victimisation of other workers.

4.1.2 Bridgestone¹³:

The company was accused of paying workers minimum wages and subjecting them to poor and unsafe working conditions.

Actions Taken: In July 1994, 6000 United Steelworkers of America (USWA) went on strike to protests against wages and working conditions. The company replaced striking workers with scab labour. However USWA received support from trade unions in Japan, Europe and Latin America. The strike ended in May 1995, 11 months after it had started with a final agreement only being reached in 1996. Workers received an "... across-the-board wage increase, bonuses and many other concessions. All union members were reinstated.

Lessons: A united local campaign by workers engaging the company and supported by an international alliance of workers applying pressure over a protracted period to make the MNC finally submit.

4.1.3 Nike¹⁴:

In May 1994, after hosting a seminar on corporate codes of conduct in Paris, International Restructuring Education Network Europe (IRENE) and Agir Ici (Act Here) decided to started a campaign against Nike. The campaign was targeted at Nike because it wanted to "... exploit the company's position as a market leader". Furthermore the campaign would focus on exploitation and harassment of workers in Indonesia manufacturing Nike products. One of many sub-contractors of Nike in Indonesia had dismissed 21 workers for demanding the legal minimum wage, better working conditions and freedom of association. These employment practices had become synonymous with working for Nike sub-contractors.

Actions Taken: Boycotting Nike products were excluded from the campaign, as Indonesian workers feared it would lead to job losses. A mass awareness campaign was started informing the public of corporate codes of conduct and Nikes non-compliance. Dialogue with the company was also pursued.

Lessons: There needs to be a broad campaign that can apply pressure to MNC's. Dialogue with MNC's must be tackled, not by NGOs, but an intermediate credible party or body.

These cases show that codes of conduct, and research on MNC's compliance with these codes, can be linked to successful campaigns. The next section reviews existing codes of conduct.

4.2 Labour Standards and Other Monitoring of MNC's

4.2.1 The International Arena

The current literature available provides detailed information of various organizations and institutions worldwide that actively seek to ensure higher labour standards being adopted and implemented by MNC's. The information provided includes the type of

¹³ Tackling Transnationals - A resource pack for activists: International Labour Resource and Information Group. (ILRIG: 1997)

¹⁴ Making it our business – European NGO campaigns on transnational corporations. Report to Catholic Institute for International Relations. (CIIR1996)

organization or institute, contact details including websites and e-mail addresses and specific activities and/or causes which it promotes or advances. This is normally provided as appendices to publications and research material.¹⁵

Other critical information provided is the historical development of investigating MNC's with specific reference to case studies. Case studies are also used in an attempt to analyse and understand how best to challenge the power that MNC's wield. The role that codes of conduct perform as well as other instruments, e.g. Framework Agreements, available to activists is critically examined to establish its effectiveness in regulating the activities of MNC's.¹⁶ Websites of specific organisations provide an in-depth profile of the nature and structure of the organisation, the modus operandi and the status of current campaigns waged.¹⁷ The development of communication technology has meant that breaches in corporate behaviour are quickly reported worldwide and opposition rapidly mobilised.

Notwithstanding the tireless work of many individuals and organizations and special victories attained, what can be gauged and captured from the available literature and information, with specific reference to codes of conduct, is that there still remain basic obstacles for its proper implementation:

- Firstly, most MNC's do not want to subscribe to internationally accepted codes of conduct and prefer business friendly codes or initiate and develop their own 'diluted codes'.
- Secondly, where MNC's are signatories or bound to certain codes due to government legislation or previous campaigns targeted at them, they argue for self-regulation and reject independent monitoring.
- Thirdly, where MNC's are guilty of breaching codes of conduct there is no agreed upon punitive measures or sanctions that penalise or prevent MNC's from continuing their unacceptable practices. One of the reasons suggested is that where MNC'S face fierce opposition, they threaten to relocate elsewhere to more "friendly socio-economic and political environments" where they can pursue their business interests uninterrupted. This reason forms the motivation for seeking the universal application of codes of conduct and other frameworks to regulate the accountability and social responsibility of MNC's.
- Fourthly, campaigns to popularise codes are often cyclical and NGOs find it hard to sustain pressure on MNC's for long periods of time, both financially and logistically. Public opinion and behaviour is also difficult to mobilise over extended periods of time and often returns to its original pattern. The creation of an international legally binding social standards to underpin such codes may be effective as long as it is not selectively used as a trade barrier against poorer nations, which suffer from a lack of implementation capacity. However where initiatives such as the Global Compact have been launched, they have been unsuccessful in controlling MNC's.

¹⁵ ILRIG (1997), Vander Stichele & Pennartz 1996, Wick 2003,

¹⁶ Vander Stichele & Pennartz 1996, ICFTU 1980, Venkata Ratnam 1996, Observatorio Social Brazil 2002

¹⁷ www.somo.nl, www.cleanclothes.org.za, www.fairlabor.org.za, www.endgame.org.za, www.corporatewatch.org, www.elipson.com/sa8000, www.ilo.org, www.fairwear.nl, www.sa-intl.org, www.workersrights.org, www.wrapapparel.org, www.unglobalcompact.org, www.oecd.org, www.fairtrade.net, www.worldshops.org, www.mcspotlight.org

Current literature also elaborates on the challenges facing those wishing to regulate MNC activity in relation to the above obstacles and other problems that activists encounter in their daily and long-term struggles against MNC's. There is an underlying consensus in the literature with respect to strategies and the way forward.

- Information on MNC's, collaboration and the expansion of activist networks; independent monitoring; continued pressurizing of governments and multi-lateral institutions; and public awareness are all regarded as critical components of successful campaigns.
- Acceptance, implementation and monitoring of codes of conduct are regarded as instrumental for creating a regulatory environment within which MNC's have to operate.
- Long term success may be tied to the introduction and implementation of internationally binding regulation on observance of core labour rights, linked with an effective sanctions mechanism, i.e. a social clause in the WTO, linked however to a revised Dispute Settlement Mechanism. As long as the existing mechanism is used, it will prove to be too expensive and damaging to developing nations to invoke it, thus allowing developed nations to abuse any social clauses for protectionist purposes. A revamped version of global corporate accountability standard overseen by the UN may be a way forward.

An issue that requires further research and debate is which role/s best suits trade unions in terms of capacity and resources to engage MNC's. For example, are trade unions best suited to monitor MNC's and if so should they not be more actively involved in social audits with other stakeholders? Should they push mainly for the creation of national laws rather than target individual companies? Also the role of trade union investment companies need to be re-examined in order to establish how it's financial and investment leverage can compliment campaigns waged against MNC's. Furthermore, information on MNC's and effective communication of that information is critical to role players, yet this information remains fragmented and therefore a serious attempt should be made to create a data base that consolidates this information.

Along these lines the recent launch of the International Right To Know (IRTK) campaign seeks to address this issue of information. The IRTK coalition is calling on US business to build trust by disclosing the same kind of information for their operations abroad that is required in the US, such as information about their labour, environmental and human rights practices. In many cases the information is kept secret in order to conceal serious abuses of human rights, labour and the environment¹⁸.

The problems inherent in monitoring and controlling MNC's are epitomised by the apparent failure of the recent Global Compact¹⁹ initiative, mooted by Secretary-General Kofi Annan at the Davos symposium of the World Economic Forum, and now launched under the UN and the International Chamber of Commerce, to deliver on its promises. The theory and reality of the Global Compact have proved to be very different:

¹⁸ IRTK campaign (2003)

¹⁹ This initiative seeks to co-opt business to achieve various benefits in terms of resource mobilisation and promotion of certain values and forms of governance.

Theory: With the Global Compact, the Secretary-General asked world business to follow nine basic principles. *Reality:* Some companies that joined the Compact violated them almost immediately.

Theory: The Global Compact is a learning forum. *Reality:* In a year and a half, not a single learning forum case study has been published.

Theory: The Global Compact advocates openness and transparency. *Reality:* The names of most participating companies are secret.

Theory: Corporate use of the UN logo is strictly controlled. *Reality:* Corporate use of the UN Global Compact logo is not controlled

International NGOs note that the Global Compact has been hijacked by MNC's who use it as propaganda or 'bluewash' whilst continuing with harmful activities. Global business, as represented by Business Action for Sustainable Development (BASD) has as one of its central political goals the avoidance of new regulations and the promotion of voluntary measures and self-regulation²⁰.

From the perspective of corporations, the partnerships may have more to do with seeking competitiveness and legitimacy rather than humanitarian or developmental goals of the UN. Critics also argue that the UN agenda is influenced by financial considerations, UN agencies may be pursuing a narrow financial agenda, compromising their values, standards and conventional agenda for financial reasons²¹.

A secondary aim appears to be the avoidance of NGO criticism. NGOs have now proposed replacing the Compact with a Convention on Corporate Accountability. They believe the Global Compact should be renamed the Global Accountability Compact and substantially redesigned. The redesign should make clear that it is not a partnership of allies that agree on all goals, and should clarify that the purpose of the Compact is not to support a liberalized trade agenda. The Compact should include provisions for monitoring of compliance with its Principles, and for public review of corporate case studies. Global Accountability Compact companies should commit to supporting the implementation of UN-brokered multilateral agreements. However, the 2002 Johannesburg summit was unable to deliver such commitments and the struggle by NGOs for MNC accountability is ongoing. A recent initiative is the move by the International Congress of Free Trade Unions, amongst others, to draft universal norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights.

A further proposed initiative²² is the International Investment Agreement, to promote quality investment and core standards for corporate responsibility. This agreement would enable governments to attract high quality investment as part of a sustainable development strategy - a rules based system which provides sufficient stability so that foreign direct investment is attracted to developing countries, while at the same time maintaining sufficient flexibility so developing country governments can attract high quality investment and ensure that the investment contributes to pro-poor growth. The agreement would also protect basic rights through global standards for the operations of foreign investors. Multinational corporations, rather than

²⁰ Bruno (2002)

²¹ Utting (2000)

²² Proposed by the World Development Movement (www.wdm.org.uk)

governments, would be responsible for complying with standards to protect the rights of individuals and communities, all based on existing UN agreements.

Enforcement of such an agreement would be via an international agreement on Core Standards for Corporate Responsibility, establishing a Core Standards Commission (CSC). This could comprise representatives from business, trades unions, governments and the law. It would cover all the core standards. The CSC would hear complaints against companies who are accused of breaching the internationally agreed core standards. If, prima facie, there were a breach of local law, then the commission would be entitled to issue proceedings against the company in the local courts. The commission would be acting on behalf of the victim and would only proceed if their permission is received. Governments could also enforce the decision themselves through their own courts.

List of Key International Organisations Seeking to Influence Conduct of MNC's:

- International Labour Office(ILO)
- Organisation for Economic Co-operation and Development (OECD)
- International Textile , Garment and Leather Workers Federation (ITGLWF)
- International Confederation of Free Trade Unions (ICFTU)
- The United Nations (UN)
- IUF
- United Nations Development Programme (UNDP)

List of Some Organisations Developing Codes:

- International Labour Office (ILO)
- Organization for Economic Co-operation and Development (OECD)
- Fair Labour Association (FLA):- Accredited 3rd party monitoring
- Ethical Trading Initiative (ETI):- Multi-stakeholder monitoring
- Clean Clothes Campaign (CCC) :- Multi-stakeholder monitoring
- Social Accountability International(SAI):- Accredited 3rd party
- Workers Right Consortium (WRC):- WRC Agency
- Worldwide Responsible Apparel Production (WRAP) - Accredited 3rd party
- OECD:-Trade Union Advisory Committee and National Contact Points of the OECD perform monitoring

List of Some Organisations Monitoring and Researching MNC's:

- Agir Ici
- A SEED
- Catholic Institute for International Relations (CIIR)
- Ecumenical Service for Socio-Economic Transformation (ESSET)
- Women Working Worldwide
- IRENE
- IRTK Coalition
- Boycott Quarterly
- Maniben Kara Institute
- Observatorio Social
- World Development Movement
- CorpWatch
- CSR Europe
- Multinational monitor

4.2.2 Labour Standard Codes

Codes of conduct for multinationals are merely recommendations. Even if the codes have been agreed by a number of sovereign states, or such other entities as have been granted international personality by sovereign states, they do not have a status of international law which would set a binding effect on multinationals operating in those states which have adopted or joined the code. As a result, codes of conduct for multinationals impose no legal, but only moral, obligations on companies, and they are not as yet capable of enforcement by the application of external sanctions. For multinationals, the commitment to the codes is voluntary. But some organizations have placed the acceptance of their code as a condition to their membership or licensing agreements²³.

There is currently a proliferation of codes. An OECD review on codes of conduct dated June 2000 lists 246 codes, most of which were issued during the 1990's. Of the 246 codes, 118 (48%) were issued by individual companies; 92 (37%) by industry and trade associations; 32 (13%) by partnerships between stakeholders including unions and NGOs and 4 (2%) by intergovernmental organisations.²⁴ Individual companies have therefore generated the majority of codes during the 1990's. Steve Gibbons states that one of the reasons for this trend " ...was to try and deflect some of the bad publicity by passing the buck down to the supplier".²⁵

Below are some existing codes of conduct that either have labour standards as its core objective or as an integral part of it:

Code	Country Based In	Year Started	Members
Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy	Geneva	1977	Member states of ILO
Guidelines for Multinational Enterprises	France	1976 (Revised 2000)	OECD- Member States
Universal Declaration of Human Rights	Switzerland	1948	U. N. – Member States
ILO – Declaration on Fundamental Principles and Rights at Work	Switzerland	1998	ILO - Signatories
Labour standards in the Nine Principles of Global Compact	Global	1999	U. N. -
SA8000	United States	1997	
Code of Labour Practice for the Apparel Industry including Sportswear	Netherlands	1998	Coalition of Trade Unions, consumer and human rights and women organisations

²³ ILO, Bureau for Workers Activities, Codes of Conduct for Multinationals.

²⁴ Wick 2003

²⁵ Gibbons 2003

ETI Base Code	U.K.	1998	Alliance of companies, NGOs and trade union organisations
Workplace Code of Conduct	U.S.	1997	U.S. companies
Cadbury Code	U.K.	1998	U.K. companies
Code of Labour Practice	Netherlands	1997	Dutch companies
Charter of the European Social Partners of the Textile and Clothing Sector – Code of Conduct	Europe	1997	Member organisations
International Trade Secretariat Framework Agreements	Various	Various	Various
Round Table on Codes of Conduct	Germany	2001	German companies
Global Alliance	USA	1999	Nike, World Bank, International Youth Foundation
Sweatshop	USA	1997	Apparel Retailers and Manufacturers
Clean Clothes	Netherlands	1990	Apparel Retailers and Manufacturers
Global Compact	Switzerland	1999	Various MNC's
Worldwide Responsible Apparel Production	USA	1998	Apparel Manufacturers

4.2.3 Monitoring

The various codes interpret and implement monitoring differently – there is no consensus amongst the various codes of what constitutes monitoring.²⁶ The underlying reasons being the proliferation of codes, logistical problems where a complex supply chain exists and the absence or lack of multi-stakeholder involvement and participation. Some codes, for example, define an announced inspection or a visit at a plant or factory as constituting monitoring. For other codes, monitoring means adherence to prescribed stringent and rigorous procedures. There is however consensus amongst codes that monitoring is essential if it is to be effective. The literature clearly distinguishes between inspections, assessments, evaluations and auditing in an attempt to reach a common understanding of what monitoring and compliance should constitute. The debate in the literature centers around who should be responsible for monitoring codes; best practice for implementing codes; scope of application; verification and reporting and finally the processes and procedures that deal with complaints, appeals and corrective action.

4.2.4 Experience

There have been a number of groundbreaking victories won against a number of powerful MNC's internationally. Well known cases include Nestle and its baby milk substitutes and Coca-Cola and its franchise in Guatemala.²⁷ However codes of conduct should not be allowed to act as substitutes or alternatives to legislated

²⁶ *ibid*

²⁷ see Vander Stichele & Pennartz 1996, ICFTU1980.

regulatory frameworks and sound and stable industrial relations. Rather codes remain a “parallel” means to promote acceptance and adherence to internationally accepted labour standards and environmentally safe practices. For example, in 1988 International Baby Food Action Network (IBFAN) still reported continued and widespread non-compliance with the International Code of Marketing Breast Milk Substitutes after its adoption in 1981 and the boycotting of Nestle products in 1977.²⁸ From the literature one can identify the pivotal role that codes of conduct fulfill to engage MNC’s. However due to corporations vacillating commitment, codes should be regarded as an opportunity and platform to empower workers and civil society and to strengthen the international labour movement and build international social partnerships. A statement by Dwight Justice captures the perceptions of trade unions regarding codes of conduct

“Some trade unionists saw the new codes as the privatisation of labour law and a means of avoiding regulation. Others saw ... potential for assisting governments in developing or applying law. Some ...saw (codes)...as a dangerous substitute for collective bargaining ...Other saw.... potential to create space for workers to exercise their rights. In the end, all of these seemingly contradictory perceptions proved true to one degree or another”.²⁹

4.2.5 Safeguards

From the literature and experience of developing codes for and monitoring MNC’s, key principles can be discerned to ensure that these codes do not merely serve as a public relations exercise in which MNC’s enhance or regain their public image while ensuring high profitability.

First, codes should not remain at a voluntary level. While voluntary company adherence to codes does raise standards generally there are numerous problems with ensuring that this is maintained. The reason is that other companies use their non-compliance as a competitive advantage over companies abiding by certain codes. One area where legislation can really improve is by ensuring that companies participate in a basic social reporting system in which they should comply with accepted international social and environmental standards.

Second, in terms of setting standards, basic rights of workers need to be used as an absolute minimum, that is, the right to organise and bargain collectively, the right to refuse forced labour, the right to reject discrimination at work, and the right to reject child labour. These basic rights are all contained in the ILO Core Labour Standards set out in the following 8 ILO conventions (see ILO website for detail of these conventions.):

- Convention 29 (Forced Labour),
- Convention 87 (Freedom of Association and the Right to Organise),
- Convention 98 (The Right to Organise and Collective Bargaining),
- Convention 100 (Equal Remuneration),
- Convention 105 (Abolition of Forced Labour),
- Convention 111 (Discrimination in Employment and Occupation),
- Convention 138 (Minimum Age),
- Convention 182 (Worst Forms of Child Labour)

²⁸ see Vander Stichele & Pennartz 1996

²⁹ quoted in Gibbons 2003.

Third, monitoring should not be a partial or once off process. It is insufficient to audit a company in one year and for years after maintain that it continues to comply with standards set out in the codes of conduct. It is also insufficient to make generalizations from a company's performance in one country. It has often occurred that companies comply with certain standards in one country and violates them in another. So monitoring should include subsidiaries, their suppliers and their subcontractors.

Forth, trade unions are essential stakeholders in both the setting of standards and monitoring of MNC's. While other stakeholders may be directly or indirectly affected by the company's operations, workers' understanding of codes is the best way to ensure that companies comply. Without strong worker participation, codes may be violated for long periods without any reporting of this. This only works if workers have already attained the right to organise and work in an environment where they are free from intimidation.

5. Environmental Standards and Monitoring of MNC's

Environmental pollution impacts directly on worker communities as workers are exposed to this pollution in the workplace and in many cases these communities are located close to industrial areas. MNC's have developed a number of response strategies to deflect the move toward monitoring and accountability. MNC's see the move towards monitoring of labour and environmental standards as attempts to curtail their profit maximisation strategies. The literature lists a number of responses by MNC's which can be broadly summarised as engineering change to stay the same³⁰. MNC lobby groups have enormous budgets and operate within the centres of global political power in order to either derail attempts to increase accountability or force relaxation of existing measures of accountability. The success of MNC's during the 1992 Rio Earth summit in mobilising support and countering efforts aimed at controlling their activities is an example. As a result, no binding regulation of MNC's was agreed to. Examples of MNC efforts include greenwashing, self-regulation through voluntary measures and finally disinformation.

5.1 Voluntary agreements and other strategies

MNC's use 'greenwashing' to distort facts and scenarios. Greenwashing is where MNC's use disinformation and green propaganda and social investment to cast their activities in a positive light. Negative activities are not changed, but positive ones are highlighted. This has been accompanied by 'blue-washing', whereby transnational corporations use humanitarian themed propaganda, their formal role and increasing influence within the United Nations to limit the options for effective global rules and regulations by which citizens can hold MNC's accountable and liable for abuses.

Self-regulation through voluntary measures – industry has attempted to convince governments that self-regulation through voluntary measures is more effective and economical than legislation and attendant regulatory regimes. This is often used as a time consuming diversion from drawing up legislation. The voluntary measures are seldom effective unless preceded by legally binding agreements, and the voluntary agreements are then used to 'top-up' the legally binding ones. Voluntary agreements for environmental issues are even harder to enforce than codes of conduct for labour rights.

³⁰ Groundwork (2002)

Prioritisation - MNC's in developing countries often attempt to downplay the impact of poor or exploitative labour and environmental conditions. Typical responses include benchmarking wages to local conditions, using high unemployment as the alternative, casting diseases such as Aids and malaria above pollution produced diseases, or listing infrastructure or energy needs as more significant. Economic development is delinked from labour and environmental rights. Powerful lobby groups are employed to sway governments in both the developed and developing world.

5.2 Problems with voluntary agreements

Voluntary agreements for pollution control are seen as ineffective in the literature. Environmental activists note that they do not work in the absence of other related regulatory mechanisms. International experience has shown that effective and consistent enforcement of pollution control laws and standards is required for voluntary agreements to be taken seriously by industry. Green taxes or financial incentives or penalties reinforce voluntary agreements³¹. A few of the mistakes often made by host countries include placing voluntary agreements ahead of legal agreements, allowing industry to drive the process, allowing industry to provide data and excluding affected communities from the process.

5.3 Experience

The UN Environment Programme notes in a recent ten-year review of industry and sustainable development that very few businesses act sustainably. Global manufacturing appears to be relocating to countries with weak or non-existent regulatory structures and enforcement regimes. This echoed a 1999 OECD study which stated that the environmental effectiveness of negotiated agreements is largely unproved. A case study of Indonesia by Kemp (2001)³² showed that agreements bypassed worker communities and allowed corporations to operate outside of parliamentary oversight and national regulatory systems.

5.4 Safeguards

Legally binding agreements should be implemented timeously, without allowing MNC's to delay the process. Such agreements should be nationally applicable. Data should be independently collected and monitored. Government departments mandated to enforce environmental agreements should be effectively staffed and financed. Voluntary agreements should only be implemented in conjunction with legally binding agreements. The UNDP has proposed the standardisation of systems of social auditing, covering labour, human and environmental rights. In essence the UNDP proposes revitalising the debate around an international code of conduct for TNC's.

6. Focus for the African Social Observatory

The proposed Social Observatory will join a wide collection of civil society organisations (CSO's) within and external to Africa, which are dedicated to Africa's economic, political, and social development. This includes amongst others reform of various workplace, environmental, human rights and labour law issues in the diverse states of the continent. African CSO's have identified challenges facing them such as increasing advocacy, research, economic literacy, building information networks, developing independent policy proposals, the need to participate in policy formulation processes, and increased regional and continental networking. That African CSO's

³¹ Groundwork (2002)

³² Cited in Groundwork (2002)

can network and operate collectively was displayed during the lobbying of politicians prior to the World Summit on Sustainable Development in 2002. African delegations were closely involved in the Civil Society Global Forum, which produced a document calling for an implementation programme on the agreements with clear timetables and possible isolation of countries that ignore them. Although this review does not have the scope to exhaustively list the range of organisations and issues covered, it is useful to note a few of the current issues around which civil society in Africa has mobilised.

The involvement of CSO's such as the Social Observatory can lead to positive developments in African continental governance, such as conferring legitimacy on policy decisions, increasing the pool of policy decisions, supporting weaker CSO's and even governments, countering a lack of political will and helping states see past national interests alone³³. The focus of the observatory will be determined by the issues following.

6.1 African Peculiarities

There are a number of economic and political peculiarities as well as peculiarities in which the labour force has been constructed that needs to be taken into account. Some have already been mentioned earlier. African countries have a small manufacturing and service base, export mainly primary goods and import capital goods, have huge external debts, has a large and growing informal economy and attracts relatively little foreign direct investment.³⁴ Even though labour in Africa constitutes a small percentage of the population, wages serves as important source of income for the communities from which workers come. Given the reduction in the labour force due to labour saving mechanisms, poverty has increased in working class communities through out the continent. The labour force is also striated along lines of ethnicity and nationality given the strong feature of migrant labour in the development of capitalism on the continent and political attempts to keep workers divided. Migrant labour is often from rural to urban or semi-urban areas. This occurs within countries but also across national borders in Africa.³⁵ Gender striation is also still a huge problem given the lack of general social and political rights of women. Women find themselves in low job categories and are often not remunerated on the same scale as men. The informal economy, in which labour standards and employee benefits are poor, is also comprised mainly of women workers with very few benefits.³⁶ Working conditions and benefits also do not take women into account. The social observatory therefore needs to focus on both the impacts MNC's are having on the overall structure of the economy as well as on the conditions of workers they employ (including patterns of employment, conditions of work, discrimination and wages).

Such an observatory would need to examine the role and impact of South African capital in Africa and the possibility of leveraging political support through the South African state and Nepad. Given the mix of governance structures in the continent, it would be useful to examine the relationship between MNC's and the political process. In many countries the relationship between social movements and governments is antagonistic, and the Social Observatory would have to navigate these relationships.

³³ Jordan (2003)

³⁴ Mkandawire 1996, African Development Bank 2000

³⁵ Stalker 2001, Crush & James 1995, Potts 1990, Jeeves 1985, Sticher 1985, Gordon 1977, ILO 1977

³⁶ Tamale 2001, Bullock 1994, Gordon 1985, Nuss 1989, Murray 1994

Strategies identified by unions for action in the Southern African region that would impact directly on MNC's include campaigns around global labour standards, gender equality, child labour, privatisation, harmonisation of regional labour laws, and specifically the upward harmonisation of labour standards at MNC's in the region³⁷.

