

“Study on the liberalization and regulatory frameworks of construction services in the SADC Region”

Draft Report undertaken for SADC Secretariat

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LIST OF ABBREVIATIONS

ACP	African, Caribbean and Pacific Group of Countries
BBBEE	Broad-Based Black Economic Empowerment
BOT	Build Operate Transfer
COMESA	Common Market for Eastern and Southern Africa
CIDB	Construction Industry Development Board
DRC:	Democratic Republic of Congo
EAC	East African Community
EPA	economic partnership agreement
EC	European Commission
ENT	Economic Needs Test
EU	European Union
FDI	Foreign direct investment
FIDIC	Fédération Internationale Des Ingénieurs-Conseils
FIP	Finance and investment protocol
FTA	Free trade area
GATS	General Agreement on Trade in Services
GDP	Gross domestic product
GNI	Gross National Income
ICT	Information and communication technology
JV	Joint Venture
IMF	International Monetary Fund
LDC	Least developed country
MFN	Most favoured nation
NTB	Non-tariff barrier
PPP	Public–private partnership
RISDP	Regional Indicative Strategic Development Programme
SACU	Southern African Customs Union
SABS	South African Bureau of Standards
SADC	Southern African Development Community
SIDS	Small Island Development States
SME	Small and medium-sized enterprises
UN	United Nations
UN CPC	United Nations Central Product Classification
WB	World Bank
WTO	World Trade Organization

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PREFACE

This Study has been prepared at the request of the SADC Secretariat, with a view to assisting and informing SADC member states negotiations in construction architecture, engineering services and related procurement. At the While the report provides an overview of key trends in the construction sector in the SADC region, the main aim is to trace out policy and regulatory issues which will assist SADC member states in their request and offer process.

The report is structured as per the specification of the SADC secretariat in the following manner. Part I outlines a conceptual understanding of what is meant by the construction sector and provides a snapshot of the construction sector in SADC countries. Part II describes the importance of the construction sector to SADC economies by evaluating key economic indicators such as the share of construction services in GDP, employment generated, real annual growth rate. This analysis considers key economic indicators over the period 2000-2012. Part IV focuses on international trade in construction and related engineering services: how it is measured, who are the main exporters and importers, and what potential trade opportunities it brings SADC member states. An important part of this analysis is to understand the drivers of construction sector in SADC countries, which has led to substantial growth of the sector. This analysis is important to understand potential areas of intra SADC trade potential in the construction sector.

Part V of the Report evaluates the regulatory framework in individual SADC member states, specifically from the context of market access and trade related regulations. It also provides an overview of the construction sector in individual SADC member states. Drawing from international best practices and common principles in individual SADC member states construction related legislation Part VI sets out common principles as regulatory benchmarks for SADC member states to consider. Part VII considers the State of Liberalization in SADC member states, evaluating substantive and specific commitment issues effecting the SADC construction sector negotiations. Part VIII provides recommendations and concluding observations for consideration.

Sources of information and data have included: SADC Secretariat Statistics Division, SADC Infrastructure Division, National sectoral stakeholder consultations (Zambia, Mozambique, South Africa and Botswana) and bilateral interviews (Swaziland, Tanzania) in, questionnaires on construction sectors and architecture and engineering sector circulated to SADC member states, legislation sent by SADC member states to the SADC Secretariat, telephonic Interviews with members of SADC informal group on construction sector, who acted as key sounding boarding in particular for the market structure and regulatory benchmarks section of this report, and members of the SADC Secretariat trade in services and EPA unit who were instrumental in designing the questionnaires, providing feedback and facilitating inputs from SADC member states.

EXECUTIVE SUMMARY

1. The construction sector in SADC member states is diverse and at different levels of development. In economic terms, across all SADC member states the sector is a key contributor to job creation and infrastructure development. The construction sector is sensitive to government spending programs and economic cycles primarily national but in some cases global, as is reflected in the construction sector's contribution to GDP in SADC member states over the past decade.
2. Construction sector development in SADC has arisen largely as a result of 3 market drivers operating on their own or in combination with each other. These drivers are (i) population growth and urbanization needs eg. Most SADC member states (ii) Economic growth and linked commercial and construction activity in large diversified economies eg. South Africa, economic growth linked to single sector dominance as for instance Tourism in the case of Mauritius or natural resource exploitation as for instance in Mozambique and Tanzania. (iii) government driven planned infrastructure at the national and regional level eg. South Africa, Malawi, Lesotho, Swaziland.
3. While the focus of construction sector in SADC countries is primarily infrastructure development, there is an increasing commercial sector, either linked to the dominant economic activity eg. Natural resources or tourism or in the case of countries such as South Africa, a thriving real estate market. In all three cases Government is the biggest client of the construction sector. This makes procurement in construction services an important area of consideration in the SADC construction sector negotiations.
4. In construction services trade terms all SADC economies with the exception of South Africa and Mauritius are net importers of construction services with large trade deficits. The trade potential of the construction sector needs to be considered in the context of future potential given existing market drivers, as well as the desire expressed in some of the focus countries to begin exporting construction services within SADC but also within the Tripartite context. In order to do this intra SADC construction services would need to be strengthened as a starting point and individually SADC member states need to start building their own supply capacity in the sector.
5. Construction Services Trade is dominated by 2 kinds of operators ie large international construction firms and domestic SMEs/MMEs. International construction firms (primarily Chinese, South African, European) operating in SADC tend to be awarded the large construction contracts, generally through international tenders and procurement, owing to their capital and technology base. SMEs and MMEs in SADC countries vary in their number and operations, usually focusing on subcontracting work, smaller construction contracts or the informal/rural sector. There is a need to incorporate these SMEs into mainstream construction projects so that an adequate transfer of expertise and supply capacity can be built. Across several SADC member states domestic operators have been unable to take advantage of existing procurement preferences in legislation for varying reasons including lack of capacity and finance. Monitoring implementation of preferences clauses in construction related procurement was therefore expressed as important. The use of PPPs and BOTs is an

emerging trend across SADC countries, and well negotiated PPPs were considered necessary to capture benefits of job creation, transfer of know how and good quality construction.

6. In terms of applicable regulation, the construction sector in SADC countries is impacted by a range of regulations (investment, procurement, building codes, regulation of professionals, land use, incentive and subsidy regimes, repatriation of profit and capital requirements, labor, technical standards, environment impact assessment etc) as well as regulatory bodies (national construction councils/bodies, ministry of public works and/or infrastructure, professional councils etc.). Further regulation are changing, being enacted or in some cases does not exist and is being promulgated for the first time.
7. In terms of regulatory impact, several SADC member states have undertaken measures to improve the regulatory environment of their construction sectors. SADC as a region does reasonable well in the World Bank's "dealing with construction permit" ranking with a regional average ranking of 99. Rankings on procedures to be followed for the grant of a construction permit, SADC member states do reasonably well with a regional average of 11 procedures. This is relevant to the SADC negotiations on the construction sector as it provides an idea as to how difficult the sector is to access and the kind of regulatory changes that are taking place ie. Positive or negative.
8. Despite differences in regulation across the region, broadly there are several areas of commonalities. For those countries that are implementing new legislation, there is a general tendency to follow existing regulatory set ups in model countries eg. South Africa, Zambia, Malawi. These commonalities include registration requirements for contractors and construction professionals, technical standards in the sector, the importance of commercial presence and investment, procurement regimes and preferences for nationals, PPP/concessions regimes in several SADC member states, provisions for the movement of persons with stipulations as to circumstances in which they can move and conditions which must be fulfilled (this is normally for high skilled construction professionals) and more often than not the possibility to recognize foreign qualifications. Other areas of commonalities include health, safety, dispute settlement, environment impact assessments etc.
9. Regional trade liberalization in the construction sector, would require an enabling and supportive framework, without which the trade liberalization is likely to be of limited value. Based on the commonalities in regulation in the construction sector across SADC member states, possible principles that could be included in this Regulatory Benchmark have been identified. These include common definitions, the scope of the regulatory benchmark, non discrimination, areas that can be exempted, transparency, accountability, market access, preservation of procurement preferences, registration procedures for qualified suppliers in the construction sector, technical specification and standards, special coverage of contractors and professionals such as architects/engineers, basic principles for procurement, financing, regional institutional cooperation, environment, health, safety, labour and dispute settlement provisions.

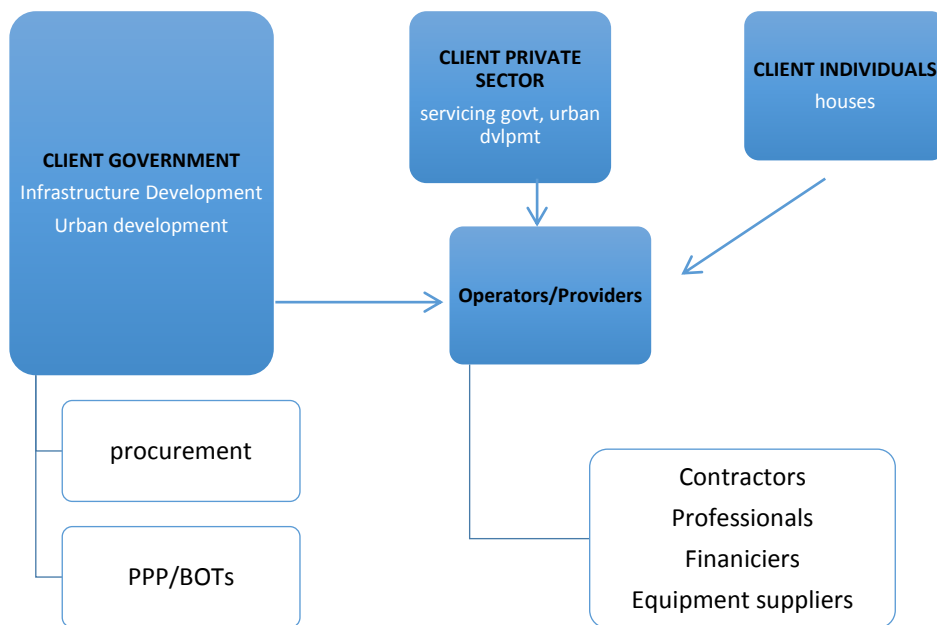
10. The state of liberalization in the SADC region can be assessed from the trade commitments made in international fora such as the WTO and national regimes. In the WTO, few SADC member states have undertaken commitments, and those that have, have undertaken reasonably wide commitments. There is room therefore for coverage by those SADC member states who have not undertaken commitments, as well as greater modal coverage, primarily in mode 3, but also mode 1 and 4. Further should procurement as it relates to construction services be considered.
11. Cross cutting issues trade liberalization issues that need to be considered include (i) should SADC member states undertake a clustering approach in construction services commitments (ii) definition considerations: such as should member states use UN CPC 2 for scheduling, also differences between construction and engineering services and engineering services. Broader issues for consideration are the impact of the LDC waiver on SADC member states negotiations in construction services, the draft text on domestic regulation as well as the rules of origin issue in construction services.
12. Specific policy recommendations relate to the need for expanding Mode 3 commitments, and exploring Mode 1 and 4 options. Given the value of construction sector related procurement, more liberal SADC wider procurement policies while maintaining national preference, may benefit SADC construction operators. SADC wide construction liberalization commitments have to be undertaken keeping in mind trade in services liberalization in other fora including COMESA, EPA's Tripartite amongst others. This will ensure a simpler process and preempt duplication of resources both financial and human and Regional trade liberalization would need to be supported by a common SADC wide regulatory benchmark for the construction sector.
13. At a regional level establishing MRAs to encourage portability of skills accompanied by set up necessary formal or informal regional institutions/ groups to support setting up of MRAs and the monitoring of cross country professionals. Other regional initiatives include having a SADC wide database of construction projects and professionals, utilizing technological platforms for information sharing and capacity building, establishing regionally acceptable technical standards, regional training initiatives amongst others.

I. OVERVIEW OF SADC CONSTRUCTION SECTOR

A. Conceptual understanding of the sector

14. Arriving at a single definition or conceptualization of the construction sector, is difficult given the range of activities, sub-sectors and operators that fall within this understanding. From the activities perspectives, SADC construction activity can also be viewed as consisting of two distinct phases (i) the “design phase” including services such as architectural and engineering services and (ii) physical construction” related activities such as construction and related engineering services. The features and services of the design phase of the construction sector tend to spillover into the “physical construction” phase.
15. From the perspective of operators in SADC’s construction industry, the industry would comprise of companies, firms and individuals working as consultants (engineers, architects) main contractors and sub-contractors, material and component producers, plant and equipment suppliers and financiers. Further, the government is involved in the industry as purchaser (client), financier, regulator and operator. To a lesser degree, private sector and individuals, are also clients.

FIGURE 1: Overview of Operators and Functions in the Construction Sector



16. Thus the range of operators, clients and their interactions with each other are wide ranging and complex. Broadly and for the purposes of this paper, except where otherwise specified the construction sector can be said to comprise of new construction and major renovations of residential, non-residential buildings and civil engineering works such as ports, airports,

telecommunications, electricity, water and sewerage. Major contractors under the supervision of architects and support of other professionals such as quantity surveyors, structural, electrical and mechanical engineers mainly execute the activities of the construction sector.¹

17. Matching these complex commercial interactions in the construction sector between different players, phases, subsectors and offshoot areas with their trade jargon is a complicated process. Table 1 provides a comparison of commercial and trade interactions in the construction sector including the modes of supply in which a single construction services can be supplied and the corresponding UN CPC classification. This interface has been dealt with in greater detail in Part VI of this Report.

TABLE 1: Phases, Activities and Corresponding Modes for a Typical Construction Activity			
Phase	Activity	Corresponding Mode	UN CPC Classification
Pre Design	Advisory architectural and engineering services	Modes 1, Mode 3, Mode 4	Architecture services: (CPC 8671) (UNCPC 2: 8321) Engineering services: (CPC 8672) (UNCPC 2: 833)
Design	Conceptual assessments, feasibility studies, decisions on site, type of structure, financing, selection of contractor, approval of official plans and permissions	Mode 1, Mode 3, Mode 4	As above
Implementation	Physical construction of structure (residential or non residential), civil engineering works (infrastructure) and installation e.g. Plumbing, wiring, building completion work eg. Plastering, painting	Mode 3 and 4	Construction and Engineering Services (CPC 511-518) (UNCPC 2: 54)
Post Implementation	Maintenance and repair	Mode 3 and 4, potentially Mode 1	Parts of previous classification
<i>Source: Authors Construction</i>			

B. Snapshot of SADC construction sector

18. While it is difficult to generalize across SADC member states on the development of the construction sector given the differences in size, economy, political events and comparative

¹ This conceptual understanding of the construction sector is based on the coverage of construction service activities in the UN CPC and the International Standard Industrial Classification of All Economic Activities (ISIC).

factors of advantage, certain generic historical trends can be set out. First, for several SADC countries until the early 90s the focus of the construction sector was primarily on construction of residential buildings and some non residential buildings such as hotels, office complexes, industrial and commercial buildings. In the early 2000s this focus shifted to high-rise urban construction and increasingly as economies become more diversified industry related construction and infrastructure development.

19. Second, for the SADC region, the construction sector is a key infrastructure service and an important welfare generator particularly in terms of its contribution to GDP and as a source of job creation. Third, most SADC countries are seeing greater economic activity in the construction sector arising from differing factors, strong diversified economies (Eg. South Africa, Mauritius), construction linked to dominant industries (Eg. tourism in Mauritius and diamond processing in Botswana), or a strong natural resource sector (Eg. Zimbabwe, Angola, Mozambique).
20. Fourth, several SADC countries are in the process of implementing massive infrastructure programs regionally and nationally. These infrastructure projects are focused on sectors such as energy, transport, and water sectors. This ongoing construction activity in SADC countries may therefore be considered largely public, with the government as the biggest client in most SADC countries.
21. Fifth, the private sector is emerging as an important partner, owing to three factors, fast paced economic growth in some SADC member states, growing privatization including the use of PPP regimes in several SADC member states and growing supply capacity of national construction operators. The main beneficiaries of growing private sector participation are currently large construction firms, however through government policy and local construction sector initiative, the role of smaller private sector firms is increasing albeit at a slow pace. The degree of private sector participation varies; countries such as South Africa and to a lesser extent Mauritius have well developed construction operators.

II. ECONOMIC PROFILE OF SADC CONSTRUCTION SECTOR

22. Globally the volume of construction output has seen a meteoric growth primarily concentrated in China, the US and India.² In SADC the average reported gross output of the construction sector is estimated at 15% of GDP.³ For SADC member states on an average the construction sector has grown consistently in real terms (ie volume) from 2000 to 2012. It is estimated that at least 50% of construction activities in SADC fall under government procurement and infrastructure development programs, however the real figure is likely to be higher and varies again from country to country.⁴
23. An analysis of SADC construction sector statistics⁵ (see Table 2) indicate at times major variations in reported statistics from one year to another. These variations arise as a result of the cyclical nature of the construction sector and the national at times global economy and variations in, government spending programs infrastructure and urban development. This marked observation in the economic indicators of SADC member states d can be more clearly observed through a time series analysis (2000-2012) of the construction sectors contribution to GDP (by percentage and value) and real growth rate. (See Annex 3).

TABLE 2: Construction sector share in GDP (percentage and value), Annual real growth rate, share of construction as % of total employment							
Country	Construction Sector share in GDP, 2005 & 2012 (%)		Construction Sector share in GDP, 2005 & 2012 (Million USD)		Annual Real Growth Rate (%)		Share of Construction as % of total employment
	2005	2012	2005	2012	2005	2012	
	2005	2012	2005	2012	2005	2012	2010
Angola	3.1	7.8	945	8875	16	7.5	9.3
Botswana	5.3	7.4	473	982	-1.2	14.4	9.2
DRC	3.9	4.6 (2011)	454	1057(2011)	21.9	1.6 (2011)	-
Lesotho	4.8	7.5	59	154	4.1	34.5	11.3(2008)
Madagascar	3	3.4	137	312	18.7	0.6	0.1 (2005)
Malawi	3.3	3.4 (2010)	97	209(2010)	12.1	-6.1	-
Mauritius	5.4	6.3	307	636	-4.7	-2.9	10.4 (2012)
Mozambique	3.2	3.2	192	415	13.2	10.4	0.1(2012)
Namibia	2.9	3.8	194	458	2.3	12.4	5
Seychelles	7.3	4.7	55	45	32.8	-2.9	5.1 (2004)
South Africa	2.8	4	6061	13735	11.9	2.5	7.6 (2012)
Swaziland	4.3	2.1(2011)	87	68(2011)	5.6	-2.6 (2011)	6 (2000)

² Oxford Economics, Global Construction Report 2025

³ SADC Statistics Unit

⁴ Figures for government procurement in the construction sector are difficult to obtain, given the lack of reporting, need to disaggregate from general government procurement, bilateral arrangements in procurement in the construction sector and the political sensitivity of the sector.

⁵ Construction sector share in GDP, annual growth rate, share of construction sector employment in total employment.

Tanzania	8.5	8.8	1102	2246	10.1	7.7	2.9 ⁶
Zambia	10.4	23.1	684	4574	21.4	13.8	1.3 (2000)
Zimbabwe	1.1	3.6	77	380	-3.6	23.5	-

Source: SADC Statistics Unit, Figures for employment of construction as % of total employment extracted from ILOStat database and African Economic Outlook Report, 2014, Data as reported by national authorities

A. Construction sector share in GDP of Individual SADC member states

24. The construction sectors share in GDP indicates the importance of the construction sector to SADC national economies in comparison to other sectors of the economy. In SADC this exhibits variations across the region. As of 2012 the countries with the largest construction sector share of GDP include Zambia (23.1%), Tanzania (8.8%), Angola (7.8%), Botswana (7.4%), Lesotho (7.5%).
25. On the whole the majority of the SADC countries demonstrate a gradually increasing trend in the share of construction sector in GDP with slight fluctuations over a period of time.⁷ SADC countries exhibiting this increasing trend include DRC 4.6% of GDP in 2011, Malawi, 3.4% in 2010, Namibia 3.8% in 2012, Madagascar, 3.4% in 2012. Countries with a consistently increasing share of construction sector in GDP include Tanzania (8.8%) and Zambia (23.1%) in 2012. Countries which have exhibited variations including declining share of the construction sector in GDP include Swaziland generally consistent at the same level till 2005, after which gradually declining standing at 2.1% in 2011. Lesotho where the share of construction sector in GDP was gradually decreasing till 2009 after which there was a gradual increase standing at 7.5% of GDP. Botswana, which saw a gradual increase till 2004, thereafter there was a gradual decrease with the share of construction sector in GDP standing at 7.4% in 2012. Countries such as South Africa have had on an average a consistently stable construction sector share in GDP standing at 4% in 2012.
26. In terms of construction sector output, the countries with the highest output for 2012 are South Africa (13735 million USD), Angola (8875 million USD), Zambia (4574 million USD), Tanzania (2246 million USD) and DRC (1057 million USD in 2011).
27. The fluctuating differences in construction sector share in GDP are consistent with industry specialists views that construction sectors share of GDP first grows at an increasing rate and then levels out in accordance with the level of economic development.⁸ This phenomenon can be clearly observed in several SADC economies, which have implemented or are implementing large-scale infrastructure programs either as a result of pursuing economic activity or the end of civil unrest. This phasing in or phasing out of public expenditure on infrastructure development has in turn resulted in either an increasing or decreasing trend in construction sector activity. This can be observed across SADC as for instance in the case of South Africa, Mauritius, Lesotho. Some SADC countries such as

⁶ Tanzania National Bureau of Statistics. Employment and Earnings Survey 2012: Analytical Report, 2012 p. 17. Available from: <http://www.kazi.go.tz/documents/takwimu/Employment-and-Earning-Survey-Report-2012-.pdf>

⁷ Please see Annex 3 for SADC Secretariat Statistics Unit, time sequence data on construction sector share in GDP, value of output and annual real growth rate figures from 2000-2012.

⁸ Bon R and Crosthwaite D, "The Future of International Construction, American Society of Civil Engineers, 2000

Angola and Mozambique have seen a consistently increasing share of GDP, driven on by massive construction activity linked to the oil and gas sector.

28. Further, the construction sector share in GDP also exhibits variations linked to economic cycles and political factors. Economic cycles such as the global financial crisis, which impacted SADC SIDS such as Mauritius and Seychelles resulting in declining tourism, linked construction activity. The global financial crisis contributed to a slight fall in the construction sectors contribution to GDP for Mauritius in 2011-2012 for Mauritius (6.3%) and Seychelles (fell from 7 to 4.5%) in 2012.
29. Political events such as the end of civil war (Angola and Mozambique) or perceived uncertainty (Zimbabwe) are also contributory factors to increasing or decreasing share of the construction sector in GDP. In the case of Mozambique the construction sector share in GDP stood high in 2000-2001 at 8.8%, after which it witnessed a strong downward trend in 2002 falling to 3.8% and staying more or less stable thereafter at 3.2% in 2012. Zimbabwe saw a consistently decreasing trend till 2008 after which the construction sector share in GDP increased, standing at 3.6% in 2012.

B. Annual Real Growth Rate of the Construction Sector

30. Annual Growth Rate in SADC countries, which is a true indicator of the rate at which the sector is growing, also exhibits an increasing trend. In terms of annual real growth rate, countries with the highest annual real growth rate for 2012 are Lesotho (34.5%), Zimbabwe (23.5%) and Botswana (14.4%). However this does not provide us with an accurate picture of the true potential of individual SADC countries. A time series analysis of SADC member states annual real growth rate from 2000-2012⁹ indicates large fluctuations reflecting variations in government infrastructure spending. For example Zimbabwe Annual real growth rate shows some of the strongest fluctuations standing at -2.8% in 2008, boomeranging to 121.9% in 2009 and falling to 23.5% in 2012. Madagascar, which stands at 27.7% in 2008, falls to -18.1% in 2009 and stands at 3.7% in 2011. Namibia, which stood at -18.4% in 2009, stands at 12.4% in 2012. Two consistently and comparatively stable countries in the time series analysis of annual growth rate between 2000-2012 are Tanzania and Zambia.

C. Construction sector employment as a share of total employment

31. In terms of construction sector employment as a share of total employment, Lesotho, Mauritius, Angola, Botswana and South Africa, in that order, exhibit a higher share of construction sector employment as a share of total employment. Wage employment tends to be highest in economies, which are diversified (eg. South Africa, Mauritius,) and those in the process of national building and leveraging their natural resource potential (Angola, Mozambique, DRC).¹⁰

⁹ Please See Annex 3, SADC Secretariat Statistics Unit, time sequence data on construction sector share in GDP, value of output and annual real growth rate figures from 2000-2012.

¹⁰ Charles Roxburgh, Norbert Dörr, Acha Leke, Amine Tazi-Riffi, Arend van Wamelen, Susan Lund, Mutsa Chironga, Tarik Alatovik, Charles Atkins, Nadia Terfous, Till Zeino-MahmalatMckinseys Report, "Lions on the move: The progress and potential of African Economies", Mckinsey Report, June 2010

III. TRADE PROFILE AND MARKET STRUCTURE OF SADC MEMBER STATES

A. Trade Profile of SADC Construction Sector

**TABLE 2: Exports and Imports of Construction and Related Engineering Services
(In Million USD)**

Member State	Exports		Imports	
	2010	2012	2010	2012
Angola	29.73	NA	4 643.11	6 229.94
Botswana	4.23	4.71	33.66	7.88
DRC	0	0	14.1	47.16
Lesotho	16.89 (2011)	21.71 28.9	88.88 (2011)	99.79 23.76
Madagascar	30.64 1.49	(2011) 0.69	3.64	(2011)
Malawi	(2008) 49.53	(2009)	-- 16.14	--
Mauritius	(2011)	35.82	(2011)	11.23
Mozambique	24.62	39.3	131.71	1 979.67
Namibia	0	0	41.3	5.53
South Africa	65.01 (2011)	60.85 (2012)	8.3 (2011)	8.01 (2012)
Swaziland	61.92	19.16	6.61	1.94
Tanzania	NA	NA	20.9	13.07
Zimbabwe	0	0	0	0

Source: WTO trade in services database

32. With the exception of South Africa and to a lesser extent, Mauritius, SADC member states are net importers of construction services. The difference between imports and limited or non-existent exports varies amongst SADC member states, with the most marked difference being observed for countries such as Mozambique, Angola where imports of construction services outweigh exports massively. Two countries outside this generalization are South Africa and Mauritius, whose exports for 2012 were 35.82 and 60.85 million USD respectively as compared to their imports, which were 11.23 and 8.01 million USD. Amongst SADC member states therefore, this puts South Africa and Mauritius in the category of exporters of construction and related services.¹¹

33. Another general trend observable is the sudden variations in imports of construction and related engineering services. This can be observed in the sudden variation in imports of

¹¹ Interestingly Malawi and Madagascar appear to have no imports but some exports of construction services. In the case of Malawi, it is unclear as to whether the figures for imports are not available or have not been reported to the WTO.

construction services by Botswana (declining imports), Namibia and Mozambique (increasing imports) between 2010 and 2012.

Professional Services linked to the Construction Sector

TABLE 3: GDP Value of Architecture + Engineering services (2010-2012) (In Million USD)			
Member States	Year		
	2010	2011	2012
Angola	773	962	1 065
Botswana	89	110	118
Democratic Republic of Congo	102	127	n.a
Lesotho	13	15	18
Madagascar	37	41	37
Malawi	25	n.a	n.a
Mauritius	72	79	76
Mozambique	31	42	50
Namibia	43	53	55
Seychelles	5	7	5
South Africa	1 506	1 662	1 648
Swaziland	8	8	n.a
United Republic of Tanzania	216	226	270
Zambia	373	490	549
Zimbabwe	22	35	46

Source: SADC Statistics Unit Estimation¹²

34. An analysis of the value of architecture and engineering services over the past 3 years indicates an increasing trend across all SADC member states. In 2012 the highest values are seen in South Africa (USD 1 648 million), Angola (USD 1 065 million), Zambia (USD 549 million) and Tanzania (USD 270 million).

B. Market Features

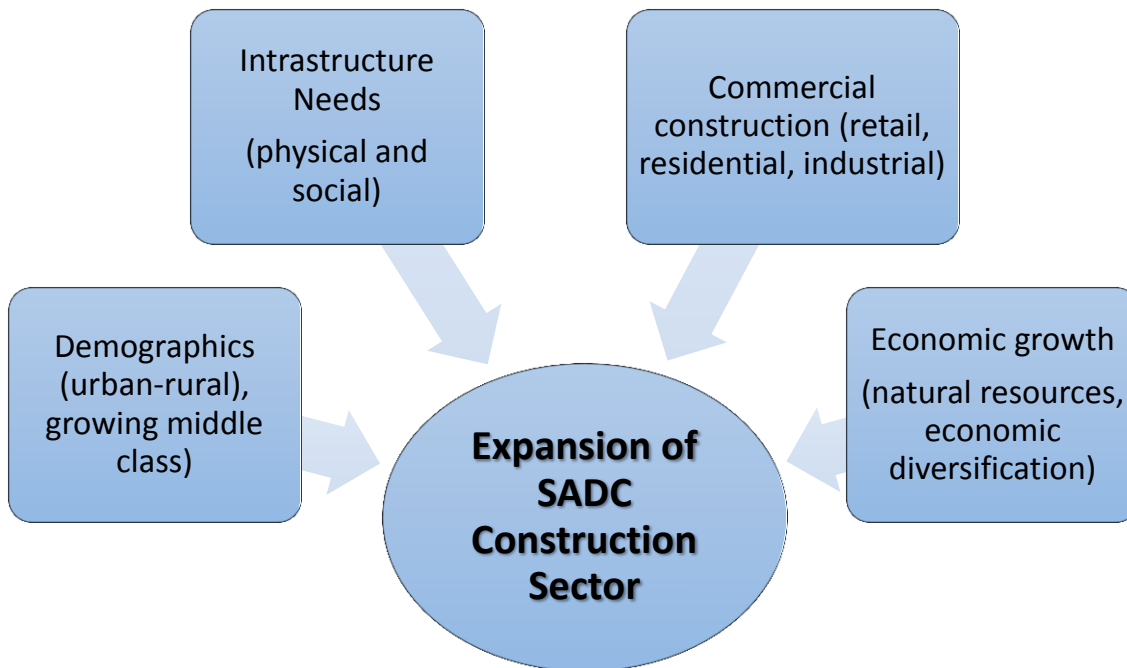
B.1. Drivers of SADC construction sector

35. The economic and trade profile of SADC member states indicate a clear and continued expansion of the construction sector across SADC member states at the national and regional level. This continued expansion of the SADC construction sector arises out of four interlinked drivers of demographics, infrastructure needs, economic growth and commercial

¹² Since disaggregated statistics for professional services linked to the construction sector are not uniformly reported, SADC Secretariat methodology involved estimating share of architectural and engineering services at approximately 12% of construction sector.

construction. The effect of these market drivers is expected to continue over the coming decade.

FIGURE 2: Market Drivers of SADC Construction Sector Expansion



36. The market drivers of the SADC construction sector are closely interlinked with each others. Demographic (rural-urban, growing middle class) shifts will require residential and commercial construction as well as put pressure on existing social and physical infrastructure, requiring maintenance and new infrastructure. For instance¹³ in sub-saharan Africa alone the annual growth rate for social infrastructure (healthcare, education) spending is expected to be strong at about 12% as the demand for schools and healthcare facilities grows.¹⁴ Economic growth and natural resource exploitation will also necessitate more and better physical infrastructure in and across SADC countries. Finally both these factors i.e changing demographics and construction linked to infrastructure and economic growth will require commercial construction (eg. Residences, leisure and commercial hotels, construction linked to leisure activities, retail and offices, industries, warehouses etc.) and social infrastructure (education and healthcare). So the range, size and kind of construction activity is not only set to rise exponentially but is also interlinked with each other.

Demographic shifts and their impact on SADC construction sector

37. The total population of sub-Saharan Africa is expected to reach almost 1.2 billion by 2025, over 40% higher than today’s population.¹⁵ The changing demographics arising from population growth, rising incomes and growing urbanization, has created a demand for commercial and non-commercial property as well as placed pressure on existing infrastructure.