6.2 Organisational Capacity and the Need for Alliance Building

Trade unions and social movements generally have little capacity to conduct research to sustain campaigns and there is a need to build alliance between the two as well as draw in other organisations that will enhance the capacity of these organisations. The social observatory should attempt to do this, especially by drawing in academics, consumer protection organisations and organisations that are doing similar work on other continents. Building alliances, however, does not remove the challenge of trade unions to develop their own research capacity. It is important that this process assists in the development of unions to carry out independent research. African CBO's and Southern African CBO's in particular have often not developed systematic local research and policy analysis processes, thus limiting their effective involvement in policy formulation.

6.3 How the monitoring can be done?

Given that international experience testifies to the inadequacy of company self monitoring it will be important to keep monitoring independent from them. If the intention is to use the social observatory to build union capacity, however, there will have to be a strong worker bias in the monitoring. Other organisations like community organisations and consumer protection organisations should also be drawn into the monitoring process as the MNC, either through its production process or by the products or services it puts on the market, has social effects. Research shows that broad stakeholder involvement is often a prerequisite for successful monitoring.

6.4 Legislation

Legislation for company operations varies from country to country in Africa and is more often than not very weak when it comes to how companies should comply with core labour standards, environmental protection, corporate social responsibility and internationally accepted corporate governance norms. A survey of legislation is essential to establish the discord between legislation in various countries. There are various attempts to ensure harmonization of such legislation in Africa e.g. by the Financial and Investment Sector Coordinating Unit (FISCU) of the Southern African Development Community (SADC). There should be an engagement with such attempts to ensure that harmonization occurs in a manner that does not simply take the lowest common denominator and that the interests of both workers and consumers are substantially reflected in this process. Legislation conceived without effective civil society interaction is often watered down to the point of being irrelevant³⁸.

6.5 Campaigns

The social observatory will ensure that the research work done assists with developing campaigns that draw in workers, whether they are directly employed by MNC's or not. Examples of both recent African and international campaigns are provided below. Analysis of the lessons of international and African campaigns around MNC codes will be taken up in another paper.

³⁷ Jauch (2001)

³⁸ Attempts to introduce legislation in the SA chemical sector are an example of this. Legislation setting minimum standards has yet to be introduced.

Campaigns have been increasingly used as a tool of mobilization by civil society since the 1970's, and have proved an effective counter strategy to the extensive political lobbying conducted by large corporations internationally over the same period³⁹. A recent paper on US campaign histories argues that though it has deeper roots, the use of sophisticated anti-corporate campaigns by a growing, and increasingly influential, network of private foundations and progressive-left activist NGOs in the United States has a identifiable history dating to the first days of the Reagan administration. The author argues that the anti-corporate network has structure and strategic imperatives that have guided its development. It evolved from applications in labor organizing and collective bargaining to the contemporary focus on broad issues of corporate governance and social responsibility⁴⁰. The global progressive movement which can be seen in action at IMF and WTO meetings is the result of this progressive, populist and anti-corporate framework. Activists have used their understanding of the workings of the power structure to produce an emerging counter-structure based on the same power dynamic, and utilising advances in communication technology (especially the Internet) to mobilize support.

A distinction can be made between campaigns conducted by organized labour, and those composed of a wider set of civil society actors. With labour union campaigns the objective is usually economic – jobs, compensation, work rules, union membership – and there is some common interest between the target company and the campaigning union, in that both have an interest in preserving the viability of the company. This tends to place some limits on what the union is prepared to do in its attacks on the company. But campaigns waged against corporations by progressive activists have no inherent stake in the viability of their targets, and even see them as morally corrupt. As a result, they are less constrained in their selection of tactics. Non-labor campaigns are essentially *anti-corporate* campaigns⁴¹. Tactics employed by CSO's were highlighted in the section on corporate social responsibility above.

6.5.1 Recent campaigns - Africa:

Arms reduction is one of the contentious issues covered by civil society, with many African countries spending significant sums of foreign exchange on arms, and the continent home to a range of wars and internal conflicts. ECAAR was established in 1988, towards the end of the Cold War, pressing for disarmament and against the arms race. It is accredited to the United Nations and it has drawn to its board of trustees eight Nobel economics laureates and is now operating in twelve countries, including South Africa.

Entrenchment of democracy is still inconsistent but vital in Africa, and even in Southern Africa effective systems of participatory democracy have not been widely entrenched in the region. The Zimbabwe Human Rights NGO Forum is an NGO fighting for accountable governance in that country. National civil society sample surveys used in the Afrobarometer show that most citizens feel that their governments are not interested in their needs or issues⁴².

Campaigns around amending IMF/WB Poverty Reduction Strategy Papers and attempts to integrate the Millenium Development Goals with NEPAD's social

³⁹ In the US, corporations make campaign contributions through their political action committees, they lobby Congress and the state legislatures, they litigate and use propaganda, and do whatever is legitimately within their power to secure their position in the social order.

⁴⁰ Manheim (2003)

⁴¹ Manheim (2003)

⁴² Gabriel (2003)

strategies have led to increased activity, networking and debate amongst African CSO's around national developmental objectives. Social development objectives are seen as the context in which economic policy should operate, rather than vice versa. Campaigns against the International Monetary Fund and World Banks' Structural Adjustment Programmes have been ongoing since the late 1980's by a range of civil society actors. Increasing criticism has been allied to mounting evidence that the programmes do not work and in fact deepen poverty whilst opening up economies unconditionally to MNC's.

The Treatment Action Campaign (TAC) together with other CSO's successfully challenged the pharmaceutical MNC's in the South African courts to withdraw their challenges to the TAC's efforts to facilitate the introduction of lower priced HIV/AIDS drugs in South Africa. The TAC has been at the forefront of a campaign to force the South African government to introduce anti-retroviral drug treatments for all infected South Africans through the public health service.

The Union Network International Global Organising Report of 2002 notes responses by 13 African countries around issues of union organisation and labour rights in bargaining with MNC's. The unions note the establishment of a National Shop Stewards Council for Southern African Countries to assist in negotiations. Strategies identified by unions for action in the region that would impact directly on MNC's include campaigns around global labour standards, gender equality, child labour, privatisation, harmonisation of regional labour laws, and specifically the upward harmonisation of labour standards at MNC's in the region.

Jubilee 2000 has continued campaigning for the cancellation of all unsustainable debt owed by Heavily Indebted Countries, many of whom are in Africa. In response creditor nations have made superficial moves to restructure debt payments (HPIC Initiative).

Victims of asbestos poisoning in South Africa recently reached an out of court settlement worth 21m Pounds in the United Kingdom in respect of Cape Plc, a company which had apparently knowingly exposed its South African workers to asbestos during the manufacturing process, without providing adequate safeguards. This campaign was fought mainly by Action for South Africa, the successor to the successful Anti-Apartheid Movement in the UK.

In Nigeria Shell and BP have been targeted by campaigns alleging that their activities in Nigeria oil rich delta have directly led to the destruction of the environment and the imprisonment, torture and execution of community activists⁴³. The corporations are accused of willingly supporting such activities through their manufacturing processes and their funding of private and state militias. The families of the victims have been supported in bringing cases against the multinationals in the US courts.

6.5.2 Recent campaigns - International:

Friends of the Earth are conducting a global campaign against water privatization, conducting research into sustainable water use and highlighting water scarcity produced by introducing profit into the equation when dealing with a public necessity.

Another high profile campaign is the one waged by a number of CSO's against the continued high trade tariffs and subsidies linked to agricultural products in developed countries. These high tariffs and subsidies prevent market access for agricultural

⁴³ The most high profile of these was the execution of activist Ken Saro-Wiwa and eight others in 1995.

products from the developing world whilst at the same time allowing dumping of unnaturally cheap products on poor country markets.

The Jubilee 2000 campaign to cancel the debt of the world's most heavily indebted (and poorest) countries has attempted to pressurize creditor governments and banks to free these countries from the 'debt traps' which absorb the majority of budgetary funds in these nations.

An example of a successful campaign was the 1990 Save the Dolphin one to highlight the damage done to dolphin populations by purse seine fishing nets, which resulted in a broad based boycott of tuna. The largest corporations in this sector now utilize different fishing methods and label their products 'dolphin friendly'. This is backed up by international laws governing tuna fishing.

The increased concentration of both genetic modification (GM) technology and the mechanisms through which it impacts farmers in the developing world in the hands of a few large companies led to an ongoing campaign to highlight how GM technologies could have a detrimental impact on poor farmers in the developing world, and campaigning for strong international regulation of the trade in GM organisms in the form of a Biosafety Protocol. In January 2000 a Biosafety Protocol was finally agreed. This Protocol sets out important principles for the trade in GMO's, and represents the start in a process to force regulation of this technology.

The 2003 trade talks in Cancun have been the focus of a campaign by many international civil society bodies to prevent the re-introduction of agreements covering investment, competition policy, transparency in government procurement and trade facilitation. They are collectively known as the 'Singapore' (after the 1996 WTO meeting where they were first discussed) or 'new' issues. Developing countries have consistently opposed launching new agreements on the Singapore issues, a position they have held since before the 3rd WTO ministerial meeting in Seattle in 1999. Continued developing country opposition was most recently restated by Least Developed Country Trade Ministers meeting in Dhaka, Bangladesh on 2 June, and by African Trade Ministers' meeting in Mauritius 20 June. Both meetings called for the continuation of the 'study process' rather than starting full blown negotiations. At the last WTO Ministerial in Doha in November 2001 developing countries, led by India, again held out against pressure from the EU. They succeeded in getting a decision to launch negotiations delayed until this year's meeting. It is felt that these proposed agreements would nullify many safeguards protecting developing nation economies from being 'strip mined' and overrun by the world's largest multinationals.

Campaigns however have their limitations. The company may be so big that different divisions operate at different levels of acceptable practice. Campaigns may also fail to result in sector wide changes, and be limited to success in one corporation. Consumer preference may also be hard to adjust. Subcontractors can also escape reform initiated by the purchasing corporation. Campaigns have their most sustainable impact when they are translated into legislation and international codes, as in the case of the Save the Dolphin campaign, and then married to voluntary agreements, compliance and self-regulation. Mandatory regulation has an important role to play, but this can complement corporate self-regulation. This will ensure maximum utilization and synergy between these different strategies.

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AFRICA LABOUR RESEARCH NETWORK

FOREIGN DIRECT INVESTMENT IN AFRICA

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TABLE OF CONTENTS

1. INTRODUCTION	31
1.1 WHAT IS FDI?	31
1.2 COMPETITION POLICY.....	32
2. WHY FDI IS SEEN AS IMPORTANT FOR AFRICA	32
2.1. INITIATIVES TAKEN BY AFRICAN COUNTRIES TO ATTRACT FDI	34
<i>2.1.1 Incentives</i>	<i>34</i>
<i>2.1.2 Investment treaties</i>	<i>35</i>
<i>2.1.3 Investment Promotion.....</i>	<i>35</i>
2.2 A TARGETED APPROACH TO FDI	36
2.3 PRECAUTIONS WHEN FORMULATING POLICIES TO ATTRACT FDI.....	37
3. FACTORS INFLUENCING INVESTOR DECISIONS	38
4. ACTUAL INVESTMENT FLOWS	39
4.1 FLOWS BY REGION: SADC	40
4.2 FLOWS BY SECTORS	40
5. THE COSTS AND BENEFITS OF FDI	41
6. RECOMMENDATIONS AND CONCLUSION	42
7. BIBLIOGRAPHY	44

1. Introduction

This introductory chapter forms part of the pilot phase of a Social Observatory Project that will monitor the conduct and impact of foreign investors in Africa. Section 1 the introduction aims to set out what foreign direct investment (FDI) is and to define the two forms in which it occurs. The second section will look at why Africa perceives FDI as important and examine the initiatives undertaken by African governments in attracting FDI. Section 3 will focus on the factors that influence/determine where FDI flows and why. Section 4 discusses the actual flows of FDI in terms of regions and sectors. The fifth section will deal with the costs and benefits associated with FDI while the last section contains the conclusion and recommendations regarding African policies on FDI.

1.1 What is FDI?

Foreign Direct Investment is viewed as a major stimulus to economic growth in developing countries. Its perceived ability to deal with major obstacles such as shortages of financial resources, technology, and skills. This has made it the center of attention for policy makers in developing countries such as Africa. FDI refers to investment made to acquire a lasting management interest (usually at least 10 % of voting stock) and acquiring at least 10% of equity share in an enterprise operating in a country other than the home country of the investor. FDI can take the form of either "greenfield" investment (also called "mortar and brick" investment) or merger and acquisition (M&A), depending on whether the investment involves mainly newly created assets or just a transfer from local to foreign firms.

Most investment have taken the form of acquisition of existing assets rather than investment in new assets ("greenfield"). M&As have become a popular mode of investment of companies wanting to protect, consolidate and advance their positions by acquiring other companies that will enhance their competitiveness. Mergers and acquisitions are defined as the acquisition of more than 10% equity share, involve in transfer of ownership from domestic to foreign hands, and do not create new productive facilities. Based on this definition, M&As raise particular concerns for developing countries, such as the extent to which they bring new resources to the economy, the denationalization of domestic firms, employment reduction, loss of technological assets, and increased market concentration with implications for the restriction of competition.

Research conducted by UNCTAD for the World Investment Report 2000 revealed that, for the host country, the benefits of M&As are lower and the risks of negative effects are greater when compared to Greenfield investments, especially at the time of entry over the short term. An UNCTAD research on M&As concluded that:

- FDI through M&As correspond to a smaller productive investment than Greenfield as the financial resources do not necessarily go into increasing the capital stock,
- FDI through M&As is less likely to transfer new or better technologies than Greenfield investment,
- FDI through M&As do not generate employment at the time of entry into the host economy, and may lead to lay-offs as the acquired firm is restructured,
- FDI through M&As can reduce competition, and may be used deliberately to reduce or eliminate competition and
- Over the longer term, cross-border M&As are often followed by sequential investment that do increase the capital stock.

Ideally the purpose of investment is to benefit both the investing company and the host economy. However M&As are likely to result in profit for the investing firm but destruction of the domestic industry. Evidence shows that in some cases, foreign investors enter a market solely with the purpose of closing down domestic competitors and establishing a monopoly in the economy. The most noteworthy policy mechanism against such practices and which also serves to protect the domestic economy is a competition policy.

1.2 Competition policy

A competition policy is central to ensuring the effective operation of the market. The main purposes of a competition policy are to oversee the efficient allocation of resources and to ensure consumer welfare. In the absence of a competition policy, markets that are open to private business, face the danger of firms engaging in monopolistic and restrictive trade practices. The basic importance of a competition policy lies in its ability to assess the competitive impact of mergers and acquisitions, and to regulate the behavior of firms (CUTS, 2001).

Mergers and acquisitions have a serious impact on competition and markets all over the world. In sub-Saharan Africa, almost all FDI in the form of M&As takes place in South Africa. It is reported that approximately 60% of inward investment in South Africa takes the form of mergers and acquisitions. A recent KPMG study revealed that South Africa recorded a total of US\$ 7.6bn of cross border inward and outward M&As since June 2000. South Africa has a very low rate of greenfield FDI. Most FDI inflows in South Africa are capital intensive and are directed at the already established sectors such as services and manufacturing.

The Central Bank of Chile (CBC) has indicated that there is a close relationship between greenfield and M&A FDI which is based on that once a transnational corporation (TNC) has established a subsidiary through cross-border M&A, all financial transfers thereafter between headquarters and the subsidiary are regarded as greenfield. The CBC cautions that this relationship is not mechanical, and does not necessarily imply a positive relationship between both types of FDI (Central Bank of Chile, 2002).

2. WHY FDI IS SEEN AS IMPORTANT FOR AFRICA

The Economic Report on Africa by the United Nations Economic Commission for Africa advocates that FDI is the key to solving Africa's economic problems. Bodies such as the IMF and the World Bank have suggested that attracting large inflows of FDI would result in economic development. Sub-Saharan African governments are very eager to attract FDI. They have changed from being generators of employment

and spillovers for the local economy to governors of states that promote competition and search for foreign capital to fill the resource gap. This change is attributed to changes that are caused through structural adjustment programmes and the internalization of neo-liberal assumptions promoted by the World Bank and IMF.

All African countries are keen on attracting FDI. Their reasons would differ but may be summarised as: trying to overcome scarcities of resources such as capital, entrepreneurship; access to foreign markets; efficient managerial techniques; technological transfer and innovation; and employment creation. In their attempts to attract FDI, African countries design and implement policies; build institutions; and sign investment agreements. These benefits of FDI to African countries are difficult to assess but will differ from sector to sector depending on the capabilities of workers, firm size, and the level of competitiveness of domestic industries.

In Southern Africa, the main five reasons governments want to attract FDI are:

- FDI is seen as an important source of capital formation particularly when the capital base is low. Capital inflow is seen as a way of creating a surplus in the capital account of the balance of payments or to make up for the deficit on the current account. Consumer Unity and Trust Society (CUTS) points out that there has been cases where FDI have not led to capital formation but rather crowded out domestic investment (Chatterjee, undated),
- Transfer of technologies is expected because foreign companies will use technology from their home country. From a developmental perspective, it is more important that technology is diffused with spill- over into the local production process, and that technology be adopted and adapted by local enterprises. For an economy to improve on quality, technological upgrading is crucial. Technical inefficiency, in developing countries, can severely hinder the quality of products produced and the ability to cope with new demands. At the moment, no studies have shown that FDI had this diffusion-effect in Southern Africa. On the contrary, foreign investment results in competition that tends to stifles local technology development and diverts resources from technology development to attracting FDI.
- It is argued that FDI will lead to employment creation. International experience shows that foreign direct investment is not always accompanied by substantial employment creation and in most cases lead to job losses when public companies are privatised. In a special ECONNEWS report on Foreign Investment in SADC, it was pointed out that “FDI is not a good way to create jobs”. While a quarter expands employment, a third will contract employment. For example, in Namibia, most FDI investments went into the mining industry that reduced its workforce from 14000 to 5000 during the past 12 years.
- Transfer of management skills, to local managers, takes place when investors set up new plants, acquire companies or outsource to local subcontractors.. .
- Increased export competitiveness is anticipated. This was an important argument when South Africa introduced its Growth, Employment, and Redistribution (GEAR) strategy. It emphasized the importance of attracting investment in clusters of industries to develop local companies.

A closer analysis of the main reasons for attracting FDI, employment creation and capital formation, don't really have the desired effect.

- Employment creation: International experiences have shown that FDI is hardly accompanied by substantial employment creation, and in some cases may even lead to job losses. Another problem with employment through FDI is the kind of employment it creates. In Namibian, for example, the government claimed that

the Export Processing Zone (EPZ) programme created jobs and thus reduced the unemployment rate. However, the jobs that were created are mostly characterized by poor working conditions and very low salaries. Most of the employees do not have job security and little prospects of improving their standards of living. It is thus important to examine the quantity and quality of jobs created.

- Capital Formation: Yash Tandon argues that any reasonable accounting of capital flows must take into account what flows in and out of the country (Tandon, 2002). In the Investment Position Paper by COSATU, it was pointed out that FDI flowing out of South Africa had increased rapidly, and since 1994, it has exceeded direct capital flows. COSATU has indicated that between 1994 and 2000, FDI into the country came to R45 billion, while outflows of direct investment came to R54 billion (COSATU, 2001).

2.1. Initiatives taken by African countries to attract FDI

African countries, like most other developing countries have taken various initiatives to attract FDI. These initiatives include incentives, signing of investment treaties and investment promotion activities.

2.1.1 Incentives

Incentives can be described as policies used to attract internationally mobile investors. Through the EPZ programme, African countries offer incentives to attract foreign investment in the form of tax holidays, exemptions on export and import duties, subsidized infrastructures, and limits on workers rights. According to Jauch and Endresen (2000), opinions about the importance of incentives vary significantly. Governments consider them as a mean to obtain FDI whereas transnational corporations perceive EPZs as providers of favourable investment sites. The case of Namibia is instructive in this regard.

In 1995, Namibia passed its EPZ Act. Four years later, LaRRI carried a study to assess the socio-economic impact of Namibia's EPZ programme. This study revealed that Namibia had come short of the expectation in terms of the EPZ programme. The government anticipated creating 25 000 jobs by the end of 1999. The actual number of jobs created at the time of the study was 400. The study carried out by LaRRI unraveled poor labour conditions that could lead to future conflicts (LaRRI, 2000). This prediction was confirmed in 2002-2003 when RAMATEX, a Chinese owned textile company producing for the US market from Namibia had two strikes within months of each other. The reasons were poor working conditions and poor salaries, typical conditions that prevail in EPZs.

African countries have improved their regulatory frameworks for FDI by opening their economies, permitting profit repatriation and providing tax and other incentives to attract investment. Improvements in the regulatory framework for FDI have been stressed in many countries through the conclusion of international agreements on FDI. Most African countries have concluded bilateral investment treaties with countries whose main aim is the protection and promotion of FDI. They also clarify the terms under which FDI can enter the host country (UNCTAD; 1999;P.6).

Since the 1980s, all SADC governments have relaxed regulations for foreign investors:

- By granting investors easier entry,
- By relaxing the ability to borrow locally although it implies a constraint on a country's foreign currency reserves,
- Relaxation of land and mining concession ownership,

- By forming new kinds of partnerships with the private sector (public private partnerships) in areas which were previously the responsibility of the government e.g. water distribution.

The incentives offered by governments can be grouped into three categories such as fiscal, financial and rule or regulatory-based:

Fiscal Incentives

- Reduced tax rates
- Tax holidays,
- Subsidies,
- Exemptions from import duties
- Accelerated depreciation allowances
- Investment and reinvestment allowances
- Specific deductions from gross earnings for national income tax purposes
- Deductions from social security contributions

Financial Incentives

- Grants
- Loan and loan guarantees

Rules-based incentives

- Modifying rules on worker's rights
- Modifying environmental standards
- Greater protection for intellectual property rights (CUTS, 2001)

2.1.2 Investment treaties

Incentives are only a part of what governments offer to attract foreign investors to their countries for investment. Increasingly countries have entered into investment treaties, both bilateral investment treaties and multilateral ones.

- Bilateral investment treaties

The bilateral treaties contribute to the establishment of favourable investment climate between two countries by providing assurance and guarantees to investors. In the SADC region, only South Africa did not have a law that specifically dealt with FDI by the late 1990s. More and more bilateral treaties are being signed by African countries to safeguard the rights of the investors. Bilateral investment treaties are perceived as contributing to the establishment of favourable investment climate because they include the following:

- Fair and equitable treatment for foreign investors in terms of applications for investment approval and setting up their businesses,
- Specific provisions on expropriation and non-commercial losses and compensation for the same, and
- Dispute or conflict settlement mechanism (CUTS, 2001).

2.1.3 Investment Promotion

More and more countries are engaging in pro-active policies to attract FDI. Most countries have established investment promotion agencies (IPA) whose main purpose is to attract FDI and to look after foreign firms once they have set operations. Many countries, particularly in Africa, still suffer from a negative image. This makes the marketing role of IPAs extremely important. Investment promotion agencies usually fulfill a dual role:

- By acting as a one stop for investors to deal with regulatory and administrative requirements, and

- By changing or modifying investor perception of the country by attending and organizing investor fairs and by distributing materials.
- Investment promotion covers a range of activities, including investment generation, investment facilitation, aftercare services, and policy advocacy to enhance the competitiveness of a location.

According to the World Investment Report (2002) the majority of countries have moved from the first generation of investment to the second generation of investment. First generation investments mainly involve the opening up of an economy to FDI whereas second generation investment actively involves a government in marketing its location by setting up investment promotion agencies.

- In order to increase the efficiency of investment generation and enhance the chances of attracting export-oriented FDI, some IPAs go further and utilize part of their FDI promotion resources for investor targeting. Third generation promotion can be an efficiency policy tool, but it is not an easy task and involves certain risks, such as, the process of investor targeting does not integrate with the overall development strategy of a country. [Other risks involve utilising resources which may be focused on seeking investments that do not materialize; attracting the wrong types of firms; and assuming the government's ability to foresee which types of FDI are likely to have the greatest ability to integrate and link with local investment (WIR, 2002).Such risks necessitates that investment promotion agencies work closely with other parts of government to identify and create comparative advantages that are sustainable and that developmental policies do not offset each other.. Targeting needs to be a continuous process and should not be taken as a once off initiative.

2.2 A targeted approach to FDI

According to the WIR (2002) targeting can be defined in different ways. In principle, it involves the focusing of promotional resources to attract a defined sub-set of FDI flows, rather than FDI in general. Some countries i.e. Singapore, Ireland and The Netherlands, have practiced targeting export-oriented FDI for some time, with success. However, it is only recently that targeting has become a more widely accepted tool among IPAs. The WIR (2002) identifies some reasons as to why some countries have adapted the targeting approach to attract export-oriented FDI:

- First and foremost, a targeted approach can help countries achieve strategic objectives related to such aspects as employment, technology transfer, exports and cluster development which are in line with their overall development strategies. Effective targeting involves a comprehensive approach to attracting investment that can contribute to development and enhance the competitiveness of a location. It also requires the adoption of government policies that underpin the specific marketing activities and coordination of the relevant government agencies, including IPA, in order to define investment priorities and the package of advantages offered in the framework of an overall development strategy,
- A second reason for engaging in investor targeting, that attracts export-oriented FDI, is the increased competition for this kind of investment. Due to the fact that some countries are better known to foreign investors in their capabilities to offer substantial domestic markets, the smaller less well-known economies have to work twice as hard in their targeting efforts, and
- A third reason relates to cost-effectiveness. A focused approach to attract export-oriented investment is likely to be less costly than the one in which an IPA tries to attract new investments in all sectors at the same time.

Once an IPA has decided to use targeting as part of its strategy to attract export-oriented FDI, the next challenge is to determine what industries; activities; countries; companies and individual managers should be targeted. The starting point of the selection process is careful assessment of the strengths of a location as a base for export production.

The recent trend amongst countries to liberalize investment policies in all respects may not allow them to reap the full benefits from investment. In countries like Taiwan and Korea, targeted investment policies placed requirements on investments to ensure the transfer of skill and technology. Similarly other successful newly industrialized countries also controlled the amount of investment in particular sectors, time periods and the balance between direct investment and portfolio investment.

2.3 Precautions when formulating policies to attract FDI

The Consumer Unity and Trust Society (CUTS) of India suggested that governments should replace burdensome regulations with good regulations that will support a country's development aims. This should include maintaining restrictions on capital flows, maintaining screening procedures and impact assessments prior to establishment for major projects, restricting investment in key strategic sectors and requiring firms to follow good standards in the operational phase. Governments should also try and create an enabling environment. The term "enabling environment" has been coined to include legal, political, social and economic factors that make a country an attractive destination for investment. . According to CUTS, these include:

- **Stability and transparency**

It is pointed out that social and political stability of a country plays a very important role in determining whether investors will consider investing in a country. Countries experiencing civil unrest and political upheaval are unlikely to be considered as investment destinations.. However, the relationship between investment and political stability is complex. It is argued that there are cases in which foreign companies operating in developing countries may be involved in fostering instability for commercial gain (CUTS, 2001).

Transparency in decision-making is another important issue. Investors, seeking sites for long-term investment for large-scale production to serve regional and global markets, attach great importance to the predictability of the operating environment of their chosen investment sites.

A system based on incentives negotiated on a deal-by-deal basis may appeal to some investors as well as to some government officials. However due to the possibilities of arbitrariness and corruption, most investors will prefer and profit more, in the long run from the stability, transparency and predictability of a rule-based approach to FDI policy. The key to attracting FDI is timely review and constant monitoring of results, the ability to change policies and adapt to new circumstances. The policies should not be changed arbitrarily or too frequently as investors attach importance to stable regimes.

- **Macroeconomic policies**

Within the context of a stable and transparent economic and regulatory environment, the main determinants of investor's decisions are broad macroeconomic factors such as the size and growth of the market and the costs of production. Governments should therefore put in place sound macroeconomic policies that will help the country achieve development objectives as well as helping the country to attract FDI (CUTS, 2001).

- Trade policy

The trade regime in a country may encourage enterprises, local and foreign, to invest in developing local capabilities. A highly protected regime or a large regime with very restrictive laws will put constraints on the entry and exit of local enterprises, discourages technological upgrading, and isolate the economy from international trends. Liberalizing the trade regime will encourage and bring competition in the economy, forcing domestic firms to improve efficiency (CUTS, 2001).

According to CUTS, trade barriers should not be lifted immediately after liberalisation so as to allow domestic industries in key sectors to achieve a certain scale before opening up to competition in the world market. Regional trade agreements enlarge the potential market for investors and therefore act as an investment magnet. Small, isolated economies can overcome their disadvantages in respect to market size by entering into such agreements. Regional initiatives may take the form of free trade areas and customs unions, depending on the level of regional cooperation. Efforts to improve regional infrastructure networks, for example, roads or electricity, can also lure foreign investors by easing access to markets. Regional free trade agreements increasingly include provisions for free trade investment. Yash Tandon disagrees with the theory that free trade is beneficial. He points out that the idea of a free market is a myth. He stipulates that the bargaining and negotiations in the WTO show clearly that the Northern countries protect the weaker parts of their economy and liberalize the stronger sectors (Tandon, 2002).

3. FACTORS INFLUENCING INVESTOR DECISIONS

It is argued that a strong policy and regulatory regime, appropriate institutions, good infrastructure, and political and economic stability are important to attract FDI. According to Ludger Odenthal from UNCTAD, business has indicated different determinants for decisions to invest abroad. Some of these determinants are:

- The policy framework for FDI such as political and social stability, rules about treating operations of affiliates of foreign companies, and international FDI agreements.
- Economic determinants such as the size of the market and per capita income.
- Economic determinants for FDI that seeks natural resources.
- Economic determinants which are relevant for FDI that seeks efficiency, such as cheaper costs for infrastructure or intermediate products.
- Business affiliation provisions such as investment incentives which are mostly considered to be important determinants but they are not, except in case of choice between two equally attractive locations.
- Privatization programmes have become a source for attracting FDI (Odenthal, 2001).

Jenkins and Thomas (Econews) conducted interviews with 81 UK, Swiss and German firms to find out why these firms invest in the SADC region. Their findings were as follows:

- ❑ 84 % - Size of the local market
- ❑ 40 % - Local raw materials
- ❑ 26 % - Personal reasons
- ❑ 21 % - Strategic reasons
- ❑ 19 % - Privatization

The most common reason given as to why Africa does not attract much FDI, is the image that Africa is unfavourable location. Africa is painted as a continent of civil unrest, starvation, deadly diseases, and economic disorder. According to UNCTAD, the bad publicity the African continent gets has played a big role in discouraging foreign investors from investing (UNCTAD, 1999). This line of argument contradicts some literature on the concentration of foreign investment in Africa. Angola has received bad publicity in terms of the war in that country, but this did not deter foreign investors from investing there. Though the grisly aspects of African states receive attention, the positive developments in Africa are seldom reported and not widely known.

A number of reasons were mentioned that hindered FDI into African countries. These include market size, lack of policies, lack of profit opportunities, inconsistent setup, negative perceptions, shortage of skills, labour regulations, poor infrastructure and corruption (CUTS, 2002). Business indicated that extortion, bribery, and the lack of access to global markets are some of the factors that discourage investors from investing in Africa. Business also attributed the delay in getting approval to start a business as a reason for the drop of FDI to Africa. Emery et al (2000) gives the following reasons for the delay in getting approval to start a business in Africa:

- Customer service e.g. unhelpful attitude,
- Delays beyond the necessary for approval or signatures,
- Complexities caused by the need to administer poorly- designed incentive schemes,
- Lack of computerization or lack of capacity in registration or regulatory applications,
- Duplication of effort among agencies, which require the same information, and
- High costs caused by the requirements for company formation and up-front capital taxes.

4. ACTUAL INVESTMENT FLOWS

FDI flows to developing countries surged in the 1990s and became their leading source of external financing. In Africa, the main attractions for FDI are market-related, notably the size and the growth of the local market and access to regional markets. In China and India, the biggest attractions are the size of the domestic markets. In Latin America, investment has been attracted by profitable opportunities from privatization. Most new investment inflows go into non-tradable service and manufacturing industries producing mostly for the domestic market.

Investment flows to Africa have declined steadily. In the 1970s, Africa accounted for 25% of foreign direct investment to developing countries. In 1992 it only accounted for 5.2% whereas in 2000 it received 3.8% of the total FDI to the developing world. During the period of 1982-1999, most FDI flows to developing countries were directed towards the South, East and South-Eastern Asia followed by Latin America. The SADC region on the other hand experienced a decline from 0.9% to 0.3% between 1995 and 2000.

According to the WIR (2001) FDI inflows to Africa declined from \$10.5 billion in 1999 to \$9.1 billion in 2000. African share of FDI in the world fell below 1 percent in 2000. The inflow to its top recipients, namely, Angola; Morocco; and South Africa have fallen by half. The main sources of FDI to Africa were France, the United Kingdom, and the United States, and to a lesser extent, Germany and Japan (WIR, 1999).

On average FDI flows to North Africa remained more or less the same as in the previous year, \$2.6 billion. Flows declined into Morocco and Algeria but increased to Sudan (concentrated in petroleum exploration) from \$370 million to \$392 million. Egypt has remained the most important recipient of FDI flows in North Africa.

In sub-Saharan Africa, there has been a decrease in FDI from \$8 billion in 1999 to \$6.5 billion by the year 2000. A sharp drop of inflows into two countries caused the overall drop of inflows into Sub-Saharan Africa: Angola and South Africa. In South Africa, the reduced inflow of M&As in the country played a role in the downturn. The decline of inflows in Angola resulted in FDI flows to the least developed countries to drop from \$4.8 billion in 1999 to \$3.9 billion in 2000.

More recently, a group of African countries including Botswana, Equatorial Guinea, Ghana, Mozambique, Namibia, Tunisia and Uganda have attracted rapidly increasing FDI inflows. The reasons differ from country to country. In the case of Equatorial Guinea it was mostly rich reserves of oil and gas. Natural resource reserves also played a role in the case of Botswana, Ghana, Mozambique and Namibia. Privatization has been pointed out as a factor which is attributed to attracting FDI to countries like Mozambique, Ghana and Uganda.

Angola has attracted most FDI in Africa, compared to its GDP, particularly in offshore exploration of gas and petroleum. The Angolan case proves that it is insufficient to base an analysis of FDI trends only on what business determines as attractive for FDI. Angola attracted resource-seeking FDI despite being the site of a longstanding war. After Angola, South Africa is attracting most FDI in the Southern African region, mostly from the US and the UK. Even though South Africa is supposed to be one of the recipients of FDI, the figures given by UNCTAD do indicate that South Africa is also a massive exporter of capital. South Africa is seen as the most attractive country for FDI by business (SOMO and LaRRI, 2001).

4.1 Flows by region: SADC

The Southern African Development Community (SADC) was established in 1992 out of the South African Development Coordination Conference. SADC committed itself to develop protocol that should take into account the heterogeneity of the region and interests of the different stakeholders (International Investment Treaties in S.A). The SADC trade protocol was signed in 1996 by all member states and it provides for the creation of a free trade zone among the member states. The main aim of the protocol is to contribute towards the improvement of the climate for domestic, cross-border and foreign investment.

Due to the drop of FDI flows into Angola and South Africa, the overall SADC region experienced a fall in flows from \$5.3 billion in 1999 to \$3.9 billion in 2000. However, countries like Mauritius and Lesotho experience strong increases in FDI whereas others, for example, Zimbabwe experienced a significant drop from \$444 million in 1998 to \$59 million in 1999 and only \$30 million in 2000 (WIR, 2001).

The latest figures of FDI into SADC by UNCTAD (2001) reveal that the highest amount of FDI inflow in absolute terms was recorded by Angola (US\$ 1,8 billion), followed by South Africa with an inflow of US\$ 877 million. The rest of the region accounted for FDI inflows of less than US\$300 million in the year 2000.

4.2 Flows by sectors

A large proportion of FDI is directed towards the primary sector, especially oil and gas. Between 1996 and 1999, most investments in the SADC region went into the metal industry and the mining sector and thereafter into the food, beverages and tobacco sectors. Other sectors like tourism accounted for a small amount of FDI. Sectors attracting FDI in the SADC region in order of priority are: the mining and quarrying; financial services; food; beverages and tobacco; agriculture, forestry and fishing; hotel; leisure and gaming; other manufacturing; energy and oil; telecom and IT; retail and wholesale; and; construction (Hansohm et al, 2002).

5. THE COSTS AND BENEFITS OF FDI

Foreign Direct Investment as a development tool has its benefits and risks, and will only lead to economic growth in the host country under certain conditions. It is the responsibility of governments to make sure that certain conditions are in place so that FDI can contribute to development goals rather than just generating profits for the foreign investor. These conditions cover broad features of the political and macroeconomic environment. The impact of FDI in a country would depend on a number of factors such as:

- The mode of entry (greenfield or merger and acquisition),
- The activities undertaken, and whether these are already undertaken in the host country,
- Sources of finance for FDI (reinvested earnings, intra-company loans or the equity capital from parent companies), and
- The impact on the activities of domestic companies (CUTS, 2001).

The potential problems associated with FDI include:

- Impact on domestic competition. FDI and in particular M&As are likely to have a negative impact on the level of competition in the domestic market. This may lead to restrictive business practices and abuse of dominance. TNCs may damage host economies by suppressing domestic entrepreneurship and using their superior knowledge, worldwide contacts, advertising skills, and a range of essential support services to drive out local competitors and hinder the emergence of small scale local enterprises.
- Impact on the balance of payments. The trade deficit can be a real constraint for developing countries. If investors import more than they export, FDI can end up worsening the trade situation of the country.
- Instability. Volatility is associated more with portfolio capital flows. Although investment in physical assets is fixed, profits from investment are as mobile as portfolio flows and can be reinvested outside the country at short notice. Profits may surpass the initial investment value and FDI may thus contribute to capital export.
- Transfer pricing. This refers to the pricing of intra-firm transactions which does not reflect the true value of products entering and leaving the country. This could lead to a drain of national resources. Countries may lose out on tax revenue from corporations, as they are able to juggle their accounts in such a manner as to avoid their tax liabilities.
- The impact of development, when FDI occur through TNCs is uneven. In many situations TNC activities reinforce dualistic economic structures and exacerbate income inequalities. They tend to promote the interests of a small number of local factory managers and relatively well paid modern-sector workers against the interests of the rest of the population by widening wage differentials. They tend to worsen the imbalance between rural and urban economic opportunities by

locating primarily in urban export enclaves and contributing to the flow of rural-urban migration.

- TNCs use their economic power to influence government policies in directions that usually do not favor development. They are able to extract sizable economic and political concessions from competing governments in the form of excessive protection, tax rebates, investment allowances and the cheap provisions of factory sites and services. As a result, the profits of TNCs may exceed social benefits.

6. RECOMMENDATIONS AND CONCLUSION

Based on the experiences with FDI in Africa, a SADC seminar that brought together researchers, trade unionists and NGOs in Windhoek, Namibia in February 2001, recommended the following:

- Africa should abandon its open door policy to FDI,
- Africa should determine the national policy and set the context for FDI. Social policy and the public sector cannot be handed over to international institutions or the private sector,
- Africa should resist all additional conditions that come with FDI and instead African governments should set up their own conditions with regard to FDI,
- Africa should retain savings as the basis for domestic capital accumulation. Other areas that need to be addressed in order to maintain own financial resources are:
 - transfer pricing (changing prizes charged by companies when moving their products between their units in different countries in order to avoid high taxes)
 - payments for consultations
 - fees for copy writes and patents
 - losses due to privatization
 - losses due to structural adjustment programmes
 - loss through increased costs of interest payment
 - loss through continuing debt payments, especially for debts that were created by the apartheid regime.
- Africa should obtain technology that is not tied to FDI,
- Trade Unions and NGOs should put pressure on Southern African governments to join forces in order not to succumb to pressure from the North during negotiations in the WTO,
- There is a need to stop the liberalisation of capital movements and speculative capital flows at global level,
- Africa should develop regionalism as defined by the people, and not by the EU or the US, and
- Africa should use the concept of selective de-linking from the global economy within regional settings but not as a form of national autarchy.

Due to many socio-economic problems facing African countries, most have become desperate in trying to find solutions. The problems vary from high unemployment rates, poverty, and lack of technology. In their efforts to overcome these problems, most African countries have taken advice from bodies such as the IMF and the World Bank to liberalize their economies in order to attract FDI which in turn, they believe, will bring development.

The liberalization of economies have led to African countries engaging in privatisation, introducing incentives to attract FDI in the form of tax holidays, relaxing regulatory framework, and introducing investment promotion agencies responsible for

attracting FDI. Since most of the African countries have liberalized their economies, it would be expected that FDI flow, to African countries, would have risen, but to the contrary, actual flows of FDI to Africa have been on the decline.

The privatization process, which has been preached by the IMF and the World Bank as one of the prerequisites for attracting FDI to developing countries was not successful and often resulted in further hardships for the poor as was the case in Zambia and many other African countries.

One of the main outcomes of using incentives to attract FDI is the increase competition among African countries. This has led to countries engaging in a 'race to the bottom', offering investors more and more attractive financial incentives, and reducing the regulatory requirements on firms. Engaging in this type of competition almost inevitably means that even the country that 'wins' (the investment) has paid too high a prize for it. Competition on investment incentives raises the distinct possibility that every country - big or small – could be worse off than if it were to refrain from using FDI incentives altogether.

CUTS pointed out that incentives are only useful to the extent that they succeed in attracting investment to one country from another and that they do not create new flows of FDI (CUTS, 2001). It has been proven that incentives do not work in attracting firms as foreign firms come due to factors such as the size of the market, privatization, resource extraction and personal reasons. Some African countries go to the extent of making changes to their regulations and restrictions on mobility of capital, whereas some countries such as Zambia introduced structural adjustment policies to try and attract FDI.

The fact that most countries have created a conducive environment to attract FDI, but that FDI flows to Africa are still on decline has shown the contradiction to the claim that the 'conducive environment' is critical for FDI. Thus it can be concluded that it is not conducive environments or incentives that attracts FDI, but that FDI decides on where to invest based on other reasons. As Tandon has pointed out, nothing seems enough to attract FDIs into ones economy, more and more incentives are needed to seduce FDIs. For example, workers are expected to abstain from strikes and not even bargain for better salaries. Fear of sending the wrong signal to the investors has led to workers rights being compromised.

Tandon indicates that there is no real evidence that FDIs brings development, just as there is no evidence that liberalization, in general brings development (Tandon, 2002). It is important to keep in mind that FDI is not in business for development, but to make profit, whereas governments are supposed to ensure development. The fact that the goals of both government and investors are not the same, does indicate that it becomes a very difficult task to direct FDI in a way that will lead to development.

Thus the theory that FDI brings development and growth needs to be reviewed in order to prove whether or not it holds water. Tandon could be right when he stated that it is growth that attracts FDI and not FDI that brings growth. The main challenge is for the IMF, World Bank and others that argue that FDI is important for growth and development to present information in the form of case studies that supports their argument.

African countries should exercise caution when they open their doors to FDI. In the process of attracting FDI, government should assess what kind of development the country needs, target FDI accordingly, and then set up policies which will guide the developmental process of the country. FDI must only be allowed to operate under

certain nationally determined conditions and must conform to certain performance requirements that will ensure a positive impact on development.

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AFRICA LABOUR RESEARCH NETWORK

SOUTH AFRICA
(METSU MINERALS)

Devan Pillay
NALEDI

SEPTEMBER 2003

TABLE OF CONTENTS

1. BACKGROUND OF COMPANY	48
1.1 METSO MINERALS IN SOUTH AFRICA	49
2. RESEARCH METHODOLOGY	49
2.1 SAMPLE	49
2.2 CONSTRAINTS OF STUDY	50
3. LABOUR LEGISLATION.....	50
4. RESEARCH FINDINGS.....	53
4.1 FREEDOM OF ASSOCIATION	53
4.2 COLLECTIVE BARGAINING.....	55
4.3 WORKPLACE RESTRUCTURING.....	57
4.4 TRAINING	57
4.5 DISCRIMINATION	58
4.7 HEALTH AND SAFETY	58
4.8 ENVIRONMENT.....	59
5. CONCLUSION	60
6. BIBLIOGRAPHY	62

1. BACKGROUND OF COMPANY

Metso Corporation, a Finnish based Multinational Corporation with business operations in over 50 countries, is a global market leader in papermaking lines, and rock and minerals processing systems. The company was formed in a chain of mergers starting with Finnish companies, Valmet and Rauma. Founded by the Finnish state in 1921, Valmet Automation repaired aeroplane engines. Eighty years later the company now known as Metso Corporation has five major business areas:

- ◆ Paper,
- ◆ Minerals,
- ◆ Automation – for pulp and paper industry automation with lifecycle solutions for customers,
- ◆ Ventures with two divisions - Metso Panelboard and Metso Drives (for wood refining industry), and
- ◆ Valmet Automotives - manufacturing convertibles.

The respective market shares of the business areas are Paper 38%, Minerals 38%; Automation 13%, Ventures 8%, and Converting 3%. Metso Corporation's net sales for 2003 was EUR 4 691 million, up by eight percent from 2001 (EUR 4 343 million). Metso's shares are listed on both the Helsinki Stock Exchanges and the New York Stock Exchange. The average trading price in 2002 was EUR 12.13 and USD 11.39 respectively. At the end of 2002, Metso's personnel totalled 28 489 down from 30 242 in 2001. The company's Corporate Sustainability Report calls this reduction "rather radical".

Metso Minerals holds a 20 percent share of the world market in rock and minerals processing systems. It supplies solutions, equipment, and services to mining industry (mines and quarries) and civil engineering contractors: e.g. rock and minerals processing plants, crushing units and grinding mills, aggregate production, building and civil engineering sectors. Metso Minerals has over 50 production units worldwide in 23 countries; as well as sales and service units, dealers and distributors in 150 countries. It has six market areas, namely, Northern and Central Europe; Southern Europe and the Mediterranean; North and Central America; South America; Asia-Pacific; and Southern Africa. The company has been divided into five business lines, namely:

- ◆ crushing and screening,
- ◆ minerals processing,
- ◆ compaction and paving,
- ◆ recycling, and
- ◆ wear protection.

Total sales in 2002 was EUR 1,819 million (913 in 2001), and its personnel numbered 10,784 compared to 11,725 in 2001. The growth in net sales was due to the acquisition of Svedala in 2001. Metso Minerals' operating profit was EUR 51,4 million (2,8 % of net sales).

1.1 Metso Minerals in South Africa

Nordberg Manufacturing was established in Milwaukee USA by Bruno Nordberg an immigrant from Finland. The first Nordberg machine was sold to South Africa in 1899. Sales intensified from 1926 with the introduction of the Symons cone crusher and by 1940 more than 100 of these crushers were sold. During World War II, there were problems getting spares so the Central Engineering Works, which was established in 1917, started to manufacture spares. In 1961 Nordberg Manufacturing Company (South Africa) (Pty) Ltd was established and in 1970 it acquired Central Engineering Works. Operations were consolidated over the following years with the head office in Johannesburg, branches in Cape Town and Durban, a repair facility in Welkom, and a factory and foundry in Vereeniging.

In 1988, due to international sanctions, a local management consortium acquired Nordberg SA. In 1993 when sanctions were lifted the Rauma group, Metso's predecessor, acquired the company. In 1998 Nordberg SA acquired the Lennings Manganese foundry in Kwa-Zulu Natal from Scaw Metals. In 2001 Nordberg Manufacturing Company (South Africa) (Pty) Ltd changed its name to Metso Minerals.

Metso Minerals is the only company that manufactures and sells the full range of comminution, pyro metallurgy and mineral processing equipment in the country. In 2002 the company exports totalled R239 million and its imports R123 million.

2. Research Methodology

The research findings are primarily based on 2 questionnaires, one for management and the other for workers. Local management was extremely co-operative throughout the study and willingly provided the researcher with information necessary for the research. In addition information was provided by SASK in the form of a prestudy done by FinnWatch.

2.1 Sample

The study was restricted to the Vereeniging plant and focused exclusively on employees engaged in production i.e. factory floor workers. A sample of 50 was chosen from a population of 276 factory for workers. The sample comprised of workers from grades C1 to A1.

The following factors were taken into account to determine the sample:

1. The number of workers in each grade,
2. The number workers to be interviewed in each grade,

3. Union density per union as well as non-unionised workers in each grade, and
4. Gender.

The table below shows breakdown of the sample.

Table 1: Composition of Sample

Union	Number
MEWUSA	24
NUMSA	15
SOLIDARITY	7
UASA	1
Non unionised	3
TOTAL	50
Male	45
Female	5
TOTAL	50

Fifty factory floor workers were interviewed. The researcher also had a focus group discussion with all shopstewards at the plant and then in-depth interviews were held with 1 shopsteward per union.

2.2 Constraints of study

1. The study-focused exclusive on the Vereeniging plant and therefore the findings cannot be extrapolated to the entire company.
2. Management while answering its questionnaire had attained a copy of the workers questionnaire. This may have influenced management responses to some of the questions posed to them.

3. LABOUR LEGISLATION

This section provides a brief overview of the labour legislation in South Africa.

The labour market was one of the cornerstones of the apartheid system in South Africa. The democratic government, having inherited a racially skewed labour market, priorities the restructuring of the labour market to redress historic imbalances. Soon a number of new labour legislation was implemented. They are:

- The Labour Relations Act – this law regulates the relationship between trade unions and employers. The stated purpose and objectives of the Act include advancing social justice, giving effect to the fair employment practices, and giving effect to ILO obligations.
- The Basic Conditions of Employment Act – this law sets minimum conditions for all workers, especially those that fall below a prescribed wage threshold.

- The Employment Equity Act – this law tackles South Africa’s history of racial job reservation. It removes barriers to employment and seeks to advance historically disadvantaged groups (i.e., ‘designated groups’). Furthermore the Act stipulates that companies, depending on the number of people employed, must submit employment equity plans to the Department of Labour.
- The Skills Development Act – this law addresses the apartheid legacy of under investment in skills development of black people, and the growing tendency of companies to neglect the training needs of their workforces.

The Labour Relations Act sets out the rules for the establishment of worker and employer representative bodies. In terms of the Act, a union must provide proof that it has sufficient representative in order to enjoy organisational rights accorded by the Act, for example, the rights to access the workplace and the implementation of stop order facilities. With regard to other rights such as, the right to elect shopstewards, right to assist in grievance and disciplinary hearings, and the right to disclosure of information are dependent on it having being recognised as a major union.

The Labour Relations Act has been criticised by business largely stem for the perception that the Act makes it difficult to hire and fire employees. The law is not overly cumbersome in terms of retrenchments for operational reasons. In fact ‘operational’ requirements are widely defined and retrenchments are easy to implement – so much so that more than 500 000 formal sector jobs were lost in the first five years of the implementation of the Act. With regards to the dismissal of workers, the Act does require employers to show ‘fair reason’ and ‘fair procedure’. The Act addresses past discriminatory practices where unskilled black labour were seen as easily disposable labour source. The Act seeks to change employers approach in the management of their workforce, something that they are generally reluctant or find difficult to do. Through this law, the Commission for Conciliation, Mediation and Arbitration (CCMA) was established to resolve disputes between employers and employees. Most importantly, the Act encourages employers and trade union to reach agreements through collective bargaining.

Two laws, in particular, place specific requirements on companies to establish committees and draw up implementation plans. These are the Employment Equity Act and the Skills Development Act.

1. The *Employment Equity Act of 1998* seeks to redress past inequalities in terms of employee recruitment and employment profiles of companies. The act requires that “*every employer must take steps to promote equal opportunity in the workplace by eliminating unfair discrimination in any employment policy or practice*”. Employment policy or practice includes: recruitment, job classification, remuneration, employment benefits, terms and conditions, and promotion and dismissal. The act makes specific reference to disadvantaged groups, referred to as “designated groups”, include blacks, women and the disabled. Companies are required to develop employment profiles, identify barriers to employment/advancement of designated groups in their company, and develop and implement plans to address this. Companies must compile reports together with worker representatives and submit the reports the Department of Labour. The EEA applies only to firms of a certain size (based on employment or turnover). It does not specify any targets leaving it to individual companies to determine their own targets after consulting with employees/unions.