¹³ Oxford Economics, Global Construction Report 2025
¹⁴ Oxford Economics, Global Construction Report 2025
¹⁵ Oxford Economics, Global Construction Report 2025

38. This demographic change has several implications. First a rising population coupled with economic growth within the SADC region will create a growing consumer and middle class with higher disposable income. Africa wide the number of households with discretionary income has grown from 59 million in 2000 to 90 million in 2011—an increase of 53 percent—and is set to increase by an additional 42 percent to 128 million households in 2020.¹⁶ Within the SADC region, the majority of SADC member states are in the upper income bracket (Angola, Botswana, Lesotho, Mauritius, Namibia, South Africa, Seychelles) or the low middle income (Swaziland, Zambia) bracket. 6 SADC member states are in the low-income bracket (DRC, Madagascar, Malawi, Mozambique, Tanzania, Zimbabwe).¹⁷ This indicates greater disposable income and therefore existing and future potential to invest in commercial property.
39. Second there is a demographic shift from rural to urban areas amongst SADC countries. According to UN-HABITAT data, the proportion of Africans living in urban areas grew from 32% in 1990 to 40% in 2010, and is expected to rise to 47% by 2025.¹⁸ In this process, existing SADC metropolis are currently expanding and there is the development of new cities. In fact 6 out of the top 10 cities for economic growth (2012-2017) in Africa, are in the SADC region. These are Dar es Salaam, Durban, Kinshasa, Luanda, Lusaka, Johannesburg.¹⁹ Many of these cities are already expanding acting as engines of economic growth and construction activity within the city and surrounding regions.²⁰

Natural Resources and Economic Growth

40. The existing and newly discovered mineral and energy wealth is a driver of expansion for the construction sector in the SADC region and beyond. Africa's large share of global unexploited industrial commodities include 25% of bauxite, over 60% of diamonds, 50% of cobalt, 81% of phosphate and ore than 90% of platinum group metals.²¹ Across SADC countries developments in the power, energy, mining, oil and gas sectors are essential forces behind the expansion and building of ports, railway lines, roads, airports etc. to facilitate the export movement of resources and personnel from points of extraction eg. Mines, oil wells etc. to ports or points of sale.²²
41. In fact oil and gas extraction spending alone in sub-Saharan Africa is projected to increase at 8% annually over the next decade.²³ Several SADC countries (Mozambique, Angola, Tanzania and South Africa) are mining and oil and gas hotspots.²⁴ These countries have put in place several transport related infrastructure projects such as the expansion of the

¹⁶ Mckinseys Global Institute, Africa at work: Job creation and inclusive growth, August 2012

¹⁷ Source World Bank Doing Business, 2013, available at: <http://www.africatrictlybusiness.com/lists/countries-income-categories>

¹⁸ Knight Frank Research, Africa Report 2013, Last visited on 20 September 2014

¹⁹ Mastercard African Cities Growth Index 2013, last visited 11 October 2013, available at <http://www.africatrictlybusiness.com/lists/top-ten-cities-economic-growth-2012-2017>

²⁰ By 2040 Africa is expected to have more than 100 cities of more than a million people and 7 cities of over 10 million inhabitants. Deloitte African Construction Trends Report (2nd edition), 2013. The Deloitte Report does not include Mauritius, Tanzania, Madagascar and Democratic Republic of Congo

²¹ Deloitte African Construction Trends Report (2nd edition), 2013

²² Deloitte African Construction Trends Report (2nd edition), 2013. The Deloitte Report does not include Mauritius, Tanzania, Madagascar and Democratic Republic of Congo

²³ Oxford Economics, Global Construction Report 2025

²⁴ Deloitte African Construction Trends Report (2nd edition), 2013. The Deloitte Report does not include Mauritius, Tanzania, Madagascar and Democratic Republic of Congo

Maputo port, Namibia's Walvis Bay terminal.²⁵ Apart from transport of natural resources, there is the need for sector specific infrastructure construction as for instance power lines, oil rigs, ports etc. requiring specialized engineering, contracting and building skill sets and materials. The natural resource drive has also boosted the demand for commercial construction in terms of office space, industrial development and consumer linked residential and retail construction.

Infrastructure Development in the SADC Region

42. Infrastructure development is a key component of the construction sector. It is estimated that the global infrastructure market will continue to grow between 6-7% yearly to 2025.²⁶ Overall infrastructure spending in the sub-Saharan region is projected to grow by 10% a year over the next decade – exceeding \$180 billion by 2025 – while maintaining its 2% share of the global infrastructure market. This massive increase in infrastructure spending is largely in response to increasing demands (both demographic and in terms of growing economic activity) on existing often outdated or non-existent infrastructure. In fact the African Development Bank projects energy demand to grow six-fold, maritime traffic as much as eight-fold, and demand for IT 20-fold in the next 30 years.²⁷ This increased demand has necessitated maintenance, repair, expansion and newer infrastructure facilities in SADC countries.
43. While specific figures on construction related infrastructure spending within the SADC region is difficult to access given the size, variation and political sensitivity of the sector, infrastructure related spending at a national level as also on a SADC level is poised to increase substantially. At the regional level, the SADC Regional Master Infrastructure Plan, involving a range of cross-border projects has a combined investment value of up to \$500bn. over the next 15 years to 2027.²⁸ At the national level, South Africa is expected to dominate the infrastructure market in terms of infrastructure spending. Other countries including Angola, Mozambique, and Tanzania are also poised for growth.²⁹
44. Infrastructure needs and as a consequence related projects are also likely to vary across the SADC region, based on economic, development and demographic needs. For instance utility infrastructure needs is expected to be significantly stronger in countries that need to upgrade deficient energy, water, and sanitation services and in economies that are rapidly urbanizing.
45. Within the SADC region, the bulk of infrastructure projects will focus on Transport, followed by Energy and Water.

²⁵ A more complete analysis and break up of sector specific SADC wide infrastructure projects is available at: SADC Regional Infrastructure Development Master Plan, Executive Summary August 2012

²⁶ Oxford Economics, Global Construction Report 2025. The report estimates that the recovery in infrastructure growth will be geographically uneven, with the Asia-Pacific market representing nearly 60 percent of all global infrastructure spending by 2025, driven mainly by China growth and the share of Western Europe is expected to shrink to less than 10 percent.

²⁷ Africa strictly business, Infrastructure Fastracked, last accessed 20 September 2014 at <http://www.africatrictlybusiness.com/news-analysis/infrastructure-fast-tracked>

²⁸ Planting Sasha, Analyst Warning on SA Construction Shares, August 2012, available at:

<http://www.moneyweb.co.za/moneyweb-investment-insights/analysts-warning-on-sa-construction-shares>

²⁹ Oxford Economics, Global Construction Report 2025

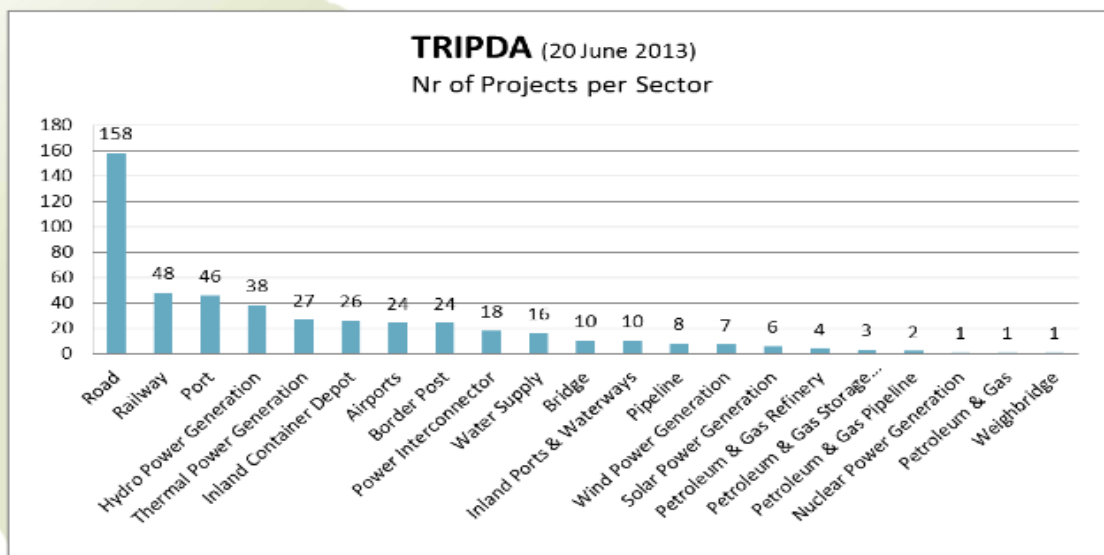
TABLE 5: SADC Sectoral break up of Infrastructure spending, projects and time period for completion

Sector	Initial Investment Costs (USD billion)	No. of Projects	Completion
Energy (Energy generation and grid connections)	12.27 billion	16	2015-2018
Transport (Construction and maintenance)	16.65 billion	32	2012-2019
Water (Investment projects and studies)	13.48 billion	8	2013-2017
Total	42.4 billion	56	2012-2018

Source: SADC Regional Infrastructure Development Master Plan, Executive Summary August 2012

46. A deeper sectoral analysis of 478 infrastructure projects at the Tripartite level, indicates the bulk of projects are focused primarily on road projects (158) followed by railway (48) and Ports (46), airports, inland container depots, bridges, inland ports and waterways.

TABLE 6: No of infrastructure projects per sector across Tripartite Countries

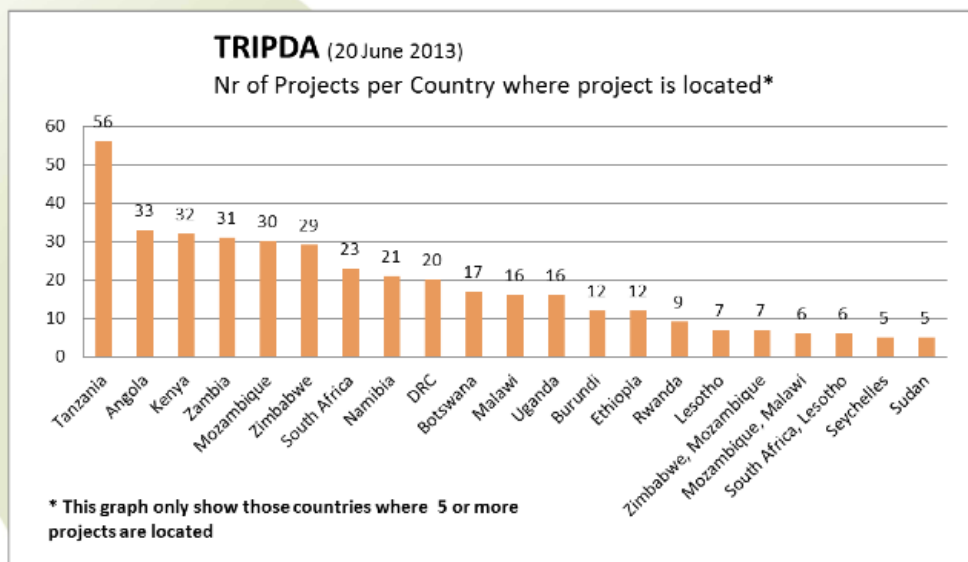


Source: Trademark South Africa

<http://invest-tripartite.org/wp-content/uploads/2013/06/Tripartite-Regional-Infrastructure-Projects-Database-Presentation.pdf>

47. A further analysis of infrastructure projects in Tripartite countries indicates the bulk of infrastructure development are being undertaken in several SADC countries. In fact perusal of Table 7 indicates that most projects are located in or between SADC member states. For instance in 2013, of the 478 projects in tripartite countries, approximately 307 are located in or between SADC member states.

TABLE 7: No. of Projects per country across all Tripartite countries



Source: Trademark South Africa

<http://invest-tripartite.org/wp-content/uploads/2013/06/Tripartite-Regional-Infrastructure-Projects-Database-Presentation.pdf>

48. These trends in infrastructure development in and around SADC countries have three key implications for SADC member states. The first is that the government and public sector have and continue to be the biggest client for construction operators in the SADC region. Procurement regimes as potential markets for SADC construction services providers therefore also become important for SADC member states wishing to supply construction services based on existing or potentially future supply capacity. An evaluation of infrastructure development across tripartite countries is potentially useful for SADC member states as they represent construction service export opportunities for SADC member states in terms of projects as well as high and low skilled labor movement.

49. Second given the large infrastructure development needs across SADC countries, there is a dearth of finance and access to the same by SADC construction services providers. Newer models of financing in particular PPPs and BOTs amongst others are being actively explored and utilized by several SADC countries (eg. Namibia, Mozambique, Botswana,

South Africa). From the trade context public-private arrangements raise issues as to whether such arrangements lie in the domain of public or private construction providers. Third the difficulty in accessing information, on national construction projects, arises from national priorities and bilateral arrangements, which are politically sensitive and likely to lie outside the realm of the SADC construction, market for awhile. This makes a complete picture of the SADC procurement linked construction difficult to assess.

SADC Commercial Markets: A growing retail and commercial Sector in the SADC region

50. With demographic shifts, rising incomes and industrialization, the demand for commercial properties especially in metropolitan areas of SADC member states is on the rise. The market for a range of residential (eg. apartments, houses) and non-residential (eg. Office, industry space, malls, shops, hospitals, educational institutions) buildings is expanding. Commercial property demands related to office and industry space, retail developments (malls, shops, cinemas) etc. are also rising. Growing populations also place an increased pressure on existing infrastructure, which in several SADC states is inadequate and outdated.
51. The drivers for construction in the commercial property market in SADC countries tend to vary. Large diversified economies such as South Africa tend to have a reasonably well-developed and mature commercial property market as compared to other SADC member states. For instance according Real Capital Analytics data, in 2012, US\$800 million of commercial property transactions were completed in South Africa, making South Africa the largest property investment market in SADC.³⁰ In some SADC countries the development of a dominant economic sector (for example tourism in Seychelles and Mauritius or energy development in Mozambique, Angola) tends to be a key driver of the commercial construction market. In Luanda, the oil and gas industry is the driver of dynamic office markets. The strength of demand for office space in Luanda, combined with a severe lack of high quality office space, creates some of the highest office rents in the world. Prime office rents in Luanda are currently US\$150 per sq m per month, higher than in London, Hong Kong or New York,³¹ This in turn has driven a construction drive to meet the needs of a dynamic market.
52. Retail markets are developing as the demand for consumer goods grows. In Sub-Saharan Africa, the most well developed and sophisticated retail market is South Africa, with numerous large shopping centers across the country.³² This retail chain model has been replicated across several SADC countries including Botswana, Lesotho, Namibia, Angola, Mauritius and Zambia, which as Table 8 indicates a growth of additional shopping centers and malls either completed or under completion. The focus of retail construction tends to be in the biggest and wealthiest cities, in smaller SADC cities retail consumption tend to focus on small-scale local trading.

³⁰ Knight Frank Research, Africa Report 2013, Last visited on 20 September 2014

³¹ Knight Frank Research, Africa Report 2013, Last visited on 20 September 2014

³² Knight Frank Research, Africa Report 2013, Last visited on 20 September 2014

TABLE 8: Illustrative Table on New Commercial Construction: Malls, Hotels, Mixed Use

Country	Construction Project	Cost	Developer/Investment Source
Botswana	Airport Junction Mall, Gaborone	\$46 million	Eris Property Group (South Africa) & Botswana Insurance Fund Management (Bifm)
Botswana	Rail Park Mall, Gaborone	\$39 million	Botswana Rail; Botswana Insurance Fund Management
Lesotho	Maseru Mall: fully-integrated shopping mall with public transport facilities and other complementary commercial use	\$45.8 million	Eris Property Group, South Africa; Group Five Lesotho
Mauritius	Mall of Mauritius, Bagatelle	-----	Atterbury Developments, (South Africa); ENL Property (Mauritius)
Mozambique	Park Inn by Radisson Tete Hotel; Radisson Blu Hotel Maputo	-----	Carlson Rezidor Hotel Group (USA)
Namibia	Keetmanshoop Retail Center	US\$9.8 million	Old Mutual (South Africa)
Zambia	Radisson Blu Hotel Lusaka		Carlson Rezidor Hotel Group (USA)
Zambia	Roma Park - residential and commercial development, Lusaka		CPD Properties (Zambia) & Renaissance Partners (Russia)
Zambia	Society House tower, Lusaka	\$100 million	Private Zambian and South African consortia
Zambia	Levy Junction. mixed-use development	\$200 million	Liberty Life (South Africa)
Zimbabwe	Mall of Zimbabwe at Millennium Park, Borrowdale West	\$100 million	City of Harare; Augur Investments; McCormick Property Development; West Group

Source: Africa Strictly Business list of New Construction: Malls, Hotels, Mixed Use³³

³³ Last visited 11th October 2014, available at: <http://www.africatrictlybusiness.com/lists/new-construction-malls-hotels-mixed-use>

53. Interestingly in the retail construction sector, with the exception of South Africa, most retail construction of Malls, Hotels and Mixed-use projects, tend to be undertaken with foreign partners. As per Table 8 foreign partners are primarily from South Africa, US and Russia.

C. Market Structure

54. Accurate information on the structure and ownership of the construction sector is difficult to come by due to the scarcity of comparable statistics, differences in reporting and the sensitive nature in particular of the procurement segment of the sector. However what is clear across all SADC member states is that government spending, related to infrastructure development drives the construction sector and makes the government the biggest client. In fact a recent Deloitte report (2013) values the Southern African market at USD 83199 million of which infrastructure development is a major component. Industry specific construction breakdown is Energy (31%), Mining (19%), Transport (18%), Real Estate (17%), Water (7%), Health (2%), and oil and gas, agriculture education, other construction (all at 1%).³⁴

55. There is also a limited but growing private, sector, which assumes a bigger role in countries with more diversified economies such as South Africa, Mauritius, but is becoming increasingly important across the SADC region focusing on real estate development and recreational/leisure related construction services.

International Construction Firm Operations in the SADC Region

56. Globally the top design and contracting firms tend to originate in Europe, US, Korean, Chinese, Brazilian and Australian.³⁵ This foreign dominance of high-end construction work is reflected in the SADC construction sector where large-scale projects across SADC member states tend to be dominated by a few large contactors mostly from outside the region and South Africa. The Deloitte African Construction Trends Report (2013)³⁶ for instance found for Africa as a whole there are 322 different construction projects³⁷ underway with a total value of USD 222767 million. The highest number of projects (38%) are in Southern African countries, followed by East Africa (29%) and then West Africa (21%).³⁸

³⁴ Deloitte African Construction Trends Report (2nd edition), 2013. The Deloitte Report does not include Mauritius, Tanzania, Madagascar and Democratic Republic of Congo

³⁵ An analysis of the top 30 International Contractors indicate that there are Brazil – 1, Chinese: 5, Korean: 5, EU –13 (Spain: 3, Sweden: 1, German: 2, French: 3, Italian: 1, Austrian: 1, Netherlands: 1, UK:1, Japanese:1, US: 3. For more information on the names and value of the Top 30 International Contracting Firms, please see Annex 2

³⁶ The Deloitte African Construction Trends Report covered 322 infrastructure construction projects valued at over USD 50 million which had broken ground but not been commissioned by 1st June 2013. The report aimed to extract trends, identify ownership and funds for African construction projects.

³⁷ Construction project refers to a construction works contract or a series of related construction works contracts

³⁸ Deloitte African Construction Trends Report (2nd edition), 2013. The Deloitte Report does not include Mauritius, Tanzania, Madagascar and Democratic Republic of Congo

TABLE 9: Top 225 International Contractors' Shares of the World Market, 2007					
Contractor nationality	Nb of firms	Int'l billings		Africa	
		Million US\$	%	Million US\$	%
AMERICAN	35	42,735	13.8	1,957	6.8
CANADIAN	3	2,767	0.9	0	0.0
EUROPEAN	64	179,577	58.0	13,660	47.8
British	4	11,310	3.6	139	0.5
German	5	32,088	10.3	933	3.3
French	5	38,695	12.5	4,364	15.3
Italian	22	25,342	8.2	5,774	20.2
Dutch	2	6,756	2.3	35	0.1
Spanish	11	25,161	8.1	886	3.1
Other	15	40,225	13.0	1,528	5.3
AUSTRALIAN	4	10,115	3.3	0	0.0
JAPANESE	16	23,859	7.7	1,150	4.0
CHINESE	51	22,678	7.3	7,696	26.9
KOREAN	11	8,016	2.6	850	3.0
TURKISH	23	8,506	2.7	956	3.3
ALL OTHERS	18	11,532	3.7	2,327	8.1
ALL FIRMS	225	309,783	100.0	28,596	100.0

Source: Reprinted courtesy of Engineering News-Record, copyright The McGraw Hill Companies, Inc., August 18, 2008. All rights reserved. WTO background Note on Engineering Services 2011. Excludes: Antarctic/Arctic - \$84.0 million; Unassigned - \$380.0 million.

57. These construction projects are being carried out by Europe/US construction companies – 37% and Chinese companies account for 12%. The operations of foreign international contracting firms, currently tend to be focused on construction works in Angola, DRC, Namibia and Mozambique.

58. In terms of ownership 53% of these construction projects are publicly owned with the balance being privately owned or owned through PPPs.³⁹ In terms of financing, 36% of all funding on the continent is provided by Development Finance Institutions (“DFIs”), Europe/US based stakeholders fund 15% of projects and Chinese stakeholders fund 10% of all projects in Deloitte’s sample survey.⁴⁰

³⁹ Deloitte African Construction Trends Report (2nd edition), 2013. The Deloitte Report does not include Mauritius, Tanzania, Madagascar and Democratic Republic of Congo

⁴⁰ Deloitte African Construction Trends Report (2nd edition), 2013. The Deloitte Report does not include Mauritius, Tanzania, Madagascar and Democratic Republic of Congo

TABLE 10: Indicative Table on Foreign Contractors operating in the SADC region

Country of Origin	Name of Foreign Contracting Firm	Country of Operation
Germany	STEAG Energy Services ⁴¹	Botswana
China	Sinohydro ⁴² , China Jiangsu ⁴³ , China National Electric Equipment ⁴⁴ , Anhui ⁴⁵	Angola, Botswana, DRC, Zimbabwe, Tanzania
South Africa	Murray and Roberts, Grinaker LTA, Group 5 and Murray and Roberts, Calgro M3 ⁴⁶	Angola, Botswana, Swaziland, Namibia, Malawi
Portugal	Texeira Duarte, Mota Engil and Soares da Costa	Angola
Brazil	Oderbrecht, Andrade Gutierrez Group	Angola, DRC
Netherlands	Fleurette Group	DRC

Source: Author construction based on newspaper articles

59. Amongst SADC member states, South African construction firms are key exporters in the region, active in both commercial and infrastructure related construction across SADC member states. The most active South African firm in the SADC region is Group 5 with operations in nearly every SADC member state, followed by Aveng and Basil Read.

⁴¹ Morupule coal power plant, Botswana

⁴² Sir Seretse Khama International Expansion Project Phase 2 – no more

⁴³ Central Business District mega projects related to office, retail and commercial space

⁴⁴ Morupule coal power plant

⁴⁵ Anhui's activities in Southern Africa have included the Dikgatlong dam construction contracts in Botswana. A 4,6-megawatt hydropower plant near Tshibwe, a building for Congo's diamond regulator at the N'Djili airport in Kinshasa, DRC. In Zimbabwe Anhui is currently completing a hotel and shopping complex, said to be worth US\$200m, adjacent to the National Sports Stadium in Harare. In Mozambique, Anhui's US\$106m contract to upgrade the Maputo International Airport in Mozambique. ⁴⁵ Zimbabwe Independent, Zim and Botswana: A tale of two nations, February 28, 2014

⁴⁶ Otjomuise project in Windhoek, involves the construction of 2 523, awarded by the Namibia National Housing Enterprise

TABLE 11: South African Firms Operating in SADC Countries

Country	Aveng	Basil Read	Group 5	Murray and Roberts	Raubex	WBHO
Angola			<input type="checkbox"/>			
Botswana	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
DRC		<input type="checkbox"/>				
Lesotho	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	
Malawi	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>	
Mauritius	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			
Mozambique	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>
Namibia	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Swaziland	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			
Tanzania	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			
Zambia	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Zimbabwe	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

Source: Drawn from DNA IDC/FRIDGE Study

60. The traditional SADC construction sector operators mainly from Europe and South Africa are facing increasing competition from Chinese construction sector operators. Chinese construction operators are focused on civil works contracts broadly divided among two main sectors: power generation (especially hydropower), and transport (especially railroads).⁴⁷ In some SADC stakeholder interviews it was set out that the Chinese contractor bring expertise, provide a range of cost options from high end to low end and are able to bring a certain degree of financing mostly through their own state owned banks.
61. The Chinese construction company financing models also tend to be “innovative” and different from the traditional methods. For instance Angola has been one of the four biggest recipients of Chinese financing for infrastructure projects. In return, Angola supplies 51% of China’s oil imports from Sub-Saharan Africa creating what is referred to as the “Angola model”.⁴⁸ In DRC China has invested USD \$6 billion for mines, roads, rails, hospitals and schools infrastructure. The Congo River Dam in the Republic of Congo currently under construction is being Financed by the China Ex-Im Bank loans backed by guarantees of crude oil.⁴⁹
62. While International construction firms have contributed to the construction landscape in SADC countries, there has also been some degree of criticism. These concerns relate to the impact on domestic construction firms and job creation as some foreign construction companies import labour and material from their home countries. Other concerns relate to profit repatriation and in particular access to finance, which gives foreign construction firms an advantage over domestic construction firms when it came to providing performance

⁴⁷ JETRO Institute of Developing Economies, China’s Infrastructure Footprint in Africa, Chapter 10, Report on China in Africa, available at: http://www.ide.go.jp/English/Data/Africa_file/Manualreport/cia_10.html

⁴⁸ Africa strictly business, Fast Facts, last accessed 20 September 2014 at <http://www.africatrictlybusiness.com/quick-access-economic-and-industry-facts-and-figures>

⁴⁹ JETRO Institute of Developing Economies, China’s Infrastructure Footprint in Africa, Chapter 10, Report on China in Africa, available at: http://www.ide.go.jp/English/Data/Africa_file/Manualreport/cia_10.html

guarantees/bid bonds. Further, in some interviews conducted with SADC construction stakeholders it was felt that despite the existence of explicit preference clauses in procurement of construction services, there was a gap in actual implementation of these preference clauses.

Predominance of SMEs and MMEs in SADC construction sector

63. Apart from the large international construction firms, SMEs and MMEs ranging in size and function dominate the SADC construction sector. In fact the majority of enterprises in the SADC construction industry particularly in LDCs are small with a few of them being in the medium category. SMEs such as small contractors can be powerful instruments of generating job opportunities and contribute to the local economy as they undertake small projects, which are considered unattractive to big firms or too costly to use big firms. For example buildings (residential and commercial eg. small shops, points of sale etc.) and other kinds of small infrastructure facilities. SMEs also provide inputs into the formal construction sector in terms of supply of labour, materials and building components, primarily through sub-contracting arrangements.

Problems faced by Small and Medium Contractors in SADC: Case study of Swaziland

Despite being an important source of employment there is a high failure rate amongst small and medium sized contractors in smaller countries in the region. The case of Swaziland indicates that these contractors fail for a variety of reasons ranging from lack of adequate managerial capacity to handle the uniqueness, complexity and risks in contracting, inadequate technical and financial skills and late payment by the government.

Small and Medium Size contractors in Swaziland are defined as those contractors who do work up to E20 million.¹ In Swaziland the key problems faced by small contractors are primarily lack of technical and financial capacity and delay in payments. The vast majority of construction firms are small enterprises that rely on outsourcing personnel as required. The high mobility of construction workers has severely affected skills training and the retention of expertise, further contributing to the rigid adherence to management techniques and construction practices handed down from colonial times. Delays with interim and final payments and onerous contract conditions impose huge constraints on construction firms. Many construction firms have suffered financial ruin and bankruptcy because of delays in payment, which are common with government contracts.¹

Registration of construction enterprises in Swaziland is considered an essential tool for industry transformation, monitoring and ensuring compliance and the implementation of contractor enabling programs.

64. However since the SADC construction SMEs/MMEs, both individuals and firms operate in the informal sector, there is lack of monitoring and this often leads to the operation of unregulated and unqualified individuals and firms.

Emergence of the PPP model across SADC region

65. Another development has been the emergence of PPPs such as concessions and BOT contracts, which facilitate private participation in infrastructure and service development and release pressure on government budgets, by linking procurement and the private sector returns to long term service provisions and maintenance of projects. PPP oversight units and regulation have been established in several SADC countries including South Africa, Swaziland, Lesotho, Mauritius.

D. Challenges Facing SADC Construction Industry

66. The problems of construction industry in SADC countries vary across the region depending on the peculiarities of the economy, its structure and its needs. Common problems that have emerged in the literature review, interviews and questionnaires relate to access to finance, low project turnover, unregistered operators in the construction sector, low quality work, lack of accountability, lack of inclusion of local construction sector operators.

Table 12 provides an overview of the problems that SADC construction sector operators have raised.

TABLE 12: Problems faced by Construction Sector Operators in the SADC Region	
Problem	Issue and Country
Finance	.Lack of financial credit facilities ⁵⁰ , especially in post conflict countries and at times of economic downturns nationally or globally. Construction sector regarded as risky, with banks preferring to focus on the retail sector. .Access to equipment at reasonable rates: across SADC
Lack of Work Opportunities for local firms	.Erratic work opportunities: due to economic cycle .Unfavorable donor conditionality's which tend to marginalize local construction enterprises ⁵¹ , inappropriate contract packaging of works that favour foreign firms in donor- funded projects
Human Resources	.Lack of local skilled professionals: across SADC .Uncertain or low productivity and quality: owing to lack of experience, need for infant industry protection, partnering and greater local ownership voiced in interviews with Botswana, Tanzania, Zambia .Health and safety concerns: across SADC the need for enforcement of good health and safety laws, as part of the conditions of contract for a construction project, site visits revealed that there are no health and safety committees, and workers were not issued with protective clothing, apart from safety helmets. ⁵² .Operation of non professional and unregistered professionals: especially contractors, which are unregistered .Informal sector
Standards	.Need for more uniform application of technical standards across the region eg. Chinese, South African, UK, National technical standards
Transparency	.Non existent, slowly emerging or too complicated regulatory systems .Inefficient and non-transparent procurement systems, corruption
Others	.Low technological base, Unfavorable tax regime
<i>Source: Prepared by author based on responses to questionnaires, interviews with SADC construction sector operators and literature review of the construction sector in SADC member states</i>	

80. Of the challenges identified, 3 areas came up repeatedly in the interviews with SADC construction sector operators. First, the integration of local construction services suppliers into the national construction sector. While on the one hand the low capacity and capability

⁵⁰ Mozambique, Tanzania, Zambia

⁵¹ Tanzania

⁵² Building and Woodworkers International, The Great Leap Outward: Chinese Construction Companies in the Global Market and BWI Engagement, October 2013, Geneva. Available at: http://www.bwint.org/pdfs/EN_China%20MNCs.pdf

of the local contractors due to weak resource-base and inexperience was acknowledged. On the other hand the need to protect local contractors from competition from foreign firms, was seen as important.⁵³ In several countries the perception was that with the entry of foreign firms in particular over the last 5 years, local construction companies get squeezed out.