The main features of these plans are:

- a. To achieve reasonable progress towards employment equity;
- b. State the objectives to be achieved each year, the names of those managers responsible for the implementation of the plan, and the affirmative action measures to be implemented;
- c. Set numerical goals to achieve the equitable representation in occupational category and level in the workforce, a timetable indicating when this is to be achieved, and the strategies intended to achieve those goals;
- d. Set a timetable for each year of the plan for the achievement of goals and objectives other than numerical goals; and
- e. Set procedures to monitor and evaluate implementation of the plan and to resolve any dispute about the plan.

The plan may not cover a period shorter than one year or longer than five years.

Under section 24, designated employers must assign one or more senior managers to take responsibility for monitoring and implementing the Employment Equity Plan.

2. The Skills Development Act places a levy on employers to contribute to a fund that supports skills development in all sectors of the economy. In terms of the Act, employers are required to contribute 1% of the wage bill, which is low compared to international norm of expenditure on skills development. Employers implementing a skills plan can recover their costs from this fund. The law thus forces all employers to share in the costs of skills development, and also creates incentives for them to establish workplace skills plans.

The following table briefly sets out how South African labour legislation gives effect to the fundamental labour rights established by the ILO Conventions as well as the dates when they were ratified by the South African government.

ILO Core Conventions	National Legislation
Freedom of association (Conventions 87) Ratified 1996	This convention is enforced in the LRA, Act number 66 of 1995.
Right to organise and to collective bargaining (Conventions 98) Ratified 1996	This convention is enforced in the LRA. The LRA obliges employers to disclose information relevant to collective bargaining.
Abolition of all forms of discrimination (Conventions 100 & 111) Convention 100, ratified 2000 Convention 111, ratified 1997	This convention is enforced through the Employment Equity Act. However, government has chosen not to enforce equal remuneration in the labour laws, but to leave it open for the labour movement to apply this convention by means of collective bargaining between employers and employees. There is still a large wage gap between women and men and between black and white workers doing work of equal value. Discrimination with regards to people

	suffering from HIV/AIDS is also covered in the Employment Equity Act.
Minimum Age Convention (Convention 138) Worst Form of Child Labour Convention (Convention 182) Both Ratified 2000	This convention is enforced as part of the BCEA. The law prohibits employers from employing children of less than fifteen years of age.
Abolition of forced labour (Conventions 29 and 105) Both ratified 1997	This convention is enforced through the BCEA.

South Africa has ratified all of the ILO core conventions and implementation is largely complete. Each of these key labour rights is discussed individually in the research findings.

4. RESEARCH FINDINGS

The research covers 8 areas, freedom of association, collective bargaining, workplace restructuring, training, discrimination, child labour, health and safety at work, and environmental issues. Under environmental issues we also discuss the companies social responsibility activities.

4.1 Freedom of Association

The 4 unions that have organised workers at the company are all members of the bargaining council. The unions are: the *National Union of Metalworkers of South Africa* (NUMSA - COSATU affiliate), *Metal and Electrical Workers Union of South Africa* (MEWUSA - NACTU affiliate), *Solidarity* and the *United Association of South Africa* (UASA – FEDUSA affiliate). The study confirmed that workers are free to join unions of their choice, all the above unions have recognition agreements with the company, and the company deducts union fees. The company expressed its willingness to work with all trade unions that are members of the bargaining council.

When workers were asked how many shopstewards were at the plant, they were generally unsure and their responses ranged from 1 to 16. Although shopstewards have regular meetings with management, they were also not certain of the exact number of shopstewards at the plant. One possible reason for this is fluctuation in membership. While NUMSA is the majority representative union within the overall company, majority differs from branch to branch. At the Vereeniging plant MEWUSA represents the majority of workers. The table shows shopsteward representation by union at the plant.

Table 3: NUMBER OF SHOPSTEWARDS PER UNION

UNION	NO. OF SHOPSTEWARDS
MEWUSA	5
NUMSA	4

SOLIDARITY	1
UASA	1

Source: Metso Minerals

Eight percent of respondents stated that management discourage workers from joining union by telling them that unions cause strikes and workers won't be paid when they strike. However a more concerning statements made by a worker in this regards is "*they don't want to promote those who have joined the union to top position*". Another worker stated "*they tell workers that they wouldn't work for long if they join union*".

Six percent of workers further stated that management discriminates against workers for belonging to trade unions. Some of these workers explained that management preferred workers belonging to certain unions only. This is very concerning and it was brought to the researchers' attention that a NUMSA member who has a BA degree had applied for a management post. He was not given the post but rather a MEWUSA member with only a matric qualification was appointed to the position. It is the researchers assertion, based on the responses, that some managers are guilty of this behaviour and these mangers are usually lower ranking managers/supervisors that manage the different operations at the plant.

A positive relationship exists between the unions and the company. This is demonstrated by the fact that there has been no disruptions/strikes at the plant over the past 5 years with the exception of a nation-wide strike over wage negotiation in 1999. Also there is an agreement between management and shopstewards to hold monthly meetings although it does not happen as frequently and usually depends on the availability of management. When management postpone meetings no alternative date is given leaving shopstewards to presume that issues that were to have been discussed in the meeting would be carried over to the next months meetings. According to shopstewards management sometimes call meetings suddenly leaving them ill prepared. Meeting usually deal with non-substantive matters, that is, issues that are not covered in the bargaining council.

While workers confirmed that trade union representatives have access to the workplace, shopstewards expressed difficulty in accessing "workers in other departments", that is departments which do not have shopstewards.

The table below reflect the responses to the question: " Does the union have freedom to distribute information to workers at the company/plant? The above mentioned difficulty experienced by shopstewards may be reason that only 52% of workers responded to the question as always and 36% as most of the time.

TABLE 4: Union Freedom to Distribute Information

	Percentage
Always	52
Most of the Time	36
Seldom	6
Never	2

No response	4
Total	100

The company in main complies with laws of the country and international obligation with regard to freedom of association.

4.2 Collective Bargaining

All issues related to working conditions are negotiated at the Metal and Engineering Industries Bargaining Council. Negotiations take place annually. The study found that most workers (74%) thought that negotiations take place either at plant or the company level. Only 14% knew that negotiations take place at the bargaining council.

The company adheres to the minimum wage as agreed to at the bargaining council. The wage rates are as follows:

TABLE 5: Wage per Hour by Grade

GRADE	SALARY PER HOUR
C1	35.49
B3	26.05
B2	22.67
B1	19.22
A2	17.04
A1	14.51

Based on employment status, that is permanent employment compared to non-permanent or contract workers, 78% of the respondents stated there was a difference in wage with contract or no-permanent workers getting paid more. Some of the contract workers are ex-employees who had gone on retirement and are recalled by the company. They and all other non-permanent workers are employed through labour brokers. Non-permanent workers cost the company R396 620 per month. It is a growing trend in the country for companies to hire labour through labour brokers. This allows the company to circumvent some of the country's labour legislation.

All permanent workers are entitled to the following benefits:

- Provident/pension fund,
- Medical Aid,
- Loans,
- Education Bursaries,
- Paid vacation,
- Paid sick leave,
- Medical facility on site,
- Incentive bonuses,
- Severance pay, and
- Paid maternity.

With regards to these benefits, workers pointed out the following:

- Medical Aid – It is offered to all employees but lower-earning employees cannot afford to purchase medical cover. According to the company, unskilled personnel accounts for only 0.5% of the value of benefits to employees.
- Educational bursaries – While worker acknowledged this benefit, they stated that it was too little. According to the company policy, this is not a bursary but a subsidy, with a 50/50 share in cost and if successfully completes a further 10% of the total cost will be given to the worker. From the responses received it seems as though workers are not properly informed of this policy. While this policy may seem encouraging the researcher notes the following concerns. Firstly, according to the policy, the head of department must approve and forward the application to the personnel department. This gives the head of department excessive discretionary power leaving the workers future in the hands of the head of department. Secondly, the policy states; “...employees to study in fields which are directly applicable to their present job or applicable to jobs planned in their career path with the Company”. This statement limits workers choices as to their study option and future career path.
- Dissatisfaction was expressed on the manner in which incentive bonuses were based. Incentive bonuses are based on profit and not production. Factors that affect profitability are taken by management and if these decision do not lead to desired profit levels, and although they have produced the desired output, the do not benefit from the incentive bonus.
- Workers also pointed out that the medical facility is closed at night and this leaves the night shift workers vulnerable.

Non-permanent employees do not receive any of the above benefits. This is the reason their salaries/wage is higher than permanent workers. Since their deductions are lower, their actual net pay is higher.

According to the Bargaining Council agreement, the maximum number of normal and overtime work hours permitted per week is 40 and 10 respectively. While there is no problem with regards to the normal working hours, the study revealed that workers sometime work more than 40 hours overtime per week, working 12 hour days over weekends. One worker stated that since January 2003 he has been working 7 days and week. Workers said that they were afraid to turn down overtime because they get victimised by their departmental manager, for example, if they refuse to work over time during the week, that is Monday to Friday, then they don't get over time over the weekend. In terms of the excessive overtime hours worked by employees, the company is breach of the Bargaining Council Agreement and the ILO Convention 155, which was ratified by South Africa in February 2003.

Union requests for company information essential for negotiations illicit the following response from respondents⁴⁴:

TABLE 6: Union Request from the Company for Information for Negotiations

	Percentage
Never	19

⁴⁴ Only 43 out of the 50 interviewees answered this question.

Scarcely	35
Reasonably	16
Fully	30
Total	100

Shopstewards confirmed that management scarcely to reasonable provides information. They accused management of sometimes using delay tactic. For example request for information on how many non-permanent workers were working at the plant was still not received. However when information was provided it was done timeously. Fourty eight percent of the workers compared to 24% felt the information when provided was relevant. Shopstewards agreed.

There was no action taken against the company for failing to comply with collective agreement. However the issue of overtime has been raised with the HR department.

In terms of the LRA, shopstewards are entitled to time off, from normal working hours, for union work. The company fully complies.

4.3 Workplace Restructuring

An overwhelming majority of the respondents said that the company uses contracted labour and there is an increase in the use of subcontracted labour. According to management just over 4% of employees are non-permanent⁴⁵. Fourty five percent of respondents said they did not know if management discussed restructuring issues with the union, while fourty percent said management don't discuss such issues and only 5% said management does. However the shopstewards did confirm that management discussed such issues with them.

Over the past five years, the company outsourced the security and office cleaning functions. No one was retrenched during the outsourcing and employees that performed these functions were redeployed within the company.

Sixty eight percent of workers said that they did not know if management demands from its sub contractors/suppliers to adhere to all labour laws. The criteria used by the company to select contractor to provide non-core services are cost and service provide.

Since the company started operations in the country it has grown substantially mainly through acquisitions. Over the last 3 years the company has increased its workforce as some departments of the company has grown. During the same period, retrenchments did occur, affecting a few senior management positions, due to the merger with Svedala.

4.4 TRAINING

The Company and the Vereeniging plant skills profile is illustrated in the table below.

TABLE 7: SKILLS PROFILE OF COMPANY AND VEREENIGING PLANT

⁴⁵ Non-permanent refers to casual, part-time or contract workers.

Skills Profile	Company (%)	Vereeniging Plant (%)
Highly Skilled/ Professional/Management	9	6
Skilled Artisans/Production Personnel	78	74
Unskilled Personal	13	20

Source: Company

The company complies with the Skills Development Act and Skills Development Levies Act of the country. It also has a study loan policy, discussed above. Fifty six percent of respondents indicated that they did receive some form of training and in most cases it was the managers decision for them to be trained. The company spends just over 2% of its wage bill on training.

4.5 Discrimination

Most respondents stated that there have no complaints of discrimination based on race, gender, religion, disability or any other personal attributes. A few workers did point out that there was an incident of black workers being treated badly by white workers. Meetings were held with management and no decision has yet been taken. It was also mentioned that white workers are favoured for promotion over black workers. Shopstewards pointed out though there were a few incidents of racism that were sorted out internally and others still being discussed.

The company has an employment equity plan, but the majority of workers stated that they did not know of the plan or that the company did not have a plan. Eighty percent of respondent stated that the company does not have or they did not know if the company had a code of good practice to deal with sexual harassment. Only 52 percent of interviewee said that the company has a code of good practice to deal with HIV/AIDS.

While the country has ratified ILO Conventions 100 and 111, it seems as though discrimination still exists at the company. Discrimination is prohibited in all laws of the country.

4.6 Child Labour

All respondents acknowledge that the company did not employ children. Sixty eight percent said that the company does not demand from its suppliers not to employ children under the age of 16.

Although the company complies with labour legislation and ILO Conventions 138 and 182, it does not ensure its suppliers do the same.

4.7 Health and Safety

Metso Forum is a cooperation forum for management and employees in European units, which has been extended to Metso Minerals. The corporation has also a Human Care concept applying life-cycle thinking to human resource management. Apart from life-long

learning, Metso seeks to secure the development of good physical and mental welfare in all workplaces, for all employees.

In the US, there are 263 asbestos related claims against Metso's US subsidiary Neles-Jamesbury. Seventy-seven claims were dismissed, 51 settled with compensation averaging USD 551, and the remaining 135 claims pending. Another two claims have also been brought against Metso Minerals Industries in the US. One of the two has been dismissed.

The study found that 90% of respondent acknowledged there was a health and safety committee. Training was provided occasionally. Forty eight percent described the training as insufficient, only 20% considered the training as plenty and the remainder said it was adequate. Seventy two percent said that the company was willing to discuss health and safety problem at the workplace but 50% said that the company was willing to discuss such issues for sub-contracted workers.

4.8 Environment

The Corporation says it contributes to ecological sustainability through all its activities. Metso emphasizes process optimization to save energy, raw materials, and money; and to minimise emissions into the air and other environmental impacts. Metso Minerals has established a separate business line that concentrates on solutions for metal recycling.

For the fourth time in 2002, Metso was included in the Dow Jones Sustainability report index and for the first time in the FTSE4 Good index. Inclusion onto these indexes is recognition of good performance in environmental sustainability, corporate social responsibility and human rights. *"It is the task of product development to ensure that the environmental impacts of new products and services are taken into account. Many laws and regulations that promote environmental protection, guide the Corporation's operations. Moreover, environmental systems meeting ISO 14001 standards are essential tools in Metso's environmental management."*

Metso develops reporting system of its own in accordance to the guidelines set by the Global Reporting Initiative (GRI). Metro's strategy, operating principles and management systems as well as progress made in economic, environmental and social performances are recorded with key indicators. On its website Metso acknowledged that its first sustainability report failed to contain all data as recommended by the GRI but it aims to develop a reporting format as set by GRI. In 2002, its environmental and technology reports were combined into a sustainability report, based on GRI guidelines. Although in the Finnish engineering industry, Metso was ranked best for reporting last year, it only scored an average mark.

Workers acknowledged that the company had a clear policy on environmental standards.

With regards to social responsibility programmes only 34% of the respondents knew that the company has such a programme. Every year, Metso collects money from its personnel during a one-hour action. The money goes into youth work since Metso is a member of Finnish Youth Foundation. In 2002, most of the yield of EUR 75,000 was spent on a SOS children's' village in Johannesburg, South Africa, and two Finnish youth schemes, Youth Academy's Mahis (Chance) project and campaign for good parenting by

the Mannerheim League for Child Welfare. The South African activities in the Ennerdale SOS children's village began 1982 and it is one of six in South Africa. The village organization belongs to SOS Kinderdorf International. Metso Minerals has supported the village for years. There are 146 children in 15 houses, a social centre for the local community and a training centre for mothers.

In addition the company assists the rural community of Isithebe through road maintenance, and general donations and sponsorships towards charities such as Hospice, etc.

5. CONCLUSION

1. In the main the company complies with the labour legislation of the country, the industry bargaining council agreements and the 8 core ILO conventions.
2. International research and research by NALEDI on MNCs show that MNCs general pay higher wage than the prescribed national minimum. Metso Minerals however simply adheres to minimum wage levels.
3. At present shopstewards can only meet with members during lunchtime, which is insufficient to discuss all issues. Therefore many workers are ignorant of company policies or do not understand the policies. While there are many committees that are made up of management and shopstewards/union, the workers seem unaware of these forums and those that are aware of them are not well informed of the outcome/decisions taken by the committees. Workers are also unaware of the company's engagement with the community, particularly the company's social responsibility activities. There is a need to improve communication to workers, especially between shopstewards/union and the workers.
4. Lower ranking managers have been accused of many forms of discriminatory behaviour. There have also been incidents of discrimination based on race. This type of behaviour does not bode well for the company's image. This can demotivate workers, adversely affecting productivity. There is policy at the company that do not permit workers have going into other department. Shopstewards have stated that this prevents them consulting with members. It is also perceived that this policy is applied to black workers only.

While an employment equity committee, a skills development committee, and a recruitment policy exist the accusation that whites are favoured for promotion warrants further investigation. There are no inherent conditions in the recruitment policy to ensure that the recruitment process is fair. For example the policy does not specify that there should be some form of union representation on the recruitment panel except that a member of the EE committee be on the panel. This member could very easily be a management person.

5. The increasing use of contract labour, particularly the use of retired workers who possess specific skills, suggests that the companies skills development plan and

employment equity plan do not speak to labour demands of the company. The unions need to play a more active role here.

6. It is of extreme concern the number of overtime hours worked by some workers. This poses a serious risk to workers mental and physical health. The excessive overtime hours suggests a need to employ more workers but in order to avoid the “*strict regulations in place regarding retrenchment and reduction of employees*”⁴⁶ workers are “forced” to work overtime.
7. Over the past years companies have restructured their operations to focus on core business, relying on suppliers for inputs into their production system. Neo-liberalism together with stiff global competition places downward pressure on wage on other working conditions. Research has shown that there is a growing trend among MNCs to ensure their supply chain conforms to local and international labour norm. Metso Minerals (SA) fails in this regard. While the company itself demonstrates its commitments to local and international labour standards, it needs to ensure its suppliers do the same.

⁴⁶ Company questionnaire. It has earlier been pointed out that this is a perception of business.

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www.metso.com

www.metsominerals.com

AFRICA LABOUR RESEARCH NETWORK

GHANA

(WOOLWORTHS)

Anthony Baah

Ghana Trades Union Congress

AUGUST 2003

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Table of Contents

1.	BACKGROUND INFORMATION/CONTEXT	66
2.	OBJECTIVES OF THE PROJECT	67
3.	RESEARCH METHOD AND CONSTRAINTS.....	68
4.	A BRIEF PROFILE OF WOOLWORTHS(GHANA)	69
	4.1 FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING.....	70
	<i>4.1.1 Brief report of interview with Industrial and Commercial Worker’s Union</i>	<i>71</i>
	4.2 LAWS AND REGULATIONS CONCERNING FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING IN GHANA	72
	4.3 DISCRIMINATION	72
	4.4 CHILD LABOUR.....	73
	4.5 FORCED LABOUR.....	73
5.	WAGES, BENEFITS AND WORKING CONDITIONS.....	74
	5.1 TRAINING	75
	5.2 CORPORATE SOCIAL RESPONSIBILITY	75
	5.3 HEALTH, SAFETY AND ENVIRONMENT	76
6.	CONCLUDING REMARKS.....	77
7.	BIBLIOGRAPHY	78

1. Background Information/Context

Woolworths is investing in Ghana at a time when the country is facing very precarious economic situation. Although the Ghanaian economy has been growing at an average annual rate of around 4 percent the economic and financial risks for investors are still high in terms of inflation, exchange rate and interest rate. Although a downward trend has been recorded in the past few years inflation still poses major challenges to investors. For instance, the year-on-year inflation was 15 percent at the end of 2002 compared to 40 percent in 2000 and over 70 percent in 1995. Like inflation, interest rate has also been falling over the past few years, but it remains high even by Sub-Saharan African standards. In 2002, for example interest rate averaged 25 percent compared to 47 percent in 1997 and 42 percent in 2000. The Ghanaian currency (the Cedi) has depreciated drastically since the early part of 1980s after the introduction of flexible exchange rate system as part of the stringent economic reforms. The current exchange rate of the cedi in terms of the US dollar is ¢9000 to US\$1.00 compared to ¢6800 in 2000. In 2002 alone, the cedi depreciated by 15 percent against the US dollar; 23 percent against the British pound; and 28 percent against the Euro.

Over a third of Ghana's population are poor⁴⁷. Only 43 percent of Ghanaians live in urban areas. The remaining 57 percent live in rural and, in most cases, deprived areas. The first two Woolworths outlets in Ghana are located in Accra (the capital city) which has a population of 3 million representing 15.4 percent of the total population of Ghana. In terms of employment, only about a million people are employed in the formal economy out of over 10 million Ghanaians considered economically active. The economy depends mainly on the production and export of agricultural commodities (staple food crops, cocoa and timber) and minerals (gold, diamond, manganese and bauxite).

Foreign direct investment (FDI) in Ghana is very low compared to other Sub-Saharan African countries like South Africa, Angola and Nigeria. In fact, Ghana attracts only about 1 percent of all FDI flow to Sub-Saharan Africa. Majority of the MNCs operating in the country are in mining and a few in manufacturing. The trade sub-sector, the sector in which Woolworths is investing, is the second most important sector in terms of employment for the working age population. It is heavily dominated by mainly self-employed local entrepreneurs with very little foreign participation in the sector.

Politically, Ghana is among the most stable countries in the West African sub-region. It has a democratically elected government, press freedom and relatively active civil society (including trade unions). As will be seen in the subsequent sections of this

⁴⁷ The population of Ghana in 2000 was approximately 19 million.

report the key factor that motivated Woolworths to invest in Ghana is the relative political stability in the country compared to the countries in the sub-region⁴⁸.

It is against this social, economic, financial and political background that the study of Woolworths (Ghana) was conducted as part of Africa Labour Research Network research project known as Social Observatory on Multinational Corporations in Africa. Ghana, Zambia, Zimbabwe and South Africa are the four countries involved in this pilot phase of the project⁴⁹.

2. Objectives of the project

There are three main objectives for this project. First, it aims at building the capacity of African-researchers and research institutions linked to the labour movement to monitor and evaluate the conduct and activities of multinational corporations in their respective countries. Second, it seeks to provide a concrete and strategic basis for social dialogue and trade union action at regional and global levels. Third, the project seeks to facilitate and enhance the contribution of African trade unions to the emerging debate and policy development process regarding frameworks and binding mechanisms for corporate accountability and social responsibility. The ultimate aim is to strengthen the capacity of members of the African Labour Research Network to assess the application of international labour standards in our respective countries.

In the case of Ghana this project is very relevant because there is a tremendous pressure on government from the international financial institutions to deregulate the labour market. To this end a new labour law is in the process of being passed to facilitate the intended deregulation of the labour market. The monitoring of the application of the core international labour standards is extremely important to ensure that vulnerable workers are protected from supernormal profit-motivated employers, particularly multinationals. In a situation like Ghana's where the government is desperately in need of foreign investments to boost the economy there is the tendency to relax the rules and standards in the labour market or ignore human and workers' rights abuses as a means of attracting more foreign investors. For instance, the World Bank considers the low wages in Ghana as a competitive advantage for attracting foreign investors and for the development of labour-intensive industries (World Bank 2001). This project is therefore timely and has enormous potential benefits for workers in Ghana.

⁴⁸ Three of Ghana's closest neighbours, namely Liberia, Sierra Leone and Côte d'Ivoire, have experienced civil wars in recent times. Ghana had a very volatile period between 1966 and 1981 during which period Ghana experienced five coup d'états that led to the overthrow of governments. Fortunately, the situation never degenerated into civil war.

⁴⁹ The project, which is being sponsored by SASK (Finland), is under the auspices of the Africa Labour Research Network. The network was formed in 2000. It is currently being coordinated by the National Labour and Economic Development Institute (NALEDI) based in Johannesburg, South Africa. Currently, the network has brought together trade union researchers or researchers from trade union-linked institutions from Ghana, Namibia, South Africa, Zambia, Zimbabwe, Malawi, Kenya, Nigeria and Angola.

The rest of the report is organised as follows: The next section discusses the research method and constraints. It is followed by a discussion of the background and operations of Woolworths (Ghana) under the following sub-themes: profile of Woolworths(Ghana); freedom of association and collective bargaining; discrimination; child labour; forced labour; wages and benefits; corporate social responsibility; and health, safety and environment. Some concluding remarks are in the last section.

3. Research Method and Constraints

This is a case study research. The company selected for this study is Woolworths (Ghana). There are two main reasons for selecting Woolworths. First, it is one of the largest and well-known multinational companies in Africa with a huge growth potential. Currently, Woolworths is operating in a number of countries in southern and more recently in western Africa and plans to expand its operations to other parts of the continent in the near future. Second, we wanted to allow for international comparison of the observance of labour and other standards by multinational companies with the same origin (South Africa) and operating in the same sector (trade).

The main method originally designed for gathering information for this research was personal interview based on separate questionnaires for management and workers of Woolworths. Management refused to grant permission for the interview and refused to provide any detailed information on Woolworths activities in Ghana. Therefore, we had no choice but to limit our interviews to workers. Additionally, an interview was conducted with two officials of the the Industrial and Commercial Workers' Union (ICU) which organises workers in the commercial sector. As mentioned in the preceding section of this report, this study forms part of a pilot phase of Social Observatory of Multinationals in Africa taking place simultaneously in four African countries. To facilitate international comparison of our findings in these countries a standard sample questionnaire was designed for all the four countries involved in the pilot phase. Each country was allowed to modify the instrument to suit the conditions in the country and the enterprise that is being studied. The questionnaires for Woolworths management and workers were, therefore, modified based on the fact that Woolworths is a new company in the country and is not yet unionised. Issues covered in the questionnaires included: general characteristics of the company, labour relations, application of core labour standards, working conditions, human rights and corporate social responsibilities, and health, safety and environment (see Appendix 1&2 for the final questionnaires designed for the interviews).

The fieldwork was done in collaboration with the Centre for Development Studies (CDS) of University of Cape Coast, in Ghana. A Research Fellow and lecturer in labour studies at the Centre did the fieldwork⁵⁰. She made the first contact with management on August 4th 2003 at the new Horizon Branch of Woolworths (Ghana)

⁵⁰ Currently, the Trades Union Congress (Ghana) is collaborating with the Centre for Development Studies (CDS) of the University of Cape Coast in a combined research and education project known as African Workers' Participation Development Programme. As part of the collaboration, the Centre launched a Diploma in Labour Studies Programme at the University in 1999 (the first of its kind in Ghana). This project is being sponsored by FNV (Holland). In 2000 the TUC, in collaboration with the Centre, introduced a Certificate in Labour Studies programme at the Ghana Labour College in Accra. Certificates for this course are awarded by the University.

on the Liberation Road in Accra (the capital city of Ghana). She was received by Mr Ernest Collison on behalf of management. A formal introductory letter from the Director of the Centre for Development Studies (see Appendix 3 for a copy of this letter) and copies of the questionnaires were given to management. The management representative was briefed on the nature, objectives and scope of the project. After the briefing, he explained that the final authority to grant permission for the interviews with management and workers rests with the General Manager who was not available.