81. This issue was raised in Tanzania, Zambia, Botswana, and Swaziland. For example, within SADC, a 2005 estimate of the Tanzania National Construction Council found (with the exception of South Africa), local contractors and consultants have approximately on an average a 30% market share in the region; Malawi (23%), Swaziland (35%), Tanzania (20%), South Africa (85%).⁵⁴ However, the view that some foreign construction firms can create local employment was also expressed.⁵⁵ There is a need to have a clear national level evaluation of the socio-economic benefits of foreign construction companies including actual levels of employment generated, skills transfer completed, profits generated amongst others.⁵⁶
82. SADC member states have put in place measures to encourage participation of local construction companies such as preference policies, local content requirements amongst others. For instance in the case of Botswana, where construction projects continue to be foreign dominated, the Botswana government is considering the unbundling of tenders in the construction sector to benefit local companies.⁵⁷ While preference policies may exist at the national level, it was felt that some foreign construction firms found a way to get around the provisions of preference policies such as having a local partner, employment of locals, purchasing materials locally.⁵⁸ A need for monitoring the implementation of preference policies was emphasized.
83. A second issue, relates to the limited number of skilled and qualified construction sector professionals (architects, engineers, quantity surveyors, technicians, contractors amongst others) across the region. This in turn often results in overworked professionals, high fees and operation of unqualified individuals with impacts on quality, safety and accountability.
84. A third area of concern across SADC countries with the exception of South Africa, was the lack of access to finance/credit by local contractors, in particular SMEs and MMEs. Access to finance enables contractors to access loans, financial guarantees, performance and bid bonds, which in turn enable them to secure big construction projects. For SADC contractors, lack of access to finance during preconstruction phase disqualifies emerging contractors from meeting guarantee and performance bond requirements. During the construction phase, lack of access to credit leads to cash-flow problems, incomplete work and even liquidation. As a result even where local construction sector operators could avail of preference policies they were unable to do so, as they lacked the financial capacity.

⁵³ The Standard, Zimbabwe: Chinese take over local construction industry, 24 September 2013, available at <http://www.thestandard.co.zw/2013/09/22/chinese-take-local-construction-industry/>

⁵⁴ Tanzania National Construction Council, Tanzania Construction Industry Policy, 2005. Available at http://www.tanzania.go.tz/egov_uploads/documents/jj_sw.pdf

⁵⁵ For example in SADC National consultations in Mozambique, December 1, 2014.

⁵⁶ Intervention made by Botswana and Tanzania during the SADC Construction sector workshop, December 8, 2014

⁵⁷ Koobonye Ramokopelwa, Cracks emerge in the Construction sector, Botswana Guardian, 18th January 2013 available at: <http://www.botswanaguardian.co.bw/latest-news/113-cracks-emerge-in-the-construction-sector.html>

⁵⁸ Raised in national consultations in Botswana, but also in telephonic interviews with representatives from Tanzania, Zambia.

85. The lack of access to credit/finance facilities arises from the perceived “high risk” tag of construction projects, particularly where the construction providers are SMEs or MMEs. The “high risk” tag is more apparent in SADC member states which are perceived as “politically or economically risky”. As a result of the enhanced “risk perception” banks are either unwilling to lend, selective in their lending or charge high interest rates to construction sector operators. Complicated regulatory systems also enhance the “risk perception” of the country. For instance as a result of Mozambique’s land/building registration and contract enforcement systems, only two banks are willing to give loans for construction and they do so at high interest rates – e.g. 16- 22.5%.⁵⁹
86. In order to overcome the handicap of the lack of access to finance, several SADC member states have set up financing facilities through banks or specific construction sector lending entities such as Contractors funds. Access to this kind of financing tends to be reserved for locally incorporated entities or citizen owned companies. In addition, there is concern that these financing facilities are undercapitalized and insufficient.
87. A suggested possibility to enhance capitalization of funds is for central banks to incentivize commercial banks to lend to the construction sector operators.⁶⁰ There is also a need to evaluate financing models in the construction sector to determine the optimal ones for SADC countries.

TABLE 13: Indicative list of construction sector linked financing provisions in SADC member states		
Country	Development Finance Institution	Description
Lesotho	Lesotho National Development Company Ltd.	Construction, developed its Own Construction Incentive Scheme which supports private entrepreneurs in building their own factory buildings for rent to investors, results of incentive scheme reported to be limited
Mauritius	Development Bank of Mauritius	SMEs and MMEs, construction sector
Mozambique	National Housing Promotion Fund Government land bank	
Namibia	Namibia Development Bank	Lends to non agricultural SMEs and construction contractors
Seychelles	Development Bank of Seychelles	private-sector lending focuses on tourism, consumer credit to households, mortgage loans, real estate, transportation, and construction. ⁶¹
Swaziland	Swaziland Development and Savings Bank	Loan advances to construction sector, focuses on developing land and construction activities

⁵⁹ World Bank, Mozambique – CEM – Construction sector draft, Available at: <http://siteresources.worldbank.org/INTDEBTDEPT/Resources/468980-1218567884549/5289593-1259608803444/MozambiqueCEMConstruction20090821.pdf>

⁶⁰ Suggestion made by Zambia, during the SADC Construction sector workshop, December 8, 2014

⁶¹ Seychelles Country Profile, African Economic Outlook, 2014, available at: http://www.africaneconomicoutlook.org/fileadmin/uploads/aeo/2014/PDF/CN_Long_EN/Seychelles_EN.pdf

TABLE 13: Indicative list of construction sector linked financing provisions in SADC member states		
Country	Development Finance Institution	Description
South Africa	Export Credit Insurance Corporation	Access to Export Credit Insurance Corporation is limited to South African firms. By availing of an interest rate subsidy that it receives from Government ECIC provides official political and commercial risk insurance.
Tanzania	Contractors Assistance Fund (CAF) Roads Fund and Roads Fund Board Construction Industry Development Fund	CAF was set up with the aim of assisting contractors in securing bid bonds and bank guarantees. It is worth over 2.1bn/- from 300m/- registered during its establishment in 2002. 900 local contractors had benefited from financial guarantee provided by CAF. CIDF assists local contractors and consultants to acquire equipment through plant advances, hire purchase and other forms of credit arrangements. The Fund will also provide loans for equipment and will act as a guarantor for loans secured through banks and other credit schemes

Source: Drawn from Financial Characteristics of DFIs in SADC⁶², Literature Review, Country legislation

⁶² http://www.sadc-dfrc.org/sites/default/files/DFS_chapter6.pdf

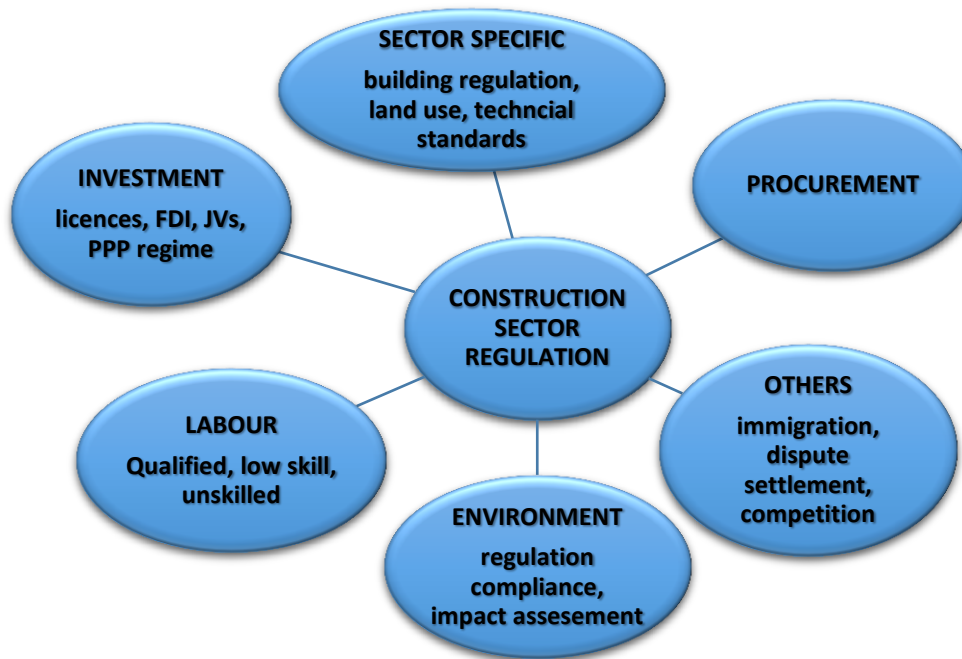
IV. REGULATORY FRAMEWORK OF SADC CONSTRUCTION SECTOR

A. Features of Regulatory Policy across SADC member states

88. The construction sector is one of the most highly regulated sectors globally as in the SADC region owing to the diversity of operators, regulatory bodies, regulatory policies, interlinkages with the national economy and other economic sectors.

A.1. Plethora of applicable laws and regulations

FIGURE 3: Applicable Regulation in Construction sector of SADC member states



89. While the specifics of regulatory policy and bodies vary across SADC member states the overall areas of focus remain the same. Construction sector specific regulation includes building codes/regulation, legislation governing the regulator/ministry, land use requirements such as land ceiling requirements or urban planning, environment and labour regulation amongst others. Construction sector related government procurement in SADC member states is usually dealt with in separate legislation, which sets out the scope of procurement, thresholds and value, conditions for participation and the process to be followed for submitting bids.

90. In terms of labor, qualified suppliers such as architects, engineers, quantity surveyors are dealt with under their respective sets of regulation generally monitored by government or

government approved bodies/boards. Unskilled labor is governed by the prevailing labor act, which deals with issues such as minimum wages, work conditions (safety, health) amongst others.

91. Investment regulation for the construction sector, could be part of a larger investment policy for the SADC member state, or construction sector investment specific regulation, which generally sets out the terms on which investment in the construction sector can be made such as permissions, licenses, Joint ventures, FDI limits amongst others. Environment regulation relates to environment impact assessment to be undertaken prior to the commencement of a project and compliance with existing environment legislation.
92. The structure of the construction sector regulatory body differs across SADC countries. There tends to be a main regulatory body (Eg. national construction council/body as in Malawi, Tanzania, Zambia, South Africa) or a dedicated Ministry or government department (Eg. ministry of public works or infrastructure as in Mauritius, Zimbabwe, Botswana and Namibia) or in some cases both. The regulation of qualified suppliers such as architects, engineers, quantity surveyors, are undertaken by corresponding professional bodies performing different functions, from setting contractor grading, quality standards, conditions for admission to the professional body, recognition of foreign qualified suppliers to enforcing codes of conduct in the different professions within the construction industry.

A.2. Changing policy and regulation in SADC member states construction sector

93. Another feature of construction sector regulatory policy in SADC member states is the level of ongoing change. This is not surprising given the breadth and scope of the sector and the dynamic market structure developments. Some countries are in the process of setting up construction sector related policy (Eg. Botswana, Namibia) or independent regulators (Swaziland, Namibia). Botswana passed the Architects Regulation Act in 2008, and is in the process of setting up the institutional structure, including the Registrar of Architects, through which the operations of architects and architecture firms in Botswana will be monitored. Namibia And Swaziland are in the process of setting up a construction sector Regulator. Countries such as Angola and Mozambique that are implementing large-scale infrastructure program are enacting legislation, setting up regulatory institutions and revising existing regulatory structures to better the operation of the construction sector.
94. With bigger economies such as South Africa and Mauritius construction sector regulation is revised to keep up with developments within the sector. For instance recent proposed amendments to South Africa's Construction Industry Development Board Regulations relating to contractor registration requirements.⁶³ Mauritius too is in the process of fleshing out provisions of the Professional Architects Council Act 2012⁶⁴ as well as moving towards a National infrastructure Policy that will form part of the larger National development plan.

A.3. Regulatory Policy Impact on Construction Sector related Business

⁶³ Recent amendments to registration requirements of the Construction Industry Development Board (CIDB) Regulations, part of the larger CIDB Act 2000, No. 36629, issued by the Department of Public Works, July 2013 available at: http://www.cidb.org.za/Documents/KC/cidb_Publications/Leg_Regs/other_leg_regs/leg_regs_gg_9983_2_july_2013.pdf

⁶⁴ Mauritius Construction Industry Development Board, A Strategy Paper for the Construction Industry, July 2013

95. Construction sector regulatory reform in the majority of SADC member states is aimed at improving the overall functioning of the sector with carry on effects on other sectors of the economy as well. A perusal of the World Bank database on the ease of obtaining Construction Permits ranks SADC member states with a regional average of 99 in terms of procedures required, time taken, costs and enforcement of contracts in the construction sector.⁶⁵ The regions best performer is South Africa ranked at 26.

TABLE 14: World Bank “Doing Business Report”, 2014, Dealing with Construction Permits SADC rankings

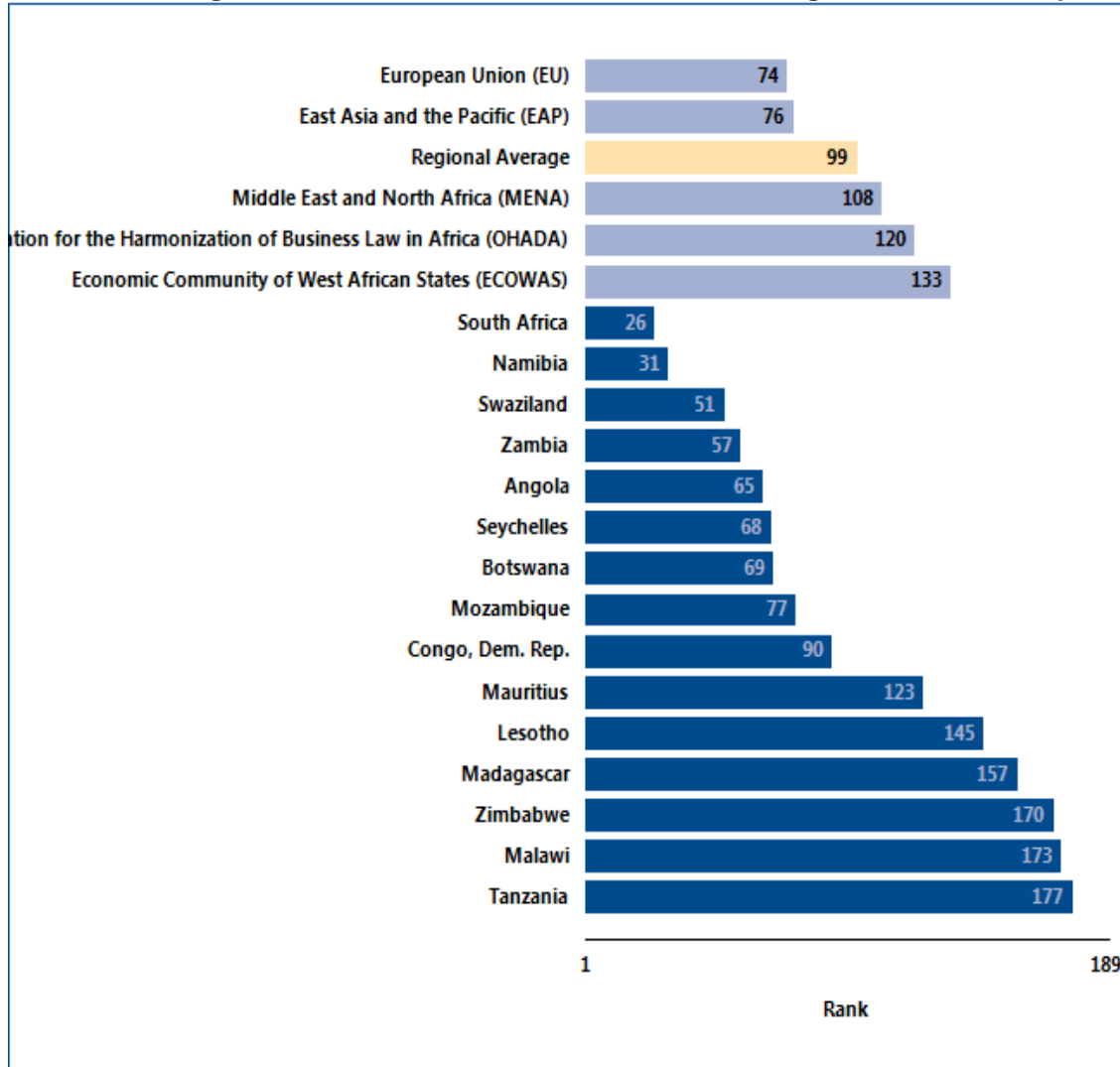
Indicator	Lowest regional performance	Best regional performance	Regional average	Best global performance
Dealing with Construction Permits (rank)	177 (Tanzania)	26 (South Africa)	99	1 (Hong Kong SAR, China)
Procedures	21 (Botswana)	11 (3 economies)	11	6 (Hong Kong SAR, China)
Time (days)	496 (Zimbabwe)	182 (South Africa)	78	26 (Singapore)
Cost (% of income per capita)	3,055.6 (Zimbabwe)	9.9 (South Africa)	620.6	1.1 (Qatar)
Enforcing Contracts (rank)	187 (Angola)	42 (Tanzania)	119	1 (Luxembourg)

Source: World Bank Doing Business database

96. In terms of procedures required for grant of construction permits, the SADC regional average is 13 procedures for grant of a construction permit, with several economies doing reasonably well at 10 procedures. In terms of the average number of days required for the grant of a construction permit the regional average is 78 days, the best performer is South Africa where it takes 78 days. In terms of enforcing contracts, the SADC region seems to lag behind with the regional average rank standing at 119, the best performer being Tanzania ranked at 42.

⁶⁵ The World Bank Doing Business database on “dealing with Construction Permits” uses a methodology based on reported sample surveys, which can be loosely summed up as follows: (i) number of procedures including submission of documents, notifications, carrying out of inspections, obtaining utility connections and registrations necessary for legally building a warehouse. (ii) Time in terms of calendar days from start to to receipt of final document, assuming no prior contact with officials (iii) official costs to complete each procedure measured as a percentage of income per capita and does not include bribes. (iv) Enforcing Contracts: covers the number of procedures to be followed for enforcement, the time taken and the cost. Further information on the methodology is available at: <http://www.doingbusiness.org/methodology/dealing-with-construction-permits>

FIGURE 4: Ranking of SADC member states for the ease of dealing with construction permits



Source: World Bank “Doing Business Report”, 2012, SADC Regional Profile

97. When compared to other regions, the SADC regional average rank (99) for dealing with construction permits, is better than the regional average in ECOWAS or MENA but does not match up to the regional average in the EU and East Asia and the Pacific. Interestingly several SADC countries led by South Africa (rank 26), followed by Namibia, Swaziland, Zambia, Angola, Seychelles, Botswana, have a higher ranking than the regional average in the EU and East Asia and the Pacific. This is an encouraging trend in terms of indicators of SADC member states openness to construction related business.

98. As Table 15 indicates there have in general been positive regulatory changes in SADC domestic regulation that have enabled this enhanced ranking in dealing with construction permits. These improvements in domestic regulatory measures could have positive implications for smaller construction companies with intra SADC construction ambitions, provided market access is available.

TABLE 15: Examples of Regulatory Improvements in SADC economies in the Ease of obtaining Construction Permits (2014)

Country	Improvement
Angola	reducing 2 procedures for getting approval from water and electricity companies, reducing time to deal with construction related approvals by 9 days
Botswana	eliminating the requirement for an environmental impact assessment for low-risk projects (2014)
DRC	reduction in the cost of a building permit from 1% of the estimated construction cost to 0.6% and a time limit for issuing building permits. (2008)
Malawi	dealing with construction permits more expensive owing to increase in the cost to obtain the plan approval and to register the property (2013)
Mauritius	combining procedures for getting development permit and building permit, and also set up an official time frame to process the permit application
Mozambique	improving internal processes at the Department of Construction and Urbanization, though there was an increase in fees for building permits and occupancy permits (2014)
Tanzania	changes resulted in a more difficult construction permitting process with additional procedures and cost. (2013) including by increasing the cost to obtain a building permit
Zambia	reducing the time to obtain utility connections
Zimbabwe	Construction permit more difficult (2008) due to requirement of inspections by Chief Building Inspector or Deputy Chief Inspector, more time consuming process. Increased the fees due to inflation. Instability and severe administrative backlog led to increase of costs for all construction permit related procedures by USD 14,851.7 and delays in approvals by 474 days.

Source: World Bank Doing Business database

B. Commonalities in national regulation across SADC region

99. Owing largely to the structure of the construction sector, there are several inherent commonalities in SADC construction sector related regulation. For instance regulation related to health, safety, environment, contractor grading, registration of qualified suppliers and contractors, labor requirements such as minimum wages, requirements of fair play, accountability and dispute settlement. Construction related procurement policy across SADC member states tend to include similar national objectives such as protection of targeted economically disadvantaged groups, enterprises or areas. Commonalities may also arise from geographical proximity and trade in construction services as for instance the reliance on South African technical standards in several SADC countries.
100. In the context of the SADC negotiations on construction services, these commonalities provide an opportunity to create a trade enabling regulatory framework across the region,

which would support construction services liberalization amongst SADC member states. These commonalities have formed the basis for the suggested principles contained in the Regulatory Benchmark contained in Part V of this report.

101. Specific areas in which commonalities in SADC construction related trade regulation include:

Registration Requirements for Professionals and Contractors

102. Almost all SADC member states have set out registration requirements for qualified suppliers in the construction sector such as civil engineers, architects, and quantity surveyors and construction contractors. These requirements are administered by a single or in the case of some countries several professional bodies, regulated by the government or self-regulating. The functions of these professional bodies tend to be similar; registration based on a minimum qualification, which is usually a degree from a recognized university, practical experience for a specified period of time, and adherence to a code of conduct. The professional body also performs other functions such as monitoring and evaluation, studying developments in the profession, sharing of information, education, disciplinary actions and at times inspection. These requirements tend to be applied in a non-discriminatory manner, although there may be slight variations in requirements for foreigners in terms of work experience or fees payable. In addition, some SADC countries provide foreign construction professionals with the option of temporary registration for the duration of their project in the country.
103. Almost all SADC member states have Registration requirements for contractors, which usually tend to fall directly under the purview of the Government or government-controlled bodies. Contractors are graded according to their technical or financial capacity, track record and other criteria. Based on their grading, they are permitted to bid for contracts, which they are qualified for. Some countries have differential grading system for different sectors eg. Civil versus building projects, transport or electrical projects etc. Grading systems may differ substantially or partially within the SADC region. For examples of grading systems in some SADC countries please refer to Annex 4. Contractor grading is an area, which SADC member states would need to take cognizance of if there is an agreement to liberalize construction services.

Technical Standards in the construction sector

104. Technical standards in the construction sector⁶⁶ of SADC countries are usually set on a national basis, however countries in their construction regulation may also refer to commonly used regional technical standards. In general there tends to be an informal recognition of the standards of some foreign construction service providers (South African, European and increasingly Chinese) by virtue of the fact that these technical standards are more developed than the importing country. However, the difference in foreign contractors usage of technical standards has posed a problem in some SADC member states. In Mozambique for instance it has been pointed out that differing usage of technical standards by Chinese and European contractors, pose a problem.⁶⁷ The SADC infrastructure program

⁶⁶ International standards such as ISO also FDIC. Several SADC countries refer to South African standards notably Lesotho, Swaziland, and Namibia. These include for example technical standards relating to Civil Engineering: SABS 1200⁶⁶, SANS 507-1 (electricity), SANS 10142-1 (wiring).

⁶⁷ Bosten Emmy, Paper for the Workshop 'Asian and other Drivers of Global Change', St. Petersburg, Russia, January

has also developed its own set of technical standards for specific sub sectors such as roads.

Mode 3 Commercial Presence and Investment

105. By and large the construction sector in SADC member states is relatively open allowing for 100 per cent private ownership of construction firms and foreign participation in the countries for which information is available, without any limitation as to the equity, which foreigners can own in such firms, except in the United Republic of Tanzania.⁶⁸ While investment in the construction sector for most SADC countries tends to be quite liberal, some SADC countries have maintained certain conditions relating to the kind of investment i.e JVs, residency requirements for senior managers etc.
106. A more common requirement, amongst SADC member states is for obtaining licenses to operate within the construction sector. For those countries within the region for which information is available, (Mauritius, Namibia, South Africa, the United Republic of Tanzania, Zambia and Zimbabwe) licenses are required for firms to provide construction services. Requirements for acquiring these licenses tend to be similar. For instance, the following requirements have to be met before such a license is issued: payment of license fees, proof of qualifications, cash bond, proof of previous works and enrolment in a professional or trade register.⁶⁹

Procurement regimes

107. Almost all SADC countries provide preferences to local contractors in their tendering processes when awarding contracts. The kinds of preferences extended vary, but target programs tend to favour economically and historically disadvantaged groups, as well as enterprises, which contribute to economic growth such as SMEs or rural enterprises. The overall rationale is to ensure that local construction sector operators also benefit economically from these projects, especially given the job creating potential of the construction sector.
108. Whether projects are donor-funded or government-funded construction related procurement across the SADC region tends to follow similar process as well as have similar requirements such as requirements for contractor eligibility, minimum capital requirements, economic preferences amongst others. For a more in-depth, country comparison of economic preferences in procurement please refer to the Section on Regulatory Benchmarks, which compares the economic preferences made in the procurement regimes of Zambia, Botswana and South Africa.

Movement of Persons

109. The movement of foreign nationals in SADC countries is often subject to visa and residency requirements, and economic needs tests, even for project-related work of short duration. There tends to be little transparency as regards the criteria applied in the issuance of visas

2006

⁶⁸ According to UNCTAD questionnaires for Mauritius, Namibia, South Africa, the United Republic of Tanzania, and Zimbabwe. There is no information on ownership for the rest of the SADC countries. UNCTAD Study 2008

⁶⁹ UNCTAD study 2008

and work permits. In interviews and national consultations conducted, several stakeholders felt that given the scarcity of skilled manpower in particular across SADC, there was a need to have a more open and structured approach to skilled movement of persons in the construction sector.

110. One means of achieving a more open regime of skilled workers in the construction sector, is through the conclusion of Mutual Recognition Agreements (MRAs). Currently there are no MRAs within the SADC region, probably because most SADC member states are construction services importers and tend to import construction services from outside the region⁷⁰ (with the exception of South Africa) from countries such as China, EU, Brazil, India and Australia amongst others. South Africa is the only SADC member state that has concluded MRAs outside the SADC region, such as the Washington Accord for Engineers.

C. An Overview of National Construction Regulatory Regime of SADC member states

ANGOLA		
Share of Construction as % of total employment (2010)	9.3	
Construction Sector share in GDP, 2012 (%)	7.8	
Trade Value of Exports and Imports (Million USD)	Exports (2010) 29.73	Imports (2010) 4 643.11
Origin of foreign operators	China, Portugal, Brazil, South Africa	
Kind of regulatory regime	Concessions, regulation by legislation	
Regulator and Regulatory Bodies	Ministry of Public Works, Ministry of Urbanization and Construction, Agencia Nacional de Investimento Privado	
Relevant Legislation	Decree No. 80/2006, 2011 Private Investment Law, Decree No. 09/1991	
Procurement preferences	Yes	
<i>Source: SADC Statistics Unit, WTO, ILO Database, Consultant research and interviews</i>		

111. The construction sector accounted for 7.8% of Angola’s GDP in 2012 and 9.3% of total employment (2010). Recent growth in the construction sector has enabled job creation, between 2009 and 2011 alone, adding approximately 90 337 new jobs to Angola’s construction sector.⁷¹ Angola is a net importer of construction services, with imports (29.3 million USD in 2010) that by far exceed exports (4643.11 Million USD in 2010).
112. Angola’s emergence from civil war in 2004, led to a massive public sector funded reconstruction process, financed by oil production. Oil production necessitated supporting transport, communication and energy related infrastructure development such as the

⁷⁰ UNCTAD study 2008

⁷¹ António Domingues do Nascimento Alexandre, Angola Country Report on Policies and Mechanism Integration into the Workforce and Job Creation, Paper presented at 2014 Ministerial Conference on Youth Employment on “How to improve, trough skills development and job creation, young Africans’ access to the world of work”, 21-23 July, 2014

planned USD 9 billion liquefied natural gas pipeline.⁷² This makes civil construction and public works one of the most likely sectors to create jobs in Angola in the near future.⁷³ Economic growth and rising incomes have also been a contributory factor to Angola's construction sector expansion as it has created demand for residential and commercial construction, as well as tourism-linked construction such as hotels. In addition FDI in the construction and real estate sector is substantial.⁷⁴

113. The Ministry of Public works is responsible for monitoring the activities of economic agents in civil construction and public works. It currently governs the activities of five joint companies, 20 public sector companies, 20 foreign private companies and 1,600 national private companies.⁷⁵ Angola's construction sector is dominated by corporates such as Teixeira Duarte, Mota Engil and Soares da Costa from Portugal, the Brazilian company Oderbrecht and the South African firms of Grinaker LTA, Group 5 and Murray and Roberts. Chinese construction firms are also dominant in the Angolan construction sector.

Mode 3 related Regulation⁷⁶: Permissions for investment

114. Under the new 2011 Private Investment Law, foreign investors wishing to establish a company or branch office in Angola must have their venture approved as a "Private Investment Project" by the Angolan Private Investment Agency (Agencia Nacional de Investimento Privado (ANIP)). To qualify under the Private Investment Law, ventures must comply with the following legal and financial requirements:
- Foreign investment projects require a minimum investment of US\$1 million (in goods and/or cash).
 - The company or branch registered in Angola must agree an investment contract with ANIP. This confers a right to repatriate profits (subject to the control of the Angolan central bank – the BNA). Repatriation is governed by conditions negotiated with ANIP on a case-by-case basis and incorporated into the investment contract. The extent of repatriation permitted (and its timing) depends on a number of factors, including the amount and duration of the investment, the profits made and the impact of repatriation on national reserves.
 - Once the investment is approved, ANIP issues a Private Investment Registry Certificate (*Certificado de Registo de Investimento Privado (CRIP)*), on the basis of which the investor can import capital, establish a local company/branch office, apply for necessary permits and licenses.

Permits and licenses for construction

115. To operate in the construction sector, a company requires a General Construction Permit from the Ministry of Urbanization and Construction. There are a number of categories, subcategories and classes of the General Construction Permit (as per Decree No. 09/1991). The particular (sub)category determines the type of construction activities the holder may

⁷² Hazelton Scott, Economic Outlook: African potential, International Construction Magazine, August 4, 2014

⁷³ UNCTAD study 2008

⁷⁴ African Economic Outlook 2014, Southern Africa, Joint Report of the African Development Bank, OECD and UNDP

⁷⁵ UNCTAD study 2008

⁷⁶ Mayer Brown, http://www.mayerbrown.com/files/Publication/39f25f54-4480-49ea-abd8-5662dc7acd25/Presentation/PublicationAttachment/73fac82a-4708-40fb-9fa6-7f37c20f7c41/CE_Legal_Update_feb2013.pdf

engage in, and the particular class relates to the value of the construction works. The higher the class of permit, the greater the value of the construction works permitted.

116. The performance of private construction work in Angola also requires a license (an authorization for construction, known as an “Alvará”) issued by the governor of the province where the works are to be undertaken. An application must be made to the relevant provincial government in accordance with Decree No. 80/2006.

Other Regulation

117. Repatriation of profits subject to permission of central bank and on investment terms set out in investment contract as above.

BOTSWANA		
Share of Construction as % of total employment (2010)	9.2	
Construction Sector share in GDP, 2012 (%)	7.4	
Trade Value of Exports and Imports (Million USD)	Exports (2012) 4.71	Imports (2012) 7.88
Origin of foreign operators	China, South Africa	
Number of firms		
Kind of regulatory regime	Concessions, procurement, government regulation	
Regulator and Regulatory Bodies	Department of Architecture and Building Services, Ministry of Infrastructure and Public Works, Public Procurement and Asset Disposal Board, Architects Registration Council, Engineers Registration Board	
Relevant Legislation	Development Control Code Building Control Regulations Town and Country Planning Act of 1977 Architects Registration Act, 2008 Engineers Registration Act, 2008	
Procurement preferences	Yes	
<i>Source: SADC Statistics Unit, WTO, ILO Database, Consultant research</i>		

118. The construction sector in Botswana accounted for 7.4% of GDP in 2012 and 9.2% of total employment for 2010. Botswana is a net importer of construction services, with imports in 2012 reaching nearly double the value of exports.

119. The construction sector is generally open. The government is the biggest client and public expenditure drives Botswana’s construction sector. Property development is an increasingly growing segment. The construction sector is comprised of small, medium local firms and large foreign construction companies. In 2000 there was an estimated 1000 operating construction firms out of which, 211 companies were not registered with the Registrar of Companies.⁷⁷ Several international construction firms are active in the Botswana construction sector including South African and Chinese firms.

⁷⁷ Kaboyakgosi and Sengwaketse, Construction and Related Services in Botswana, Botswana Institute for Development Policy Analysis, SATRN Working Paper No. 4, April 2003

120. There is concern amongst citizen owned construction sector operators as to the existing and future loss of opportunity to foreign construction companies. While the PPADB does make procurement reservation for Botswana nationals, there, gaps in implementation may exist. For instance even though Grade E of contractor registration is reserved for nationals, in reality very few Grade E contractors beg international contracts.
121. At the same time, Botswana construction service suppliers need to be build supply capacity and look beyond supplying the national market. 78 Local firms have benefitted from some degree of construction subcontracting within the country but also increasingly subcontracting work from outside the region. Eg. Chinese construction firm in Zambia. However sub-contracting work does give visibility to Botswana construction firms.

Regulation and Regulatory Structure:

122. Several legislations pertaining to Botswana's construction sector are currently underway. This includes the Architects Act passed in 2008, and the Engineering Act passed by Parliament in 1998 and amended in 2008 to be implemented in 2014. These Acts provides for registration of domestic and foreign professionals with recognized degrees, work experience as well as the conclusion of MRAs.
123. The Botswana construction industry is also in the process of setting up a Construction industry specific policy based on existing models in South Africa and Kenya. The emerging Botswana Construction industry policy envisages the creation of a Construction Industry Regulatory Body and the setting up of Register of Contractors. Currently contractors are only registered by PPADB. 78695It is hoped this Construction Sector wide policy will bring more regulation within the sector.⁷⁹
124. *Specification for technical standards* is set by the Botswana bureau of Standards and is a combination of national British and South African standards.
125. *Mode 3 Related regulations*
- No fixed ratio of equity between foreign and local construction companies. But foreign investors are encouraged to enter into joint ventures with local investors.⁸⁰
 - When foreign investors sell their interests in resident companies, locals to be given priority to purchase such interests.⁸¹
 - mandatory registration requirements for both foreign and local firms with Registrar of Companies⁸²
126. *Mode 4 related regulation*
- All non-citizen employees and self-employed persons are required to have work and resident permits. Foreign investors who need to recruit non-citizen staff to fill the

⁷⁸ Inputs from Botswana National Consultations held on 29th October 2014, Gaborone, Botswana.

⁷⁹ Inputs from Botswana National Consultations held on 29th October 2014, Gaborone, Botswana.

⁸⁰ Botswana WTO Schedule of commitments

⁸¹ Botswana WTO Schedule of commitments

⁸² Kaboyakgosi and Sengwaketse, Construction and Related Services in Botswana, Botswana Institute for Development Policy Analysis, SATRN Working Paper No. 4, April 2003, Botswana WTO Schedule of commitments

skills gap are required to apply for work permits.

- Work permits granted on the basis of a labor market test and submission by the employer of a program to train citizen replacement for each position.⁸³ It has been argued that requirements for work permits and delays in obtaining them can sometimes defeat the contractor's objectives of completing projects on schedule and within budget.⁸⁴
- Professional foreign natural persons must be registered in countries of origin.⁸⁵
- Qualifications of foreign professional employed by company should be recognized by appropriate legislative Council and in its absence Botswana Institute of Engineers.⁸⁶
- Provision for temporary registration of professionals such as architects
- provision in the architect registration act 2008, for conclusion of MRAs

Procurement

127. For the award of a contract, construction service and works providers must be registered with the Central Tender Board - Supplies Regulations Procedures, 1988. For foreign firms to register with the PPADB, they must satisfy the following requirements:
- Provide financial profile
 - Provide a list of projects undertaken internationally
 - Provide references
128. Certain categories of contractor grading are reserved for citizens or require the setting up of joint ventures. Contractor categories are reserved for Categories OC, A and B for 100% citizen owned companies. Categories C and D are for citizen majority owned joint ventures (51% citizen owned and 49% or less foreign owned) and category E has no restrictions by nationality, as such 100% foreign owned companies can participate in this category.⁸⁷ Firms that are 100% foreign owned are restricted to register in grade E category of the procurement authority. The contract value for Grade E contractors varies between sub categories: for construction work for buildings it is for projects over P8 million. Civil engineering, for projects whose contract value is over P40 million. For installation and assembly for projects over P1 million.
129. Entry of foreign firms is still possible at categories reserved for 100% citizen owned firms if citizen capacity is inadequate or not available. Projects over P50 million are open for international competitive bidding.

Others

130. Repatriation of Profits: Fees payable to non-resident service supplier are subject to approval of the Bank of Botswana

⁸³ Kaboyakgosi and Sengwaketse, Construction and Related Services in Botswana, Botswana Institute for Development Policy Analysis, SATRN Working Paper No. 4, April 2003, Botswana WTO Schedule of commitments

⁸⁴ Kaboyakgosi and Sengwaketse, Construction and Related Services in Botswana, Botswana Institute for Development Policy Analysis, SATRN Working Paper No. 4, April 2003, Botswana WTO Schedule of commitments

⁸⁵ Botswana WTO Schedule of commitments

⁸⁶ Botswana WTO Schedule of commitments

⁸⁷ Kaboyakgosi and Sengwaketse, Construction and Related Services in Botswana, Botswana Institute for Development Policy Analysis, SATRN Working Paper No. 4, April 2003

Land Use

131. Foreign firms are required to produce a certificate of registration when they apply for use of tribal or state land. Acquisition of land is subject to approval by the Minister of Lands.⁸⁸ Generally leasing of land is made on 50-year lease. Many of the 50-year leases are coming up for renewal.
132. *Access to Finance*: In terms of Access to finance, several government schemes exist including reservation for citizens, CIDA and increasingly the National development bank is moving into construction financing. Citizen contractors are given payment advances for mobilization. So owned, controlled and registered (PPADB and Registrar of companies) in Botswana.
133. *Botswana's Possible Trade Interests*: In terms of export potential, working with international construction firms, there is the possibility for Botswana to build up its supply capacity in subcontracting work. Further, export potential specifically in the high skilled category exists. Countries of potential interest include South Africa, Zambia.⁸⁹ However, South Africa's BEE policy is perceived as a potential trade barrier. The conclusion of MRAs would be crucial to the process of high skilled movement.⁹⁰ In countries such as Angola, Mozambique, language and the complicated regulatory structure was perceived as a potential issue. The potential export of Makoro bricks and tiles adhesive to South Africa is also a possibility. Botswana can also use Mozambique timber.
134. However concerns relating construction sector liberalization, are that foreign construction firms could corner key contracts, without including local firms or employees, non use of local material and equipment and repatriation of profits by foreign firms.

DEMOCRATIC REPUBLIC OF CONGO		
Share of Construction as % of total employment (2010)	NA	
Construction Sector share in GDP, 2011 (%)	4.6	
Trade Value of Exports and Imports (Million USD)	Exports (2012) 0	Imports (2012) 47.16
Origin of foreign operators	China, South Africa, Netherlands, Brazil	
Kind of regulatory regime	Primarily procurement, PPP, regulation by government	
Regulator and Regulatory Bodies	ANAPI (National Agency for the Promotion of Investment)	
Relevant Legislation	Law on public procurement and public works, Investment Code, Labour Code	
Procurement preferences	Yes	
<i>Source: SADC Statistics Unit, WTO, ILO Database, Consultant research</i>		

⁸⁸ Kaboyakgosi and Sengwaketse, Construction and Related Services in Botswana, Botswana Institute for Development Policy Analysis, SATRN Working Paper No. 4, April 2003

⁸⁹ Inputs from Botswana National Consultations held on 29th October 2014, Gaborone, Botswana.

⁹⁰ Inputs from Botswana National Consultations held on 29th October 2014, Gaborone, Botswana.

135. In DRC, the construction sector accounted for 4.6% of GDP in 2010. The construction sector is sustained by the reconstruction of public infrastructure specifically transport (roads) and energy infrastructure and property projects for private investors. Key infrastructure projects include the Inga III hydroelectric dam in the Lower Congo, costed at USD 12 billion and scheduled for completion in 2020. In addition there has also been construction related activity in property projects for private investors as well as non-residential buildings in particular for education.⁹¹

136. In trade terms, DRC is a net importer of construction services and in 2012 had no exports of construction services. The construction industry consisting of both local and foreign companies is relatively small and projects are financed internationally (World Bank, Africa Development Bank). There is an increasing use of the PPP model, the Inga dam project is an example of DRCs use of the public-private partnership model. Public procurement plays a particularly important role in in terms of employment.⁹² The law on public procurement and public works defines the current policy for the construction sector.

137. *Mode 3 related Regulation*

- Engineering-related services (general construction work for civil engineering) has been fully liberalized since 1994.
- Entry into the market for construction services is regulated. Only fifty local operators and twenty foreign operators are allowed.
- Foreign companies are required to form partnerships or joint ventures with local businesses.⁹³

138. *Mode 4 related Regulation*

- Application for a work permit for all foreigners is mandatory,
- Mode 4 restrictions take the form of measures governing entry and temporary stay for one year. These measures are subject to authorization that may be extended for senior executives and specialists who possess knowledge essential for the provision of the service concerned
- The percentage of foreign remunerated workers allowed to work in a company operating in the DRC is fixed by law and may not exceed 15%.⁹⁴ For the construction and public work sector, maximum authorized percentage of foreign workers, is limited to Professional categories (2%), Supervisors (2.5%) Managerial personnel (2%).

Other regulation

139. Acquisition of land and real estate by foreigners is subject to authorization for all services, including construction services.

⁹¹ For instance in 2013, there was ongoing construction of 1 000 schools, 286 of which were ready in 2013. DRC Country Profile, African Economic Outlook, 2014, available at: http://www.africaneconomicoutlook.org/fileadmin/uploads/aeo/2014/PDF/CN_Long_EN/CongoRD_EN.pdf

⁹² UNCTAD study 2008

⁹³ UNCTAD study 2008

⁹⁴ Ministerial Decree dated 26th October 2005

LESOTHO		
Share of Construction as % of total employment (2008)	11.3	
Construction Sector share in GDP, 2012 (%)	7.5	
Trade Value of Exports and Imports (Million USD)	Exports (2013) 16.77	Imports (2013) 83.70
Origin of foreign operators	China, South Africa	
Kind of regulatory regime	PPP, Regulation by contract	
Regulator and Regulatory Bodies	Ministry of Public Works and Transport, National Agency for Promotion of Investment (ANAPI) has been set up by the	
Relevant Legislation	Investment Code, Law no. 004/2002	
Procurement preferences	Yes	
<i>Source: SADC Statistics Unit, WTO, ILO Database, Consultant research</i>		

140. The construction sector accounted for 7.5% of Lesotho's GDP in 2012 and 11.3% of total employment in 2008. The sector is funded primarily by government expenditure and has played a key role in the expansion and growth of the Lesotho economy. The Ministry of Finance and Development Planning has prioritized and increased spending on the construction and maintenance of roads and industrial infrastructure.⁹⁵ Construction and building works were boosted by activity on the Metolong Dam.⁹⁶ There is also expansion of construction activity linked to the wholesale and retail sectors, such as the opening of shopping malls in Maseru.
141. Several construction related legislation in Lesotho are currently being revised and new legislation is underway.
142. *Mode 3 related regulation*
- There are currently no restrictions placed on foreign owned firms that want to engage in construction work in Lesotho.
143. *Procurement*
- There is competitive tendering for all projects and whilst there is no policy regulating this industry, Basotho-owned companies are given preference for work that is below one million Maloti (approximately \$130,000).⁹⁷

⁹⁵ UNCTAD study 2008

⁹⁶ Lesotho Country Profile, African Economic Outlook, 2014, available at: http://www.africaneconomicoutlook.org/fileadmin/uploads/aeo/2014/PDF/CN_Long_EN/Lesoto_EN.pdf

⁹⁷ UNCTAD study 2008

MOZAMBIQUE		
Share of Construction as % of total employment (2012)	0.1	
Construction Sector share in GDP, 2012 (%)	3.2	
Trade Value of Exports and Imports (Million USD)	Exports (2012) 39.3	Imports (2012) 1 979.67
Origin of foreign operators	Portugal, Brazil, China, Italy, South Africa, India	
Kind of regulatory regime	Mixed, regulation by ministry and concession contracts	
Regulator and Regulatory Bodies	Ministry of Public Works and Housing The Institution of Engineers (ORDEMO) Unit for the Supervision of Acquisitions Association of Engineers of Mozambique (ODENG)	
Relevant Legislation	Procurement statute, Decree 15/2010 of 24 May 2010, "Mega Projects law" Law No. 15/2011 was passed in August 2011	
Procurement preferences	Yes, Upto 15% margin for local firms Low value projects reserved	
<i>Source: SADC Statistics Unit, WTO, ILO Database, Consultant research</i>		

144. In 2012 the construction sector in Mozambique, accounted for 3.2% of GDP. As in the case of Angola, Mozambique's imports of construction services massively outweigh its exports of construction services owing to infrastructure development related construction and "mega projects". As a result of Mozambique's high imports, the balance of trade suffered with a 51% increase in the current account deficit in 2012, to 36% of GDP.⁹⁸ In terms of employment, the construction sector in Mozambique is ranked 3rd in terms of number of employees absorbed by sector, after services and transport.
145. Similar to Angola, the construction sector in Mozambique is driven by large-scale infrastructure construction and the exploitation of natural resources. The recent discoveries of extensive coal basins and gas reserves have led to related infrastructure construction. These sectors have also opened up the possibility of developing value-added products locally, such as iron, steel, power and a diversity of downstream hydrocarbon related industries.⁹⁹ This in turn is likely to lead to a need for commercial construction in particular, industrial and office space. The development of an efficient infrastructure network in Mozambique is likely to facilitate trade, particularly within the SADC region, enhancing Mozambique's position as entry point to hinterland countries including Botswana, Zambia, Malawi and Zimbabwe.
146. There is heavy reliance on government and donor financing to undertake infrastructure related projects, in particular the rehabilitation and expansion of the road and rail network. Rehabilitation of port and airport facilities also figures prominently on government and donor agendas. Apart from government financing, there have also been strong FDI flows into

⁹⁸ Mozambique Country Profile, African Economic Outlook, 2014, available at: http://www.africaneconomicoutlook.org/fileadmin/uploads/aeo/2014/PDF/CN_Long_EN/Mozambique_EN.pdf

⁹⁹ African Economic Outlook 2014, Southern Africa, Joint Report of the African Development Bank, OECD and UNDP

Mozambique's construction sector, totaling USD 3.5 billion during the second quarter of 2013.¹⁰⁰

147. In terms of residential construction, despite huge needs and very high demand, formal housing construction is currently limited to the very high end of the market (e.g. luxurious houses in Maputo). The rest of the housing construction consists of informal construction in slums and rural areas.¹⁰¹ Construction of rural health and education facilities offers possibilities for additional sales. More generally, construction costs in Mozambique are on the higher side for the SADC region (more than 30% higher than in South Africa) due to high costs of materials (most material is imported), low productivity and high financing costs.¹⁰²
148. Mozambique's construction sector is dominated by a few relatively large vertically integrated and well-managed foreign construction companies from Italy, Portugal, Brazil, South Africa, China and Italy who focus largely on the infrastructure and civil engineering related construction sector.¹⁰³ Chinese expertise for instance focuses on roads and bridges, water and sanitation.
149. Domestic firms do however; capture some degree of subcontract work with South African, Portuguese or Italian companies¹⁰⁴ as well as small private construction projects operating in the areas of architecture, turnkey projects, and supervision. Construções e Serviços, SARL (CETA) is one of the largest local construction company, which used to be state owned and is currently the 5th largest employer in the country.¹⁰⁵
150. There is limited availability of skilled expertise, which is one of the factors behind the exclusion of local companies from major internationally funded construction projects. In some skill sets such as qualified inspectors and quantity surveyors, the lack of qualified suppliers is critical. Availability of semi-skilled workers such as carpenters and plumbers has also been limited as a result of which Chinese construction companies for instance tend to rely on imported labor.¹⁰⁶

Mode 3 related Regulation

151. Mozambique's construction sector is relatively open, characterized by a concessions based regime and privatization. Main issues relate to a lack of clarity in the concessions regulatory regime and the informal characteristic of some segments.¹⁰⁷

¹⁰⁰ African Economic Outlook 2014, Southern Africa, Joint Report of the African Development Bank, OECD and UNDP

¹⁰¹ World Bank, Mozambique – CEM – Construction sector draft, Available at: <http://siteresources.worldbank.org/INTDEBTDEPT/Resources/468980-1218567884549/5289593-1259608803444/MozambiqueCEMConstruction20090821.pdf>

¹⁰² World Bank, Mozambique – CEM – Construction sector draft, Available at: <http://siteresources.worldbank.org/INTDEBTDEPT/Resources/468980-1218567884549/5289593-1259608803444/MozambiqueCEMConstruction20090821.pdf>

¹⁰³ Portugal (e.g. Teixeira Duarte, Emocil, Soares da Costa and Jomofi Construcoes), South Africa (e.g. SB Construction and Group Five), Italy (CMC Africa Austral) and China (SOGEOA and CCM)

¹⁰⁴ UNCTAD study 2008

¹⁰⁵ KPMG, Top 100 Companies in Mozambique, Thirteenth Edition, 2011

¹⁰⁶ World Bank, Mozambique – CEM – Construction sector draft, Available at: <http://siteresources.worldbank.org/INTDEBTDEPT/Resources/468980-1218567884549/5289593-1259608803444/MozambiqueCEMConstruction20090821.pdf>

¹⁰⁷ Marconini Mario, Analytic Report on Mozambique and Trade in Services undertaken for SADC Secretariat, 2013

152. A new law governing public-private partnerships, large-scale ventures and business concessions, Law No. 15/2011 (often referred to as the “Mega-Projects Law”) was passed in August 2011 requires the participation of Mozambican persons in the share capital of all such undertakings in a percentage ranging from 5% to 20% of the equity capital of the project company.
153. License requirements exist for the construction sector, apart from Ministry of Trade there is a need to consult with the Ministry of public works who assesses participants on their work experience, registrations, qualifications and verify credentials of representatives of construction companies. Minimum capital is not a major issue in the assessment.¹⁰⁸
154. Foreign construction companies entering the Mozambique market for the first time are required to register or obtain a license. Foreign contractors have to meet certain requirements relating to experience, documentation of work completed in country of origin.

Mode 4 Related Regulations

155. Employment of foreign workers by national or foreign entities is subject to the authorization of the Ministry of Labor. Foreign workers must possess professional qualifications, and may only be contracted where there are no similarly qualified Mozambicans available.
156. Quotas for foreign workers exist, quota levels depend on the size of the company. All investment project proposals must specify the number and category of Mozambican and foreign workers to be employed. The quota system requires the number of foreign employees to be no larger than 10% of a company's workforce. Standard quotas are: (i) for small size companies (up to 10 employees), 10% (ii) for medium-sized companies (more than 10 employees and up to 100 employees), 8% (iii) for large companies (more than 100 employees) 5%. The quota employment system in Mozambique maybe undergoing some changes.¹⁰⁹

Procurement Regime

157. The Unit for the Supervision of Acquisitions governs procurement. The updated procurement statute, Decree 15/2010 of 24 May 2010, requires:
- bidders for public works projects to comply with minimum requirements as to legal and financial standing, technical qualifications and payment of tax.
 - Foreign construction companies can only bid for public works tenders if they have been operational in Mozambique for 10 years, this ensures foreign capital is retained, the company gains experience and trust and can be made to subcontract to local firms.¹¹⁰
 - all documents relating to procurement to be in Portuguese
 - Measures favour domestic bidders by restricting the participation of foreign bidders in lower-value projects and applying margins (of up to 15%) in favor of domestic-bidder preference on other projects. To qualify as a domestic bidder, a bidding

¹⁰⁸ Mozambique National consultation meeting 1-2nd December, 2014

¹⁰⁹ Mozambique National consultation meeting 1-2nd December, 2014

¹¹⁰ Information provided by Mozambique at the SADC construction workshop of December 8, 2014.

company must be incorporated in Mozambique and be 50% owned (directly or indirectly) by natural persons of Mozambican nationality.¹¹¹

Other Regulation

158. Land rights: Private ownership of land is not allowed in Mozambique. Instead the government grants land-use concessions for periods of up to 50 years, with options to renew, called “DUATs” (Direitos de Uso e Aproveitamento de Terra, or a land title). The system of DUAT requires registration at both the Ministry of Justice and municipality.¹¹² While the land cannot be sold, constructed structures maybe sold.¹¹³
159. Technical standards: The authority that awards the license decides on applicable technical standards.¹¹⁴
160. *Trade interests:* It was indicated that Mozambique could have a potential interest in architecture and engineering services, provided qualifications are recognized. Mozambique Engineers already operating in Malawi, Angola and South Africa. A clear recognition of qualifications and work experience would be key to underpin any trade commitments.¹¹⁵ Setting up regional education institutions for architects, engineers but also technicians with lower skill requirements such as plumbers, supervisors etc. could help in creating a regional workforce.¹¹⁶ In terms of defensive interests, the need to build domestic capacity in particular among smaller contracting firms and enforcing existing procurement and quota preferences was highlighted.¹¹⁷

¹¹¹ <http://www.frontiermarketnetwork.com/article/3933-opportunities-for-construction-companies-in-mozambique#.VDOxUKA6Y0Q>

¹¹² World Bank, Mozambique – CEM – Construction sector draft, Available at: <http://siteresources.worldbank.org/INTDEBTDEPT/Resources/468980-1218567884549/5289593-1259608803444/MozambiqueCEMConstruction20090821.pdf>

¹¹³ Mozambique National consultation meeting 1-2nd December, 2014

¹¹⁴ Mozambique National consultation meeting 1-2nd December, 2014

¹¹⁵ Mozambique National consultation meeting 1-2nd December, 2014

¹¹⁶ Mozambique National consultation meeting 1-2nd December, 2014

¹¹⁷ Mozambique National consultation meeting 1-2nd December, 2014

MAURITIUS		
Share of Construction as % of total employment (2012)	10.4	
Construction Sector share in GDP, 2012 (%)	6.3	
Trade Value of Exports and Imports (Million USD)	Exports (2012) 35.82	Imports (2012) 11.23
Origin of foreign operators	China	
Kind of regulatory regime	PPPs, regulation by Government and regulatory agency	
Regulator and Regulatory Bodies	Ministry of Public Infrastructure, Construction Industry Development Board, Mauritius Qualification Authority, Council of Registered Professional Engineers of Mauritius, Mauritius Association of Architects	
Relevant Legislation	Construction Industry Development Board Act, Building Control Act, Public Procurement Policy, Professional Architect Council Act, 2012, Registered Professional Engineers Council Act, Environment Protection Act, Local Government Act, Town and Country Planning Act ¹¹⁸	
Procurement preferences	Yes	
Source: SADC Statistics Unit, WTO, ILO Database, Consultant research		

161. In 2012 the construction sector accounted for 6.3% of GDP and recorded growths of 16% in 2007 and 11.6% in 2008. Since 2009, Mauritius construction sector has been experiencing a downward trend declining to 6.1% in that year, 2% in 2011 and 1% in the second quarter of 2012.¹¹⁹ This declining trend is generally attributed to the completion of major projects (airports and shopping malls), the limited size of the Mauritius market and saturation due to exponential increase in the number of operators at all industry levels. Additional factors contributing to this declining trend has been the delay in some major public sector road projects, capacity bottlenecks in implementation and low private investment.¹²⁰ Further growth opportunities could exist for private and foreign investment in the hospitality industry and real estate scheme.¹²¹
162. Employment in the construction sector is high accounting for 10.4% of total employment in 2012 and employing some 55,000 employees many of which have a minimum level of education and manual skills.¹²²
163. There are around 400 building and civil engineering contractors registered in the country and approximately 450 registered engineers.¹²³ Mauritius also has a wealth of architectural

¹¹⁸ Mauritius Construction Industry Development Board, Strategy Paper for Construction Industry, July 2013

¹¹⁹ Mauritius Construction Industry Development Board, Strategy Paper for Construction Industry, July 2013

¹²⁰ Mauritius Country Profile, African Economic Outlook, 2014, available at: http://www.africaneconomicoutlook.org/fileadmin/uploads/aeo/2014/PDF/CN_Long_EN/Maurice_EN.pdf

¹²¹ Mauritius Construction Industry Development Board, Strategy Paper for Construction Industry, July 2013

¹²² Mauritius Construction Industry Development Board, Strategy Paper for Construction Industry, July 2013

expertise, exporting design-consulting expertise to various locations in Asia.¹²⁴ Government emphasis and the limited size of the domestic markets has resulted in a construction services export oriented policy for Mauritius particularly within the SADC region.¹²⁵

164. The dominance of foreign construction operators (usually big international players with a good track record) has resulted in some concern amongst local construction operators.¹²⁶ Opening up of the construction sector in Mauritius has led to the crowding out of smaller firms.¹²⁷

165. *Mode 3 related regulation*

- In general the construction sector appears to be quite open.

166. *Mode 4 related regulation*

- There are restrictions on importation of foreign labor, foreign contractors are allowed to import upto 85% of their labor needs, whereas local contractors can only import a maximum of 35% of their labour needs.¹²⁸

167. *Procurement*

- The ceiling for international biddings has been reduced from Rs. 400 million to Rs. 200 million, increasing competition for local contractors.

MALAWI		
Share of Construction as % of total employment (2012)	Not available	
Construction Sector share in GDP, 2010 (%)	3.4	
Trade Value of Exports and Imports (Million USD)	Exports (2009) 0.69	Imports ---
Origin of foreign operators	South Africa, China	
Kind of regulatory regime	Legislation	
Regulator and Regulatory Bodies	National Construction Industry Council of Malawi, Ministry of Works, Board of Architects and Quantity Surveyors, Malawi Institute of Engineers	
Relevant Legislation	National Construction Industry Act, 1996	
Procurement preferences	Yes	
Source: SADC Statistics Unit, WTO, ILO Database, Consultant research		

168. The construction sector in 2010 accounted for 3.4% of Malawi's GDP. The resumption of major infrastructure construction projects (especially road-building) and related government expenditure boosted construction sector growth from 2.6% in 2012 to 7.1% in 2013. Major construction projects under implementation include the Nacala railway corridor.¹²⁹

¹²³ Commonwealth Network, http://www.commonwealthofnations.org/sectors-mauritius/business/construction_and_engineering/

¹²⁴ Commonwealth Network, http://www.commonwealthofnations.org/sectors-mauritius/business/construction_and_engineering/

¹²⁵ Mauritius Construction Industry Development Board, Strategy Paper for Construction Industry, July 2013

¹²⁶ Mauritius Construction Industry Development Board, Strategy Paper for Construction Industry, July 2013

¹²⁷ Intervention made by Mauritius during the SADC Construction sector workshop, December 8, 2014

¹²⁸ Mauritius Construction Industry Development Board, Strategy Paper for Construction Industry, July 2013

¹²⁹ African Economic Outlook 2014, Southern Africa, Joint Report of the African Development Bank, OECD and UNDP

169. The construction and related engineering services industry consists of over 960 registered construction firms, all of which are privately owned.¹³⁰ Since 1996, the sector is regulated by the National Construction Industry Council (NCIC), which was established to take over the regulatory functions previously carried out by the Ministry of Works. The council is an independent regulator responsible for the licensing of companies in the industry, among other things. While, individual professionals (engineers, architects and quantity surveyors) are certified by respective professional boards such as the Malawi Institute of Architects and Malawi Institution of Engineers, all professional boards and trade associations are in turn affiliated to the NCIC.¹³¹

170. *Mode 3 related regulation*

- no policy restrictions on the entry of new construction firms either domestic or foreign.
- Foreign construction companies not required to form JVs with domestic companies, however subcontracting of smaller works to local companies is encouraged.¹³²
- Engineering firms are required to obtain licenses from the NCIC. In the case of engineering firms, registration in the country of origin is required. There is a requirement for firms to partner with locals¹³³

Procurement regime

171. Foreign construction companies are required to establish locally if they plan to bid for government-funded projects.

NAMIBIA		
Share of Construction as % of total employment (2012)	5	
Construction Sector share in GDP, 2012 (%)	3.8	
Trade Value of Exports and Imports (Million USD)	Exports (2012) --	Imports (2012) 5.53
Origin of foreign operators	South Africa, China	
Kind of regulatory regime	Concessions	
Regulator and Regulatory Bodies	Construction Industries Federation of Namibia, the Engineering Professions Association of Namibia and the Namibian Institute of Architects	
Relevant Legislation	Regulation by contract such as PPPs	
Procurement preferences	Yes	
Source: SADC Statistics Unit, WTO, ILO Database, Consultant research		

172. The contribution to GDP of the construction sector in Namibia was 3.9% in 2012 compared to 2% in 2000.¹³⁴ The construction sector in Namibia is one of the fastest growing in the SADC region, driven by public works and the expansion of the mining sector as for instance

¹³⁰ UNCTAD study 2008

¹³¹ Information provided by Malawi at the SADC construction workshop of December 8, 2014.

¹³² UNCTAD study 2008

¹³³ Information provided by Malawi at the SADC construction workshop of December 8, 2014.

¹³⁴ African Economic Outlook 2014, Southern Africa, Joint Report of the African Development Bank, OECD and UNDP

the construction of new uranium and gold mines¹³⁵, expansion of the container terminal at Walvis Bay, construction of the Neckartal Dam and the Erongo coal fired power project, the Kudu power project and the Baynes power project to be realized in 2016.¹³⁶ For infrastructure development, Namibia has leveraged its Targeted Investment Program for Employment and Economic (TIPEEC) growth to meet the dual goal of promoting growth and job creation. TIPEEC has financed the construction of dams (USD 365 million) and rural electrification (USD 100 million).¹³⁷ There has also been increased private-sector investment in residential and commercial properties including shopping malls and hotels.¹³⁸

173. There are about 30 registered consulting engineering companies operating in Namibia specializing in a number of disciplines, including land surveying, geographic information systems.¹³⁹ The main sectoral bodies are the Construction Industries Federation of Namibia, the Engineering Professions Association of Namibia and the Namibian Institute of Architects. The need to transfer skills from foreign construction professionals to locals is an issue in Namibia's construction sector.¹⁴⁰

Regulations relating to Mode 3

174. Under the PPP regime, requirement to establish a project office

Regulations relating to Mode 4

175. Namibia has a national employment policy and legislation, which gives priority to employment of Namibians, including in the public works framework, skills transfer to Namibians is part of this sectoral policy. Work permits are generally issued for a period of 3 years, after which an extension can be sought.¹⁴¹ Other features include:
- Employment of non-nationals is permitted when the required expertise is not available locally.
 - Developer can bring labor of choice, but must get work permits and send labour back on completion of project. The Developer is responsible for appointment of Engineer, Surveyor Contractor with approval of Council¹⁴²
 - Engineers whether as individuals or firms, are required to meet government standards and be registered in Namibia
 - Contractor to be qualified and have qualified personnel, good and relevant track record, financial security, and equipment.¹⁴³

Procurement

176. Construction works are usually awarded on a tender basis. However, due to Namibia's affirmative action policy, procurement policy provides for preferences, which favour

¹³⁵ Husab uranium mine, Otjikoto gold mine and Tschudi copper mine

¹³⁶ African Economic Outlook 2014, Southern Africa, Joint Report of the African Development Bank, OECD and UNDP

¹³⁷ Hazelton Scott, Economic Outlook: African potential, International Construction Magazine, August 4, 2014

¹³⁸ African Economic Outlook 2014, Southern Africa, Joint Report of the African Development Bank, OECD and UNDP

¹³⁹ Commonwealth Network, http://www.commonwealthofnations.org/sectors-namibia/business/construction_and_engineering/

¹⁴⁰ Suggestion made by Namibia at the SADC construction workshop of December 8, 2014.

¹⁴¹ Suggestion made by Namibia at the SADC construction workshop of December 8, 2014.