The researcher followed up with a telephone call on August 5. She was informed that the General Manager had received the introductory letter and copies of the questionnaires but has not given any comments on them. Again, the General Manager was out of office when she called that day. She made another telephone call on August 6 but the GM was not available. On August 7 she travelled from Cape Coast to Accra (100 km) to meet the GM (Debbie Eve). The GM explained that she had not got sufficient time to study the questionnaires due to a special sale they were organising in the shop during that week. On August 18, the researcher spoke to the General Manager on telephone only to be told that our questions are too “sensitive” and so the company will not grant the request for interview. We asked her to respond to the questions that are not “sensitive” but she refused.

Since management did not cooperate with us we limited out interviews to workers. Two employees of the company were interviewed on August 28 (outside the company’s premises). This report is based on information gathered mainly from the two employees and from secondary sources as well as information gathered during the visit to the company head office and from telephone conversations with management personnel including the General Manager.

4. A Brief Profile of Woolworths(Ghana)

Woolworths (Ghana) is part of the global supermarket chain. It is one of the franchised Woolworths companies jointly operated by Woolworths of South Africa and Handa Group of companies. The company owns a total of 52 stores in 19 countries across Africa and in the Gulf region. The first branch in Ghana, which was also the first in the West African sub-region, was officially opened in Accra on November 19, 2002 by the President of Ghana⁵¹. In his opening remarks, the President assured Woolworths management of government’s support and urged the company to venture into manufacturing of garments as well as processing, marketing and packaging of agricultural produce in Ghana under the President’s Special Initiatives (PSI)⁵². Cobus Barnard, the head of franchise of Woolworths South Africa indicated that the company had so far invested about US\$10 million in Ghana and expect to expand its operations to other parts of the country. Three reasons were given by Ish Handa, the Chairman of the Board of Directors of the Handa Group of Companies, for investing in Ghana. They include political stability in the country, the bright economic prospects and the investor friendly environment. The company has since opened a second outlet in Accra. Woolworths is planning to open other outlets

⁵¹ See cover page for a photograph of the President of Ghana in the first Woolworths store immediately after the official opening ceremony.

⁵² Under this initiative, companies are given incentives to venture into manufacturing using local raw materials. It is part of government’s special effort to attract foreign investors into the country.

in Kumasi (the second largest city) and in Tema (the port city near Accra), in the short to medium term and in other regions in the long term. Currently, the company employs between 40 and 50 Ghanaians and about 9 expatriates. It uses no sub-contracted labour. The workers could not give us accurate information on the sex composition of the workers but indicated that there are more women than men in almost all the departments and at various levels in the company's hierarchy. They are not aware of any targets of employment equity plan. The company has four departments: textiles, ware house, food and sales.

The main competitors of Woolworths are Marx Mart and Koala – the other big supermarkets in Accra⁵³. The workers believe that Woolworths have the highest labour productivity and the best customer care in Ghana. They attribute their perceived higher productivity to the fact that all workers at Woolworths have formal education and are highly skilled. Most of the Ghanaian supervisors have university degrees. However, they indicated that Woolworths does not attract as many customers as their major competitors. They attributed lower market share to the relatively higher prices at Woolworths.

4.1 Freedom of Association and Collective Bargaining

Workers at Woolworths are not yet unionised. But at the insistence and initiative of workers a Communications Committee was formed about five months ago. The committee is made up of representatives of workers from all the departments. The duty of the committee is to serve as a liaison between workers and management. But they reported that, so far, the main duty of the committee has been to carry management decisions and instructions to the workers. They revealed that one of the workers (a female employee) who led the formation of the communications committee has already been fired for allegedly stealing chicken thighs. The interviewees believe strongly that she was framed and consequently victimised because of the leading role she played in the formation of the committee⁵⁴.

According to the workers we interviewed, management discourages workers from forming or joining a trade union. Management staff keep intimidating and reminding workers of the lack of jobs in Ghana with statements like “you come begging for jobs” and, “there are many people in the streets without job”. This has created a sense of job insecurity among the workers. They believe that if they should join or form a union at the moment management would be very displeased and they fear they could lose their jobs. The interviewees reported that because of lack of protection some workers have already been laid off unjustifiably. Despite this negative attitude on the part of management the workers have never complained nor taken any actions against the company for the fear that any such action could result in their dismissal.

The Communications committee meetings are held irregularly as and when necessary. The interviewees could not remember the last time a meeting was held.

⁵³ Shoprite has announced its plans to open five shops in Ghana in 2004.

⁵⁴ The interviewees explained further that the chicken thighs she took was due to the information she received from one of the expatriate managers who misled her to take out chicken thighs instead of chicken wings. She was entitled to chicken wings but not chicken thighs at a discount. They said this incident was not reported to the General Manager, who the interviewees believe, would have ordered an investigation before any action was taken. Instead she was dismissed outright by the Financial Controller who the workers say is very hostile to the Ghanaian workers.

Among the main issues discussed at the committee meetings are working hours. Employees work for six hours a day from Monday to Sunday and have one day off every other Sunday. They work 9 hours on Sundays from 11:00am to 8:00pm. Each worker is entitled to 15 minutes break and a 30 minutes lunch break. The workers find these working conditions too harsh and so they devote a chunk of their meeting times discussing how they can resolve the problem of working hours and short breaks. The workers particularly complained about the insufficient number of days off. In their opinion one day off every week (but not every fortnight) will be preferable. With regard to information dissemination, the interviewees reported that they have had no problems distributing information to workers at the workplace. There has never been a strike since the company was established in Ghana. According to the interviewees, workers feel very insecure to even contemplate a strike action.

The workers reported that neither collective bargaining nor workplace forums takes place in the company. Workers have individual contracts with the company and wages are determined by management at the enterprise level based on a pay structure which was determined by management without any consultation with workers or their representatives. Management has promised workers a pay rise at the beginning of every year. According to the interviewees, management insists that there is no need for workers to join or form trade union because unionisation will not change their working conditions. Management cites examples from other countries to support their argument that the workers can still enjoy good conditions without unions. But despite these arguments, workers are of the strong opinion that unionisation will improve their lot in the company⁵⁵.

4.1.1 Brief report of interview with Industrial and Commercial Worker's Union

To find out the reasons why the workers have not been unionised, we conducted an interview with the Industrial and Commercial Workers' Union (ICU) of the Trades Union Congress (Ghana). The union organises workers in both the formal and informal sectors. In the formal sector the sub-sectors that fall under ICU include manufacturing, financial services, hotels and restaurants, printing press, commercial entities like wholesale and retail companies. In the informal sector the union organises mainly domestic workers (drivers, house helps, gardeners and security personnel); hairdressers and barbers, weavers and batik-tye-and-dye small-scale manufacturers. Potentially, two categories of Woolworths' employees fall under the jurisdiction of ICU - the workers who work in the stores and those who work as domestic servants and security guards for the expatriate staff.

According the union it has not attempted to start the unionisation process in the company because it considers Woolworths (Ghana) a "young" company and so it is willing to give the company some time to establish firmly in the country before the unionisation process starts⁵⁶. The union hinted that it intends to start the process of unionisation of both junior and senior staff in the latter part of 2003. As usual, the union is not certain about the extent of cooperation it will receive from the management of Woolworths. According the union the duration of the unionisation process in foreign companies depends on the degree of co-operation of management. If such co-operation

⁵⁵ Many studies have shown that the unionized sector of Ghana's formal labour market earn between 21 and 28 percent higher wages than the non-unionised sector even when controlling for observable individual and firm characteristics. Union members also enjoy better conditions of employment compared to their counterparts in the non-unionised sector [see Teal (1996)].

⁵⁶ The other reason for the non-unionisation was that this year has been very busy for the union because of its quadrennial conference which took place from 7th to 11th August, 2003.

is not forthcoming then the unionisation process could take up to year or more. The union expects management to strongly resist the unionisation of senior staff for fear that company secrets might be divulged to the union. The ICU is certain that the workers will cooperate if only management does not interfere. As usual, the union's fear is that management might intimidate and threaten workers to discourage them from becoming unionised. The union officials cited several examples where they faced many difficulties when they attempted to unionise workers in multinational and foreign owned enterprises in Ghana.

4.2 Laws and Regulations Concerning Freedom of Association and Collective Bargaining in Ghana

Although Woolworths employees are not unionised they are protected by the labour laws of Ghana. Ghana has ratified ILO Conventions 87 and 98 which guarantee freedom of association and the right to bargain collectively. In fact the Industrial Relations Act (1965) guarantees unions the right to represent all workers in Ghana whether unionised and or not. The law states in article 7(1) that “an officer of a trade union who is duly appointed by his trade union may conduct negotiations on any matters connected with the employment or non-employment or terms of employment or conditions of labour of any employees *whether members of a trade union or not*”(emphasis added). In addition to the Industrial Relations Act cited above, there are other labour laws that protect workers in Ghana irrespective of their union status. These include; Trade Unions Ordinance,1944; Factories, Offices and Shops Act, 1970 (amended by PNDC Law 66); Trade Dispute (Arbitration and Inquiry) Ordinance; Labour Decree, 1967; Labour Regulations, 1969; Daily-rated Workers (Minimum remunerations); and Social Security Law, 1991. Together, these laws regulate employment in Ghana and provide for the protection of rights of workers. They cover a whole spectrum of employment and non-employment issues such as employment contracts, termination of agreements, severance award, employment of female and disabled, child labour, protection of remuneration, forced labour, compensation for occupational injuries and deaths, occupational health and safety, working conditions (leave, hours of work, rest periods at the workplace, pension, social security benefits, etc), and many other issues relating to employment or non-employment of unionized and non-unionized workers. Several institutions are involved in industrial relations and the protection of workers' rights in Ghana but the three most important institutions that are engaged in industrial relations on regular basis are the government, trade unions, and employers and their associations. Woolworths is expected to comply fully with all the laws outlined above as well as the conventions, norms and practices that seek the welfare of unionised and non-unionised workers in Ghana.

4.3 Discrimination

The two ILO Conventions concerning equal treatment - Conventions 100 and 111 have been ratified by Ghana. Convention 111 seeks to promote equality of opportunity and treatment in respect of employment and occupation. Convention 100 ensures the application to all workers of the principle of equal remuneration for work of equal value. The Constitution of Ghana and the labour laws outlined above guarantee the equality of treatment and prohibit discrimination on the basis of race, sex, ethnic origin, religion, creed, colour, social or economic status. The workers reported no evidence of any form of discrimination at Woolworths (Ghana). They were, however, not happy with the huge differential in wages and benefits between the expatriates and Ghanaian workers and managers. For instance, all the expatriate

staff enjoy free housing and own private cars but not even a single Ghanaian owns a car or enjoys subsidized housing. The workers we interviewed are not aware of any code of good practice for dealing with sexual harassment and HIV/AIDS.

In terms of remuneration, men and women who perform work of equal value are paid equally. Generally speaking, there seem to be no problems with the application of the conventions and standards regarding equality of treatment with respect to employment and remuneration. But this may be due to the difficulties involved in determining the comparability of employment for the purposes of assessing equal remuneration for work of equal value. With regard to human rights abuses, there have been reports of incidents where some expatriate managers have subjected their Ghanaian employees to verbal abuse and inhuman treatment. For example, there was an incident whereby an expatriate employer was alleged to have verbally abused his Ghanaian driver and called him an animal and wondered how an “animal” could enjoy music⁵⁷. There was another reported incident where a foreign employer allegedly forced his Ghanaian employee to lick his sputum after he (the Ghanaian employee) spat on the floor at the workplace. These are but a few cases that can be cited to illustrate the potential for increased human and workers’ rights abuses, particularly in foreign enterprises, if there is no monitoring mechanism in place to ensure the full protection of workers.

4.4 Child Labour

ILO has adopted two conventions on child labour: Minimum Age Convention 138 (1973) and Worst Forms of Child Labour Convention 182 (2000). Ghana has ratified Convention 182 (2000). Additionally, there is a Children’s Act which was passed by Parliament in 1998 to ensure adequate protection of children. Ghana National Commission on Children (GNCC) which was established in 1979 is charged with the responsibility of ensuring the “the general welfare and development of children” in the country. The legal minimum age set for either formal or informal employment in Ghana is 15 years. The law also allows children between the ages of 13 and 15 years to engage in “light work” which is defined as work that is not likely to harm the health, safety and the physical and mental development of children. In spite of all these laws and conventions, child labour is quite widespread in Ghana particularly in the informal sector and in agricultural sector. Ghana Statistical Service estimates that nearly 11 percent of children of school going age are engaged in income-generating activities. In some regions in the country the incidence of child labour is as high as 57 percent⁵⁸.

As mentioned earlier, child labour is mainly a rural and informal sector phenomenon. Therefore, we did not expect Woolworths to violate the convention on child labour. The workers we interviewed confirmed that Woolworths does not employ workers who are below 15 years. If anything at all, Woolworths can possibly and indirectly be guilty of violation of the convention through its dealings with sub-contractors as it expands its business to other parts of the country and into other sectors. But the workers have no evidence to believe that the company’s subcontractors (if any) employ children.

4.5 Forced Labour

According our interviewees, overtime work is determined by management as and when necessary but it is voluntary. In other words workers may or may not do overtime work. Workers in Ghana are protected by Conventions 29 and 105

⁵⁷ The expatriate manager was a Malaysian working for Ghana Telecom. He was deported within 48 hours of the incident.

⁵⁸Source: Ghana Statistical Service (1998) “Core Welfare Indicators Questionnaire (CWIQ) Survey”

regarding forced labour because Ghana has ratified them. The Constitution and labour laws in Ghana prohibit all forms of work or service that is exacted from any person under the threat of any penalty and for which the said person has not offered himself [or herself] voluntarily. Commission on Human Rights and Administrative Justice (CHRAJ) has the duty of ensuring that there is no form of forced or compulsory labour in the country. Although no serious violation of forced labour in the formal sector has been reported, some affiliates of the Ghana Trades Union Congress, particularly unions in the mining and manufacturing sectors have had to deal with cases where workers are forced against their will to work on shifts that last for more than 8 hours. It is not uncommon to find workers in the formal sector who work between 10 to 14 hours a day for seven days a week. In the case of Woolworths(Ghana), as mentioned earlier, workers are obliged to work seven days a week with only one day off every fortnight.

5. Wages, Benefits and working conditions

With regard to wages and benefits we asked specific questions about the level of wages; how wages are determined (either by management or through consultation with workers' representatives); how often wages are determined; whether or not there are differences in wages based on employment status (temporary/casual and permanent employment); and what type of benefits the workers at Woolworths enjoy. Although management considered these questions as some of the "sensitive" questions, they were willing to answer a general question on benefits. In the last telephone conversation our field researcher had with the general manager of Woolworths(Ghana), she was quick to indicate that workers' contribution to the Social Security and National Insurance Trust (SSNIT) are fully paid every month in accordance with the Social Security Law of 1991. The law requires all employers to deduct 17.5 percent of each employee's gross wage as their social security contribution⁵⁹. The workers we interviewed also confirmed that management pays their SSNIT contribution and offers them a paid vacation leave for 16 working days and paid sick leave for 3 days. Workers are also offered incentive bonuses if they meet targets set by management. But the interviewees were of the view that these sales targets are usually set by management and are usually difficult to achieve. In cases where targets are achieved the procedures for payment of bonuses are cumbersome and so payment is delayed unnecessarily. They do not benefit from medical aid, loans, education bursaries, transportation, medical aid, Employee Share Ownership Plan (ESOPs), subsidised housing and child care services. The workers we interviewed could not provide any accurate information on paid maternity leave. There are differences in benefits received based on employment status. The expatriate staff earn far more than their Ghanaian counterparts and, unlike their Ghanaian counterparts, the expatriate staff receive other fringe benefits such as free or subsidised housing and transportation.

Our informants reported that they do not benefit from severance pay. Probably, the workers are not aware that there is a law that protects all workers in Ghana irrespective of their union status. Paragraph 34 of the Labour Decree (1967) provides for the payment of severance pay to all employees who become unemployed or suffer any diminution in their terms and conditions of employment due to rearrangement, amalgamation or closure of the enterprise that employs them. The Decree further provides that all such severance pay should take into account the past services of the affected employee(s). The Decree does not state how severance pay should be calculated. It only states that the amount of severance pay and terms of

⁵⁹ Workers and employers' contributions are 5% and 12.5% respectively.

payment are matters for negotiation between the employer and the affected employee(s). The TUC has on many occasions represented non-unionised workers (including management personnel) in the negotiation of severance pay since the Industrial Relations Act allows trade unions to represent all workers in all matters regarding employment and non-employment. Although some unionised workers receive as high as 3 months pay for every year of service as severance, the average for unionised workers is around one month pay for every year of service. Severance pay for non-unionised workers who seek redress through the trade unions usually receive lump-sum payment determined by the affected worker in consultation with the union officer who deals with that particular case. Usually the level of severance for non-unionised low skill workers depend on the number of years of service as well as the financial position (ability-to-pay) of the employer.

Since Woolworths management did not give us detailed information about the wage levels and pay structure in the company we are not in the position to provide any detailed assessment of levels of wages, factors considered for wage increases and the extent of differential in wages based on employment status in the company. However, like other foreign companies, wages and salaries for Woolworths' employees exceed the legal national minimum wage⁶⁰.

5.1 Training

The company has a training policy. The first group of workers were given two weeks training when they were employed. However, the workers who were employed later have not had any training yet but management has informed them that there will be more training soon. The training was fully financed by management and workers were paid their full salaries for the period they were undergoing training. As part of the training programme workers were introduced to the structure of the company and customer relations - subjects the workers consider very relevant for their job. According to the workers, Woolworths is very particular about customer care and does everything to ensure high standards of customer care. As mentioned above the company is planning more training for the workers and is making arrangement to send managers to its branches in other countries for training. Also, arrangements are being made to bring a trainer from South Africa to train the Ghanaian staff. According to the workers, although the training programme is tailored specifically to suit the needs of the company, some aspects of the training will be beneficial for their career even when they are no longer with Woolworths. The company has not given any financial assistance to any worker for further education or training outside the company⁶¹.

5.2 Corporate Social Responsibility

⁶⁰ Wage levels are generally low in Ghana even by Sub-Saharan African standards. Currently, the minimum wage is 9000 Cedis (about US\$1.00) per day or about US\$27 per calendar month. Average monthly wages are still below US\$100. In the mid to late 1990s Ghanaian workers ranked lowest in terms of average monthly earnings as compared to other Sub-Saharan African countries at the similar level of economic development. Comparative analyses of wages in the Sub-Saharan African region by Teal (1998) revealed that average monthly wage in Ghana, measured in Purchasing Power Parity in US Dollars (US\$PPP), was US\$170 compared to \$467 in Cameroon, \$333 in Kenya, \$176 in Zambia and \$328 in Zimbabwe. Studies have shown that, on average, foreign companies in Ghana pay higher wages than their local counterparts [See Teal (1998)].

⁶¹ The workers laughed when we posed this question and wondered if this will ever happen.

Woolworths(Ghana) is a young company in the country but according the workers we interviewed, the company has demonstrated that it is committed to community improvement. The company has donated money and food worth million of cedis to orphanages and other charitable institutions. The company also donated food and drinks for special Christmas party for children.

Woolworths' positive attitude and commitment to community improvement and social welfare were confirmed when we tried to find out the parent company's performance in this area. The result of our search was very encouraging⁶². Woolworths has been involved in community improvement projects in some of the countries it is investing and encourages all the new franchised stores to play a visible role in all community improvement initiatives. For instance in 2002 Woolworths donated surplus food and clothing valued R120 million to hundreds of charitable organisations in South Africa. The company is also involved in health and nutrition education and provides financial assistance to support initiatives for the improvement of lives of people living with HIV/AIDS. Other community initiatives Woolworths supports in South Africa include Poison Information Centres at provincial hospitals, education in environmental care and protection, conservation and natural resource management, and provision of pumps to supply potable water to some rural and deprived areas. Like the parent company, Woolworths(Ghana) demonstrated its commitment to community improvement at its official opening in Ghana by donating €101 Million (US\$11000) to the Mother and Child Community Foundation, a Ghanaian NGO committed to the improvement of lives of women and children in deprived areas. In a telephone conversation with our field researcher, the general manager indicated that the company is involved in other community initiatives and it will continue to support these initiatives.

5.3 Health, Safety and Environment

We found out from our interviewees whether workers or their representatives have access to information on accidents and any health problems the workers in the company might have. The response was, categorically, no. There is no health and safety committee and workers have never received any training in health and safety. They have no idea about any plans of health and safety training for the workers. Some of the workers are complaining of health and safety problems. For example, sales assistants are complaining about standing continuously for 6 hours with only thirty minutes break. Workers in the foods department have to manually lift heavy loads everyday and some have already linked this to hernia they have developed. Workers in the foods department complain that they do not have adequate clothing to protect them from the cold in the freezing warehouse. They admitted that management has provided them with sweaters but according to the workers the sweaters do not provide adequate protection. Management is aware of the problem and has been promising them appropriate clothing for some time but they are yet to provide them. However, the interviewees indicated that management may be willing to discuss any problems related to health and safety with the workers if such issues are raised.

One of the positive reports we received from our informants about Woolworths(Ghana) has to do with its concern for and commitment to high environmental standards particularly with regard to sanitation. However, they could not provide detailed information on the company's performance in health, safety and environment in Ghana. Our search for further information about the parent company revealed that it has taken a number of initiatives in the area of health, safety and

⁶² See http://www.woolworthsholdings.co.za/corporate_profile/profile.html

environment. For example the company stopped sourcing milk products from dairies whose animals are dosed with rBST (a hormone known to stimulate milk production). The report also indicates that Woolworths sell free range eggs, beef, lamb and pork and ensures that all organic foods are certified by credible auditing bodies. Woolworths claims that its suppliers of honey do not trap badgers and its tuna products come from fleets that use dolphin-friendly techniques. It also ensures that its garments, particularly childrens' wears, are free of any strange objects like pins and broken needles. The company has adopted the EU regulations on banned dye-stuffs to reduce pollution and recycles nearly 1500 tons of corrugated board packaging per year. It has phased out the use of PVC in their packaging. Its shopping bags are re-usable which translates into less environmental pollution.

If these reports accurately reflect Woolworths' activities in health, safety and environment then we can conclude that the company is fairly conscious of its responsibilities in these areas. Since most of the supplies to the new franchised stores come from South Africa it is likely that the benefits from health, safety and environmental initiatives undertaken by the parent company in South Africa automatically extend to Ghana and other countries where franchised stores have been opened recently.

6. Concluding Remarks

The purpose of his report was to provide information on Woolworths (Ghana), focusing on the application of core international labour, health and safety, and environmental standards in the company. Our research method was designed in such a way that a bulk of the information required for this report was based on management cooperation and the company's willingness to provide such information. Since management refused to provide the information we requested we had to rely mainly on workers and secondary sources for information.

Despite this constraint, we have provided some information on the company's activities and have given the broad picture of the company's performance in the application of labour, health, safety and environmental standards. We have the impression that Woolworths is fairly conscious of its corporate social responsibilities. This was confirmed by the workers we interviewed. Our main reservation about the company has to do with its attitude towards unionism. As mentioned above, management is using very subtle methods to ensure that workers do not form or join a union. Since the union in charge of commercial sector in Ghana has not made any attempt to start the unionisation process, we cannot confirm that Woolworths management is anti-union. The union has hinted that it will start the unionisation process soon. The outcome will reveal the true character of the company towards unions. Another important area that needs to be emphasised is health and safety of workers. The impression we had from the information we gathered from the workers is that workers in some departments, particularly those in the warehouse, have been complaining about lifting heavy items and working in very cold conditions without adequate protective clothing. Management is aware of the situation but has not paid sufficient attention to the plight of workers in this section. Like many other multinationals, and consistent with their super-normal profit motive, any regulation or standard that appear to impose considerable costs on the firm and possibly reduce profits are likely to be violated, albeit, in very subtle manner especially if the monitoring and inspection is weak and if workers in the enterprise are not unionised. Ensuring higher occupational safety and health standards, for example, is usually expensive and is likely to be ignored if unions are not present. We expect this project

to enhance the capacity of trade unions across Africa to ensure that companies, both foreign and local, apply labour, health, safety and environmental standards as a means of protecting workers and the general public.

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AFRICA LABOUR RESEARCH NETWORK

**ZAMBIA
(SHOPRITE)**

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Zambia Congress of Trade Unions**

SEPTEMBER 2003

TABLE OF CONTENTS

1. INTRODUCTION.....	82
1.1 METHODOLOGY.....	82
2. THE PROFILE OF SHOPRITE IN ZAMBIA	83
2.1 MANAGEMENT STRUCTURE	84
2.2 LABOUR RELATIONS.....	85
2.3 NATIONAL LEGISLATION AND RATIFICATION ILO CONVENTIONS.....	87
3. LABOUR RELATIONS: BASIC WORKER RIGHTS	88
4. LABOUR CONDITIONS	91
4.1 REORGANISATIONS/RESTRUCTURING/RELOCATION	94
4.2 HUMAN RIGHTS.....	95
4.3 ENVIRONMENT.....	95
5. ECONOMIC AND SOCIAL IMPACT.....	95
6. CONCLUSIONS	97
6.1 LABOUR CRITERIA	97
6.2 ECONOMIC AND SOCIAL CRITERIA.....	98

1. Introduction

Since the return to political pluralism in 1991 Zambia has vigorously and religiously implemented the World Bank (WB) and International Monetary Fund (IMF) Structural Adjustment Programmes (SAP) as a remedy to stabilize and resuscitate the ailing economy. Major policy measures introduced included liberalization of trade, prices, interest and foreign exchange rates, removal of subsidies, cut in public expenditure, privatization and public sector reforms.