¹⁴² Draft PPP contract for townhouse development between Windhoek Municipality and Developer

¹⁴³ UNCTAD study 2008

Namibian-domiciled contractors and consultants. A company that wins a tender is required to source labour locally and only where local expertise is not available can foreign expertise be sought.¹⁴⁴

SWAZILAND		
Share of Construction as % of total employment (2000)	6	
Construction Sector share in GDP, 2011 (%)	2.1	
Trade Value of Exports and Imports (Million USD)	Exports (2012) 19.16	Imports (2012) 1.94
Origin of foreign operators	South Africa	
Regulator and Regulatory Bodies	Swaziland Association of Architects, Engineers and Surveyors (SAAES), Swaziland Contractors Association, Swaziland Association of Indigenous Construction Consultants (SAICC)	
Relevant Legislation	Construction Industry Council Act No: 14 of 2013, Engineers, Architects and Surveyors Bill, Construction Industry Council Act, Building Regulations, CIC Regulations Revised	
Procurement preferences	Yes	
<i>Source: SADC Statistics Unit, WTO, ILO Database, Consultant research</i>		

177. There has been growth in construction activity throughout the 2000s in Swaziland, mainly due to government investment in infrastructure, notably hydroelectricity, roads, the international airport, urban housing, and government, commercial and industrial buildings.¹⁴⁵ In 2013, public sector investment in the construction sector benefitted from a 25% increase in capital budget, leading to a jump in business plan approvals.¹⁴⁶ At times, there is a lack of involvement of local contractors or sub-contractors in major infrastructure projects, undermining the size and sustainability of the local industry.
178. The Construction Industry Council was set up in 2013. The Council is responsible for registration and classification of contractors and professionals in the construction industry. Both processes of registration are underway. Registration of professionals and contractors is mandatory in Swaziland. Registration may be temporary or long term. Though the Council's activities are relatively new, the Council is expected to regulate the construction industry, give priority to Swazi firms and Swazi companies through policy implementation, establishment of ethical standards, practices and procedure and promoting safety standards. There is also a new legislation relating to Architects, Engineers and Surveyors Bills developed, passed by Cabinet and presented to Parliament.¹⁴⁷

¹⁴⁴ Suggestion made by Namibia at the SADC construction workshop of December 8, 2014.

¹⁴⁵ Commonwealth Network, http://www.commonwealthofnations.org/sectors-swaziland/business/construction_and_engineering/

¹⁴⁶ African Economic Outlook 2014, Southern Africa, Joint Report of the African Development Bank, OECD and UNDP

¹⁴⁷ The Swaziland Review, last visited November 1, 2014, Available at: <http://swazilandreview.com/construction.php>

179. *Regulations relating to Mode 1*

Swaziland does not allow cross border provision of construction and engineering services, or architect and engineering services.¹⁴⁸

180. *Regulations relating to Mode 3*

JV requirements exist for Mode 3

181. *Regulations relating to Mode 4*

- The construction sector is subject to normal work permit restrictions, which are largely applied to low-skilled workers.

Procurement

182. The Government encourages local participation through government procurement. Local firms benefit from preferences.

SOUTH AFRICA		
Share of Construction as % of total employment (2012)	7.6	
Construction Sector share in GDP, 2012 (%)	4	
Trade Value of Exports and Imports (Million USD)	Exports (2012) 60.85	Imports (2012) 8.01
Origin of foreign operators		
Kind of regulatory regime	Regulation by government and industry body, PPP and procurement regime	
Regulator and Regulatory Bodies	Ministry of Public Works Construction Industry Development Board Council for the Built Environment	
Relevant Legislation	Construction Industry Development Board act of 2000, CIDB Regulations 2004, Standard for Uniformity in Construction Procurement, Council for the Built Environment, 2000, Architectural Professions Act 2000, Engineering Profession Act 2000, National Building Regulations and Building Standards Act No. 103 of 1977, Employment Equity Act 1998, Labor Relations Act No. 66 of 1995, Preferential Procurement Policy Framework Act 2000, Black Economic Empowerment (BEE) Charter, Broad Based Black Economic Empowerment Act 2004	
Procurement preferences	Yes	
<i>Source: SADC Statistics Unit, WTO, ILO Database, Consultant research</i>		

183. In 2012 the construction sector in South Africa accounted for 4% of GDP and 7.6% of the share of total employment. The uncertainty in local and global economic conditions has impeded construction activity in South Africa in particular for the private sector. In the residential sector, demand for residential, retail and commercial buildings remains low, except for premium properties. However, strong demand is experienced in the “smaller-sized” housing segment driven by increasing urban population and middle-income

¹⁴⁸ Swaziland WTO GATS Schedule of Specific commitments, 1994

households.¹⁴⁹ The retail sector expansion is expected to increase within the SADC region.¹⁵⁰

184. In terms of infrastructure, the government infrastructure plan is expected to provide strong impetus to South Africa's Construction sector. The government has allocated a substantial part of the budget (South Africa's Treasury approved USD 79 billion package in 2013 for public sector projects over the next three years)¹⁵¹ to infrastructure development in transport, energy, water, communication and housing, with spill over effects in other sectors including agriculture, mining and tourism.
185. Significant activity is forecast in South Africa's transport sector through targeted infrastructure investment in rail, road and mining-related transport. (Eg. 146-kilometre Mpumalanga- Swaziland railway line). The energy and utilities sector is a cornerstone of government's infrastructure development plan.¹⁵² Infrastructures spending on water projects revolve around dam construction and water distribution.¹⁵³ In the health care sector large allocations have been set-aside in national and provincial budgets for hospital infrastructure building, renovation and maintenance. At the end of 2012 there were approximately 50 public sector health mega-projects at feasibility stage and 29 projects in the financing stage for the period 2012–2020.¹⁵⁴
186. Within SADC, South Africa is the largest exporter of construction services, its exports outstripping its imports by a wide margin. South Africa boasts a number of large and extremely competent construction firms that dominate the regional market as well as highly skilled internationally competitive segment of engineers and architects in the region. South Africa dominance of the construction sector as compared to other SADC member states arises from the possession of necessary skills; capital, regional know how and material required to undertake basic infrastructure projects in nearby countries.¹⁵⁵ The skilled construction labor force though is dwindling owing to emigration, ageing and inadequate replenishment. Yet, South Africa is able to export professional skills relevant to the construction sector to other SADC countries.¹⁵⁶
187. The Department of public works is the key custodian of construction services. The Council of Built environment (CBE) is responsible for regulation of qualified suppliers in the construction sector including quantity surveyors, project managers, property evaluators. The Construction Industry Development Board regulates the registration and categorization of contractors, (local and international) as well as looks into development of contractors.¹⁵⁷

¹⁴⁹ AECOM Africa Property and Construction Handbook 2013, ISBN 978-0-620-55244-8

¹⁵⁰ AECOM Africa Property and Construction Handbook 2013, ISBN 978-0-620-55244-8

¹⁵¹ The larger package announced by South Africa is a spending of USD 400 billion infrastructure program over the next two decades, 85 billion over the next 3 years. Projects will be split between government departments and state owned enterprises such as logistics company Transnet and national electricity utility Eskom. See du Venage Gavin, International Construction Regional Report: Southern Africa, 17th July 2013

¹⁵² AECOM Africa Property and Construction Handbook 2013, ISBN 978-0-620-55244-8

¹⁵³ Examples include Kamati Water Scheme augmentation Project; Lesotho Highlands Water Project; and Olifants River Water Project.

¹⁵⁴ AECOM Africa Property and Construction Handbook 2013, ISBN 978-0-620-55244-8

¹⁵⁵ UNCTAD study 2008

¹⁵⁶ UNCTAD study 2008

¹⁵⁷ South Africa National Consultations, 5th December 2015, Johannesburg

Mode 1 related regulation

188. Architectural services for building less than 500 sq metres, limited to local architects¹⁵⁸

Mode 3 related regulation

189. Foreign contractor can apply under CIDB, the process takes several months and the cost depends on specific grade of registration sought.

Mode 4 related regulation

190. Foreigner can work in South Africa only if they have a work permit. To employ a foreigner, it has to be shown that the appropriate skills are not available locally. The Immigration Act 2002 provides for 5 types of temporary work permits, the latest being work quota work permit which allows a work seeker to enter without secure employment. This work quota work permit is subject to an annual quota list in specific sectors termed “national scarcity and critical skills list”.

Registration requirements

191. In South Africa registration of construction sector professionals is not compulsory. This provides a challenge in terms of having an idea of the number and kind of construction services related professionals as well as in areas of safety and liability. South Africa is however moving towards compulsory registration.¹⁵⁹

Procurement Regime

192. Procurement Preferences exist for economically and historically disadvantaged sections of the population including women, handicapped individuals etc. as well as in order to support industry. This is covered under the preferential procurement policy framework act, which also makes provision for the support of national industry programs relating to SMEs, micro enterprises, job creation, promotion of local enterprises in specific provinces, rural areas etc. The Construction Industry Development Regulations, 2004 require the Register of Contractors to reflect the BBBEE score.

Other Regulation

193. Exchange controls: limited exchange rules apply to expatriate individuals, which do not form significant restrictions, as long as status as temporary workers is confirmed with authorized dealer.
194. Local borrowing by South African registered companies with a non-resident shareholding of 25 per cent or more is limited.¹⁶⁰ It has been pointed out that is a limitation and not a prohibition, which is maintained in order to prevent foreign owned companies from

¹⁵⁸ South Africa, WTO GATS Schedule of Specific commitments, 1994

¹⁵⁹ South Africa National Consultations, December 5, 2014

¹⁶⁰ Exchange Control Regulations as promulgated by Government Notice R1111 of 1 December 1961 and amended up to Government Notice No. R.885 as of 23

borrowing money in South Africa and going bankrupt. ¹⁶¹ There is the possibility of this limitation being removed in the near future.

195. New withholding tax on services fees for non-residents to come into effect on 1 January 2015.
196. Access to Export Credit Insurance Corporation only to South African firms.
197. *Potential areas of trade interest:* Within SADC, South Africa is the largest exporter of construction services at several levels and kinds. However South Africa could potentially import construction services from within SADC, in particular professionals and semi-skilled services related to the construction sector. South Africa's Strategic Integrated Projects skills division has identified several construction related areas as areas of scarcity. These include both skilled (surveyors, materials engineers/technicians/technologist, electronic engineering technicians) and semi skilled occupations (welders, plant and machine operators and assemblers). ¹⁶²

TANZANIA		
Share of Construction as % of total employment	2.9 ¹⁶³	
Construction Sector share in GDP, 2012 (%)	8.8	
Trade Value of Exports and Imports (Million USD)	Exports (2012) NA	Imports (2012) 13.07
Origin of foreign operators	UK, Chinese	
Kind of regulatory regime	Regulation by Government and industry	
Regulator and Regulatory Bodies	Ministry of Works, National Construction Council, Building Research Unit, Tanzania Bureau of Standards, Contractors Registration Body Engineers Registration Board, Architects and Quantity Surveyors Registration Board, Association of Consulting Engineers, Tanzania Institute of Quantity Surveyors , Architectural Association of Tanzania	
Relevant Legislation	Contractors Registration Act 1997, Engineers Registration Act 1997, Public Procurement Act 2011	
Procurement preferences	Yes	
<i>Source: SADC Statistics Unit, WTO, ILO Database, Consultant research</i>		

198. The construction sector is key to Tanzania's national economy. There was strong growth in construction activity during the 2000s owing to major investment by government and aid agencies in infrastructure, including roads, housing, government offices and tourism. In 2012 Tanzania's construction sector accounted for 8.8% of GDP and 2.9% of employment. The development of Tanzania's recently discovered natural gas reserves (off the southern coast of Tanzania with further reserves in the west) act as a stimulus to the expansion of

¹⁶¹ South Africa National Consultations, 5th December 2015, Johannesburg

¹⁶² South Africa National Consultations, December 5, 2014

¹⁶³ Tanzania National Bureau of Statistics. Employment and Earnings Survey 2012: Analytical Report, 2012 p. 17. Available from: <http://www.kazi.go.tz/documents/takwimu/ Employment-and-Earning-Survey-Report-2012-.pdf>

Tanzania's construction and engineering industry¹⁶⁴ as for example the ongoing construction of USD 1.2 billion gas pipeline from Mtwara to Dar es Salaam.¹⁶⁵

199. The majority of enterprises in the construction industry are small and only a few are categorized as medium sized. Of the 31 foreign firms registered in Tanzania, 14 are Chinese¹⁶⁶ and some European firms such as Vinci Construction, which operate alongside important local firms including Kiribo Construction Ltd.¹⁶⁷ Foreign contractors and consultants are few in number, but account for about 80% of market share and the bulk of large-scale contracts.¹⁶⁸ The dominance of foreign companies in Tanzania's construction industry has resulted in concern amongst local operators. As a result the government is committed to increasing the market share of local contractors,¹⁶⁹ through subcontracting and skills transfer.¹⁷⁰

200. *Mode 3 related Regulation*

- Private ownership of construction companies is permitted but foreign investment is allowed only upto 49%¹⁷¹
- Local incorporation of a contracting firm possible only if the majority shareholding is with citizens of Tanzania.¹⁷²

201. *Permits, licenses*

- To conduct business in Tanzania, a foreign company must first register with the Business Registration and Licensing Agency.
- For foreign investors making a capital investment of US\$300,000 or more, the Tanzania Investment Centre can assist with obtaining permits, authorizations and documentation required to set up and operate in Tanzania.
- Investment in Zanzibar is governed by the Investment Promotion Act of 1986, with the Zanzibar Investment Promotion Agency undertaking a similar role to the Tanzania Investment Centre.
- The Contractor's Registration Act 1997 sets out further requirements as to the registration of contractors and construction projects.¹⁷³

202. *Mode 4 related regulation*

- Immigration rules do not appear to be too strict. For instance, a firm can automatically employ five expatriate workers without having to apply for a work permit.¹⁷⁴
- Temporary registration is permitted subject to the following conditions:

¹⁶⁴ Plans are afoot to develop facilities for the liquefaction and export of liquefied natural gas, and financing has been agreed for a 532km gas pipeline.

¹⁶⁵ Tanzania Country Profile, African Economic Outlook, 2014, available at: http://www.africaneconomicoutlook.org/fileadmin/uploads/aeo/2014/PDF/CN_Long_EN/Tanzanie_EN.pdf

¹⁶⁶ Including China Civil Engineering and Construction Corporation and the China Henan International Cooperation Group. Other major multinationals such as China Communications Construction Company Ltd

¹⁶⁷ Commonwealth Network

¹⁶⁸ Tanzania National Construction Council, Construction Industry Policy, 2005

¹⁶⁹ Centre for Chinese Studies Stellenbosch University, China's Interest and Activity in Africa's Construction and Infrastructure Sectors, A research undertaking evaluating China's involvement in Africa's construction and infrastructure sector prepared for DFID China, November 2006

¹⁷⁰ UNCTAD study 2008

¹⁷¹ UNCTAD study 2008

¹⁷² Tanzania Contractors Registration Act 1997, Section 12

¹⁷³ See Annex 4 for Grading system applicable to Tanzanian Contractors

¹⁷⁴ UNCTAD study 2008

- Contractors: Temporary Registrations of foreign contractors is allowed within permissible limit and class, and where the firm is to execute a contract in Tanzania. The firm must possess registrar of companies certificate, established credentials as qualified contractor, show that firm is not employing expatriates whose qualifications and skills are not available in Tanzania, give an undertaking not to engage in further contracting business on completion.¹⁷⁵
- Engineers: Temporary Registration: for non resident engineers, engaged in specific work with track record as engineer for a duration of one year or duration of assignment. Expected to comply with national regulations. Includes body corporates eg. Engineering firms.¹⁷⁶ For foreign engineers and consulting firms local incorporation and majority shareholding of Tanzanians is a necessity.¹⁷⁷

203. Procurement

- A new procurement act, the Public Procurement Act 2011, which builds on the provisions of the 2004 procurement Act has been approved by parliament The new Act includes measures to enhance transparency provides for the first time, for e-procurement, with the aim of simplifying and speeding up the tendering process.
- Contracts are awarded on a tender basis, the Procurement Act encourages joint ventures with locals by awarding preferences to companies, which team up with locals. Foreign construction firms can only tender for works whose value is more than 1 billion shillings or more.¹⁷⁸
- Only locally established foreign companies and domestic companies can participate in construction of donor-funded works procured by government entities. Locally-based foreign firms can operate as prime contractors and are not restricted to a subcontracting role.¹⁷⁹
- Licenses: All firms have to have licenses to operate; there are four different licenses that a firm can apply for. The fees for these licenses are lower for local companies than for foreign companies.¹⁸⁰
- Minimum capital requirements are lower for domestic firms: domestic firms need to have minimum capital of \$100,000 while foreign firms need to have a minimum of \$300,000.¹⁸¹

204. Others

- All companies must register with the Commissioner of Domestic Revenue and receive a taxpayer identification number. The tax regime features incentives aimed at promoting national economic development, such as relief from VAT and import duties in respect of plant and machinery for certain infrastructure and utilities projects.

¹⁷⁵ Tanzania Contractors Registration Act 1997, Section 11

¹⁷⁶ Tanzania Engineers Registration Act 1997, Section 11

¹⁷⁷ Tanzania Engineers Registration Act 1997, Section 12

¹⁷⁸ UNCTAD study 2008

¹⁷⁹ UNCTAD study 2008

¹⁸⁰ UNCTAD study 2008

¹⁸¹ UNCTAD study 2008

ZAMBIA		
Share of Construction as % of total employment (2000)	1.3	
Construction Sector share in GDP, 2012 (%)	23.1	
Trade Value of Exports and Imports (Million USD)	Exports (2012) ----	Imports (2012) 66.68
Origin of foreign operators	Chinese, South African	
Kind of regulatory regime	Regulation by government and industry, PPP and procurement regime	
Regulator and Regulatory Bodies	National Council for Construction, Zambia Public Procurement Authority, Association of Consulting Engineers of Zambia, Engineering Registration Board, Zambia Institute of Architects, Private Public Partnership Unit	
Relevant Legislation	National Council for Construction Act No 13 of 2003, National Council for Construction (Contractors) (Code of Conduct) Regulations, 2008, Zambia Public Procurement Act, 2008, supported by Public Procurement Regulations of 2011, Public-Private Partnership Act, 2009 Citizens Economic Empowerment Act, 2006, Engineering Institution Of Zambia Act, 2010, Zambia Institute of Architects Act, The Citizens Economic Empowerment Act 2006 ¹⁸²	
Procurement preferences	Yes	
<i>Source: SADC Statistics Unit, WTO, ILO Database, Consultant research</i>		

205. The construction sector in Zambia accounted for 23.5% of GDP in 2012 and in 2000 accounted for 1.3% of employment. It is currently the biggest growth sector in the economy, with an average growth rate of 17.5% per year for the last seven years. Mining and government financing for infrastructure development have been the driving force of growth in Zambia's construction sector. The government's increased allocation for infrastructure (e.g. Link 8000 and Pave Zambia), with more than USD 5 billion in the road projects, will ensure that growth in construction remains buoyant.¹⁸³
206. The privatization of the former state/party-owned construction companies in the early 1990s has meant that no single construction company dominates the Zambian construction market.¹⁸⁴ The sector however continues to be dominated by foreign contractors mainly from South Africa and China.¹⁸⁵ International contractors who account for less than 5% and get about 95% of the contracts. All companies must register with the Commissioner of Domestic Revenue, Zambia Revenue Authority and receive a taxpayer identification number. The tax regime features incentives aimed at promoting national economic

¹⁸² Zambia, The Citizens Economic Empowerment Act, 2006, http://www.ncc.org.zm/wp-content/uploads/2013/03/citizens_economic_empowerment_act_2006.pdf

¹⁸³ Zambia Country Profile, African Economic Outlook, 2014,

¹⁸⁴ UNCTAD study 2008

¹⁸⁵ Centre for Chinese Studies Stellenbosch University, China's Interest and Activity in Africa's Construction and Infrastructure Sectors, A research undertaking evaluating China's involvement in Africa's construction and infrastructure sector prepared for DFID China, November 2006

development, such as relief from VAT and import duties in respect of plant and machinery for certain infrastructure and utilities projects.

207. Conversely, Zambian contractors account for an average 93% of registration but account for only 7% of the market. Further, despite the existence of capacity, smaller and medium Zambian contractors are relegated to inconsequential jobs such as drainage marking. Barriers sometimes exist against Zambian entities as for instance the availability of incentives for investors above US\$250000. Some foreign contractors undertake questionable practices, like fronting, inaccurate CVs amongst others. There is no problem with big contractors but they must subcontract, transfer knowledge and know-how and be monitored.
208. Despite explicit preference clauses in Zambia's construction bidding documents, local contractors are yet to achieve a dominant role in the Zambian construction sector, as they face financial and operation problems, coupled with plant and machinery inadequacies as well as lack of technical competencies. Further it was felt that there is a strong need to encourage local contractors and suppliers participation right from commencement of designing the contract or tender. In this regards it was felt using international standard contracts such as those issued by FDIC would be useful to bring Zambia on par with international specifications.¹⁸⁶
209. In terms of construction sector related personnel, there is a large skills gap in diploma level technicians required for the sector while smaller gaps for professional and craftsman do exist. The need to revived technical institutes was felt.¹⁸⁷
210. The National Council for Construction (NCC), established in September 2003, is responsible for the promotion, development and regulation of the construction industry in Zambia. The registration of contractors, originally administered by the Ministry of Works and Supply, is now the responsibility of the NCC, as the regulatory body for all government contracts.¹⁸⁸

Mode 3 related Regulation

211. Citizens Economic Empowerment Act 2006: strongly encourages foreign investment through partnerships and JVs for targeted citizens, firms, companies in different kinds of legislation, requiring foreign firms to take into account stipulated provisions.

Registration Requirements

212. No Architectural, Surveying, Engineering or Contracting company registered or incorporated outside the country is allowed to undertake any construction business in Zambia, unless it is registered with respective Professional Institute i.e. Zambia Institute of Architects, Surveyors Institute of Zambia, Engineering Institution of Zambia or the National Council for Construction: under the various respective Acts¹⁸⁹

¹⁸⁶ Zambia National meeting with Construction sector stakeholders, November 27-28, 2014

¹⁸⁷ Zambia National meeting with Construction sector stakeholders, November 27-28, 2014

¹⁸⁸ Centre for Chinese Studies Stellenbosch University, China's Interest and Activity in Africa's Construction and Infrastructure Sectors, A research undertaking evaluating China's involvement in Africa's construction and infrastructure sector prepared for DFID China, November 2006

¹⁸⁹ The Zambia Institute of Architects (ZIA) Act being CAP 442, The Surveyors Institute of Zambia (SIZ) Act being CAP , The Engineering Institution of Zambia (EIZ) Act No. 27 of 1992, The National Council for Construction Act No. 13 of 2003.

213. No foreign construction companies registered or incorporated outside Zambia are allowed to undertake any construction business in Zambia, unless they are registered with the National Council for Construction under the National Council for Construction Act No. 13 of 2003.¹⁹⁰ The NCC awards Grades 1-6, (Grade 1 is the highest) in the categories of building, civil, road. Foreign contractors are restricted to Grades 1 and 2, with no category restrictions. There is no discrimination for contractors in terms of conditions to be met for qualification, or on import of personnel and equipment.

Mode 4 related Regulation

214. No foreign professional person is allowed to conduct his profession unless registered with Engineering Institution of Zambia, the Zambia Institute of Architects, the Surveyors Institute of Zambia.
215. All foreign construction workers including professionals required to prove that they are registered professionals with their respective professional bodies or expatriates with a valid work permit.¹⁹¹
216. Foreign construction professionals may be required to sit an examination to ascertain their qualification and experiences
217. Engineer MRAs¹⁹²: Section 44 provides for (i) recognition of local and foreign qualification and their registration. (ii) Recognition of a foreigner as an engineer if that person is to work as such under an international agreement between Government of Zambia.

Procurement regime

218. Open national bidding for procurement below specified threshold is open only to Zambian firms, nationals etc. Open international bidding is open to all bidders i.e citizen, local and foreign bidders, requirement for foreign bidder to partner with citizen or local supplier/bidder.¹⁹³
219. To benefit from preferences, citizens/local suppliers should be part of an identified target group either from a particular region/industry/ economic sector or enterprises which are SMEs, or owned by women¹⁹⁴
220. Contract for construction works cannot be awarded to a foreign company/firm without approval of Council Licensing requirement. Council will ascertain whether the award for contract can be undertaken by Zambian company/firm,¹⁹⁵ Further, any contract for construction works to foreign company/firm can be made only if they undertake to implement in partnership with Zambian company/firm.¹⁹⁶

¹⁹⁰ National Council for Construction Act No. 13 of 2003

¹⁹¹ Zambia Labour Act

¹⁹² The Engineering Institution of Zambia Act 2010

¹⁹³ Zambia Public Procurement Act, 2008, Sections 26 and 28

¹⁹⁴ Zambia Public Procurement Act, 2008, Sections 26 and 28

¹⁹⁵ Section 23, Zambia National Council for Construction Act 2003

¹⁹⁶ Zambia National Council for Construction Act 2003

221. Social objectives eg. Participation of local communities/ NGOs, increased utilization of local know how and materials, maybe reflected in project components¹⁹⁷ Preferences may also take the form of reserves or set aside certain procurement requirements for target group etc.¹⁹⁸

Others

222. Attempts are being made to make finance available to the domestic construction sector and agreements have been signed with 7 banks, but are yet to be implemented.¹⁹⁹
223. About 80% of the land is under customary (traditional) custodianship and land leased for construction is granted by local government
224. Technical standards utilized are mostly South African and British, but Zambia is in the process of development technical standards with the Zambia Bureau of Standards, 40 of which relate to the construction sector and have already been approved.

Possible trade interests

225. Zambia is already highly liberalized, the need to build capacity in Zambia was considered important, and in order to achieve this the focus on monitoring and implementation of preferences so that benefits can accrue to nationals was highlighted.²⁰⁰ In the short and medium, it was felt there is a need to build and leverage existing capacity of Zambian firms in the contracting sector. However, potential export capacity already exists in the architecture and engineering services sector. Zambian architects and engineers already operate in Botswana, Namibia and Rwanda. MRAs are important.²⁰¹

MADAGASCAR

226. The current policy allows any company to settle and participate in construction activities on the territory of Madagascar and to provide construction services.²⁰²

SEYCHELLES

227. Foreign direct investment and public investment in infrastructure have kept the construction industry in Seychelles booming, with construction contributing around 7% to GDP (2010). FDI inflows increased in 2013, largely in the construction sector. The expansion of Seychelles construction sector is closely linked to developments in the tourism sector. The easing of the financial crisis in the European markets has had a positive impact on arrivals and as a result the sector is expected to experience continued growth in the short term as

¹⁹⁷ Zambia Public Procurement Act, 2008, Sections 36

¹⁹⁸ Zambia Public Procurement Act, 2008, Section 63

¹⁹⁹ Zambia National meeting with Construction sector stakeholders, November 27-28, 2014

²⁰⁰ Zambia National meeting with Construction sector stakeholders, November 27-28, 2014

²⁰¹ Zambia National meeting with Construction sector stakeholders, November 27-28, 2014

²⁰² UNCTAD study 2008

construction of further resorts/hotels comes to completion and the tourist marketing efforts are consolidated.²⁰³

228. There are around sixty registered construction companies working in the Seychelles. Companies include Allied Builders (Seychelles) Limited, Avalon Project Management, Benoiton Construction Co (Pty) Ltd and Civil Construction Company Limited.²⁰⁴

ZIMBABWE

229. In Zimbabwe, the construction sector is marked out as one of 13 sectors for the indigenization program.²⁰⁵ Zimbabwe indigenization program requires all foreign companies to cede 51% shares to indigenous Zimbabweans. Regulatory bodies include the Ministry of public works, Zimbabwe Institute of Engineering, Architect's Council of Zimbabwe.

²⁰³ Seychelles Country Profile, African Economic Outlook, 2014, available at: http://www.africaneconomicoutlook.org/fileadmin/uploads/aeo/2014/PDF/CN_Long_EN/Seychelles_EN.pdf

²⁰⁴ Commonwealth Network, http://www.commonwealthofnations.org/sectors-seychelles/business/construction_and_engineering/

²⁰⁵ UNCTAD study 2008

V. POSSIBLE PRINCIPLES FOR SADC REGULATORY BENCHMARK IN CONSTRUCTION SECTOR

A. INTRODUCTION

- There is no SADC Protocol or cooperation framework in the construction sector, which provides a framework to support liberalization commitments in the construction sector that member states intend to undertake. The Regulatory Benchmark features principles, based on international best practices and common elements across SADC focus country construction related legislation.
- Each principle attempts to identify the purpose behind the principle, suggests a potential draft provision for SADC member states to consider, and looks at prevalent Practice in terms of legislation. The Regulatory Benchmark also draws from other sources in particular the WTOs revised Government Procurement Agreement, as this provides already negotiated and agreed outcomes, which may be more acceptable to SADC member states.
- The Regulatory Benchmark is not intended to be exhaustive, but illustrative and any correction, clarification and modifications can be carried out. There is a need to consult other SADC agreements such as Protocols, guidelines or agreements that relate to labour, infrastructure, finance, and investment to ensure coherence.

B. DEFINITIONS

Purpose: Define terms required for the clarity of the Regulatory Benchmark. Definitions are drawn primarily from national legislation of Botswana, Mozambique, South Africa, Tanzania, Zambia²⁰⁶ and the WTO’s revised Agreement on Government Procurement.

TERM	CONTENT
Architect	As registered under respective national legislation. Definitions contained in legislation of South Africa, Tanzania, Zambia
Bond	South Africa ²⁰⁷ : sum of money or securities submitted to the employer or placed in the hands of a third party to guarantee completion of the work and recovery of the sums which the contractor would be recognized as owing
Contractor	Zambia: “Means a person or body of persons who undertakes to execute and complete construction works” Tanzania ²⁰⁸ : A contractors “any person who for reward or other valuable consideration undertakes to carry out and complete any construction work for

²⁰⁶ All Definitions for Zambia extracted primarily from the Zambia National Council for Construction Act 2003, unless specified otherwise.