This was a major shift devoid of any transitional measures for an economy coming from a long background of a mixed economy with dominant state participation.

The opening up of the economy coupled with fast track privatization process created some opportunities for foreign investors to venture into Zambia. Among these foreign investors are a considerable number of South Africa based Multinationals.

This study looks at Shoprite Checkers operations in Zambia, which belongs to the Shoprite Group of Companies. The Shoprite group of companies is reputed to be the largest food retailer in Africa operating 643 corporate outlets with outlets in 13 African countries apart from its diverse interests throughout South Africa.

Shoprite has expanded in the past 9 years beyond the South African Borders. There are 95 outlets in Africa operating outside the Republic of South Africa. The countries in which these outlets are located include Egypt, Mauritius, Madagascar, Uganda, Tanzania, Mozambique, Zambia, Zimbabwe, Namibia, Lesotho, Swaziland, Botswana and Malawi. Shoprite currently provides employment to some 7,400 local nationals in its non-South African operations Shoprite even plans to expand beyond the African continent and is keenly eying the Indian subcontinent. Shoprite's long-term aim is to increase the operating income from its non-South African operations to more than 50 per cent.

1.1 Methodology

The purpose of this study is to;

Examine and assess the corporate practices and operations of Shoprite in Zambia on a measurement of good, average or bad scale based on labour, economic and social criteria on a 60 – 40 per cent weight respectively.

The specific criteria include the following;

- Wages, unionisation, employment intensity, decent jobs relative to industry, skills development, industrial health and employment equity
- Adherence of Corporations and Supply Chain to core labour standards

- Engagement with trade unions and community
- Contribution to local economic development/linkages to local companies
- Support for acceptable forms of corporate social responsibility
- Adherence to good corporate governance
- Promotion of human rights
- Extent of environmental/health and consumer protection impacts
- Extent of political influence
- Adherence to Code of Conduct (including strong enforcement and auditing)

The study is primarily concerned with how Shoprite operations in Zambia as determined by the above criteria impact on labour and the economic and social aspects of the economy at large.

Several methods were used to collect data for the study. The main focus was to collect qualitative and quantitative data from both primary and secondary sources. The methods used for data collection include;

- Interviews with key informants using questionnaire (in particular trade unions and Management at Shoprite),
- Desk review and content analysis of published and unpublished data including policy documents, newspapers, Internet.

2. The Profile of Shoprite in Zambia

The operations in Zambia began in 1995 with one retail store in Cairo road, Lusaka. Between 1995 and 2003 17 more outlets were opened including the flagship of investment in Zambia, the Manda Hill store. Currently Shoprite operates 18 retail outlets, one wholesale and 7 fast food outlets trading as Hungry Lion throughout Zambia employing a total of 1,698 persons. The bulk of these operations are in urban areas with only a handful located in rural areas mainly the provincial centres.

Direct employment attributed to Shoprite is illustrated in Table 1 below by structure of employment. The table shows that 57 per cent are permanent employees while the remaining 43 per cent are casual employees.

Table 1 Employment Structure of Combined Workforce – Shoprite Zambia as at July 2003

Employment Category	Number Employed
Permanent Employees	918
Casual Employees	699
Total	1617

Source: Shoprite Zambia Management Interview

Management further claimed that 60 per cent of the employees are female. Shoprite also contributes to indirect employment through out sourcing certain services. Table 2 below shows secondary employment attributed to Shoprite operations in Zambia.

Table 2 Shoprite Indirect Employment July 2003

Service	Number Employed
---------	-----------------

Security Services	196
Merchandizing Services	150
Cleaning Services	64
Total	410

Source: Shoprite Zambia Management Interview

Management were able to quantify the above indirect employment totalling 410 persons attributed to Shoprite operations countrywide. Disaggregated data on gender relating to the 410 persons mentioned above was not available.

The trends in past employment were not available but management confirmed an increase in employment over the previous years due to opening of new outlets.

However, figures on financial results could not be availed by management because they needed authorization from Head Office in Western Cape South Africa to do so. However, information on the Shoprite web site (www.checkers.co.za) is quite revealing. The information of financial results shows a consolidated position for the entire Shoprite Group. The Group recorded a turnover of ZAR 22.1 billion (US\$ 2.4 billion) in the 12 months ended June 2002. In the next 12 months to June 2003, Shoprite Group increased operating profits on revenue by 13 per cent to ZAR 25 billion. During the same period operations out side South Africa contributed ZAR 2.6 billion or 10 per cent of total revenue up from ZAR 2.3 billion in 2002.

2.1 Management Structure

Shoprite Zambia is very much an appendage of Shoprite South Africa with little autonomy. This puts the national management in relative weaker position to the corporate management at Head Office in Western cape. The national management is made up of 75 persons of whom 6 are white expatriates from South Africa. The expatriates hold the most senior management positions including that of General Manager and Finance Manger.

The national management are responsible for the day to day running of Shoprite operations in Zambia and related operational decisions such as hiring and firing of workers, administration, and stock management.

However, all decisions involving statutory issues, including decision on collective agreements, procurement and investment are referred to Head Office in Western Cape.

Out of the 75 management positions Zambians hold 69 mainly in lower management. These positions are at Regional, Branch, Sales and Administrative Manger level. The expatriates hold all the key and top management positions including that of General Manager and Finance Manager. The only Zambian in Key management position is the Human Resource Manager.

The future plans for Shoprite in Zambia gives little indication that this character of management will change. Shoprite through its holding company in South Africa is now listed on the Lusaka Stock Exchange. While this has been done, another scheme called the share incentive scheme to which Shoprite committed itself as a form of re-investment to benefit workers is yet to be implemented.

Management at Shoprite Zambia are limited to the breadth of responsibility and decision-making. Often Head Office in South Africa has to make the bulk of

decisions. The Shoprite Group has a Human Resources Division at Head Office that is committed to transformation of the workplace in line with an employment Equity Plan with training remaining a top priority. However, the scheme benefits employees based in South Africa more compared to their counterparts employed outside South Africa.

Shoprite Group has a social investment policy that is controlled from the Head Office. In 2003 a total of ZAR 6.5 million is committed to the social investment fund. From this fund the Shoprite Zambia supports a limited number of charities mainly selected orphanages.

Shoprite Zambia involvement with community is limited. Shoprite Zambia runs a consumer programme on the national radio station. It has also occasionally supported some national sporting and music activities. Shoprite also provides information boards in all its supermarkets as part of its service to the community/public.

Shoprite Zambia has a policy on outsourcing and subcontracting. Management listed outsourced or subcontracted services as security, merchandizing and cleaning.

2.2 Labour Relations

At present only permanent employees of Shoprite Checkers are unionised. Table 3 below shows disaggregated trade union membership in each of the Shoprite Checkers outlets operating in Zambia. The NUCIW puts its paid up membership from all 18 Shoprite Checkers outlets at 829. The variance arising when one takes into account total permanent employees (918) is due to those in management and supervisors that have not opted to join the union.

However, the remaining 699 casual employees are not unionised. Either the union or management could give sufficient reasons for this exclusion. The simple reason was that the casual were difficult to include because of the temporally nature of their employment. There is no legal restriction in organizing casual workers under current labour laws.

Table 3 Trade Union Paid Membership by Gender July 2003

Name of Outlet/ Branch	Female	Male	Total
Cairo	33	44	77
Matero	28	22	50
Chilenje	18	31	49
Manda Hill	32	23	55
Ware House	6	18	24
Livingstone	10	14	24
Mazambuka*	8	10	18
Mongu*	18	15	33
Kabwe	15	27	42
Chipata*	23	16	39
Ndola	44	36	80
Luanshya	18	16	34
Kitwe	28	23	51
Chingola	16	18	34
Mufulira	20	16	36
Solwezi*	29	26	55

Mansa*	26	34	60
Kasama*	38	20	58
18	420	409	829

Source: NUCIW Research Department, 2003 * Rural Outlets

Some casual workers at Shoprite Checkers felt that the union was discriminating against them. The casual workers also felt that they had no form of protection and were vulnerable to management intimidation. Some casual employees have been engaged as casuals for periods of up to 2 years.

The employers are able to beat the legal requirement that an employee ceases to be casual if in continuous employment for a period exceeding six months by rolling over fixed three months contracts. The contracts are appropriately terminated and then fresh ones re-entered into by both parties.

The National Union of Commercial and Industrial Workers (NUCIW) organize unionised workers in all Shoprite outlets. The NUCIW are affiliated to Zambia Congress of Trade Unions, International Textiles, Garments, Leather, Workers Federation (ITGLWF) and Union Network International (UNI).

The NUCIW branch with nine executive members represents unionised employees in all Shoprite Checkers outlets. The union also has a shop steward in each outlet. Management intimated that they provide space and time for trade union representatives (shop stewards) to conduct trade union business at the workplace. A Collective Agreement between NUCIW and Shoprite Checkers exists with a provision to review salaries once a year and conditions of service after every two years.

In July 2003 Shoprite Checkers countrywide went on strike demanding increase in salaries, which they claimed were very low to meet the most basic needs. The workers were demanding a living wage that they strongly felt they deserved from profits the company made from Zambian operations. The workers called for better conditions of service and vowed not to report back for work until their demands were met.

The workers were demanding a salary increase to a minimum of K 700,000(US\$146) from the current minimum of K 230,000(US\$48), which is an increase of 204 per cent. Management on the other hand offered an increment of K 80,000 across the board covering housing, transport, medical, lunch allowances and the salary increment which would bring the minimum to K 310,000(US\$65) or an increment of 35 per cent.

The annual overall inflation at the end of the year 2002 was 26.7 per cent. However, prices in Zambia have remained at a high level relative to wages since the runaway inflation rates of over 200 per cent in the early 1990's that witnessed a drastic decline in real wages and workers purchasing power. Most workers especially those in low-income brackets have not recovered from this decline in purchasing power. According to a monthly survey carried out by Jesuit Centre for Theological Reflections (JCTR) the **Basic Needs Basket** for the month of June stood at K 1,012,000 (US\$210). The Basic Needs Basket is made up of the cost of food for a family of six (2 adults and 4 Children), the cost of essential non-food items such as charcoal, wash and bath soap etc.

The JCTR conducts the **Basket Basic Needs** survey as a way of highlighting the daily challenges that the majority of Zambian households encounter in trying to meet

decent sustainable livelihoods. It is important it must be taken into serious consideration during discussions on wages and conditions of service.”

The Ministry of Labour intervened in the two days strike in which Shoprite Checkers is reported to have lost over K 800 million from the Lusaka outlets alone.

The Ministry of Labour called on management at Shoprite Checkers to expedite the delayed negotiations to avoid further industrial unrest. Labour Deputy Minister went on to warn investors not to abuse workers like slaves just because they were at liberty to hire and fire.

Negotiations had resumed but have ended in a dispute. The parties have agreed to the appointment of a reconciliation board. The union is now demanding a salary increase of K 500,000 covering the five issues mentioned above while management has offered K 150,000 across the board. The union has already proposed a name of the conciliation board Chairperson but management has not responded.

2.3 National Legislation and Ratification ILO Conventions

In the past ten years government has taken a number radical measures to liberalize and deregulate the labour market. The current government strongly believes that deregulation of the labour market will create flexibility and the much needed jobs. To achieve this government has reviewed and amended the principal labour laws with little consultation with the relevant social partners, i.e. unions and employers.

At present there are about fifteen pieces of legislation in Zambia that directly or indirectly affect labour and labour relations. These include the Industrial and Labour Relations Act (ILRA), Employment Act, the Minimum Wages and Conditions of Employment Act, Factories Act, Employment of Women, Young Persons and Children Act, National Pensions Authority Act, Workmen’s Compensation Act and the Public Service Pensions Act. However, the principal Acts are the Industrial and Labour Relations Act (ILRA) and the Employment Act.

In 1993 the IRA 1990 was repealed and replaced by the Industrial and Labour Relation Act (ILRA 1993). The ILRA removed mandatory membership to unions and left the right to be a member of a union to the individual worker. This meant that unions had to go out to organize and recruit members. Mandatory check-off system was stopped, leaving the deduction of subscription at the discretion of the worker and the employer. The ILRA further restricted strike action including prohibition from participation in lockout or strikes. For instance no employee or trade union is allowed to take part in a strike action which is not in contemplation or furtherance of a collective dispute to which the employee or trade union is party. This meant killing the spirit of solidarity, which is key in the trade union fraternity.

In December 1997 government again amended the ILRA. The amendment provided for formation of trade unions and employers’ representative organizations, including the formation of federations of trade unions and federation of employers’ organizations.

The amendment to the ILRA in 1997 also redefined the recognition and collective agreements by removing the word joint council and collective agreements and replacing them by simply collective agreements.

The motive behind this move by government was to comply with the situation in the liberalized economy where employers were agitating for a shift from industrial or joint

council bargaining to enterprises bargaining. Employers were arguing that joint council collective agreements were acceptable in a liberalized economic environment because what really counted was the employers' ability to pay and this varied from one employer to another even if they operated in the same industry. This amendment effectively put an end to joint councils as employers dismantled their joint council bargaining units.

The amendment to the ILRA was meant to liberalize the industrial relation arena and to aid the accelerated deregulation of the labour market. The trade unions perceived this development as a measure meant to further weaken them.

The Employment Act has also undergone a number of changes in the last ten years. The Employment Act was amended in 1997 to facilitate deregulation of the labour market as well as remove some of the so-called over protection clauses workers enjoyed and was now seen to be scaring away investors. The key changes in the 1997 amendment to the Employment Act was the definition of casual employment, the addition of the Supreme Court other than the Industrial relations Court alone hearing labour related cases. The amendment also delegated a lot of powers to the Labour Commissioner.

The 1997 amendment to the Employment Act defines a casual employee as “any employee the terms of whose employment provides for his payment at the end of each day and who is engaged for a period of not more than six months”. Trade unions have questioned government rationale on this change especially since before the amendment the maximum period of continuous employment of casual employees was three months.

The amendment also removed the clause that made it mandatory for an employer to provide housing or in the absence of a housing allowance. This also applied to the mandatory provision of medical services by the employer to the employees.

The Minimum Wages and Conditions of Employment Act was intended as statutory protection for non-unionised workers in formal employment who were not organized mainly because of the small numbers at their place of employment. Through this Act the Minister of Labour could issue a statutory instrument to announce minimum monthly wages and other conditions including hours of work, overtime, paid leave, sick leave, maternity leave, funeral benefits, redundancy, retirement, medical discharge, allowances and repatriation benefits. The Act was amended and title changed to the Minimum Wages and Conditions of Employment (Shop Workers) Order, 1997. This change meant reducing the category of workers covered previously to shop workers only i.e. shop assistants or those in connection with the business of any shop.

Zambia has ratified a total of 43 International Labour Organization (ILO) conventions including the 7 core International Labour Standards. However, only 39 of these are in force following denunciation of conventions 45 Under Ground Work (Women) and 87 Night Work (Women) and the denunciation of conventions 5 Minimum Age (industry) and 123 Minimum Age (Under Ground Work) as a result of the ratification of convention 138. See Annex 1.

3. Labour Relations: Basic Worker Rights

Zambia has ratified both ILO conventions 87 and 98 on Freedom of Association and Protection of the Right to organize and Right to Organize and Collective Bargaining. National legislation in particular the Industrial and Labour Relations Act (ILRA), which regulate the formation of trade unions and provides for the right to collective bargaining, support these conventions.

Management maintains that it has complied with national labour legislation and Shoprite employees other than those in management are free to join trade unions of their own choice. Management demonstrated this assertion by pointing to the existence of a recognition agreement between Shoprite Checkers and the National Union of Commercial and Industrial Workers (NUCIW). The NUCIW is the national union currently organizing eligible permanent employees in all Shoprite Checkers outlets.

Management went on to indicate that a Collective Agreement between the NUCIW and Shoprite Checkers exist. But a scrutiny of the Agreement shows that it become effective on 1st July 2001 and expired on 30th June 2003.

The current expired Collective Agreement provides for review of wage/salary every year but with a number of conditions. Some of these conditions include that future increment and adjustment will be based on performance of company, turnover growth, shrinkage improvement and improvement in profitability and that increment are not automatic. Furthermore, in the collective agreement it is stated that the Shoprite Checkers will not be obliged to adjust wages/salaries to meet new minimum statutory requirement if this will be in excess of what is currently being paid.

Management was aware of expiry of current Collective Agreement and explained that negotiations to review and extend the Collective Agreement were in progress and will soon be concluded with the union.

On disclosure of information on strategic company issues management maintained that this was the discretion of the Shoprite Checkers Head Office in Western Cape South Africa. This include information on company finances, investment, restructuring. Strategic information could only be availed with the express permission of the Head Office in South Africa.

However, the union officials and workers interviewed at Shoprite Checkers indicated that it was a difficult struggle for them to have a union recognised. Management did not like the idea of formation of a union in Shoprite Checkers outlets because they strongly believed that unions would make it difficult for them to attain the targets for profits as well as achieve the Company mission statement to reinvest profits realized into expansion programmes.

Nevertheless, continuous pressure from workers and the NUCIW coupled with the enabling provisions of national legislation brought a change of mind in managements' thinking and the union was recognised. Management also agreed to deduct union dues off the payroll.

According to the union, managers often discourage workers from joining the union. This is evident in the case of casual employees and the supervisors who are in constant pressure from management not to join the union. Furthermore workplace union meetings are usually not allowed. Meetings between the trade union and managers only take place when there is a collective bargaining meeting.

The unions also claimed that management had tendency to delay the collection bargaining process and at times declared unilateral wage adjustments without consultation with unions. After the two days strike action in July 2003 for instance management decided and put a notice captioned in the box below.

NOTICE BOARD

To: ALL NON-UNIONISED EMPLOYEES/CASUAL EMPLOYEES

To day 17th July 2003 is the final day for payroll adjustments. The Union have not formally accepted the Company final position of an increase of K 150,000 (US\$31) per month gross and the Company has therefore decided to give this increase to qualifying employees who are not union members. This increase for these employees will be effective from 1st July 2003.

This increase on gross is made up of K 115,000 (US\$24) across the board plus K 35,000 (US\$7) in recognition of contribution made by staff to shrinkage improvement and in anticipation of future support for improving shrinkage levels.

In view of all the prevailing circumstances and inflation levels w believe that this increase is very fair and reasonable.

The casual rate per hour has also been adjusted to K 1,550 which represents 24 % increase. This is with immediate effect.

A double rate will apply for Sunday and public holiday as usual.

Management

The unions and employees at Shoprite say that such arbitrary notices were a normal feature of management style. Trade unions have further observed that most investors coming to Zambia have a tendency to violate national labour legislation and ILO conventions including Shoprite Checkers. The common practice to elude the labour laws is by resorting to casual and temporal employment contracts for the bulk of their employees.

The evidence from the union clearly shows that Shoprite Checkers Zambia practices are contrary the spirit of ILO conventions 87 and 98 including the national labour legislation.

Union representatives do not have access to all workplaces in particular food preparation areas, control rooms for security, cash office and finance offices. The union have limited freedom to distribute information to workers in that they need to obtain permission from management to do so. This is again contrary to national legislation that allows union officials to inspect work places. Zambia has also ratified ILO convention 135 on Workers' representation.

The union also find it extremely difficult to obtain company information to held them prepare for negotiations. Requests for company information for negotiation purpose by unions are often not entertained by management. When management decides to provide information it is not timely and relevant for the intended purpose.

It is often not a policy of Shoprite Checkers Zambia to demand from its sub-contractors and suppliers to adherence to labour laws. In other words adherence to labour laws is not an important criteria for choice of sub-contractors or suppliers.

Employees of Shoprite Checkers have equally misgivings about their union representatives. They claim the union is not doing enough to represent their interests effectively. Some go to the extent of claiming that management compromises the union officials. This is strongly so among the casual employees who feel that the union has let them down.

4. Labour Conditions

Investigations at Shoprite Checkers Zambia revealed that two sets of working conditions exist. The conditions of service for non-unionised employees who may include managers, some supervisors and casual, and conditions of service for unionised employees.

Management were reluctant to share information on conditions of service of managers. However, union sources revealed that management salaries for Zambian and Expatriates differ. Zambian managers earn a K 1,500,000 (US\$313) while their expatriate counterparts receive around US\$ 3,000 plus several allowances. This is the case even where the Zambian managers have superior qualifications. There is no national legislation to discourage this practice of discrimination even though Zambia has ratified conventions 100 (Equal Remuneration) and 111 (Discrimination - Employment and Occupation).

As for the other employees management say that the average salary is around K 460,000 per month and is above the national legislation and industry. However, evidence from payslips obtained from the union indicates salary range of K 230,000 for the lowest and K 450,000 for the highest. The union employees who fall within this range include Cashiers, Till Packers, Shelf Packers, Parcel Counter, Storeroom Labourers, Receiving Labourers, Stock Counter and Service Department. A cleaner's salary ranges from K 150,000 for the lowest to K 180,000 for the highest. Supervisor's salaries range from K 350,000 to K 450,000 for the highest.

Below is table 4 showing the minimum salary schedule obtained from the current collective agreement in force effective from 1st July 2001.

Table 4 Shoprite Checkers Minimum Salary Schedule – 01/07/2001in Zambia Kwacha Per Month

Title	Basic	Housing	Travel	Medical	Lunch	Gross
Trolley Collector	160,000	50,000	30,000	10,000	10,000	260,000
Till Packer	160,000	50,000	30,000	10,000	10,000	260,000
Parcel Counter	160,000	50,000	30,000	10,000	10,000	260,000
Receiving Labourer	160,000	50,000	30,000	10,000	10,000	260,000
Storeroom Labourer	160,000	50,000	30,000	10,000	10,000	260,000
Shelf Packer	160,000	50,000	30,000	10,000	10,000	260,000
Service Dept.	160,000	50,000	30,000	10,000	10,000	260,000
Cashiers	160,000	50,000	30,000	10,000	10,000	260,000
Stock Counter	160,000	50,000	30,000	10,000	10,000	260,000

Source: Shoprite Collective Agreement 2001

It is evident from table 4 above that there is a uniform salary structure for all categories of unionised employees. On the other hand the wage range for casual employees is K 35,000 per week (K 140,000) for the lowest and K 38,000 per week (K 152,000 per month). Furthermore, management claims to offer a better deal than what national legislation provides.

The Minimum Wages and Conditions of Employment (Shop Workers) Order, 1997 is a statutory protection for shop workers in formal employment who are not unionised or are employed in establishments that have no union representation. Through this statutory instrument the Minister of Labour can without consultation with social partners announce minimum monthly wages and other conditions including hours of work, overtime, paid leave, sick leave, maternity leave, funeral benefits, redundancy, retirement, medical discharge, allowances and repatriation benefits. The categories of workers covered by this statutory instrument are shop workers only i.e. shop assistants or those employed in connection with the business of any shop.

The minimum wages are arranged in eight grades with the lowest being K 55,000 and the highest K 135,000. These have not been revised since 1997 when this statutory instrument came into force. The problem trade unions find with this Statutory Instrument is that the Minister does not consult social partners including trade unions on arriving at minimum wages and conditions of employment. Furthermore the revision of these is not regular and but remains the sole discretion of the Minister. The decisions of the Minister are often arbitrary and at great variance with the prevailing situation in the economy.

The maximum working hours under the provisions of this Statutory Instrument is forty-five hours per week. A severance benefit under this instrument is three months pay for each completed year of service. Similarly the Shoprite Checkers collective agreement provides for a maximum forty-five hours per week.

The company complies with the provisions of the labour laws in force and no practices of child labour, forced labour and discrimination have been reported. In the collective agreement it is stated that the company shall employ no person below the age of fifteen years.

This is in accordance with national legislation. Zambia has also ratified ILO conventions 29 (Forced Labour) and 138 (Minimum Age). The company has however no explicit policy to compel the supply chain to observe the same practices.

The company has no policy on occupational health and safety. In the collective agreement the only clauses that cover this aspect relate to medical regulation, protective clothing and accident without elaborating in details the obligations. For instance on accidents the collective agreement clause mere mentions that quote, “ All accidents occurring at the place shall whether involving injury or not (minor or serious) be reported immediately to the store management.”

However, the company is compelled to abide by the national legislation relating to compensation arising from work place accidents as contained in the Workmen Compensation Act.

The company has no in house social security scheme for its employees apart for the compulsory National Pension Scheme administered under the National Pensions

Authority Act. The collective agreement provides for severance benefits in four categories;

- (i) Normal retirement on attaining the age of 55 years or early retirement in agreement with employer. An employee who has served for a minimum period of 10 years shall be entitled to benefits of two and half months for each completed year of service.
- (ii) Redundancy benefits shall be subject to negotiations with the union but for non-unionised employers benefits of not less than two months pay for each completed year of service will apply.
- (iii) Death Benefit paid to registered spouse and children 1-2 completed continuous years of service (2 months basic pay); 3-5 years (4 months basic pay); 6-10 years (5 months basic pay)
- (iv) Early Medical Discharge benefits of not less than two and half months basic pay for each completed year of service.

The Collective Agreement further assures the following benefits where so indicated.

Benefits	Collective Agreement at Company Level	National Legislation	ILO Convention
Medical aid	Yes as part of Total Salary Package. See table 4. Employer is only responsible for Medical expenses relating to Medical Examinations at request of employer	No national legislation exist to compel employer to pay medical expenses for employee	
Loans	Loans may be granted at discretion of employer		
Education bursaries	Not provided by employer		
Transportation	Employer Shall pay K 16,000 when employee is required to assist with irregular tasks after 21:00 hours. Also as part of salary See Table 4.		
Paid Leave	24 days paid normal leave		
Paid sick leave	Sick leave maximum 26 days for employees on Probation. For permanent employees maximum of 90 days on full pay and further 90 days on half pay		
Medical facilities on site	No medical facilities at Work Place. Employer on provides First Aid kit.		
Subsidised housing/housing	No provision in		

allowance	Collective Agreement. Employer pays housing allowances as part of total salary package see table 4.		
Childcare services	Not provided		
Incentive bonuses	Christmas Bonus		
Paid maternity leave	90 days paid maternity		Zambia has ratified ILO Convention 103
Mothers Day	Female employees entitle to 1 day absence from work each month		
Funeral Benefits	K 650,000 Death of Employee K 500,000 Death of Spouse K 500,000 Death of Legal Child below age 16		

Source: Collective Agreement Shoprite Checkers Zambia 2001-2003

However all the above benefits only apply to permanent unionised employees and are denied to casual employees. The hours of work are 45 per week as stated in the Collective Agreement. However some workers interviewed claimed that they often work for 48 hours per week contrary without overtime payment for the extra hours contrary to the provisions of the Collective Agreement and national legislation that stipulate 45 hours per week. The over time hours per week are often determined by monthly sale targets and often performed at request of management.