²⁰⁷ <http://www.l2b.co.za/Public/TenderForms/sans294.pdf>

²⁰⁸ Tanzania Contractors Registration Amendment Act No. 15 of 2008, Section 3

TERM	CONTENT
	<p>another person, of any structure situated below, on or above the ground or water bodies or other work connected therewith, where such person undertakes to do any such works:</p> <p>Himself supplies the material necessary for the work or is authorized to exercise control over the type, quality or the use of material supplied by any other person.</p> <p>Himself supplies the labour necessary for the work or is authorized on behalf of the person for whom the work is undertaken or any other person, to employ or select for employment workmen to assist him in the execution of the work.</p> <p>Or</p> <p>Any person who for himself as a developer or investor undertakes to carry out and complete the construction work of any structure for public or private use or other works connected therewith, where such person undertake to do any such works:</p> <p>Himself supplies the material necessary for the work or is authorized to exercise control over the type, quality or the use of material supplied by any other person.</p> <p>Himself supplies the labour necessary for the work or is authorized on behalf of the person for whom the work is undertaken or any other person, to employ or select for employment workmen to assist him in the execution of the work.</p>
Construction/ covered procurement	South Africa ²⁰⁹ : means procurement in the construction industry, including the invitation, award and management of contracts
Employer	South Africa ²¹⁰ : means a person, body of persons or organ of state who enters into a prime contract with a contractor for the provision of construction works
construction work	Zambia: “means the provision of a combination of goods and services for the development, extension, installation, repair, maintenance, renewal, removal, renovation, alteration, dismantling or demolition of a fixed asset including building and engineering infrastructure”
Construction service	<p>Suggestion: For the purposes of this regulatory benchmark includes construction and engineering services, related professional services such as architecture, engineering, contracting, quantity surveying and covered construction related procurement.</p> <p>EU-Singapore Agreement: “means a service that has as its objective the realization by whatever means of civil or building works, based on Division 51 of the Provisional UN Central Product Classification (CPC)</p>
Emerging Sector	Zambia: “means that sector of the construction industry which comprises emerging enterprises”
Engineer	Zambia: ²¹¹ : person with special knowledge of the mathematical and physical sciences and the principles and methods of engineering analysis and design, acquired by engineering education and engineering experience;
Engineering	Zambia: ²¹² means a statutory corporation, a company, a firm, a partnership, an

²⁰⁹ SA legislation, CIDB Regulations for Amendments to Registration Requirements, July 2013

²¹⁰ SA legislation, CIDB Regulations for Amendments to Registration Requirements, July 2013

²¹¹ The Engineering Institution of Zambia Act 2010

²¹² The Engineering Institution of Zambia Act 2010

TERM	CONTENT
Organization	association or other body, corporate or uncorporate, that provides a service through the application of scientific or mathematical laws and principles, in the design, development, utilization, maintenance or disposal of machines, materials, instruments, structures, processes and operational systems, or whose function involves the planning, designing, processing and delivery of engineering products and services.
Foreign company	Zambia: “means a company registered, or controlled from, outside Zambia and in which fifty-one per cent or more of the shares are owned by a non-Zambian”
Foreign Firm	Zambia: “means a firm which is registered outside Zambia and whose partners are non-Zambian or in Zambia and whose partners are non-Zambian”
National Firm	Zambia: “means a firm registered in Zambia and whose partners are Zambians”
Quantity Surveyor	As registered under respective national legislation. Definitions contained in legislation of South Africa, Tanzania, Zambia
Qualified supplier	South Africa ²¹³ : means a person who is recognized by virtue of his or her training and experience as having the necessary qualification to undertake construction works in a specific category as contemplated in regulation 12 (8)
Project	Zambia: “means a construction works contract or a series of related construction works contracts”
Professional Services	South Africa ²¹⁴ : A person is considered to be a qualified person for the purpose of regulation 7 (4) (registration of contractor) if that person: for the classes of construction works “civil engineering, “electrical engineering” and mechanical engineering” is registered as a professional in accordance with the Engineering Professional Act 46 of 2000 or the Project and Construction Management Professions Act 28 of 2000 and for the classes of construction works “General Building” and “ Specialist Works” is registered as a professional in accordance with the: Project and Construction Management Professions Act, 48 of 2000 Engineering Profession Act, 46 of 2000 Architectural Professional Act 44 of 2000 Quantity Surveying Professional Act 49 of 2000 or Landscape Architectural Professional Act 45 of 2000 Possible Suggestion: a person is considered to be providing a professional service within the context of the construction sector if that person is qualified and registered as such under national regulations/legislation relating to engineering, architecture, quantity surveying, landscape architectural.
Register	Zambia: means the register of contractors and affiliated bodies
Standard ²¹⁵	EC-Singapore FTA: means a document approved by a recognized body, that provides, for common and repeated use, rules, guidelines, or characteristics for goods or services, or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking, or labelling requirements as they apply to a good, service, process, or production method
Technical specification	EC-Singapore FTA ²¹⁶ : means a tendering requirement that: (i) lays down the characteristics of goods or services to be procured, including

²¹³ SA legislation, CIDB Regulations for Amendments to Registration Requirements, July 2013

²¹⁴ SA legislation, CIDB Regulations for Amendments to Registration Requirements, July 2013

²¹⁵ EC Singapore draft agreement initialled 2013

²¹⁶ EC Singapore draft agreement initialled 2013

TERM	CONTENT
	quality, performance, safety, and dimensions, or the processes and methods for their production or provision; or (ii) addresses terminology, symbols, packaging, marking, or labelling requirements, as they apply to a good or service.

C. SCOPE

These regulatory Benchmarks may cover:

- a) Construction and engineering services, related professional services and covered procurement as defined by SADC member states to the extent possible with reference to the W120 and the UN CPC.
- b) The scope, extent and terms of coverage of construction services will be determined by individual SADC member states
- c) Limitations and specifications will be specified by SADC member states in their schedule of commitments

D. GENERAL PRINCIPLES

D.1. NON DISCRIMINATION

Purpose: To ensure that where SADC member states have agreed to liberalize construction services, they do so on an equitable, fair and non-discriminatory basis. This is a standard provision in most construction and procurement legislation

Provision: Where SADC member states have undertaken commitments in construction and engineering services or related procurement coverage, they will treat each others suppliers in the same manner as domestic construction service suppliers (National Treatment) and construction service suppliers of another Party (MFN). In the case of covered procurement a locally established supplier will be treated on par with other locally established supplier irrespective of their degree of foreign affiliation or ownership, subject however to limitations that SADC member states may decide to maintain including those related to economic empowerment and preferences.

Practice

Country and Regulation	Provision
WTO GPA Article III ²¹⁷	<p>With respect to any measure regarding covered construction services or procurement thereof, each Party, including its procuring entities shall accord immediately and unconditionally to services of any other Party and to the suppliers of any other Party, treatment no less favourable than the treatment the Party, accords to:</p> <ul style="list-style-type: none"> • domestic construction services and suppliers; and • construction services and suppliers of any other Party. <p>With respect to any measure regarding covered procurement, a Party, including its procuring entities, shall not:</p> <ul style="list-style-type: none"> • treat a locally established supplier less favourably than another locally established supplier on the basis of the degree of foreign affiliation or ownership; or • discriminate against a locally established supplier on the basis that the services offered by that supplier for a particular project or procurement are services of any other Party.

D.2. GENERAL EXCEPTIONS

Purpose: General carve outs for exceptional circumstances

Provision:

- i. enable SADC members to take necessary action or disclose necessary information for the protection of essential security interests or national defense purposes. Subject to the requirements that such measures are not applied in a manner, which is arbitrary, acts as a disguised restriction to trade or results in unjustifiable discrimination between SADC member states and their suppliers.
- ii. Further SADC member states are not prevented from imposing/enforcing measure necessary for the protection of public morals, order, safety, human animal/plant life, intellectual property or relating to philanthropic institutions or prison labor.

²¹⁷ Relevant portion of the WTOs revised GPA has been extracted for this provision. For exact wording of Article III, please refer to the WTOs revised GPA

Practice:

Country and Regulation	Provision
WTO GPA Article XXIII	<p>Security and General Exceptions</p> <p>Nothing in this Agreement shall be construed to prevent any Party from taking any action or not disclosing any information that it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defence purposes.</p> <p>Subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between Parties where the same conditions prevail or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent any Party from imposing or enforcing measures:</p> <ul style="list-style-type: none"> • necessary to protect public morals, order or safety; • necessary to protect human, animal or plant life or health; • necessary to protect intellectual property; or • relating to goods or services of persons with disabilities, philanthropic institutions or prison labour.

D.3. TRANSPARENCY

Purpose: The purpose of this section is to create a more predictable environment for SADC construction services suppliers, through transparency in regulation in the construction sector and covered procurement.

Provision: SADC member states will make available through publication, laws, regulations, and in the case of covered procurement, decisions on procurement outcome and standard contract clauses that are referred to in covered procurement notices or tenders. Such information shall be made available without delay.

Practice:

Country and Regulation	Provision
WTO GPA Article VI and VII	<p>Article VI — Information on the Procurement System</p> <p>Each Party shall:</p> <ul style="list-style-type: none"> promptly publish any law, regulation, judicial decision, administrative ruling of general application, standard contract clause mandated by law or regulation and incorporated by reference in notices or tender documentation and procedure regarding covered procurement, and any modifications thereof, in an officially designated electronic or paper medium that is widely disseminated and remains readily accessible to the public; and provide an explanation, on request. <p>Each Party shall list:</p> <ul style="list-style-type: none"> the electronic or paper media in which the Party publishes the information, notices ,website address or procurement statistics <p>Notify Committee on government procurement of any changes</p> <p>Article VII — Notices</p> <p>Notice of Intended Procurement</p> <p>For each covered procurement, procuring entity shall publish a notice of intended procurement in the appropriate paper or electronic medium which is widely disseminated. The notices shall include:</p> <ul style="list-style-type: none"> the name and address of the procuring entity and other information necessary to contact the procuring entity and obtain all relevant documents relating to the procurement, and their cost and terms of payment, if any; a description of the procurement, including the nature and the quantity of services to be procured or, where the quantity is not known, the estimated quantity; for recurring contracts, an estimate, if possible, of the timing of subsequent notices of intended procurement;; time-frame for delivery of services or the duration of the contract; procurement method that will be used and whether it will involve negotiation or electronic auction; where applicable, the address and any final date for the submission of requests for participation in the procurement; the address and the final date for the submission of tenders; the language or languages in which tenders or requests for participation may be submitted, <p>a list and brief description of any conditions for participation of suppliers, including any requirements for specific documents or certifications to be provided by suppliers</p>

D.4. ACCOUNTABILITY

Purpose: To create accountability in construction services as well as covered construction procurement in the grant of permissions, decisions made and in the case of covered procurement the process and evaluation of awards.

Provision

- i. SADC member states will ensure that there is transparency and accountability in the award of construction services related licenses, quotas, permissions, including in covered areas of procurement. Evaluation of applications for licenses, quotas, permissions shall be carried out in a transparent and impartial manner, avoiding conflict of interests, using widely accepted methods and avoiding corrupt practices.
- ii. Further SADC member states will ensure effective review procedures which suppliers can appeal to if they wish to seek clarification or further information and/or challenge decisions made as they relate to the grant of permissions, licenses quotas and awards. Such clarification/information shall be provided at the earliest and shall not be unreasonably withheld. Where possible such processes and their application thereof shall be automated, enhancing accountability.

Practice:

C. Country and Regulation	D. Provision
WTO GPA Article IV	Article IV (4) Conduct of Procurement conduct covered procurement in a transparent and impartial using methods such as open tendering, selective tendering and limited tendering; <ul style="list-style-type: none"> i. avoids conflicts of interest; and ii. prevents corrupt practices Article IV (3) Use of Electronic Means To the extent possible move towards conducting covered procurement by electronic means.
EU-Singapore draft initialed Agreement (2013)	ensure transparency in the award of works concessions contracts, including by the publication of notice of intended work concessions, and ensure that there is an effective review procedure through which supplier, including suppliers from the other Party may challenge decisions relating to the award of work concessions contracts

D.5. MARKET ACCESS

Purpose: to specify the scope and coverage of intended market access and national treatment provisions in terms of sectors and modes. To create a more integrated SADC construction services market, keeping in mind the existing and arising regional opportunities commercial and non-commercial as well as infrastructure related opportunities that may arise over the next decade.

Provision

- i. SADC members shall specify the sectors and modes of construction services related commitments (including where intended covered procurement in construction services) that they would like to undertake in their schedule of commitments, along with any limitations that they may wish to retain therein. To the extent possible, keeping in mind national development and social objectives, SADC member states will endeavor to create greater construction trade integration within SADC including through more open market access and better treatment of SADC construction services suppliers
- ii. Construction Services Schedules could include:
 - a) construction services and engineering services
 - b) professional services requiring specific qualifications and registrations directly related to construction sector including architects, engineers, quantity surveyors, contractors
 - c) procuring entities covered by SADC member states in their schedule of commitments. For procuring entities the threshold value above which procurement activities are covered can be specified as well as exceptions to this coverage

D.6. ECONOMIC EMPOWERMENT

Purpose: Achievement of national development objectives such as employment creation, assisting disadvantaged groups (women, race), geographic development

Provision

In keeping with their development, social objectives and existing legislation, SADC member states, may maintain preferences and limitations, which will be specified in their schedule of commitments

E. REGISTRATION SYSTEMS AND QUALIFICATION PROCEDURES OF PROFESSIONAL SERVICES AND QUALIFIED SUPPLIERS

Purpose: In order to encourage information sharing and as a first step towards the creation of and institutionalization of mutual recognition agreements, SADC member states can build on already existing national Registers for the provision of professional services. This will enable SADC wide information sharing, accountability and monitoring of construction related professional and qualified services suppliers including architects, engineers, contractors, and quantity surveyors.

Provision

- i. SADC member states recognize the need for registration of professional services suppliers in the construction sector. All professional services and qualified suppliers are required to have some form of affiliation nationally to government recognized bodies and boards. This applies to architects, engineers, quantity surveyors and contractors in particular. Several member states have already set up such Registers to ensure quality, safety, education and monitoring of construction related professional and qualified services suppliers and firms.
- ii. SADC member states including procuring entities may maintain a professional and qualified a supplier registration system under which interested suppliers are required to register and provide stipulated information as long as such as registration system or qualification procedure is not created with the intention of creating unnecessary obstacles to the participation of suppliers of another Party in its construction sector and covered procurement.²¹⁸
- iii. Most registration requirements contain the potential outline of MRAs, and allow for temporary registration provisions, providing for acceptance of recognized or equivalent qualifications and work experience.
- iv. For the purpose of information sharing and as a first step towards the creation of MRAs, details of such registers shall be shared and made available through the SADC region. In the case of cancellation or suspension from the Registers for whatever reason including non observance of regulations and professional misconduct, such suspension shall be shared amongst other SADC member states.

²¹⁸ Also contained in WTO revised GPA under “qualified suppliers”

Practice:

Country and Regulation	Provision
South Africa	<ul style="list-style-type: none"> • Contractor Registration: national register of contractor and construction projects, systemic regulation and monitoring, best practice of public and private sector lien's, contractors and other participants, categorizes contractors on basis of financial and work capability, uniform application of procurement policy ²¹⁹ • Contractor maybe registered in more than one category. • Foreign contactors: grading designation determined in accordance with regulation by exchange rate in ZAR in relation to financial statements and value of work projects. ²²⁰ • Register of Projects: for the public sector exceeding Rand 200000 or for private/public sector undertaking with a value exceeding R 10 million, needs to be registered. ²²¹
Tanzania	<ul style="list-style-type: none"> • Contractors Registration²²²: Contractors Registration Board has power to make regulation relating to conduct and ethics of contractors, categorizing classifying and specifying types of contractors, fees payable, reasonable profit margins, certificates and qualifications necessary for registration, arbitration for disputes, evaluation of applications made for registration and qualifications therein. • Eligibility for registration includes minimum technical qualification for category, type and class of contractors, track record, fit person professionally and conduct wise, possession of requisite equipment • MRAs: potential as function of the board is to liaise and interact with local and foreign professional bodies and associations related to the construction industry. • Engineering Registration²²³: provides for registration, making it illegal to practice without registration, keeps a register of engineers, covers professional conduct and monitoring of engineer activities, also inspection of sites fore health and safety reasons. Has the power to issue stop order of works in case of contravention. • Architect Registration²²⁴: registration, supervisions, education
Zambia	<ul style="list-style-type: none"> • Registration of Contractors: ²²⁵ includes Criteria and renewal for registration and grounds for cancellation, maintenance of records and stipulation to undertaken work in category of registration • Register or Projects:²²⁶: to include nature, value and distribution of projects above a stipulated tender value , indication of emerging sector coverage

²¹⁹ Section 38, CIDB Act 2000

²²⁰ Section 16, SA CIDR 2004

²²¹ Section 10, South Africa CIDR 2004

²²² Section 34, Contractors Registration Act 1997, Section 34

²²³ Section 4, Engineering Registration Act 1997

²²⁴ Architect and Quantity Surveyors Registration Act No. 16 of 1997, repealed and replaced in 2010

²²⁵ National Construction Act, Section 7-10, Available at: <http://www.ncc.org.zm/wp-content/uploads/2013/03/NCC-Act.pdf>

Country and Regulation	Provision
	<ul style="list-style-type: none"> • Engineer registration: ²²⁷ provides for registration of engineers, maintenance of records, promotion of best practices, investigation of professional misconduct, settlement of disputes, continuing education, mutual recognition agreements (MRAs) and disqualification of membership • MRAs: Section 44 provides for (i) recognition of local and foreign qualification and their registration. (ii) Recognition of a foreigner as an engineer if that person is to work as such under an international agreement between Government of Zambia or undertakes courses and passes examination as determined.

F. TECHNICAL SPECIFICATIONS AND STANDARDS

Purpose: In order to enable cross border provision of construction services there is a need for a more harmonized or universal reference point for technical standards in the construction sector. Depending on the country, technical standards maybe entirely nationally driven, often incorporating international features eg South Africa FDIC and MRAs with Europe/US others, alternatively they could be a mix of national and regional or international as is the case with smaller SADC countries eg. Namibia. There is a need for intra SADC recognition/acceptance or incorporation of technical standards, so as to have common reference points.

Provision:

- i.SADC members will strive to recognize each others technical standards in the construction sector. Efforts will also be made to use international standards as common reference points for incorporation.
- ii.Technical specification will to the extent possible focus on performance and functional requirements rather than design or descriptive characteristics and will be based on international or widely accepted regional standards where such standards exist, otherwise on national technical regulations, recognized national standards or building codes. Technical standards may also promote conservation of natural resources and protection of the environment.²²⁸

²²⁶ National Construction Act Section 15, <http://www.ncc.org.zm/wp-content/uploads/2013/03/NCC-Act.pdf>
²²⁷ The Engineering Institution of Zambia Act 2010
²²⁸ Drawn from WTO revised GPA

Practice:

Country and Regulation	Provision
Namibia	Frequent reference to regional South African standards (SA council for Scientific and industrial research, SABS 1200 ²²⁹ , SANS 507-1 (electricity), SANS 10142-1 (wiring)but also national standards and specifications for CAD system in electrical design plans, water plants and sewage treatment etc.
South Africa	Range of Standards, many linked to international standards including ISO also FDIC. . Civil Engineering: SABS 1200 ²³⁰ , SANS 507-1 (electricity), SANS 10142-1 (wiring), but also national standards and specification for CAD system in electrical design plans, water plants and sewage treatment. Several SADC countries refer to South African standards notably Lesotho, Swaziland, and Namibia.
Zambia	Section 25 ²³¹ : requirement for construction materials used to conform to Standards Act and not be of substandard quality.

G. CONTRACTORS

Purpose: Common Treatment and assurance of monitoring for Contractors across SADC, sharing of information on contractor registration.

Provision:

- i. Each SADC member state shall maintain a register of contractors, which they share with and make available as requested by other SADC member states. Such a register could include the following details of a registered contractor name, category of registration, fees paid, financial statement, tax clearance certificate or proof that all taxes have been paid in the country of origin, certified copies of the identity documents of the principal or principals, proof of registration of employed qualified persons. In the case of a contracting company details to be included are the registration number and the certificate of incorporation and in the case of a trust a copy of the trust deed

229 SABS 1200 was developed in the late 1970s for use with Civil Engineering Quantities (CEQ73) and GCC 1982 for the design by employer contracting strategy. SABS 0120 code of practice provided guidance on the use of SABS 1200 and informed the way in which tenders were compiled and formatted. The SABS Technical Committee (TC 59) took the decision in 2000 to convert SABS 1200 into two families of standards, namely the SANS 1921, Construction and management requirements for works contracts, and SANS 2001, Construction works. All reference to the responsibilities of the Engineer and the Contractor were removed from the text and no measurement and payment items were included. This enables these standards to be used with any pricing or contracting strategy at main or subcontract level and with any conditions of contract in an objective manner. All parts of SANS 1921 were published in 2005. Most parts of SANS 2001 have now been published. <http://www.ice-sa.org.za/sabs-standards-matters>

²³⁰ *Ibid*

²³¹ Zambia National Council for Construction Act 2003

- ii. Broadly indicators that SADC member states will endeavor to take into account during the process of registration include:
 - a. Financial capability of the contractor Eg: annual turnover in preceding financial years, value of previous construction contracts undertaken, contractors' access to capital
 - b. Work Capability Eg. Contractors ability to requisition qualified persons, meeting requirements of specified class of construction work, completion of construction work in the category in which the contractor seeks registration.
- iii. To the extent possible SADC member states will endeavor to develop a regional Register of Contractors and Contracting Firms.
- iv. Contractors or contracting firms operating within a SADC national jurisdiction should be registered within that jurisdiction either on a permanent basis or for the duration of their work contract.
- v. A contractor or contracting firm maybe required to execute a performance bond or collectable financial guarantee by one person to another (beneficiary).²³²

Practice:

Country and Regulation	Provision
Zambia	<ul style="list-style-type: none"> • Section 21: mandatory registration of contractor²³³ • National Council for Construction (Contractors) Code of Conduct Regulations 2008 regulation 8: requirement for contractor to provide good quality work, safe working environment and clothing to employees, compliance with Environment Protection and Pollution Control Act

Contractor Grading Examples Botswana, Tanzania, South Africa²³⁴

Country and Regulation	Provision
Botswana	<ul style="list-style-type: none"> • Most construction companies are registered with the PPADB. The PPADB has six categories of contractors. Categories are based on company's track record, financial capability and the plant the companies possess. Each of the categories is defined by a financial ceiling on a single project, which a firm can handle.
South Africa	<ul style="list-style-type: none"> • Contractors registered in Grades 2-9, two categories General Building and Civil Engineering • Grade 9: contractors at national/international level • Grades 7/8: Contractors at a regional/provincial level • Grades 5/6: contractors transitioning from grades 2-4 at provincial/regional level • Grades 2/4 contractors operating at local level

²³² SA CIDR 2004 Section 10

²³³ Zambia National Council for Construction Act 2003

²³⁴ See Annex 4 for a more detailed picture of contractor grading's in various sub sectors for Tanzania, Zambia, South Africa and Botswana

H. PROFESSIONAL SERVICES ARCHITECTURAL, ENGINEERING, QUANTITY SURVEYING RELATED SERVICES

Purpose: enhance provision of construction related professional services such as architects, engineers, quantity surveyors. Facilitation of this intra SADC movement could benefit from (i) sharing information from individual SADC members Register’s of architects, engineers and quantity surveyors (ii) set up Mutual Recognition Agreements that enable cross border provision and movement of these services as well as accountability.

Note: In the case of MRA, decision will need to be made on broad structure and terms. An understanding of other models eg. EAC, EU, ASEAN, NAFTA, other bilateral agreements could be considered. Two broad possibilities are (i) registration at the national level with application to practice as a regional “SADC professional” sent on to SADC regional council for evaluation. Here even though a person maybe designated a regional “SADC professional” conditions/if any on which he maybe admitted to practice at the national level would need to be worked out eg. Requirement to work with national architect/engineer. (ii) Professional service bodies in SADC states work out MRAs in a joint manner for recognition of each others professionals

Provision:

- i. *Define who can be considered a SADC engineer or architect:* coverage of educational qualifications, work experience, compliance with professional, technical or ethical code.
- ii. *Method of application:* for SADC regional wide operation and obligation on individual professionals to abide by laws/regulations, bound by codes of conduct, other conditions of operation.
- iii. *Role of National architect/engineering regulatory authority:* in terms of evaluating and authorizing applications for registration from professionals, monitoring and assessment of professionals activity, reporting to and co-coordinating with international bodies including SADC regional body, information exchange on professionals/contractors who have been delisted or suspended, excahgne of informational on legal and regulatory developments including with a view to regional and/or international harmonization.
- iv. *SADC regional body (informal or formal):* promote acceptance of professionals and qualified suppliers in SADC member states, develop, monitor, maintain mutually acceptable standards and criteria for facilitating practice by SADC Professional Engineers/Architects throughout SADC, gain an understanding of trade barriers and assist government/licensing authorities to reduce barriers in an effective and non-discriminatory manner, identify best practice for the preparation and assessment of Engineers/Architects intending to practice at the professional level, inform all national Regulatory Authorities when a Professional architect/Engineer is no longer qualified to undertake independent professional engineering practice in the Country of Origin.

Practice

Country and Regulation	Provision
South Africa, Tanzania, Zambia	Similar provisions for all three countries related to registration of engineers, architects, consideration of application, continuing education, monitoring and supervision of architects, engineers, appeals authority

I. PROCUREMENT REGIME

Purpose: As per Article 18 of the SADC Protocol on Trade in Services, government procurement on services is not meant to be covered by the SADC Protocol on Trade in Services. However, given that more than 50% of construction sector transactions originate out of government procurement SADC member states may wish consider some degree of procurement in construction services. This may help to enable access to competitive construction services providers and quality work as well as ensure national development and social objectives are met through the use of procurement.

I.1. Coverage of procurement of construction services²³⁵

- i. SADC member states may wish to include procurement in construction services as part of their Schedules of Commitment or as Procurement annexes. Covered procurement means procurement for governmental purposes of construction and related services, as SADC member states intend to include which are:
 - a) not procured with a view to commercial sale or resale, or for use in the production or supply of goods or services for commercial sale or resale
 - b) by any contractual means, including public-private partnership contracts
 - c) for which the value, as estimated by SADC member states, equals or exceeds the relevant threshold specified in SADC member states Annexes and Schedules.
 - ii. Covered procurement would not include:
 - a) express exclusions contained in SADC members Annexes and Schedules
 - b) acquisition or rental of land, other immovable property
 - c) non-contractual agreements eg. cooperative agreements, grants, loans, equity infusions, guarantees, and fiscal incentives
 - d) procurement or acquisition of fiscal agency or depository services
 - e) public employment contract
 - f) procurement conducted for purposes of defense, international assistance, or procurement projects involving international/regional funding
 - iii. When SADC member states intend on including procurement in construction services they should specify:
 - a) the entities covered (central, sub-central, others)
 - b) construction services covered
 - c) professional services, other than construction services, covered
 - d) thresholds of coverage
- Note: SADC member states to decide structure of procurement coverage, if this is to be included.

²³⁵ Drawn from WTO Revised GPA

I.2. *Conditions* for Participation

- i. SADC procuring entities to ensure that procurement evaluation is based on essential factors such as supplier's legal and financial capacities and the commercial and technical abilities to undertake the relevant procurement
- ii. In terms of tender documentation, the procuring entity shall make available to suppliers tender documentation that includes all information necessary to permit suppliers to prepare and submit responsive tenders including the nature and quantity of construction services to be procured, conditions for participation of suppliers, applicable evaluation criteria, technological requirements for submission, terms of payment, manner of submission, dates for delivery, any other relevant terms and conditions.

I.3. Treatment of Tenders and Awarding of Contracts

- i. A procuring entity shall receive, open and treat all tenders under procedures that guarantee the fairness and impartiality of the procurement process, and the confidentiality of tenders.
- ii. Information Provided to Suppliers: A procuring entity shall promptly and within a reasonable timeframe inform participating suppliers of the entity's contract award decisions
- iii. Maintenance of Documentation, Reports and Electronic Traceability: Each procuring entity shall, maintain the documentation and reports of tendering procedures and contract awards relating to covered procurement.
- iv. Maintenance of preferences: SADC member states may apply preferences agreed on in national law, in their evaluation of bids.

J. REGIONAL INSTITUTIONS

Purpose: To enable SADC member states to consult on a regional basis in specific areas of construction cluster i.e. contractors, professional services, and procurement.

Provision:

- i. In order to enhance regional integration in the construction sector, SADC member states can set up a Committee on Construction Services. The SADC Committee on Construction Services will be composed of representatives from each SADC member state. The purpose of such a Committee on Construction Services is to meet as necessary, to take stock, enhance the SADC construction integration agenda, resolve any issues of concern and review the implementation of SADC construction cluster integration.
- ii. If necessary additional formal/informal working groups for contractors, professionals (engineers, architects, quantity surveyors), procurement may be set up when required. The purpose and functions of these groups could include maintenance of information of Registers of Contractors, Architects, Engineers and Suppliers, develop and operationalize MRAs in their respective areas, share information on market

developments in their respective sectors, report to the SADC Committee on Construction Services developments of the sector.

K. ENVIRONMENT PROVISIONS

Purpose to ensure environment measures, legislation in place is followed and to promote sustainable construction practices.

Provision: As per national environment legislation, SADC member states will establish procedures for Environmental Impact Assessment (EIA) of projects and enforce their application.

Practice: SADC member states will also promote sustainable construction practices and use of environment friendly building material

L. HEALTH AND SAFETY

Purpose: The construction industry is one of the most dangerous with site safety being of great importance. High levels of accidents, in turn result in delays in projects due to stoppage, monetary loss, high insurance premia. This is compounded by inadequate safety regulations or lack of enforcement, lack of personnel trained in occupational safety and health, failure of contractors to be proactive, and a semi-literate to illiterate workforce. Safety hazards pose imminent danger causing injury or death to workers or damage to materials, equipment, or structures. Health hazards include heat, radiation, noise, dust, shock and vibrations, and toxic chemicals.

Provision: SADC member states shall ensure that construction service supplier's demonstrate a sufficiently documented health and safety plan, with adequate risk assessment and covering the entire duration of the project under consideration.

Practice

All professional services suppliers in particular architects, contractors and engineers are required to meet specific health and safety regulations.

Country and Regulation	Provision
Namibia	Meet all safety laws and responsible for any accidents or damages thereof
South Africa	Parties shall provide and demonstrate a sufficiently documented health and safety plan, based on the client's documented health and safety specification, necessary risk assessment of the contract being undertaken and covering the duration of the construction work. 236

²³⁶ Schedule to Section 43 of South Africa's Occupational and Health Safety Act, 1993

Country and Regulation	Provision
	the principal contractor shall take reasonable steps as far as is necessary to ensure co- operation between all contractors to enable each of those contractors to comply with the provisions of these regulations. 237 any contractor who fails to observe agreed upon and necessary regulations pertaining to the health and safety plan for the site, will be stopped from carrying on his work. Similarly for contractual work which poses a threat to the health and safety of persons; 238
Tanzania	Similar safety regulations exist in more disparate legislation including relating to responsibility of architects and engineers
Zambia	Similar safety regulations such as the Factories Act

M. LABOUR LAWS

Purpose: To preserve labour standards and wages within SADC region, especially in the case of unskilled and informal labour, which forms the majority of labour force in the construction sector.

Provision: Each SADC member state will ensure national and where possible international labor standards relating to minimum wages, hours of work, conditions of work, annual leave, unfair dismissal, provision of protective clothing and safety equipment, etc. are preserved. Where possible SADC member states will endeavour to set up health and safety committees to ensure workers minimum conditions of labour are preserved throughout the region.

N. FINANCING MECHANISMS FOR THE CONSTRUCTION SECTOR

- i. In order to enable better access to finance by SMEs and MMEs in the SADC construction sector, SADC member states may explore the possibility of setting up a
- ii. SADC wide Construction Industry Development Fund. The Fund will provide working capital and guarantees on easier terms than traditional banks to contractors, consultants and the informal sector. The Fund will also provide loans for equipment and will act as a guarantor for loans secured through banks and other credit schemes.
- iii. SADC member states will also promote private sector participation in financing construction and infrastructure projects public private type partnerships. To this end SADC member states will share experiences on the use of different public-private models and utilize the SADC infrastructure unit’s database and program’s to enhance this facility.

237 Schedule to Section 43 of South Africa’s Occupational and Health Safety Act, 1993
 238 Schedule to Section 43 of South Africa’s Occupational and Health Safety Act, 1993

- iv. SADC member states will also explore possibilities of making available access to and supply of construction equipment on a region wide and competitive basis.

Namibia	Performance Security: 10% of value of project Insurance: on project and personnel
South Africa	Financial sponsorship or collectible financial guarantee by one person to another is fixed, available to beneficiary as required, necessary to support completion of contractor project, in a form acceptable to a South African financial institution, if not provided by a financial institution to an amount which does not exceed 15% of sponsors net asset value ²³⁹
Tanzania	Contractors Assistance Fund: aim to assist contractors in securing bid bonds and bank guarantees for advance payments from commercial banks.

O. CONSULTATIONS AND DISPUTE SETTLEMENT

- i. SADC member states should have or establish systems for consultation, domestic review and dispute settlement, which are timely, effective, independent, transparent and non-discriminatory. These systems permit suppliers to challenge breaches of contractual arrangements and awarded tenders and/or national legislation. The review body, which may be an administrative authority or a court, must have the authority to implement remedial measures and/or to insure compensation for the loss or damages suffered by a supplier. Interim measures must also be available to preserve a supplier's opportunity to participate in construction/procurement activities, where appropriate.

²³⁹ Section 10, South Africa CIDR 2004

VI. STATE OF LIBERALIZATION OF SADC CONSTRUCTION SECTOR

230. SADC member states are faced with ongoing trade in services negotiations in 3 fora, multilaterally at the level of the WTO, regionally within the context of SADC and COMESA and bilaterally within the context of the EPAs and or other FTAs. In addition there are ongoing discussions and potential negotiations at the level of the Tripartite, the Continental Agreement and the African Union. For the construction services negotiations these multiple levels of negotiation, each involves similar substantive subject areas but potentially differing levels of specific commitment.