The union has had discussions with management over the issue of profit sharing schemes. Management has always shown rigidity over the matter and general response not encouraging. However, the union is aware that some managers benefit from such a scheme despite denying the same to the other workers.

On training the union say that it is only the privy of those appointed to management. Shoprite Checkers mainly provides training to Zambians appointed to management positions. Limited in house training is also available to a few selected staff mainly supervisors.

The company has no explicit training policy. Management says that it provides on the job training to employees. The workers and unions on the other side say that this is not sufficient. The collective agreement does not provide for study leave or financial support to employees in terms of study loans. Training often does not include a development programme linked to a career path.

4.1 Reorganisations/restructuring/relocation

The company has not undertaken any significant reorganization/restructuring or relocation during the period of their operations in Zambia. However, as mentioned earlier it is company policy to outsource and subcontract certain services. This is highly evident in the areas of security, merchandising and cleaning. Management confirm that this trend will remain the same for now and in the future plans. The

Company does not demand conditions relating to compliance with labour codes other than the normal business related conditions.

The company has no plans to relocate in the near future stating that it is happy with the business climate in Zambia. In terms of future investment decisions in Zambia the Management viewed the following to be critically important;

- Inflation rates
- Exchange rates Stability
- Economic growth
- Domestic consumer spending
- Good labour relations
- Overall stability and predictability of the economy

Average wage levels were important but not critical according to management. However, the most important factor driving investment was profitability, which in the case of Zambia was showing an upward trend.

4.2 Human Rights

No serious human rights violations have been recorded during the period of Shoprite Checkers operations in Zambia. The trade unions have time and again decried the poor working conditions at Shoprite Checkers. The Zambia Human Rights Commission who many times expressed concerns about the poor working conditions at Shoprite has echoed this assertion.

Only one incident of an expatriate manager passing derogatory racial remark against Zambian workers has been reported. The government intervened and severely reprimanded the expatriate against this practice. The company has no code on good practice to deal with issues such as sexual harassment, and HIV/AIDS at work place.

4.3 Environment

The company in Zambia has no policy on environment but complies with national legislation and standards on this matter. Shoprite Checkers in Lusaka and Kitwe works in collaboration with Local Authorities in disposing its garbage. No serious environmental complaints have been brought before the company during its period of operations in Zambia. However, during the month of July 2003 it was reported in local press that the Health Inspectors had confiscated and destroyed large quantities of foodstuff that had gone stale from Shoprite Checkers fast food outlets trading as Hungry Lion on the Copperbelt province of Zambia.

5. Economic and Social Impact

The coming of Shoprite Checkers to Zambia as an investor in the retail industry was generally welcome because it was at a time when the state owned retail business had collapsed and left a big gap in the industry.

Shoprite first established itself in Zambia in 1995 and participated in the privatization process. The nature of its participation in the privatization process was through **Asset Sale**. This type of privatization involves only the sale of physical infrastructure belonging to a state enterprise under privatization. According to the Zambia

Privatization Agency (ZPA) in Asset Sale privatization no workers are retained as all are retrenched prior to privatization. Shoprite Checkers paid a total of US\$ 13.17 million for acquisition of physical infrastructure of the former state owned National Import and Export Corporation through privatization.

The major commitments Shoprite put in its business plan in securing the bid on privatization included the following;

- Skills training and management development
- Promotion of a healthy retail environment
- Development of a sustainable Shoprite network nationwide
- Fair and equitable pricing structures
- World standards of merchandizing and retailing
- Broad based participation in the ownership of the company

In response to these commitments the Zambian Government gave Shoprite huge incentives that included;

- Exemption of import duty on capital goods for the first five years of operations
- Exemption from Corporate Tax for the first five years of operations

Shoprite Checkers has at present 18 retail outlets, 1 wholesale outlet and 7 fast food outlets trading as Hungry Lion throughout the country. Freshmark, Shoprite distributor of fresh fruit and vegetable, also operates in Zambia with depots in Lusaka and Kitwe.

Shoprite Checkers has indeed set pace in the retail industry with management claiming that it enjoys over 70 per cent market share in the industry. In February 2003 Shoprite Group of Companies listed 2.7 million shares on the Lusaka Stock Exchange (LuSE).

The investment in Zambia has grown significantly with turnover increasing from K 19 billion (ZAR 76 Million) in 1996 to K 276 billion (ZAR 552 million) in 2002. When one takes the Groups 2002 revenue contributions from outside of ZAR 2.3 billion the contribution by Zambian operations to this is 24 per cent and 2.5 per cent to the overall Group revenue of ZAR 22 billion. It is worth noting that the population of Shoprite outlets outside South Africa have grown from one store in Lusaka in 1995 to 95 outlets in 13 Africa countries today. One would argue that contribution of Shoprite Checkers investment in Zambian has played a significant role to Shoprite Checkers expansion in Africa.

It is also speculated that Shoprite Checkers remits all its sales to the Head Office in South Africa who in turn reimburse operations expenses in Zambia on a pro rata basis. It implies even money for salaries has to come from South Africa even if generated locally. Critiques claim that this system may be open to abuse and encourage capital flight through transfer pricing given that the bulk of the exports to the Zambian outlets are handled by the holding company itself. However, no formal complaint has been made in this regard against Shoprite Checkers.

Shoprite Checkers has contributed to the creation of jobs in the industry. The combined employment for the collapsed state owned retail enterprise was 1,491 compared to the 1,617 created by Shoprite Checkers. However, the quality of these jobs is being questioned given the large number of casual employees engaged.

Management also claim that Shoprite Checkers is contributing to Zambia's development programme by creating skills, jobs and business opportunities to local

nationals and establishments. According to local management Shoprite checkers imports from South Africa account only for 35 per cent of stocked items while 65 per cent is from local sources. When management were asked to substantiate it was learnt that 65 per cent include imports from the region and the share of Zambia could not be quantified.

What is evident is that Shoprite Checkers contributes more to South Africa export market. In 2002 the Shoprite Group exported stock to its outlets trading outside South Africa to the tune of R 377 million. Local business claims that Shoprite Checkers discriminates against them in term of doing business as part of the supply chain. Equally local farmers have complained that Shoprite discriminates against local farm produce in preference of imported produce distributed by its subsidiary Freshmark.

The local farmers see no logic why government should continue to allow Shoprite Checkers import fresh vegetables and farm produce such as cabbage, potatoes, onions, tomatoes and eggs when these are abundantly available on local market. Management however concede that it is Shoprite policy to do business with local as much as possible but are equally concerned with reliability of local suppliers. The contributions by Shoprite Checkers to backward and forward linkages within the Zambian economy are not quantified but obviously they are minimal.

The Shoprite Group acts in accordance with the principles as embodied in the Code of Corporate Practice and Conduct in the King Report 2002 (“the Code”). The group also complies with the significant requirements incorporated in the Code and the Johannesburg Stock Exchange (JSE) Securities Exchange SA listing requirements.

6. Conclusions

From the foregoing one can assess the corporate practices of Shoprite Checkers Zambia on the basis of labour on one side and economic and social on the other.

6.1 Labour Criteria

Labour relations in Shoprite Checkers Zambia present a mixed grill. Shoprite has allowed unions to organize and workers to join unions though at the same time denying casual employees and those in supervisory categories to freely do so. Can then one say that Shoprite is doing this to be seen to comply with national labour legislation when in fact it does not intend so in practice? This can be confirmed by the tendency towards employment of casual labour as opposed to permanent employees.

The rate of unionisation however is relatively high one considers both the eligibility (90 per cent) and those excluded due to employment category (51 per cent).

The wage policy at Shoprite is a bit confusing because apparently there is little or no difference between the unionised and other non-unionised employees including supervisors. This could be a deliberate policy to discourage employees to join the union. Well if unionised and non-unionised have uniform wages what difference does it make to belong to the union? The disruption of collective bargaining processes by imposing unilateral and arbitrary adjustment point to managements’ lack of

appreciations of unions and the notion of collectivity and a violation of worker rights as enshrined in ILO conventions 87 and 98.

One also notices big salary differentials between rest of employees and management as well as between Zambian managers and expatriate managers. This works contrary to ILO conventions 100 and 111.

Shoprite Checkers has indeed contributed to employment creation in Zambia in particular to the retail industry. The quality of jobs however does not measure to decency. Casualisation of labour as practiced at Shoprite Checkers does not add to the much-needed decent jobs. Nevertheless one could also claim that jobs at Shoprite Checkers measure well to those provided elsewhere in the industry both formal and informal.

Skills development and industrial health is lacking for the bulk of employees at Shoprite Checkers. Only a limited number of those in management and supervisor have benefited from skill development in the form of training. Shoprite Checkers has no health policy for its employees. Though employment pattern at Shoprite Checkers seem to be gender balanced management positions are predominantly occupied by men.

Shoprite Checkers relationship with the supply chain including subcontractors is governed by purely business considerations and not labour standards.

Shoprite engagement with the union and community are minimal. Management interaction with the union is not regular unless when there is a crisis or negotiations are going on. Shoprite Checkers supports limited community initiatives such as its annual contribution to orphanages.

However, the unfavourable balance in labour relations it is equally true that the union has not taken advantage of all favourable national legislation that is complemented by ILO labour standards to challenge certain management practices of indeed to management to task. This is an area that the union need to build confidence and capacity to engage the Zambian Shoprite management.

To achieve this the Zambia union at Shoprite Checkers will need to collaborate and network with unions elsewhere organizing employees of Shoprite in other countries especially South Africa.

6.2 Economic and Social Criteria

Contribution to local economic development and linkages to local company is difficult to assess in the absence of quantified information. What is certain is that Shoprite is one of the actors in the privatization process of Zambia and came in when the big retail industry was faced with collapse. Shoprite Checkers has also invested in some rural areas.

Shoprite Checkers has equally opened opportunity for local companies to supply goods and services even though on a limited level. However, the stimulus is provided to local companies with prospects of expansion and employment creation. The farming community however still feel that they are not receiving a fair share of the Shoprite Checkers market. Shoprite continues to deny market for local farm produce in preference of imports delivered by its distributor Freshmark.

Shoprite Checkers Zambia investment is influenced more by the profit motive than any other consideration. Shoprite Checkers corporate social responsibility is derived from the Shoprite Holdings Group corporate governance practice. Shoprite Group corporate governance is in line with the Code of Corporate Practice and Conduct and the JSE Securities Exchange SA listing requirements and most recently the LuSE listing requirements.

The unions could seek reference to the Codes of Practice and Conduct to challenge the Company on issues of social responsibility, human rights promotion, environment and health and consumer protection. What is certain the above codes to which Shoprite Checkers subscribes adhere to strong enforcement and auditing procedures?

The Shoprite Group acts in accordance with the principles as embodied in the Code of Corporate Practice and Conduct in the King Report 2002 (“the Code”). The group also complies with the significant requirements incorporated in the Code and the Johannesburg Stock Exchange (JSE) Securities Exchange SA listing requirements.

In conclusion therefore it is evident from the above that Shoprite Checkers Zambia practices from a labour standpoint is below average. Management need not only open spaces for union engagement but also equally provide an enabling environment for the union to freely establish without fear or intimidation. For instance casual employees must be free to join the union without the threat of losing their jobs. Management need to allow trade union forums at work place and allow time for this.

Furthermore, management need to reconsider its information policy especially providing the necessary company information to enable the unions adequately prepare for negotiations and also be well informed on the company’s situation. The union should equally prove to management that it would use such information whenever provided responsibly and confidentiality is so required. This is what bonds mutual trust and respect between management and the union.

Management at Shoprite Checkers Zambia need to reflect the Shoprite Group corporate mission and governance ideals in their management style notwithstanding the profit objective. Management will also need a great leverage of autonomy and the scope of responsibility broadened to deal effectively with local challenges without recourse to Head Office in South Africa. This could include decisions on wage negotiations, training and investment to a certain extent.

However, the union has a critical role to play to realize the above. The union needs to think strategically re-orient its approach and involve the general membership in all its decisions and actions. The union through the leadership need to inspire members so that they have the sense of confidence and belonging. The members need to be assured that nothing but their interests is being championed and that they feel protected. The union has to build capacity to engage management with confidence and also be able to put forward demands that are solid, practical and convincing.

On the economic and social front Shoprite Checkers need to open up business to local Zambian companies that have the capacity and are competitive. Shoprite Checkers need to give Zambian farm products a fair share of its market. In the same way it is promoting South African exports to other African countries it should develop the same policy for local produce as well.

Shoprite Checkers social investment programme in Zambia is need to be enhanced to plough back the billions that it rakes in sales. Local management must be able to

make decisions on scope and extent of social investment programmes within Zambia.

Annex: list of ratifications of ILO Conventions by Zambia a member of the ILO since 1964.

- Minimum Age (Industry) Convention, 1919, **Number 5**
- Rights of Association (Agriculture) Convention, 1921, **Number 11**
- Workmen's Compensation (Agriculture) Convention, 1921 **Number 12**
- Workmen's Compensation (Accidents) Convention, 1925, **Number 17**
- Workmen's Compensation (Occupational Diseases) Convention, 1925, **Number 19**
- Minimum Wage-Fixing Machinery Convention, 1928, **Number 26**
- Forced Labour Convention, 1930, **Number 29**
- Underground Work (Women) Convention, 1935, **Number 45**
- Recruiting of Indigenous Workers Convention, 1936, **Number 50**
- Contracts of Employment (Indigenous Workers) Convention, 1939, **Number 64**
- Penal sanctions (Indigenous Workers) Convention, 1939, **Number 65**
- Contracts of Employment (Indigenous Workers) convention, 1947, **Number 86**
- Freedom of Association and Protection of Right to Organize Convention, 1948, **Number 87**
- Night Work (Women) Convention (revised), 1949, **Number 89**
- Protection of Wages Convention, 1949, **Number 95**
- Migration for Employment Convention (revised), 1949, **Number 97**
- Right to Organize and Collective Bargaining Convention, 1949, **Number 98**
- Minimum Wage Fixing Machinery (Agriculture) Convention, 1951, **Number 99**
- Equal Remuneration Convention, 1951, **Number 100**
- Maternity Protection Convention (Revised), 1952, **Number 103**
- Abolition of Forced Labour Convention, 1957, **Number 105**
- Discrimination (Employment and Occupation) Convention, 1958, **Number 111**
- Social Policy (Basic and Standards) Convention, 1962, **Number 117**
- Employment Policy Convention, 1964, **Number 122**
- Minimum Age (Underground Work) Convention, 1955, **Number 123**
- Medical Examination of Young Persons (Underground Work) Convention, 1965, **Number 124**
- Minimum Wage Fixing Convention, 1970, **Number 131**
- Worker' Representative Convention, 1971, **Number 135**
- Benzene Convention, 1971, **Number 136**
- Minimum Age Convention, 1973, **Number 138**
- Rural Workers' Organization Convention, 1975, **Number 141**
- Tripartite Consultation (International Labour Standards) Convention, 1976, **Number 144**

- Working Environment (Air Pollution, Noise, Vibration) Convention, 1977, **Number 148**
- Nursing Personnel Convention, 1977, **Number 149**
- Labour Administration Convention, 1978, **Number 150**
- Labour Relations (Public Service) Convention, 1978, **Number 151**
- Collective Bargaining Convention, 1981, **Number 154**
- Termination of Employment Convention, 1982, **Number 158**
- Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983, **Number 159**
- Protection of Workers' Claims (Employer's Insolvency) Convention, 1992, **Number 173**
- Safety and Health in Mines Convention, 1995, **Number 176**
- Worst Forms of Child Labour Convention, 1999, **Number 182**

AFRICA LABOUR RESEARCH NETWORK

**ZIMBABWE
(SHOPRITE)**

**Tendai Makwavarara
Zimbabwe Congress of Trade Unions**

September 2003

TABLE OF CONTENTS

1. GENERAL CHARACTERISTICS.....	104
1.1 PRESENCE IN THE COUNTRY.....	104
1.2 EMPLOYMENT.....	104
1.3 PROFIT AND TURNOVER.....	105
1.4 MANAGEMENT STRUCTURE.....	105
1.5 LABOUR RELATIONS.....	105
1.6 NATIONAL LABOUR LEGISLATION.....	106
2. LABOUR RELATIONS.....	106
2.1. FREEDOM OF ASSOCIATION.....	106
2.2 COLLECTIVE BARGAINING.....	106
2.3 PROTECTION OF TRADE UNIONISTS.....	107
2.4 THE RIGHT TO INFORMATION.....	107
3. LABOUR CONDITIONS.....	108
3.1 BASIC RIGHTS.....	108
3.1.1 Child Labour.....	108
3.1.2 Forced Labour.....	109
3.2 DISCRIMINATION.....	109
3.3 LABOUR REGIMES.....	109
3.3.1 Wages.....	110
3.3.2 Working Hours.....	110
3.3.3 Health and Safety.....	111
3.3.4 Training.....	111
3.3.5 Maternity Leave.....	112
3.3.6 Sick Leave.....	113
3.3.7 Pension Schemes.....	113
3.3.8 Vacation Leave.....	114
4. REORGANISATION/ RESTRUCTURING/RELOCATION.....	114
4.1 LABOUR FLEXIBILITY.....	114
5. ENVIRONMENTAL POLICY.....	115
6. SOCIAL OBLIGATIONS.....	116
7. SUMMARY.....	116

1. General Characteristics

1.1 Presence in the country

Shoprite Zimbabwe is a retail supermarket that sells foodstuffs and household wares. It is located in Bulawayo, the second largest city in Zimbabwe. It was established and began operation in 2000. There is only one Shoprite branch in Zimbabwe. There are no current plans to open new branches. This could be the result of the harsh and unstable socio-economic and political environment that is not conducive for business investment and expansion. The supermarket has quite a number of local competitors who are in the retail market for foodstuffs and non-foodstuffs. These are mainly OK, Thomas Meikles and Spar supermarkets. However, Shoprite has quite a significant share of the local market, (mainly in Bulawayo), this has been the result of Shoprite being able to supply foodstuffs and detergents that have been in short supply in Zimbabwe, for example; mealie-meal, cooking oil, sugar, washing detergents and baby products. However, the market share of Shoprite Zimbabwe in the whole of the retailing industry in the country is still insignificant.

1.2 Employment

Shoprite Zimbabwe employs between 60 to 70 employees. The variation in total employment is a result of changes in the number of casual employees. Approximately 35% of the total number of employees are permanent workers, with 65% being casual employees. Women represent about 60-65% of the total number of employees, with the majority in casual labour and in the lower grades of employment. The supermarket has not increased the number of permanent employees significantly in the past three years since its establishments, although there have been new contracts drawn for casual employees. More than 90% of the total staff is unskilled labour (non professionals), whilst less than 10% are professionals with qualitative qualifications. The supermarket 'employs' subcontracted labour for cleaning, repairs and maintenance of office equipment and shop machinery i.e. computer tills. Employees under these contracts are not employed directly by Shoprite but through their own companies. Shoprite pays for services rendered to the suppliers of these services.

The supermarket acknowledges that it is currently under staffed and intends to employ more employees. However, management is projecting that the supermarket will probably employ more casual labour, although these new employees will have to have retail qualifications. The projected number of permanent employees in the next five years remains very uncertain and will depend on the supermarket's performance and the environment in Zimbabwe, which is unpredictable. The corporate management of Shoprite has stated that despite the failing local economy, Shoprite is not currently contemplating withdrawing from Zimbabwe, hence, there is no hanging threat of the shop closing and hence, job losses of the local people. Shoprite also has backward and forward linkages between the local suppliers and customers. The supermarket imports more than 30% of its products from the Republic of South Africa but still buys local products such as fruit, vegetables and other non-food household wares for sale.

1.3 Profit and Turnover

Shoprite Zimbabwe has been highly publicised as managing to more than break even in terms of profit turnovers. Unfortunately, profit figures are labelled as classified information and are not available to the public. However, because the supermarket uses the mark up pricing system, costs are often passed onto the consumer, hence profit will depend on total sales rather than independently on the price. Again, stock market indicators reveal that retail outlets are not performing badly as compared to other economic sectors. The management at Shoprite is optimistic that that Shoprite Zimbabwe will be much more profitable and viable in the future.

1.4 Management Structure

From the interviews conducted, many employees and some of the lower rank managers do not have in-depth knowledge about the linkages of the local Shoprite supermarket to those in the region.

However, Shoprite Zimbabwe has an Operations Manager that communicates directly with the corporate management. The Operational Manager has the task to disseminate information between corporate management and the national management. The national management is responsible for running the daily operations of the local branch, whilst decisions on expansion and investment are mainly made by the corporate management. However, national legislation, legislation on investment (investors), the Companies Act, the Labour Act set out the standard framework in which the supermarket operates. Nonetheless, this does not mean that corporate management makes the all-important decisions. The national management has the power to recommend suitable operational procedures based on the local socio-economic environment.

1.5 Labour Relations

The most active trade union within the supermarket is the Commercial Workers Union of Zimbabwe, (CWUZ), an affiliate union of the Zimbabwe Congress of Trade Unions, (ZCTU). There is another competing trade union, the Zimbabwe Federation of Trade Unions, (ZFTU), however, this trade union is not active within the supermarket. The labour standards and /or terms of employment are determined by the Labour Act and the general conditions of service agreed upon in the Collective Bargaining Agreement (CBAs). Both management and the trade union (CWUZ) agree that relations between them are amicable which is both to their advantage. Since the establishment of the supermarket there have been very few labour disputes, but none have been resolved through industrial action or legal suits. Labour disputes have been handled through dispute settlement procedures between the union and the management. Methods often used for dispute settlement are conciliation and mediation. So far, none of the labour disputes have been resolved through arbitration. However, this 'amicable relationship' should not be taken as the reason there has not been any industrial action or legal battles, as Shoprite has not been operating for long enough in Zimbabwe for the analysis to be conclusive.

The Labour Act specifies that if 50% or more of the employees belong to a specified trade union, then a Workers Committee must be formed by that trade union's members, hence the Shoprite Workers Committee be formed by workers who are CWUZ

members. Workers are still in the process of formulating other workers committees, i.e. the Health and Safety Committee, according to the Labour Act.

1.6 National Labour Legislation

Zimbabwe has ratified all eight ILO conventions. The main challenge currently lies in the implementation process of the conventions. There is currently, no legislation that enforces all the ratified ILO Conventions. However, minimum labour standards are stipulated in the Labour Act of 2002 (after the completion of the harmonisation of the Labour Relations Act in 2002). However, sectorial National Employment Councils, (NECs), negotiate codes of employment. To some extent, these pieces of legislation can be used to implement ratified ILO Conventions. Unfortunately, since the liberalisation of the labour market in 1990, there has been an increase in labour market flexibility. Employment has greatly shifted from permanent employment to contractual employment, part-time employment, and casual labour. Unionisation is not encouraged and the strength of the unions has been greatly eroded. Unfortunately, most if not all casual labour is not unionised.

Labour Relations

2.1. Freedom of Association

The Labour Act specifies that workers have the right to be a member or an officer of a trade union. The Act further specifies that the employees have the right to engage in lawful activities of the trade union for the advancement or protection of their interests. This section of the Act is drafted within the framework of the ratified ILO Convention for Freedom of Association, (stated in the Labour Act). It also provides a legal framework in which workers and employees can bargain collectively for the improvement of working conditions and calls for fair labour standards.

The management at Shoprite feels that it abides by this legislation as it allows workers access to union membership with CWUZ. CWUZ is 'allowed' to recruit members from Shoprite. The union is also allowed to distribute flyers and reports on union activities. The local trade union office acknowledges that management does indeed allow it these provisions. Ninety six percent of employees concluded that there is freedom of association and workers are not victimised for taking part in trade union activities. Unionised employees are given time off from work to participate in union activities for example; to attend seminars, workshops, meetings and labour forums.

2.2 Collective Bargaining

Collective bargaining is held at two main levels, shop floor negotiations and national-industry level. Collective bargaining is conducted within the provisions of the Labour Act. Collective Bargaining Agreements (CBAs) should at least present the minimum labour standards as provided for in the Labour Act, but trade unions can negotiate for better terms of employment. Commercial sector CBAs, once registered with the Ministry of Labour become law and binding in the commercial sector. Both parties, labour and the employer should conform to agreed outcomes. If conditions stipulated

in the CBA become inconsistent with the Labour Act, unreasonable, unfair or inequitable, then parties can re-negotiate to amend the CBA.

Since Shoprite begun operations in the country, the trade union has not launched complaints about non-compliance by Shoprite to collective bargaining agreements. Shoprite has adhered to all provisions registered under collective bargaining agreements. However, whether employees are always fully satisfied with the CBAs is a totally different issue. Again, the collective bargaining process is not always transparent. Management does not provide all the required information to the trade union nor the employees. Company performance and profitability is considered to be classified information. The trade union always faces the disadvantage of information asymmetry. In instances where management has provided some information to the trade union, it is rarely timely and the union does not have adequate time nor the capacity to effectively use the information for collective bargaining purposes.

2.3 Protection of Trade Unionists

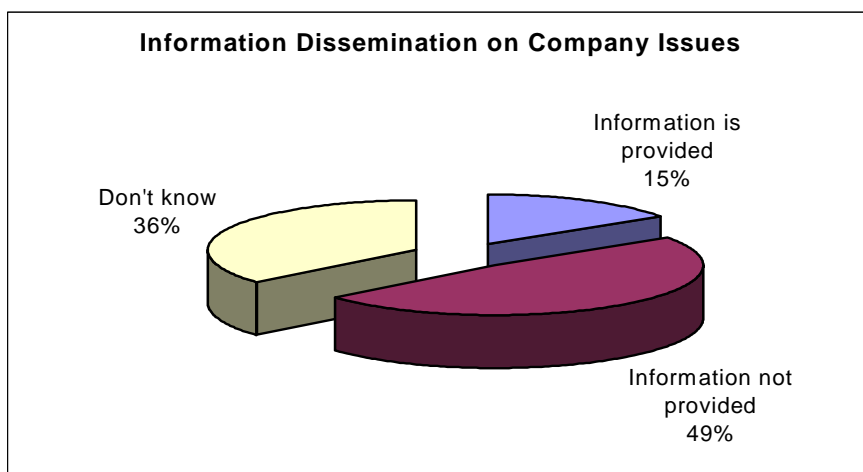
The national legislation tries to cover the protection of trade unionists under the provisions of; freedom of association, protection of employees' rights to democracy in the workplace and the right to form trade unions. In general, these provisions state the rights of trade unionists, i.e. to protect and defend workers interests without prejudice. However, the national legislation does not clearly specify the rights of trade unionists outside those of discrimination and the right of freedom of association. The government has introduced repressive laws that have violated the rights of trade unionists for example the Public Order and Security Act (POSA), which discourages trade union activities i.e. trade unionists need to seek permission from the authorities in order to address members and conduct trade union workshops, seminars and to take part in a collective job action.

Shoprite has not been reported for violating the rights of trade unionists nor are workers discriminated for being trade unionists.

2.4 The right to information

The Company's Act provides private companies with the right not to disclose financial reports and strategic company issues. The Labour Act does not provide trade unions the right to access classified information. However, a clause in the Labour Act on unfair practices by the employer specifies that employers should negotiate in good faith. This clause is not adequate enough to promote information dissemination of strategic company issues.

There are provisions within the national labour legislation and in CBA agreements that workers can employ in order to get strategic information on issues of; restructuring, retrenchments and new technologies. It therefore follows that, '...every employer should ensure that, at the earliest possible opportunity, employees are kept informed of and consulted with regard to any major changes in production, programmes, organisation or technology that are likely to entail...retrenchment'. Unfortunately, this excludes provision of information to employees which is not necessarily related to retrenchment issues, but to improving employees' working conditions.



Source: Compiled from questionnaire responses

Forty nine percent of the employees concluded that Shoprite management did not provide workers and the trade union with information on strategic company issues. Thirty six percent of the workers did not know whether management provide relevant information. This also revealed another dimension that there is unsatisfactory information dissemination, not only from Shoprite management, but also by the union. Only fifteen percent of the workers felt that management did provide information on strategic issues. The local CWUZ felt that the management did not always provide information on strategic company issues, unless the union asked for it. Information is rarely given on time and often, the information does not encompass all the issues under review. This will greatly undermine the role of the trade union and ultimately weaken workers' rights.

Labour Conditions

3.1 Basic Rights

Zimbabwe has ratified all the eight ILO Conventions. The national labour legislation makes occasional reference to the ratified ILO Conventions. By the end of the year 2000, the Zimbabwean government had ratified a total of 19 ILO Conventions. However, it should be noted that the ratification of these conventions does not necessarily mean that they are being fully implemented in the country or enforced by the national legislation.

3.1.1 Child Labour

The national legislation before amendments were made in 2002, specified that no contract of employment would be enforceable for persons under the age of 16. After the amendments, the national legislation now enforces that no employer will employ a person below the age of 13 years even for apprenticeship, (13 years is the minimum age for apprenticeship), whilst for all other forms of employment the age limit is 15 years old. To some extent there has been a slight slacking in the legislation on child labour.

Shoprite Zimbabwe does not employ child labour. The youngest employees' age ranges between 16 to 18 years. Hence, the supermarket does abide by the national

legislation on child labour. However, the supermarket does not require that its local supplier abolish child labour nor does it discriminate between the purchase of supply on the grounds of suppliers who do or do not use child labour. Despite this lack of policy on child labour (in the supply chain), child labour in Zimbabwe is still rampant in the informal and agricultural sectors, sectors that are suppliers of Shoprite's agricultural products. There is some form of ignorance as regards indirect employment of child labour.

3.1.2 Forced Labour

Zimbabwe ratified the ILO Convention on the abolishment of forced labour in August 1998. However this was not incorporated in the national labour legislation until December 2002. In the new Labour Act, distinctions of forced labour are listed, but there is still a lot of groundwork to be covered. It is still too early to measure the extent to which this piece of legislation has alleviated the problem of forced labour in Zimbabwe. Nonetheless, there has been no report of forced labour, neither has Shoprite been accused of using forced labour. There is still a lot of speculation around forced labour that needs to be investigated.

3.2 Discrimination

National legislation on discrimination is very well written. New clauses have been added in terms of defining discrimination based on race, gender, disability, political opinion, tribe, religion, pregnancy and the place of origin. Employers are obligated to pay the same remuneration to both male and female employees for equal work. Today, discrimination in terms of employment and remuneration amongst the different races in Zimbabwe has since seized to be a quandary that needs to be urgently addressed. Nonetheless, any degree of racism should never be undermined.

The trade union has not complained about discrimination of workers by Shoprite management. Shoprite does not have an active company policy on affirmative action. Employment is not based on race, gender, disability and religion. None of these are given preference or special reference in terms of employment engagement or promotion in the company.

However, the problem of how to detect discrimination remains prevalent. Discrimination can be easily covered up and presents a great challenge that the trade union needs to overcome. For example, HIV/AIDS remains a very sensitive issue and is taken as a stigma amongst the local people, hence, it is rare for an HIV/AIDS infected employee to step up and fight against discrimination in the workplace.

3.3 Labour Regimes

Zimbabwe has ratified the following ILO Conventions:-

- Minimum wage, (Convention 1928 No. 28)
- Equal remuneration, (Convention 1951, No. 100)
- Paid educational leave, (Convention 1974, No. 140)
- Chemicals convention, (Convention 1990, No. 159)
- Vocational rehabilitation and Employment, (1983, No. 159)

All labour conditions are enshrined in the Labour Act and in sectorial collective bargaining agreements.

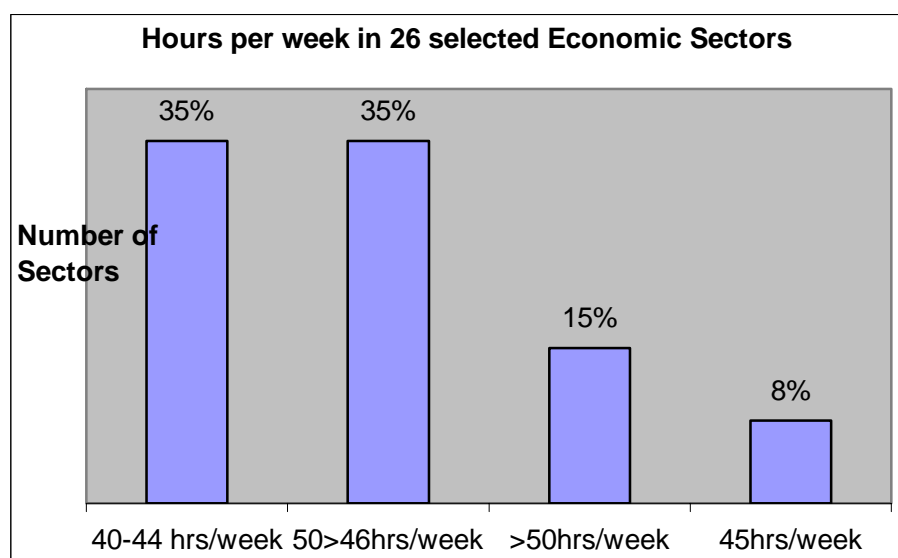
3.3.1 Wages

Wages are determined at the national-industry levels in collective bargaining agreements. Wage negotiations are held three times a year for the commercial sector. This is inclusive of a cost of living adjustment. Wages for Shoprite employees are therefore determined by the outcomes of these industrial negotiations. Occasionally wages can be determined at the Tripartite Negotiating Forum, (TNF). Wages passed at the TNF become the national minimum wages, but affiliate unions can re-negotiate for higher and better wages in NEC negotiations. Every employer is obligated to pay all employees the legislated minimum wage (given for each sector in the economy).

Zimbabwe has a volatile economy with inflation rising everyday. Inflation stood at 399.5% as at July 2003. This has eroded the small incomes earned by already struggling workers. Real wage trends indicate a significant decline in wages. The Poverty Datum Line, (PDL) in Zimbabwe stands at ZW\$104,000 for a family of five. The minimum wage for the commercial sector was ZW\$47,696.00 as at June 2003. This means that workers were earning a wage that was only 46% of the PDL! This is also the same line for employees employed by Shoprite, (wages for Shoprite employees are determined at the industrial level and not at the shop floor level). More than 70% of Shoprite’s employees are earning a wage below the PDL. Wages are failing to improve the living standards of the employees. Another disparity in Shoprite is the widening income differentials between the highly and lowly paid workers. What this trend suggests is that, the burden of adjustment is falling disproportionately on the lower echelons of the earnings structure. Again, casual employees remain worse off, not only in terms of general employment conditions, but also because they are the least paid employees in Shoprite Zimbabwe.

3.3.2 Working Hours

Collective bargaining agreements specify the maximum hours of work for each sector in Zimbabwe. The collective bargaining agreement for the commercial sector specifies that the maximum hours of work is 45 hours per week.



Source: Collective Bargaining agreements, 2002

An analysis of 26 selected sectors (all represented by ZCTU affiliate unions), reveals that collective bargaining agreements in more than forty three percent of the sectors agreed to work more than 40 hours per week, thirty five percent of the sectors have more than 50 hours per week as the maximum working hours. This is much more than the 40 hours prescribed by the ILO.

Seventy five percent of the employees at Shoprite work at least 45 hours per week. Shoprite does sometimes require its employees to work overtime. However, overtime is not voluntary, and is management's decision. Sixty eight percent of the employees opted not to have overtime as it is not well remunerated. Employees who work overtime during normal working days are paid one and half times the hourly rate, whilst employees who work overtime on public holidays are paid double the hourly rate.

Casual employees are often the workers who take on more overtime work, as a means to increase total earnings. Overtime in the commercial sector is working during weekends (Saturdays and Sundays) and public holidays. Contract workers are usually the employees that work on weekends. This might reflect workers' rights disparities between the casual and permanent employees. Unfortunately, casual and part-time employees are not unionised and are not covered for adequately in the Labour Act and are excluded from collective bargaining agreements on general conditions of service for employees.

3.3.3 Health and Safety

Under the new Labour Act, employees have the right to be part of the Health and Safety Committee at the shop floor level. There should be at least a 50%: 50% representation of management and employees in the Committee. This Committee has the responsibility to draft a Health and Safety code or policy document that is suitable/ relevant to the working environment of the company.

Shoprite Zimbabwe currently does not have a Health and Safety Committee. The trade union is still waiting for both Shoprite management and employees to nominate committee members. However, the trade union commented that there is a lot of ignorance in terms of health and safety requirements in supermarkets. Management and to some extent workers do not see the real need of a Health and Safety code in a supermarket. Health and Safety is often associated with heavy machinery, chemicals, and jobs classified as dangerous and risky.

3.3.4 Training

The national legislation is not clear in terms of providing training for employees. Some sectors have managed to negotiate for educational paid leave and educational allowances in their collective bargaining agreements, however, these are not provided for in the commercial sector's collective bargaining agreement.

Training often refers to in-house training so as to equip workers with new skills to enable them to carry out their work. Vocational and skills development training is not stipulated in the collective bargaining agreement. Despite measures that employers are urged to undergo vocational training and skill development to avoid possible retrenchment, such as retraining, there are no specifications for management to be responsible for training.

Shoprite does not advocate that workers undertake vocational and skill development training. Since the inception of the supermarket, the only training that has been undertaken by workers is:

- Training of new employees; and
- Training of till operators to use computerised tills

The management makes all in-house training decisions. These decisions are not made with any contribution from the union. 68% of the employees did not know whether the company offered training opportunities for employees. Employees deem that they do not have equal training opportunities. Nonetheless, workers can apply for loans (educational loans) which are payable after a one year period. Only ten percent of the total number of employees had information about how to apply for an educational loan. An employee willing to undertake vocational or skills development training can seek a loan from the company. The employee is required to get a quotation from the educational institute, seek a letter of recommendation from the supervisor then put in a formal loan application. It is not always guaranteed that an application will be approved. Approval is based on the wages earned by an employee and the ability of the employee to pay back the loan. This loan is not available to casual employees.

3.3.5 Maternity Leave

The commercial sector collective bargaining agreement specifies the conditions for maternity leave as stipulated in the national labour legislation, (the Labour Act). Shoprite's permanent female employees may proceed on maternity leave upon submission of a certified document from a registered nurse specifying that she is pregnant and the following conditions apply:

- She will be entitled to start her leave not earlier than the forty fifth day and not later than the twenty first day prior to the expected date of delivery, (the total number of maternity leave days is ninety days);
- She is entitled to full months pay for the ninety days maternity leave, (only if she has served for more than one year) and is entitled to only three maternity leave period per employer;
- She is given three months maternity leave, if she needs more days, she forfeits her wages and sick leave may not be granted during paid maternity leave;
- During her maternity leave period, her normal benefits and entitlements at works continue uninterrupted;
- After the maternity leave is over, the female employer is allowed an hour a day of the normal working hours per day for nursing. She may combine this nursing time with other breaks, (lunch and tea breaks) so as to constitute longer nursing periods. She is entitled to these provisions for the period required to nurse her child or for six months, whichever is lesser.

Casual female employees and permanent female employees who have served for less than a year will be granted at their request ninety days for maternity leave without pay. It is important to point out that trade unions can negotiate for more favourable maternity leave conditions in the collective bargaining agreement.

3.3.6 Sick Leave

Sick leave conditions for all sectors are provided in the Labour Act. Shoprite applies the provisions in the labour act to govern its policy on sick leave. Sick leave is granted to any Shoprite employee that cannot carry out duties at work because of poor health, or because the employee has incurred an injury or has undergone medical treatment. Employees are entitled to a ninety-day sick leave during any one-year of service to an employer. If an employee uses all the ninety paid sick leave days, he/she can apply for ninety more days on half pay, (the employee will need to get a certified document from a registered medical practitioner to support this). The medical practitioner should be able to guarantee that the employee will be able to return to work after the leave. Nonetheless, the employer can terminate employment without notice after an employee's sick leave exceeds one hundred and eighty days.

Provisions in the Labour Act for sick leave are not applicable to casual employees (which constitute sixty five percent of Shoprite's employees). If a contract employee falls ill, they can request for sick days without pay. However, Shoprite's management emphasised that any employee either casual or permanent would be taken to a medical practitioner if he/she fell ill at the workplace with expenses paid by Shoprite. Nonetheless, Shoprite does not offer medical aid schemes for all its employees. This is not stipulated in the commercial sector's collective bargaining agreement, hence, Shoprite is not obligated to contribute to employees' medical schemes.

3.3.7 Pension Schemes

Shoprite does not offer its employees pension schemes outside the compulsory national social security pension scheme provided by the National Social Security Authority. Government introduced the compulsory pension scheme with a vision to provide workers and their families against contingencies. It is compulsory that all employees contribute to the scheme, regardless of whether an employee is covered by a private pension scheme or not.

Each employee pays a contribution of three percent of the employees insurable earnings, up to a ceiling of ZW\$48000.00, (as determined by the Minister of Finance as at 31st August 2003). The employer also contributes 3% of each employee's insurable earnings not exceeding ZW48, 000.00, hence a total of six percent is paid monthly towards the scheme. Insurable earnings refer to an employee's wages that excludes other private pensions, payment from shares/stock under a profit sharing scheme and other employment benefits.

The workers' contributions are deducted directly from their wages. All Shoprite employees (both casual and permanent workers) contribute towards the scheme. The benefits that should accrue from this pension scheme are:

- Retirement grant;
- Retirement pension;
- Invalidity grant and pension;
- Funeral grant;
- Survivor's grant and survivor's pension;

Members or survivors, subject to meeting qualifying conditions, may collect these benefits.

3.3.8 Vacation Leave

Shoprite offers the basic provisions for vacation leave days to employees as enshrined in the national labour legislation. An employee is entitled to at least a twelfth of each year of service. If an employee is granted vacation leave days less than those provided in the Labour Act, he/she is entitled to *cash in lieu* (of forfeited vacation leave days). Casual employees do not have vacation leave days. They are paid a wage for exactly the number of days that they report for work. Nevertheless, all employees can apply for special leave days:

- To attend a court hearing;
- To attend to family/private matters, (e.g. a funeral);
- Attend trade union activities;
- If an employee has been detained for questioning by the police;

However, casual employees will not be paid during special leave.

4. Reorganisation/ Restructuring/Relocation

Shoprite Zimbabwe has only been operating in Zimbabwe for the past three years. There is only one Shoprite branch and there are currently no plans for restructuring, reorganisation and relocation. The supermarket has not retrenched any employees during the few years of its operations in Zimbabwe, and the management does not have plans to retrench workers in the near future. Unfortunately, there is very little or almost no information dissemination by management to the union in terms of developmental, investment and expansion plans.

4.1 Labour Flexibility

The introduction of labour market flexibility in Zimbabwe during the implementation of the Economic Structural Adjustment Programme, (ESAP) in 1990 has since lead to the intensification of the labour market flexibility. The global trend has been to liberalise the labour market in order to reduce labour costs. The Zimbabwean government argues that liberalising the labour market is necessary for promoting competition amongst firms, hence growth in the long run. More so, government argues that for firms to survive, there is need for functional flexibility, which refers to the internal labour market of the firm. ESAP advocated for the flexibility of working practices and job structures.

Local firms are being 'forced' due to competition from imports arising as a result of trade liberalisation, to restructure their internal operations. In order to improve on quality and efficiency, firms are now introducing new technologies. The introduction of new technologies has meant that new forms of work organisations be adopted. Work reorganisation has resulted in loss of jobs through retrenchment, downsizing or rationalisation or closure of some companies, which have difficulties introducing new technologies. In the retail sector, new technologies are often new computers, new computer packages, improvements in managerial skills and operations.

Labour market liberalisation in Zimbabwe also brought with it the use of non-standard forms of employment such as casual, contract and seasonal labour. Many employers now prefer to employ casual employees and less permanent workers. Such a shift in

the preference of firms' labour requirements has resulted in a number of workers losing basic labour rights. At the same time, the number of workers employed on a permanent basis continues to fall, and this has serious effects on the strength of the working class. Employers, by employing non-permanent workers are avoiding incurring additional labour costs such as housing, pension payment and other employment benefits.

Trade unions are being weakened as they continuously lose their membership through retrenchments, casualisation and contract employment. The weakening of the trade union threatens to lead to poor collective bargaining agreements.

5. Environmental Policy

National legislation on the environment has thirty-three Environmental Acts (as at June 17, 2003) that promotes sustainable growth and development. The main objective of the environmental laws is to encourage environmentally responsible investment, growth and development. Unfortunately, the legislation of environmental policies in Zimbabwe does not mean they are being implemented. Zimbabwe still intends to promote '...environmentally-sustainable development, that does not inhibit economic investment in the country'. Unfortunately, this compromises the extent to which environmental legislations govern investors' activities, investors such as Shoprite. Though many conservation strategies have been drafted, (for example the National Conservation Strategy that recommends ideal strategies for resource management, the Clean Up Zimbabwe Campaign- the campaign on cleaning up waste and rubbish) these are not legal documents and do not affect the current environmental laws.

Environmental laws in Zimbabwe are specific only to the protection of natural resources, natural processes, the ecosystem and wildlife. Nevertheless, government has redefined 'environmental' to include biophysical, economic and socio-cultural aspects. Despite this broad definition that is all encompassing, environmental laws (contained in the Environmental Act of Zimbabwe) do not bind investors in the commercial sectors who have not invested directly in these sectors, i.e. sectors such as mining and manufacturing, hunting, forestry, fishing, medicine e.t.c. Hence, Shoprite Zimbabwe does not have direct obligations to preserve the local environment. Nonetheless, there are environmental laws that the supermarket can observe and implement as company policy or request that its suppliers observe. These Acts can include the: -

➤ **Food and Food Standards Act:**

This Act specifies the standards and quality of food for both exportation (exporters should meet the stipulated global standards – as reflected in trade agreements), and internal consumption. Suppliers and producers of food are also required to provide consumers with all information regarding quality (standards) of foodstuff so that consumers can make informed decisions and choices in the purchase and consumption of foodstuffs. All foodstuffs that are not consumable should be destroyed;

➤ **Communal lands Act:**

This provides for the protection of communal lands from overgrazing, deforestation and the use of improper farming methods;

➤ **Water Act:**

This act controls the use of water above and below the surface. The act also prohibits water pollution.

➤ **Hazardous Substances and Articles Act and Atmospheric Pollution Prevention Act:**

These two Acts provide producers and suppliers with the minimum standards for the production, manufacturing, packaging, distribution, 'handling' and the disposal of hazardous chemical substances

This list of Environmental Acts is not exhaustive. Despite these environment laws, Shoprite Zimbabwe does not have an environmental policy. However, the supermarket does have internal company policies that could lean towards the environment. These are:

- The supermarket is to be kept clean at all times. The supermarket needs to conform with international hygiene standards set by the corporate management;
- The area around the supermarket (outside) is to be kept clean at all times with rubbish disposed of carefully;
- All goods that have exceeded their expiry date (foodstuffs), ought to be destroyed.

6. Social Obligations

Foreign investors do not have the obligation to promote local social activities. However, Shoprite Zimbabwe does contribute to some social activities in Bulawayo. The supermarket contributes funds to a local football club and a golf club. It also occasionally funds social football matches. The supermarket also donates foodstuffs, non-foodstuffs and household wares to local charities.

7. Summary

There is only one Shoprite branch (supermarket) in Zimbabwe, which operates in Bulawayo. It has a reasonably sized market share in the town but is insignificant in the whole country. More than 15% of the total products sold in the supermarket are imported from South Africa. The supermarket currently has no plans to relocate, expand or to downsize. The national management makes most of the operational decisions whilst the corporate management makes decisions on investment, expansion and development. However, there is little information dissemination in the supermarket, not only from the national management to the workers (and the trade unions) but also from the cooperate management to all national managers. This resulted in some of the managers failing to answer comprehensively to questions asked by the questionnaire and the interviewer, whilst employees were not aware of some company policies or perceptions regarding labour relations in Shoprite Zimbabwe.

The supermarket employees sixty to seventy employees, and this is quite a sizeable number of employees for a single supermarket branch (in Zimbabwe). However, Sixty five percent of the total employees are casual workers and are not unionised. Most of these workers are women. The supermarket is expecting to employ more workers, however, these will be more qualified but still casual employees. The

management at Shoprite sees this as necessary to cut down on labour costs. Since the deregulation of the labour market in 1990, labour market flexibility has intensified. Employers now prefer to employ casual, contract and seasonal employment. The Labour Act does not adequately cover casual workers and this lessens the employer's responsibility towards the workers. Again it cuts down on the costs borne by the employer in the event that the supermarket relocates, reorganises its operation or decides to retrench workers.

The national labour legislation, the Labour Relations Act was amended in December 2002. The Labour Act now governs the labour market in Zimbabwe. Whilst the Labour Act has commendable adjustments and additions, workers have lost out in other areas.

Gains include: -

- The inclusion of better provisions for maternity leave. Unfortunately casual female workers are excluded from these new benefits;
- A clause on sexual harassment was included in the Labour Act;
- Some of the gender issues in employment were addressed, such as; equal pay for equal work, prohibition of discrimination based on gender, sex or pregnancy and affirmative action in recruitment;
- The definition of discrimination has been broadened to include discrimination against gender, (not sex) and discrimination against employees infected by HIV/AIDS at the workplace, or the employment based on ones HIV/ AIDS status;
- The legislating of the ILO Convention on Child Labour (S.I. 72 of 1997) and the inclusion of a clause prohibiting forced labour.

Shortcomings of the Labour Act are that: -

- Public sector workers are not completely covered by the Labour Act, the Minister of Labour, Public Service and Social Welfare has discretionary powers to recognise freedom of association for state employees.
- The Labour Act restricts employees' right to strike or take part in a collective job action;
- Casual and contract workers are only provided for in the Act as far as the terms of contract termination, but are thereafter not covered;
- The Act fails to adequately recognise freedom of association, for example protest action is not provided for in the Act;
- The clause on retrenchment is poorly written and is rather confusing, for example, if an employer plans to retrench less than five employees, the employer is not obligated to abide by the provisions on retrenchment in the Act, but to negotiate with the Workers Committee, a system that has failed to work in the past and has left workers much worse off;

Despite the fact that the Labour Act has left a lot that is much desired by workers, Shoprite Zimbabwe has managed to conform to most of all the provisions in the Act and to those in the commercial sector's Collective Bargaining Agreements. However, because the majority of its employees are casual workers and are not unionised, a lot of these workers' rights have been violated. They remain repressed and have very limited benefits in their terms of employment. They are denied the most basic of working conditions given to permanent employees such as paid sick leave, paid

vacation or special leave, educational loans, trade union representation and so on. Employers have recognised the ‘advantages’ in employing casual labour and are taking full advantage of it. Unfortunately, in Shoprite’s situation, women seem to be suffering the most, as they constitute the greater part in this type of employment. Remuneration also remains far below the Poverty Datum Line, (PDL) and there is very little that can be done to increase these earnings.

Training provisions to improve the human capital base is almost non-existent in Shoprite. Workers do not have adequate information as to how to access company funds for vocational training and skill development. Information asymmetry is rampant and there seems to be very little communication between the trade union and the management. More so, there is no communication between the local trade union and the corporate management. This means that major decisions are made in the absence of workers and without consultations. Labour relations between the trade union and the national management might be satisfactory now, but can easily turn sour if some of these oversights are not recognised and addressed.

Foreign direct investment is viewed as crucial to national economic growth and development and the country’s strategies and policies on social and environmental protection are usually compromised so as to increase investment. Many firms that are investing in Zimbabwe are not obligated to abide by set environmental laws.

In conclusion, whilst it is important that countries ratify ILO Conventions to improve working and living conditions of employees, it is even more important that countries legislate them to enforce implementation. Companies need to also start recognising the importance of labour in the production cycle and rewarding it accordingly. Information dissemination is very important, more so, Shoprite should begin to engage the workers in dialogue and consultations on issues that affect workers, both directly, through collective bargaining agreements and indirectly through company policies and strategies that affect employment and remuneration.