A. Cross cutting issues substantive issues in the construction services sector under discussion at the WTO

231. Before getting into specific liberalization commitments made by SADC member states in different fora, there are certain areas under discussion within the WTO which are relevant to the current SADC states negotiations on construction services.

A.1. Clustering/Inter-relationship of Construction and Engineering Services with Architectural and Engineering Services

232. One of the key issues SADC member states may wish to consider in their construction services negotiations is negotiating construction and engineering services (physical aspects) along with architecture and engineering services (professional services aspects). The use of this “cluster approach” to construction services negotiations has been the target of much discussion at the WTO dating back to 2000.

233. At the WTO level several negotiating proposals submitted by WTO Members have stressed that construction and engineering services consist of a wide range of interrelated activities, therefore, future specific commitments in the sector should encompass all stages of the construction process ranging from "pre- erection work at construction sites" (CPC 511) to "building completion and finishing work" (CPC 517). The rationale behind this request to consider construction services negotiations from the “cluster approach” perspective is the inter-related nature of the construction, engineering and architectural firms. Further the use of the “cluster approach” would ensure that service suppliers engaged in multi-stage or 'turn-key' construction projects obtain the array of commitments required so as to effectively carry out their work.²⁴⁰

234. Other negotiating proposals which support the “cluster approach” have drawn attention to the interrelation between the supply of construction services and the supply of architectural (CPC 8671), engineering (CPC 8672), integrated engineering (CPC 8673), urban planning and landscape architectural services (CPC 8674), and other related consulting services –

²⁴⁰ See paragraph 8 of New Zealand's negotiating proposal (S/CSS/W/91 of 26 June 2001) as well as the negotiating proposal by Japan (S/CSS/W/42 of 22 December 2000)

although these services are classified elsewhere in the Services Sectoral Classification List, under professional services.²⁴¹

235. Table 16 tries to match construction activity, with specific phase of construction and the corresponding modes in which the activity may be provided within the two classification systems the traditional UN CPC classification, which corresponds to the WTOs current W120 classification and the newer UN CPC 2 classification.²⁴²

TABLE 16: Phases, Activities and Corresponding Modes for a Typical Construction Activity			
Phase	Activity	Corresponding Mode	UN CPC Classification
Pre Design	Advisory architectural and engineering services	Modes 1, Mode 3, Mode 4	Architecture services: (CPC 8671) (UNCPC 2: 8321) Engineering services: (CPC 8672) (UNCPC 2: 833)
Design	Conceptual assessments, feasibility studies, decisions on site, type of structure, financing, selection of contractor, approval of official plans and permissions	Mode 1, Mode 3, Mode 4	As above
Implementation	Physical construction of structure (residential or non residential), civil engineering works (infrastructure) and installation e.g. Plumbing, wiring, building completion work eg. Plastering, painting	Mode 3 and 4	Construction and Engineering Services (CPC 511-518) (UNCPC 2: 54)
Post Implementation	Maintenance and repair	Mode 3 and 4, potentially Mode 1	Parts of previous classification

Source: Authors Construction

236. A key observation from the Table 16 comparison is that in each phase of construction, each sub sector can be supplied in more than one mode and often-similar services can be supplied in more than one category. The cluster approach may help clarify some of the confusion and provide more clarity especially in an evolving industry thereby preventing overlap and complications in scheduling and regulation.

²⁴¹ Negotiating proposals by Brazil (S/CSS/W/113 of 5 October 2001), by Cuba (S/CSS/W/145 of 22 March 2002), paragraphs 10(a) and 11; and by the European Communities (S/CSS/W/36 of 22 December 2000), paragraph 7, New Zealand, Negotiating proposal for Construction and Related Engineering Services, made to the Committee on Trade in Service, Special Session, S/CSS/W/91, 26 June 2001

²⁴² The traditional CPC classification corresponds to the WTOs current W120 classification and the UN CPC 2 classification is the latest version of the CPC classification, which is more disaggregated, in terms of sub sectors.

237. While the primary gainers of such a clustering approach are internationally active construction firms,²⁴³ the cluster approach can also enable SADC member states to get an overview of the different parts of the industry and how they fit into each other. This overview in turn can be effectively utilized by SADC member states can take a cluster approach to negotiations in construction services, but make specific commitments based on their national offensive and defensive interests. Finally from a long-term perspective it enables SADC member states to envision the kind of construction sector they wish to create nationally and within the region.

A.2. Definition Issues relating to the Construction and related services sector

238. As can be seen from Table 16 the commercial segmentation of the construction sector in terms of sub-sectors and phases of construction service delivery is different from how the GATS W120 and the corresponding UN CPC are structured.

239. In the W/120, ambiguity exists regarding the respective coverage of "Engineering services" (CPC 8672) and "Construction and related engineering services".²⁴⁴ In the UN provisional CPC, engineering services (CPC 8672) do *not exclude* construction-related engineering services, while "construction work" (CPC 511–518) does not appear to explicitly cover "related engineering services". In the UN provisional CPC, construction-related engineering services are included in "Other engineering services during the construction and installation phase" (CPC 86727), a subset of engineering services.²⁴⁵ See Annex 1 for a comparison of the W/120, UN CPC Provisional and UN CPC 2 classifications of construction, engineering and architecture services.

240. A number of services closely related to construction are classified elsewhere in W/120, under professional services: engineering and integrated engineering services, but also architectural services, urban planning and landscape architectural services. Further the W/120 and CPC provisional do not explicitly cover services provided by surveyors and topographical engineers.

241. The UN CPC Version 2 provides a much better disaggregated form of construction sector, to an extent eliminating many of the definitional issues that the construction services has been faced with. However one of the likely problems with scheduling according to the UN CPC Version 2 is it will make cross-country comparison, especially relevant to negotiations (eg. Request and offer phase) as well as data collection more complicated and difficult to assess.

A.3 WTOs Working Party on Domestic Regulation

242. Another area that could have potential implications for the SADC member states is the ongoing discussions/negotiations at the WTO on the Chairman of the Working Party on

²⁴³ For instance from pre-investment stage (e.g., feasibility studies), through project design and project implementation (the actual physical construction).

²⁴⁴ WTO Secretariat Background Note on Architectural and Engineering Services (S/C/W/44, dated 1 July 1998), paragraph 8

²⁴⁵ Some countries have scheduled construction and engineering services together (e.g., Morocco, Venezuela), or have added remarks to clarify the scope of construction and related engineering services (e.g., Hong Kong, China).

domestic regulation draft text (2009)²⁴⁶ on Domestic Regulation in the WTO. The Chair's draft text covers issues of licensing requirements and procedures, qualification requirements and procedures, and technical standards, other provisions. Some or all of these disciplines are likely to have direct relevance to the current SADC negotiations on construction services.

B. An Overview of SADC member's commitments in Construction services at the WTO

243. An analysis of commitments undertaken by WTO Members in construction and engineering services reveals that roughly half of the schedules contain commitments in construction services. The sectors most commonly covered are general construction work for building (CPC 512) and civil engineering (CPC 513). Most commitments focus on mode 3, which is a clear recognition of the "localized nature" of the construction industry and therefore the need to establish, near the site of construction projects in order to supply construction service. Mode 1, generally discarded as technically unfeasible for "physical construction", has fewer commitments for the related professional services. Mode 4 has the lowest number of commitments, even when horizontal commitments are factored in. There are few MFN exemptions on construction services.²⁴⁷
244. In terms of commitments made in architectural and engineering services as a result of the Uruguay Round and subsequent accessions, 78 Members (counting EU12 as one) made commitments in engineering services, 50 in integrated engineering services and 47 in related scientific and technical consulting services.²⁴⁸ In architecture services, 70 WTO Members have made commitments²⁴⁹
245. Liberalization of construction services is also covered under the WTOs Agreement on Government procurement, to which several WTO members (mostly developed countries) are signatories.²⁵⁰ The aggregate size of market access commitments under the WTO Agreement on Government Procurement has been valued at \$US 1.6 trillion in 2008, representing 2.64% of world GDP.²⁵¹ Of this the value of Construction service market access for EU, US and Japan alone is \$US 423.7 billion.²⁵² Further several countries have included construction services in their bilateral and regional trade agreements.²⁵³

²⁴⁶ See The WTOs General Council called for an intensification of the Doha Round negotiations in all areas in December, 2010, following which intensive consultations on a draft for disciplines for domestic regulation were held among Members during February until early April 2011. The Chairman of the Working Party on Domestic Regulation produced a Progress Report (S/WPDR/W/45) on 14 April 2011, reflecting the progress so far achieved in the negotiations f disciplines on domestic regulation.

²⁴⁷ WTO Secretariat Information Note, Construction and Related Engineering Services, JOB(05)/216, 29 September 2005

²⁴⁸ WTO Secretariat Background Note on Engineering Services, Council for Trade in Services, S/C/W/334, 22 February 2011

²⁴⁹ WTO Secretariat Background Note on Architecture Services, Council for Trade in Services, S/C/W/303, 17 September 2009

²⁵⁰ some developing countries are seeking accession or are admitted as Observers

²⁵¹ Anderson, Pelletier, Osei-Lah, Muller, Assessing the Value of Future accession to the WTO Agreement on Government Procurement: Some New Data Sources, Provisional estimates and an evaluative framework for individual WTO members considering Accession, Staff Working Paper ERSD-2011-15, October 2011

²⁵² Anderson, Pelletier, Osei-Lah, Muller, Assessing the Value of Future accession to the WTO Agreement on Government Procurement: Some New Data Sources, Provisional estimates and an evaluative framework for individual WTO members considering Accession, Staff Working Paper ERSD-2011-15, October 2011

²⁵³ See EU FTAs in particular but also US FTAs such as NAFTA.

TABLE 17: SADC GATS Sector specific Commitments in construction & engineering services			
Construction and Related Engineering Services (CPC 512-518) ²⁵⁴			
Country	Sub sector	Kind of coverage	GATS Plurilateral request on Construction ²⁵⁵
DRC	512 and 513	Modes 1-3 – None Mode 4 – unbound, except for horizontal	Substantial sectoral coverage –CPC 511-518, focus on 512&513 Mode 2 full coverage Mode 3 commitments or at least phase out of some forms of limitations
Lesotho	512, 513, 514, 516, 517	Mode 1 – unbound as unfeasible Modes 2-3 – None Mode 4 – unbound, except for horizontal	
Malawi	Whole sector	Modes 1-3 None Mode 4 – unbound, except for horizontal	
South Africa	512, 513, 514, 516, 517	Mode 1 – unbound as unfeasible Modes 2-3 – None Mode 4 – unbound, except for horizontal	
Zambia	Construction and related Eng. Services	Modes 1-3 None Mode 4 – unbound, except for horizontal	
<i>Source: Author's analysis</i>			

246. In terms of commitments made in construction services, SADC member states have made relatively low commitments (33% of SADC member states compared to 61% globally). For the construction and engineering sector, as Table 17 indicates only Lesotho, Malawi, South Africa, the Democratic Republic of Congo, and Zambia made GATS commitments in this sector. Schedules mainly covered general construction work for building and for civil engineering, specifically Pre-erection work at construction sites (UNCPC 511), Construction work for buildings (UNCPC 512), Construction work for civil engineering UNCPC 513), Assembly work (UNCPC 514), Building completion and finishing work UNCPC 517).

247. In general, where commitments have been undertaken, they are relatively open in particular for Mode 2 and 3. This reflects a more global trend in the sector, where increasingly the tendency is towards establishment. According to Chen since the 1990s the construction industry has seen a tendency of market establishment either short term but increasingly long term establishment abroad.²⁵⁶

²⁵⁴ 511: Pre-erection work at construction sites, 512: Construction work for buildings, 513: Construction work for civil engineering, 514: Assembly & erection of prefabricated construction, 515: Special trade construction work, 516: Assembly work, 517: Building completion and finishing work

²⁵⁵ Summary of Plurilateral request for Construction and Related Engineering Services. Japan is the coordinator, requestor parties include Australia, Canada, Taiwan, EC, Republic of Korea, Malaysia, Mexico, New Zealand, Norway, Singapore, Turkey, US

²⁵⁶ Chen C, Entry Mode for international construction markets: the influence of host country related factors, Construction Management and Economics, 2008. According to Chen In permanent stay entrants tend to source staff locally while in short term entry the work of expatriates tends to be relied on. Where the host country market tends to have high entry restrictions, contractors are more likely to use short term than permanent entry.

248. Some countries have undertaken commitments in Mode 1 (DRC, Malawi, Zambia), while others have deemed Mode 1 unfeasible to make commitments. The countries with the most open sectors are Malawi and Zambia who have inscribed no commitments for Modes 1-3. Mode 4 has the lowest number of commitments.

TABLE 18: SADC GATS Sector specific Commitments in Architecture and Engineering services			
PROFESSIONAL SERVICES RELATED TO CONSTRUCTION SERVICES			
Country	Sub sector	Kind of coverage	GATS Plurilateral request ²⁵⁷
Architecture Services²⁵⁸			
Country	Sub sector	Kind of coverage	GATS Plurilateral request
Botswana	CPC 8671	Mode 1: Unbound Mode 2: no limitations Mode 3: registration requirement for foreign company and foreign professionals employed in Botswana Mode 4: unbound, except for horizontal	Modes 1, 2: reduce/eliminate restrictions on commercial presence requirements; nationality/citizenship requirements, residency requirements.
Lesotho	CPC 8671, 8674	Modes 1, 2,3: No limitation except for buildings of less than 500 square meters Mode 4: unbound, except for horizontal	Mode 3: meaningful commitments to eliminate/reduce restrictions on legal entity; foreign capital; JVs, nationality/citizenship, residency requirements
South Africa	8671	Modes 1, 2: Limited to local architects for buildings of less than 500 square meters Mode 3 no limitations Mode 4: unbound, except for horizontal	Mode 4: commitments for all categories emphasis on contract service suppliers including independent professionals "architects" and "engineers" or architectural, engineering and integrated engineering services sectors, remove/reduce ENTs
South Africa	8674	Modes 1-3: no limitation Mode 4 – unbound, except for horizontal	
Engineering Services			
Botswana	CPC 8672, 8673 ²⁵⁹	Mode1: Unbound Mode 2: no limitations Mode 3: registration requirement for foreign company and foreign professionals employed in Botswana Mode 4: unbound, except for	

²⁵⁷ Summary of Plurilateral request for Architectural, Engineering and Integrated Engineering Services. Canada is the coordinator and the requesting countries are Australia, Canada, Chile, the European Communities, Japan, Korea, Mexico, New Zealand, Norway, Switzerland and the United States. There are 27 requested members.

²⁵⁸ UN CPC 8671: CPC 8674 Urban planning service, Landscape architectural Services

²⁵⁹ UNCPC 8672 Engineering Services, 8672 Integrated Engineering Services

TABLE 18: SADC GATS Sector specific Commitments in Architecture and Engineering services			
PROFESSIONAL SERVICES RELATED TO CONSTRUCTION SERVICES			
Country	Sub sector	Kind of coverage	GATS Plurilateral request ²⁵⁷
		horizontal	
Lesotho	CPC 8675 ²⁶⁰	Modes 1 - Unbound Modes 2-3 None Mode 4 – unbound, except for horizontal	
South Africa	CPC 8675 ²⁶¹	Modes 1-3 None Mode 4 – unbound, except for horizontal	
Swaziland	CPC 8672, 8673 ²⁶²	Modes 1 – Unbound Modes 2-3 None Mode 4 – unbound, except for senior qualified chartered engineers	

Source: Author's analysis

249. In terms of professional services linked to the construction sector, primarily architecture and engineering services as Table 18 indicates for the SADC countries that have undertaken commitments there are few limitations on investment in architectural and engineering services and Mode 2. Mode 1 has a greater level of restriction, and is either “unbound” or subject to some degree of restriction as in the case of Lesotho and South Africa for architecture services. In mode 4, with the exception of Swaziland for qualified chartered engineers, commitments are subject to horizontal limitations, across all SADC member states who have undertaken WTO commitments.
250. More specifically for architecture services, Mode 1 is relatively open with the exception of Botswana, as is Mode 2. Lesotho and South Africa have a single limitation for Mode 3, which limits buildings of less than 500 square meters to local architects. Botswana requires professional accreditation for foreign companies and individuals operating in Botswana.
251. In the case of engineering services, for Mode 1 Lesotho and South Africa have no limitations, but for Botswana and Swaziland Mode 1 is unbound. Mode 2 on the other hand has no limitations retained. For Mode 3 Swaziland, Lesotho and South Africa have not retained any limitations; Botswana requires professional accreditation for foreign companies and individuals operating in Botswana.

260 UN CPC 8675 Engineering related scientific/technical consulting services

261 UN CPC 8675 Engineering related scientific/technical consulting services

262 UNCPC 8672 Engineering Services, 8672 Integrated Engineering Services

252. Mode 4 for all SADC country GATS commitments, in architecture and engineering services as well as construction and engineering services makes references to the horizontal section, with the exception of Swaziland which makes an exception for senior qualified chartered engineer.

Horizontal Commitments of SADC GATS Schedule of Commitments of relevance to specific construction and professional sector commitments

253. The SADC member states sector specific commitments also need to be read with their GATS Horizontal commitments which apply to commitments made in construction and engineering services as well as architecture and engineering services. In the case of Malawi²⁶³ and Zambia²⁶⁴, in mode 3 the Reserve Bank of Malawi and the Bank of Zambia respectively, allow foreign controlled companies to obtain loans and/or overdrafts of up to one-third the value of its paid up capital. This would mean that foreign construction companies could potentially access funds for their construction sector more easily.
254. Botswana's horizontal commitments on mode 3²⁶⁵ require juridical persons to acquire necessary license, register in country of origin and register with the Botswana Registrar of companies. Foreign investors are encouraged to enter into JVs with local investors. Further where foreign investors sell their interests in resident companies, locals should be given priority to purchase such interests and Ministry of Commerce and Industry should be notified. South Africa's horizontal commitments limit local borrowings of companies with a non-resident shareholding of 25%. As a result foreign owned South African companies, borrowings in South Africa are limited to its offshore capital.²⁶⁶
255. In Mode 4, horizontal commitments tend to be more open for temporary stay of persons employed in management/expert jobs relating to foreign investment.²⁶⁷ Nearly all mode 4 requirements are subject to the national immigration/labor regulations/laws including work permits/approvals etc. (Zambia, Botswana, Malawi). Other provisions could include, training requirements for nationals, especially for specialized roles/areas.²⁶⁸ Professionals are required to register with the appropriate professional body. For Botswana, professionals must have the right to practice in countries of origin and be recognized and registered by the appropriate committee or council.
256. South Africa's horizontal commitments provides for temporary (up to three years) and unrestricted movement of natural persons in the following categories: service salespersons, intra-corporate transferees, and management personnel engaged in the establishment of a new enterprise. Intra-corporate transferees include managers, specialists and professionals, thereby providing architects/engineers employed by foreign-owned construction companies groups with unrestricted access to the South African market. The only precondition is that transferees must have been employed by the company for more than a year and that the company must establish a branch, subsidiary or affiliate in South Africa.

²⁶³ Malawi WTO Schedule of Commitments, GATS/SC/100, 30 August 1995

²⁶⁴ Zambia, WTO Schedule of Commitments, GATS/SC/93 15 April 1994

²⁶⁵ Botswana WTO Schedule of Commitments, GATS/SC/109, 30 August 1995

²⁶⁶ South Africa, WTO Schedule of Commitments, GATS/SC/78 15 April 1994

²⁶⁷ Botswana, DRC, Malawi, Zambia GATS Schedule of Commitments

²⁶⁸ Zambia, Botswana GATS Schedule of Commitments

257. While there appears to be a shortage of in particular high skilled persons in the construction sector across SADC, there are concerns as to the impact of foreigner construction service providers and varying views as to their desirability. In interviews what did come across was the need to have more high skilled movement across the region, but at the same time this should not be at the detriment of employment of nationals. In some cases preference was expressed for movement of persons from within the region as opposed to outside the region.
258. Finally given the massive amount of *procurement related construction projects*, which is either underway or in the pipeline. An area that SADC member states may wish to consider is the “sensitive” area of procurement in construction services. There are several reasons for this, first the SADC region as a whole as well as individual SADC member states are implementing a range of infrastructure related projects. In a sense therefore the market and employment opportunities exist. Second, sourcing personnel in particular, but construction services and equipment is likely to be less expensive if it is sought within the SADC region. The added effect of procuring within the region is that it will build up regional skills, sharing of technologies and the setting up of business arrangements.
259. At the same time there must be recognition of the development role that procurement regimes can play. Several SADC member states already have in place preferential procurement regimes²⁶⁹, which technically protect and enhance participation of domestic construction sector operators. However in interviews, some stakeholders expressed the view that a gap existed between preferential procurement policies in the construction sector and market practice owing to lack of domestic capacity. The issue is therefore not one of creating new legislation to protect local firms, but effective enforcement of existing preferential clauses, as well as a clear understanding of the local markets ability to supply categories in which reservations are built in. A potential means of enhancing this supply capacity especially for small national construction sector providers is to create/implement the requirement for forming partnerships and joint ventures.
260. If SADC member states choose to include “procurement of construction services” a key issue that will need to be considered is whether, current Trade in Services agreements at the GATS, SADC Trade in Services Protocol and the Draft EPA text allows for negotiations on procurement in construction services. A comparison of the relevant “procurement” related text in the 3 agreements, seems to indicate similarity in the 3 texts in terms of not explicitly covering procurement of services, however, the GATS provides for future negotiations on government procurement in trade in services. Further a key issue in the context of SADC member states is the purview or scope of procurement for government purposes or under government authority. This provision may need to be reconsidered in view of the trend towards Public-Private partnerships, as well as the large-scale infrastructure, township and recreational developments being undertaken by the government. For instance physical infrastructure is used for a range of commercial purposes.

²⁶⁹ For instance, procurement of construction works could be subject to conditions that construction firms employ locals or enter into joint ventures with local construction firms. This could promote local participation

TABLE19: Comparison of government procurement provisions in the GATS, SADC Protocol on Trade in Services and the draft EPA Text

GATS	SADC Protocol on Trade in Services	EPAs Draft Text
<p>Articles II, XVI and XVII shall not apply to laws, regulations or requirements governing the procurement by governmental agencies of services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of services for commercial sale.</p> <p>There shall be multilateral negotiations on government procurement in services under this Agreement within two years from the date of entry into force of the WTO Agreement.</p> <p>(Article XIII)</p>	<p>Procurements by government officials of services purchased for government purposes and not with a view to commercial resale or with a view to use in the supply of services for commercial resale are not covered by this Protocol (Article 18)</p>	<p>This Chapter shall not apply to measures affecting: the procurement by government agencies of services; services supplied in the exercise of governmental authority.</p> <p>Article 3(2) (b)</p>

TABLE 20: Indicative Overview of possible limitations in SADC countries construction and related sectors based on GATS Schedules and applied national regimes for Construction and related Engineering Services, Architecture and Engineering Service

LIMITATION	ANG	BOT	DRC	LES	MAL	MAU	MOZ	NAM	SEY	SA	SWA	TAN	ZAM	ZIM
MODE 3														
Equity Restriction							X					X		X
Licenses	X			X	X	X	X	X		X		X	X	X
Minimum Capital	X									X		X	X	
Legal Form eg. JV			X											
Limitation on No. of suppliers			X											
MODE 4														
Work Permit	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Labor ENT/Quotas		X	X				X	X		X				
Registration of Professionals	X	X				X		X		X		X	X	X
Foreign/Temporary Registration		X											X	
PROCUREMENT														
Preferences for nationals	X	X	X	X			X	X		X	X	X	X	X
Existence of PPP regime	X	X	X	X		X	X	X		X			X	
OTHERS														
Land		X	X				X							
Profit repatriation	X	X								X				

Source: Author's analysis based on national regulations identified in Part IV of this Report and existing GATS schedule of Commitments, UNCTAD Questionnaires²⁷⁰. ANG: Angola, BOT: Botswana, DRC, LES: Lesotho, MAL: Malawi, MAU: Mauritius, MOZ: Mozambique, NAM: Namibia, SEY: Seychelles, SA: South Africa, SWA: Swaziland, TAN: Tanzania, ZAM: Zambia, ZIM: Zimbabwe. X indicates a limitation/condition exists.

261. Thus despite the seemingly “liberalized” nature of the construction sector, given its highly “localized” output, true barriers to trade in construction services in SADC countries is more likely to in national legislation. These barriers may take the form building codes/regulations, land use restrictions and ownership, contractor grading, approval for designs, technical standards, language and education requirements amongst others. Based on the Part IV on Regulatory frameworks and individual member states GATS commitments the following, tabular summary can be drawn up on existing GATS and national regime related trade barriers.

Potential Avenues for further trade liberalization in SADC Construction Services Sector

262. For those SADC member states that have not undertaken any GATS commitments (Angola, Madagascar, Mauritius, Namibia, Mozambique, Tanzania, Zimbabwe) or who are not members of the WTO as yet (eg Seychelles), the scope for making deeper commitments in

²⁷⁰ UNCTAD Questionnaires as contained in “Towards SADC Services Liberalization”, 2008

the SADC context in the construction, engineering and architecture sectors is quite wide, in terms of sectors, modes.

263. The scope of further commitments for the relatively few SADC member states that have undertaken GATS commitments in Construction and Engineering Services and Architecture and Engineering services appears to be a bit limited, given that their existing schedules tend to be quite liberal as for instance in the case of Zambia and Malawi. In the absence of any other points of comparison (given that construction services in other regional fora are progressing at a slower rate than SADC trade in services negotiations), the GATS plurilateral requests²⁷¹ could provide a benchmark to assess further commitments that SADC member states could consider.
264. For some SADC member states that have already undertaken commitments there is the possibility of greater sectoral coverage. For instance South Africa's schedule does not cover "other construction services", usually defined to include pre-erection work, foundation work, water well drilling, roofing, concrete work, steel bending and erection, and masonry work.²⁷²
265. Exploring the extent of Mode 1 commitment feasibility: The supply of certain construction sector related services eg Blueprints, plans and engineering designs which can be transmitted electronically, and parts of site investigation work has only emerged in recent years due to technological advances. During interviews conducted, some respondents said providing mode 1 services could be a possibility, however the issue of accountability, observance of code of conduct as well as safety issues was raised. One example was in the area of site investigation and design, where on site visits were a necessity to finalize designs, made.
266. A key characteristic of the construction industry as opposed to other services sector is that it is a highly "localized" industry, as its outputs "structures erected" are delivered locally. This would mean that Mode 3 both temporary (for projects) and long term are a key and potentially preferable mode of delivery. In order to address issues of job, skill and entrepreneurship development locally, SADC countries may wish to explore the possibility of (a) joint ventures, associations and partnerships with foreign firms (b) use of performance requirement consistent with multilateral and SADC disciplines (c) transfer of technology and know-how.
267. Targeted Mode 4 openness particularly in the high skilled categories is an area SADC member state can consider, especially given the shortage of qualified construction services suppliers in the SADC region. At the lower skilled level too some stakeholders in the course of interviews, expressed the importance of allowing contractors to bring with them their own personnel from within the SADC region. However, recent concerns within SADC on immigration in the region and its impact on national employment, coupled with security and even more recently health concerns, makes the possibility of far reaching Mode 4 commitments in the sector difficult. In any event a clear discussion on the kind of Mode 4 possibilities and its structuring especially in the construction sector, is an area that SADC

²⁷¹ An outline of the contents of GATS plurilateral requests as they related to the construction sector is provided in Tables 16 and 17.

²⁷² Teljeur and Stern suggest that foreign firms are unlikely to pose a threat to domestic industries in this sub-sector and it could be easily incorporated into South Africa's existing schedule.

member states may wish to consider. MRAs would be a necessary skeletal structure for enabling high skilled movement.

268. An issue that SADC member states will have to keep in mind is ongoing construction service related negotiations (including the emerging concessions and PPP regimes) in other trade fora (bilaterally or regionally). For instance at the regional level, SADC and COMESA have 9 member states in common, therefore commitments made in the construction sector liberalization in one fora would have implications for commitments in other regional fora.²⁷³ Common SADC-COMESA member states would need to consider the nature, scope and timing of their commitments in these two trade fora.
269. Construction services negotiating questions SADC member states may wish to consider include :
- Do SADC Members wish to undertake construction sector commitments as sub-sectors as a cluster? I.e interrelated sub-sectors?
 - Do member states wish to use the W120 or UN CPC or UN CPC 2 for classification?
 - In which sub-sectors could cross-border commitments be expanded?
 - Should sector-specific commitments on the movement of natural persons be considered as a complement to horizontal commitments? If so, for what categories of persons?
 - How do SADC member states wish to address already fairly liberalized Mode 3 commitments?
 - Do SADC member states wish to consider coverage of procurement in construction services?
 - How is the PPP regime to be handled?
 - How are ongoing WTO negotiations likely to impact SADC member states negotiations on the construction sector?

²⁷³ DRC, Madagascar, Mauritius, Malawi, Seychelles, Swaziland, Tanzania, Zambia, Zimbabwe

VII. RECOMMENDATIONS AND CONCLUDING OBSERVATIONS

Liberalization of construction and related services

270. Currently most SADC countries with the exception of South Africa and to a lesser extent Mauritius are significant importers of construction and related services. However given the opportunities that the construction holds for the future in both commercial and non commercial construction, SADC member states, may wish to undertake commitments based on potential future construction services exports that they can develop.
271. To begin with Mode 3, would be a good starting point given the local nature of the construction sector and already existing relatively liberalized construction and related services regimes. Mode 3 liberalization would also limit the immediate MRA requirement by instead allowing for temporary registration with professional bodies. Given the concerns on loss of work and job opportunities raised in several SADC member states, mode 3 commitments could encourage greater partnering, sharing of technology and other areas of co-operation.
272. Generally SADC member state appear to be of the view that greater mobility of construction sector professionals and firms specifically at the higher skilled levels would make the SADC region more business oriented.²⁷⁴ The scarcity for skill sets (particularly highly specialized areas of engineering and architecture services) has been raised in most countries, with the scarcity being more acute in some countries eg Mozambique and less acute in others. The lack of supply of construction sector relevant skill sets across the region, compromises the supply, quality and price of construction works.
273. Liberalization of high skilled mode 4 (professionals, contractors) can help fill high skill vacuum as well as increase the export potential of some countries, where the scarcity of high skilled construction sector professionals is not that acute. Registration and licensing of professionals are a key element in this process.²⁷⁵ However, most of SADC member states do not recognize each other's qualifications, there are variations in educational curriculum, differing qualification criteria and sectoral disaggregation (Eg. In South Africa each professional category has at least 4 sub categories with varying requirements, as compared to other SADC member states). Coupled with this is the need for natural persons in these sectors to belong to certain professional bodies before they can undertake any construction projects. If the process for attaining membership in these bodies is restrictive or if qualifications are not duly recognized, this can be a barrier to entry.
274. The recognition of qualifications including through MRAs is an areas that SADC member states may wish to consider given (i) the scarcity of construction professionals within the region (ii) MRAs and registration will enable construction professional to supply their services cross border, with follow up inspection and work if and when required. (iii) it will encourage the sharing, regulation and monitoring of scarce construction professionals across the SADC region thereby enabling sharing of skills, cost effectiveness and education

²⁷⁴ SADC construction workshop, December 8, 2015

²⁷⁵ Suggestion made by Zambia at SADC construction workshop, December 8, 2015

as well. (iv) most SADC member states are importers of construction services, but construction professionals is one area where SADC member states can develop a future supply potential for their own country and firms as well as for supplying the region given the future opportunities in the SADC construction sector.

275. High skilled mobility will however require either the recognition of qualifications through the conclusion of MRAs or harmonization of academic and technical qualifications. Immediate harmonization of regulatory and educational systems regarding construction sector professionals is considered by some experts as a difficult and time consuming process given the differing standards, trainings, languages.²⁷⁶ MRAs by comparison provide a more viable option. These individuals or firms, from SADC or SADC owned can operate either on their own or in conjunction with nationals, thereby having the dual effect of filling a gap and contributing to national capacity building. Existing MRAs concluded within the East African context, have been suggested as a basis to start with in SADC.²⁷⁷ It may also be useful to consider existing international MRA models to decide and structure SADCs own models. Further using international standards such as the Washington Accord for engineers as a ready reference point, would enable greater acceptance, quality and potentially future extra SADC export possibilities.
276. In terms of low skilled labour, there is the possibility to consider, within SADC member states, that a contracting party may bring their own contingent of low skilled labour, provided they undertake to ensure that the party leaves on completion of work. This may help develop a low skilled labour base from the SADC region linked to registered contractors that can move across the region. Foreign contractors from outside the SADC region can at a later stage be required to utilize this developed labor base for intra SADC projects. To a large extent this movement is happening in any event whether officially or not. However, in recent years sensitivities to immigration in particular for low skilled workers in the construction sector across the SADC region, owing to a number of factors including the need for employment of locals, financial crisis amongst others.
277. Mode 1 can be another area that can be effectively leveraged to overcome scarcity of construction professionals. Here too the issue of monitoring, regulation and accountability is likely to arise, once more highlighting the importance of MRAs and regional monitoring. To avoid this Mode 1 possibilities can be confined to the initial design stage as for instance concept development, otherwise the issue of accountability for instance in architecture services where a inexperienced architect may end up stamping drawings for use in another SADC member state.²⁷⁸ Further Mode 1 commitments can be undertaken with Modes 3 and 4 to ensure accountability.
278. Furthermore, the lack of technological capacity has the effect of hindering Mode 1 supply of construction services such as the electronic supply of design, inventory analysis, and project management services, as these services can be provided through the Internet, especially with the construction industry increasingly becoming more dependent on computer use. The benefits of outsourcing particularly in the pre design and project management phases, is a potential area of export potential that could bring down costs and

²⁷⁶ Suggestion made by Tanzania at the SADC construction workshop of December 8, 2014

²⁷⁷ Suggestion made by Tanzania at the SADC construction workshop of December 8, 2014.

²⁷⁸ Suggestion made by Tanzania at the SADC construction workshop of December 8, 2014.

ease the pressure on the labour market. Mode 1 commitments in this regard, are an area that SADC member states may wish to consider.²⁷⁹

279. Procurement in construction services is another area that SADC member states may wish to consider, given that more than 50% of construction works is carried out through government procurement. SADC level construction related procurement processes can be harmonized, given that there are several areas in common amongst SADC construction related procurement regime. A guide on these common procedures and areas can be created for the benefits of SADC wide construction service providers.²⁸⁰
280. Since in all the countries it is a legal requirement that most construction works are awarded based on a tendering process, the manner in which this process is conducted is critical. The large procurement contracts in construction are already being undertaken by international firms, and preferences for nationals already exist in the procurement regime of almost all SADC countries.
281. While economic empowerment programs exist across all SADC member states, a gap in policy and practice has been raised as an issue amongst some stakeholders. The key could potentially lie in enforcing preferences and employment provisions, including through monitoring and inspection. There could also be a focus on intra SADC construction services providers.²⁸¹ Rules of origin in construction services supply will become all the more important in the area of procurement of construction services as the preferences are very strictly reserved for nationals.

Construction Services Negotiations in other Fora

282. Most SADC member states are negotiating trade in construction services or related commitments in other fora, primarily the WTO, but also COMESA, Tripartite, EPAs, bilaterals amongst others. For trade in construction services negotiations, given the breadth and scope of the sector, it would be relevant for SADC member states to have a common approach in all for a. A considered decision would need to be taken at a national and SADC wide level, as to which is the appropriate forum for the widest construction sector commitments. SADC construction services maybe a good reference point and testing ground to begin with, given existing regulatory commonalities and construction trade links amongst SADC member states.
283. The need to build a strong SADC construction sector, which focuses within the region for construction services rather than outside, has been emphasized by several countries. Such an approach would build capacity, retain profits, generate employment. SADC member states trade negotiation in other trade fora should reflect this decision to build a strong SADC construction sector.²⁸²

²⁷⁹ UNCTAD study 2008

²⁸⁰ Suggestion made by Zambia at the SADC construction workshop of December 8, 2014.

²⁸¹ UNCTAD study 2008

²⁸² SADC construction workshop, December 8, 2015

284. Further substantive discussions and developments at the WTO, as they relate to the construction sector will also need to be monitored for their impact on SADC construction sector negotiations. Those relating to the proposed LDC waiver on trade in services, Disciplines on domestic regulation, discussions on classification and scheduling and Rules of origin in the services sector.

Regulatory Benchmark in the Construction sector

285. Regional trade liberalization in the construction sector, would require an enabling and supportive framework, without which the trade liberalization is likely to be of limited value. Based on the commonalities in regulation in the construction sector across SADC member states, possible principles that could be included in this Regulatory Benchmark have been identified. These include common definitions, the scope of the regulatory benchmark, non discrimination, areas that can be exempted, transparency, accountability, market access, preservation of procurement preferences, registration procedures for qualified suppliers in the construction sector, technical specification and standards, special coverage of contractors and professionals such as architects/engineers, basic principles for procurement, financing, regional institutional cooperation, environment, health, safety, labour and dispute settlement provisions.

Regional wide initiatives

286. Two essential regional wide initiatives are the setting up of MRAs, preferably based on existing international and existing regional standards. Second, regional co-operation in the monitoring and accountability of qualified suppliers in the construction sector and contractors is essential to movement in mode 4, mode 3 and potentially mode 1. This can take the form of regional working groups (formal or informal), regional registers of contractors, architects, and engineers. Or a database which member states report into and can access at the SADC level. Building on existing repositories of information within SADC such as national and regional associations will avoid duplication.
287. Leveraging technology to create a SADC wide platform for registration of professionals and contractors and to move towards eprocurement in the construction sector was put forward as an important regional initiative.²⁸³
288. Construction disputes in several SADC countries are not resolved by the formal legal process but by arbitration/mediation owing to the technical nature of the sector. The issue of having some kind of a platform for dispute settlement in the construction sector was considered important for the functionality of the sector across SADC.²⁸⁴ The use of FIDEC contract dispute provisions which provide for clarity in dispute settlement was suggested.²⁸⁵

Intra SADC Trade Framework

289. It has been pointed out that there is currently no SADC protocol or construction framework. In the absence of such a region wide Construction framework it is important to have some

²⁸³ Suggestion made by Zambia at SADC construction workshop, December 8, 2015

²⁸⁴ Suggestion made at the SADC construction workshop of December 8, 2014.

²⁸⁵ Suggestion made by Zambia at the SADC construction workshop of December 8, 2014.

kind of regional institutional set up such as regional committees.²⁸⁶ Such a regional wide committee could focus on regulatory issues as well as capacity building.

290. Evaluation of existing SADC Protocols and other legal instruments to determine their bearing on liberalization of trade in construction services in terms of areas that can be leveraged and areas that maybe conflicting maybe necessary. These include the SADC Education Implementation Plan, Decisions on Movement of Persons, SADC Finance and Investment Protocol and the SADC Infrastructure Protocol SADC Energy and Transport Protocols.

SADC Infrastructure Program

291. The SADC Infrastructure Program creates a platform where member states, project sponsors and Development financing institutions can interact with the SADC secretariat performing a facilitative role There are several cross border projects involving SADC member states.²⁸⁷ Areas of the SADC infrastructure program which may be interesting for SADCs work on trade in construction service include:
292. Using the SADC Infrastructure program to create or build on an already existing register of projects, SADC member states may use this for reporting, information sharing and general awareness of construction related activities and opportunities within the region. Later if SADC member states choose to cover construction related procurement this register of projects may help fulfill the transparency requirements.
293. Registration of qualified construction professionals and the maintenance of a SADC wide register if agreed can be leveraged within the SADC Infrastructure program.

International Standards or Regional ones

294. SADC member states will also need to make a decision as to whether they would choose to adhere to international or regional standards in the construction sector. This has immediate relevance to deliberations on MRAs as well as Technical standards. It would be of greater value to aspire for international standards while building on regional ones, especially if SADC member states would in future like to expand construction operations within the region beyond SADC.
295. For intra SADC construction services trade, technical Standards in would need to be harmonized or have degree of regional acceptance. The SADC Infrastructure program, has already developed technical standards within certain areas such as roads, rehabilitation etc. These technical standards can be built on more regionally. Suggestions have been made to

²⁸⁶ Suggestion made by Tanzania at SADC Construction Workshop, December 8 2014

²⁸⁷ For a indicative list of projects, SADC member states involved, donors and value and scope of the project, see SADC Regional Infrastructure Development Master Plan, Executive Summary August 2012.

adhere to international acceptable standards such as ISO where available.²⁸⁸ As a first step for information sharing, South Africa's SPECIFILE can be leveraged.²⁸⁹

296. **Specific policy recommendations**

- i. Consider Mode 3 commitments, and explore Mode 1 and 4 options
- ii. Consider loosening procurement policies but also ensure existing provisions for national preferences are implemented
- iii. Establish mutual recognition agreements to encourage portability of skills
- iv. Set up necessary formal or informal regional institutions/ groups to support setting up of MRAs and the monitoring of cross country professionals
- v. Adopt a common enabling framework for trade liberalization commitments undertaken in construction sector, containing appropriate provisions of the Regulatory Benchmark

²⁸⁸ FIDIC is the International Federation of Consulting Engineers, is an international standards setting body best known for its construction contract templates. Engineering Associations of several SADC Member states including Botswana, Namibia, Malawi, Mauritius, Mozambique, South Africa, Tanzania, Zambia and Zimbabwe are members of FIDIC.

²⁸⁹ SPECIFILE, South Africa collates information on technical standards and shares the same within the SADC region. South African Bureau of Standards has established a new technical committee for Construction Standards to maintain approximately 250 construction related standards and test methods and to develop new standards in this area.

ANNEXES TO SADC CONSTRUCTION STUDY

ANNEX 1 COMPARISON OF W120, UN CPC PROVISIONAL, UNPCPC VERSION 2 COVERAGE OF CONSTRUCTION, ARCHITECTURE AND ENGINEERING SERVICES

CATEGORY	W120	UNPCPC Prov	UNPCPC Ver 2
CONSTRUCTION AND RELATED ENGINEERING SERVICES	3	5 Construction work and construction	Section: <u>5</u> - Constructions and construction services Division: 54 - Construction services ²⁹⁰
General construction work for buildings	3A	512 Construction work for buildings	<u>541</u> - General construction services of buildings <u>5411</u> - General construction services of residential buildings <u>5412</u> - General construction services of non-residential buildings <u>54121</u> - General construction services of industrial buildings <u>54122</u> - General construction services of commercial buildings <u>54129</u> - General construction services of other non-residential buildings
General construction work for civil engineering	3B	513 Construction work for civil engineering	<u>542</u> - General construction services of civil engineering works <u>5421</u> - General construction services of highways (except elevated highways), streets, roads, railways and airfield runways <u>5422</u> - General construction services of bridges, elevated highways and tunnels <u>5423</u> - General construction services of harbours, waterways, dams, water mains and lines, irrigation and other waterworks <u>5424</u> - General construction services of long-distance pipelines, communication and power lines (cables) <u>5425</u> - General construction services of local pipelines and cables and related works <u>5426</u> - General construction services of mines and industrial plants <u>5427</u> - General construction services of outdoor sport and recreation facilities <u>5429</u> - General construction services of other civil engineering works

²⁹⁰ This division includes: general construction services for constructions defined in division 53, specialized construction services (special trades), i.e. services related to parts of buildings or civil engineering works, rather than the complete construction object.

CATEGORY	W120	UNPCPC Prov	UNPCPC Ver 2
Installation and assembly work	3C	516 Assembly work	546 - Installation services 5461 - Electrical installation services 5462 - Water plumbing and drain laying services 5463 - Heating, ventilation and air conditioning equipment installation services 5464 - Gas fitting installation services 5465 - Insulation services 5469 - Other installation services
		514 Assembly & erection of prefabricated construction	544 - Assembly and erection of prefabricated constructions
Building completion and finishing work	3D	517 Building completion and finishing work	547 - Building completion and finishing services 5471 - Glazing services 5472 - Plastering services 5473 - Painting services 5474 - Floor and wall tiling services 5475 - Other floor laying, wall covering and wall papering services 5476 - Joinery and carpentry services 5477 - Fencing and railing services 5479 - Other building completion and finishing services
Other	3E	511 Pre-erection work at construction sites	543 - Site preparation services 5431 - Demolition services 5432 - Site formation and clearance services 5433 - Excavating and earthmoving services 5434 - Water well drilling and septic system installation services
		515 Special trade construction work	545 - Special trade construction services 5451 - Pile driving and foundation services 5452 - Construction framing services 5453 - Roofing and waterproofing services 5454 - Concrete services 5455 - Structural steel erection services 5456 - Masonry services 5457 - Scaffolding services 5459 - Other special trade construction services
		518 Renting services related to equipment for construction or demolition of buildings or civil engineering works, with operator	NO EQUIVALENT CATEGORY
BUSINESS SERVICES Professional Services	1 1A	867 - Architectural, engineering and other technical services	Section: 8 - Business and production services Division: 83 - Other professional, technical and business services

CATEGORY	W120	UNCPC Prov	UNCPC Ver 2
Architectural Services	1Ad	<p>8671</p> <p>86711 - Advisory and pre-design architectural services</p> <p>86712 - Architectural design services</p> <p>86713 - Contract administration services</p> <p>86714 - Combined architectural design and contract administration services</p> <p>86719 - Other architectural services</p>	<p>8321 - Architectural services and advisory services²⁹¹</p> <p>83211 - Architectural advisory services</p> <p>83212 - Architectural services for residential building projects</p> <p>83213 - Architectural services for non-residential building projects</p> <p>83214 - Historical restoration architectural services</p>
Engineering Services	1Ae	<p>8672</p> <p><u>86721</u> - Advisory and consultative engineering services</p> <p><u>86722</u> - Engineering design services for the construction of foundations and building structures</p> <p><u>86723</u> - Engineering design services for mechanical and electrical installations for buildings</p> <p><u>86724</u> - Engineering design services for the construction of civil engineering works</p> <p><u>86725</u> - Engineering design services for industrial processes and production</p> <p><u>86726</u> - Engineering</p>	<p>833 - Engineering services</p> <p>8331 - Engineering advisory services²⁹²</p> <p>8332 - Engineering services for specific projects</p> <p>83321 - Engineering services for building projects</p> <p>83322 - Engineering services for industrial and manufacturing projects</p> <p>83323 - Engineering services for transportation projects</p> <p>83324 - Engineering services for power projects</p> <p>83325 - Engineering services for telecommunications and broadcasting projects</p> <p>83326 - Engineering services for waste management projects (hazardous and non-hazardous)</p> <p>83327 - Engineering services for water, sewerage and drainage projects</p> <p>83329 - Engineering services for other projects</p> <p>8333 - Project management services for construction projects</p>

²⁹¹ This class includes: advisory and pre-design services, preparation of designs and construction documents, plans, studies and other advisory services related to the design of buildings. The architectural services may be provided in a bundle covering all stages of a building project, including the advisory, pre-design and design stages, or they may be provided individually.

²⁹² This subclass includes: provision of (i) advice to clients concerning engineering principles and methods, when performed independently of an engineering project, including policy analysis, regulatory studies and audits (ii) provision of testimony by a witness who, by virtue of experience, training, skill or knowledge of engineering, is recognized as being qualified to render an informed opinion on such matters (iii) engineering investigation of a failed engineered system or structure to determine causal factors. This subclass does not include: advice, studies, and reports performed in conjunction with a project, cf. based on the project type under 8332

CATEGORY	W120	UNPCPC Prov	UNPCPC Ver 2
		design services n.e.c. <u>86727</u> - Other engineering services during the construction and installation phase <u>86729</u> - Other engineering services	
Integrated engineering services	1Af	8673 <u>86731</u> - Integrated engineering services for transportation infrastructure turnkey projects <u>86732</u> - Integrated engineering and project management services for water supply and sanitation works turnkey projects <u>86733</u> - Integrated engineering services for the construction of manufacturing turnkey projects <u>86739</u> - Integrated engineering services for other turnkey projects	NO CATEGORY EQUIVALENT
Urban planning and landscape architectural services	1Ag	8674 86741 - Urban planning services 86742 - Landscape architectural services	<u>8322</u> - Urban and land planning services <u>83221</u> - Urban planning services <u>83222</u> - Rural land planning services <u>83223</u> - Project site master planning services ²⁹³ <u>8323</u> - Landscape architectural services and advisory services ²⁹⁴ <u>83231</u> - Landscape architectural advisory services <u>83232</u> - Landscape architectural services

²⁹³ This subclass includes providing plans for a construction site, showing the proposed location of buildings, roads, parking lots and other features, for: residential building projects, non-residential building projects, recreational and open-space projects

²⁹⁴ This class includes architectural services concerned with the design of the landscape. Landscape architectural services include the provision of designs and construction documents, plans, studies and other services related to specific landscape projects

ANNEX 2 : Top 30 International Contracting Firms (2014)

FIRM		2013 INTERNATIONAL REVENUE (\$ MIL.)
2014		
1	Grupo ACS, Madrid, Spain†	44,053.8
2	HOCHTIEF AG, Essen, Germany†	34,845.0
3	Bechtel, San Francisco, Calif., U.S.A.†	23,637.0
4	VINCI, Rueil-Malmaison, France†	20,292.6
5	Fluor Corp., Irving, Texas, U.S.A.†	16,784.3
6	STRABAG SE, Vienna, Austria†	15,392.0
7	BOUYGUES, Paris, France†	14,789.0
8	Skanska AB, Stockholm, Sweden†	14,141.1
9	China Communications Construction Group Ltd., Beijing, China†	13,162.5
10	Technip, Paris, France†	12,243.0
11	Saipem, San Donato Milanese, Italy†	12,137.6
12	Construtora Norberto Odebrecht, Sao Paulo, SP, Brazil†	9,877.1
13	Hyundai Engineering & Construction Co. Ltd., Seoul, S. Korea	8,707.8
14	Ferrovial, Madrid, Spain†	7,416.5
15	Samsung Engineering Co. Ltd., Seoul, S. Korea†	7,132.5
16	Bilfinger SE, Mannheim, Germany	6,853.5
17	Samsung C&T Corp., Seoul, S. Korea	6,308.0
18	Royal BAM Group nv, Bunnik, The Netherlands†	5,936.0
19	Abeinsa SA, Seville, Spain†	5,824.2
20	China State Construction Engineering Corp., Beijing, China†	5,742.7
21	Petrofac Ltd., Jersey, Channel Islands, U.K.†	5,685.1
22	PCL Construction Enterprises Inc., Denver, Colo., U.S.A.†	5,497.3
23	Sinohydro Group Ltd., Beijing, China†	5,314.4
24	Consolidated Contractors Group, Athens, Greece†	5,289.4
25	China National Machinery Industry Corp., Beijing, China†	5,288.9
27	JGC Corp., Yokohama, Japan†	4,822.0
28	China Railway Group Ltd., Beijing, China†	4,766.9
29	GS Engineering & Construction Corp., Seoul, S. Korea†	4,713.4
30	Daelim Industrial Co. Ltd., Seoul, S. Korea†	4,381.3

ANNEX 3

Value of Construction sector in GDP, Annual Growth Rate of Construction Sector, Share of Construction in GDP for SADC Member States (2000-2012) Source: SADC Secretariat

GDP Construction Sector, 2000-2012 Million \$													
Member States	Year												
	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Angola	n.a	n.a	n.a	440	673	945	825	988	241	5 066	6 445	8 018	8 875
Botswana	289	256	360	426	506	473	487	577	546	628	744	914	982
Democratic Rep. of Congo (DRC)	1 759	297	281	261	411	454	632	692	782	752	852	1 057	n.a
Lesotho	86	61	40	57	57	59	60	62	73	84	112	123	154
Madagascar	63	79	80	104	101	137	186	289	410	327	308	341	312
Malawi	n.a	n.a	84	77	86	97	89	95	130	173	209	n.a	n.a
Mauritius	218	215	233	296	321	307	329	430	591	556	600	658	636
Mozambique	329	298	147	160	169	192	203	226	277	275	262	348	415
Namibia	78	105	67	127	176	194	265	320	343	289	355	439	458
Seychelles	49	50	67	60	41	55	54	53	50	41	43	62	45
South Africa	3 044	606	294	536	967	061	821	067	752	10 255	12 551	850	735
Swaziland	47	50	42	56	82	87	85	79	65	62	69	68	n.a
United Republic of Tanzania	519	537	725	922	006	102	106	317	574	1 670	1 801	1 885	2 246
Zambia	151	190	234	318	461	684	241	594	242	2 236	3 112	4 085	4 574
Zimbabwe	177	87	83	82	79	77	68	68	63	139	184	292	380

GDP Construction sector, Annual Real Growth Rates in SADC, (%), 2000-2012													
Member States	Year												
	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Angola	n.a	8.5	10.0	3.3	10.9	16.0	30.0	37.1	25.6	23.8	16.0	6.1	7.5
Botswana	-7.8	-14.6	37.0	-14.2	-1.1	-1.2	15.0	24.2	0.8	12.3	3.6	23.1	14.4
Democratic Rep. of Congo (DRC)	n.a	9.9	8.1	23.6	24.9	21.9	-0.4	5.2	3.6	5.7	0.8	1.6	n.a
Lesotho	22.8	-11.6	-20.0	-3.9	-19.1	4.1	-1.6	0.4	28.4	4.8	13.7	3.3	34.5
Madagascar	n.a	13.4	-15.5	29.9	29.0	18.7	27.3	21.8	27.7	-18.1	2.2	3.7	0.6
Malawi	-0.3	1.1	1.8	0.7	2.6	12.1	12.2	20.0	25.1	-20.0	-6.1	n.a	n.a
Mauritius	8.5	6.0	6.3	13.3	0.5	-4.7	5.9	15.7	11.8	5.9	4.3	-2.0	-2.9
Mozambique	13.0	6.7	10.8	9.7	-7.0	13.2	10.4	11.8	12.5	5.8	5.4	4.6	10.4
Namibia	n.a	58.5	-31.0	27.2	5.9	2.3	37.1	14.4	10.0	-18.4	5.6	19.3	12.4
Seychelles	-0.2	1.3	4.2	-20.2	32.8	32.8	15.7	9.9	10.8	-4.9	-4.8	27.7	-2.9
South Africa	5.6	4.9	5.8	7.7	9.1	11.9	10.4	15.0	8.5	7.8	0.7	0.5	2.5
Swaziland	14.1	25.3	-10.7	-9.9	17.3	5.6	3.5	-3.4	-3.0	-2.6	-2.6	-2.6	n.a
United Republic of Tanzania	0.8	7.6	11.8	13.7	12.9	10.1	9.4	9.6	10.5	7.5	10.2	8.9	7.7
Zambia	6.6	11.6	17.5	21.8	20.7	21.4	14.6	20.2	8.8	9.7	8.3	9.1	13.8
Zimbabwe	-23.3	-50.6	-4.9	-3.7	-3.0	-3.6	-4.6	-2.3	-2.8	121.9	14.0	65.0	23.5

GDP Construction sector, Share in respective economy, (%), 2000-2012													
Member States	Year												
	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Angola	n.a	n.a	n.a	3.6	3.8	3.1	4.3	4.9	5.2	7.7	8.1	7.9	7.8
Botswana	5.4	5.1	7.1	6.2	6.3	5.3	5.3	5.9	5.5	7.1	6.0	6.6	7.4
Democratic Rep. of Congo (DRC)	2.9	2.8	3.3	3.0	4.2	3.9	4.5	4.4	4.2	4.9	4.5	4.6	n.a
Lesotho	11.9	9.2	6.4	6.4	5.0	4.8	4.5	4.2	4.9	5.3	5.8	5.6	7.5
Madagascar	1.8	1.9	1.9	2.1	2.5	3.0	3.7	4.3	4.8	4.1	3.8	3.8	3.4
Malawi	n.a	n.a	3.1	3.1	3.0	3.3	2.7	2.6	2.7	3.1	3.4	n.a	n.a
Mauritius	5.3	5.2	5.4	5.8	5.6	5.4	5.4	6.3	6.9	7.0	7.0	6.6	6.3
Mozambique	8.8	8.1	3.8	3.7	3.2	3.2	3.1	3.0	3.0	3.0	3.0	3.1	3.2
Namibia	2.2	3.2	2.2	2.8	2.9	2.9	3.6	3.9	4.2	3.5	3.5	3.9	3.8
Seychelles	8.9	8.9	10.4	9.7	6.0	7.3	6.2	5.9	6.0	5.7	5.4	7.0	4.7
South Africa	2.5	2.4	2.3	2.3	2.5	2.8	2.9	3.2	3.6	4.0	3.8	3.8	4.0
Swaziland	3.7	4.5	4.1	3.7	4.3	4.3	3.9	3.5	2.9	2.6	2.3	2.1	n.a
United Republic of Tanzania	5.4	5.5	7.2	8.5	8.4	8.5	8.5	8.6	8.4	8.6	8.7	8.7	8.8
Zambia	5.2	5.9	6.9	8.1	9.3	10.4	12.5	14.8	16.4	18.3	20.0	22.1	23.1
Zimbabwe	2.1	1.0	1.0	1.1	1.1	1.1	1.1	1.1	1.1	2.0	2.3	3.1	3.6

ANNEX 4 NATIONAL EXAMPLES OF CONTRACTOR GRADING

SWAZILAND.²⁹⁵

Table 1. Civil contractor grading (roads department) in Swaziland

Categories	Local contractors	Foreign contractors	Project Category Eligible to tender for
Category 1	1	2	Locally and internationally funded construction projects above E20 million.
Category 2	1	2	Local and internationally funded construction projects above E10 million but below E20million.
Category 3	4	0	Local and internationally funded construction projects above E5 million but below E10million.
Category 4	6	0	Local and internationally funded construction projects above E1million but below E5million.
Category 5	24	0	Local and internationally funded construction projects above E500, 000.00 but below E3million.
Category 6	158	0	Local and internationally funded construction projects below E500, 000.00.

Source: Ministry of public works and roads- Swaziland: 2007.

Table 2. Contractor grading (buildings department) in Swaziland

Categories	Local contractors	Foreign contractors	Project Category Eligible to tender for
Category M	8	5	Locally and internationally funded construction projects above E20 million.
Category M1	6	0	Local and internationally funded construction projects above E10 million but below E20million.
Category A	11	2	Local and internationally funded construction projects above E5 million but below E10million.
Category B	13	0	Local and internationally funded construction projects above E1million but below E5million.
Category C	20	0	Local and internationally funded construction projects above E500, 000.00 but below E3million.
Category D	91	0	Local and internationally funded construction projects below E500, 000.00.

Source: Ministry of public works and buildings department: 2007.

Source: National Construction Council, Zambia, August 2006.

²⁹⁵ Wellington Didibhuku Thwala, Mpendulo Mvubu, Problems Facing Small and Medium Size Contractors in Swaziland, J of Service Science & Management, 2009, 2: 353-361, December 2009. The authors 100 distributed questionnaires to different role players in the construction sector in Swaziland. The response rate was 87%.

Designated Class	Project Value	
	Building and Housing	Civil Engineering
Grade 1	Unlimited	Unlimited
Class 2	\$3,750,000	\$5,000,000
Class 3	\$1,875,000	\$2,500,000
Class 4	\$875,000	\$1,250,000
Class 5	\$500,000	\$375,000
Class 6	\$125,000	\$125,000

Botswana²⁹⁶

Construction Work for Building

Class	Maximum Contract Value	Number of Local Firms	Number of foreign firms	Total Number of Firms
OC	300, 000	782	0	782
A	100000	114	0	114
B	2,000 000	88	0	88
C ³	4,000 000	Not available	Not available	44
D	8000, 000	Not available	Not available	22
E	Unlimited	Not available	Not available	43

Source: Department of Architecture and Building Services

Construction Work for Civil Engineering (Roads)

Class	Maximum Contract Value	Number of Local Firms	Number of Foreign Firms	Total Number of Firms
OC	600, 000	224	0	224
A ⁴	2,000,000	55	Unknown	57
B ⁵	10,000,000	21	4	28
C ⁶	20,000,000	13	Unknown	15
D ⁷	40, 000, 000	11	8	19
E ⁸	Unlimited	2	6	10

Source: Department of Roads

Installation and Assembly (Electrical and Mechanical)

Class	Maximum Contract Value	Number of Local Firms	Number of foreign firms	Total Number of Firms
OC	40,000	58	0	8
A	100,000	35	0	35
B	250,000	23	7	30
C	500,000	8	14	22
D	1000,000	5	8	13
E	Unlimited	6	25	31

Source: Department of Electrical and Mechanical Services

²⁹⁶ Kaboyakgosi and Sengwaketse, Construction and Related Services in Botswana, Botswana Institute for Development Policy Analysis, SATRN Working Paper No. 4, April 2003

Contract Ceiling by Classification

	CLASS LIMIT FOR ANY SINGLE CONTRACT(In Million Tshs)				
CLASS	CIVIL	BUILDING	MECHANICAL	ELECTRICAL	SPECIALIST
ONE	UNLIMITED	UNLIMITED	UNLIMITED	UNLIMITED	UNLIMITED
TWO	4500	1200	750	750	150
THREE	1500	900	450	450	75
FOUR	750	600	300	300	-
FIVE	450	300	150	150	-
SIX	200	150	75	75	-
SEVEN	100	75	30	30	-

Source: Contractors Registration Board

ANNEX 5: LIST OF RESOURCE PERSONS CONTACTED**SADC SECRETARIAT**

Alfred Ndabeni, Program Officer, Trade in Services, SADC
Mapolao Rosemary Mokoena, Senior Programme Officer – Transport, Infrastructure
and Services Directorat
Ackim Jere, Senior Officer, SADC Statistics Unit
Deepsingh Jagai, SADC Statistics Unit
Shubhi Mukurashi, Legal Officer

Medicine Masiwa, Coordinator, SADC Regional Economic Integration Support
Programme
Emily Mburu, Advisor, SADC Regional Economic Integration Support Programme
Malcolm Mckinnon, Advisor GIZ
Viola Sawere, GIZ

SADC Informal Construction Group

Engineer Francis Mwape, National Council for Construction, Zambia
Nana Mhlongo, Manager, Council of Built Environment, South Africa
Joe Malongo, Contractors Registration Board, Tanzania

ANNEX 6 FOCUS COUNTRY NATIONAL PROFILE, LIST OF PARTICIPANTS AND INTERVIEWEES

BOTSWANA CONSTRUCTION SECTOR NATIONAL CONSULTATIONS

DATE: 21 October 2014

TIME: 0830 HRS

LOCATION: Ministry of Trade and Industry Headquarters – Ground Floor Boardroom

1. **Opening remarks** *Ministry of Trade and Industry*
 - a. **SADC Protocol on Trade in Services: why construction is a priority sector and purpose of sector study**
 - b. **What do we mean by trade in services?**
2. **Objectives of study and information requirements from sector** *Presentation by Short Term Expert*
3. **Market structure of construction sector in Botswana and participation of foreign companies** *Speaker from Ministry of Public Works*
4. **Professional services: Market structure of architectural and engineering sector in Botswana and participation of foreign companies** *Speaker from architects association*
5. **Future development of construction sector and ambitions for regional export growth - strengths and weaknesses in Botswana** *General discussion*
6. **Detailed discussion of questionnaire for national consultations** *Discussion led by Short Term Expert*
7. **Review of proposed SADC regulatory benchmark for the construction sector** *Presentation by Short Term Expert*
8. **Conclusion and way forward** *Ministry of Trade and Industry*

LIST OF PARTICIPANTS

NO.	NAME	ORGANISATION
1	Keemenao Kekobilwe	Department of Buildings and Engineering Services/Ministry of Infrastructure, Science & Technology
2	Bena Tibe	Department of Buildings and Engineering Services/Ministry of Infrastructure, Science & Technology
3	Nic Janse Van Rensburg	Association of Botswana Building and Civil Engineering Contractors
6	Ogaufi Phemo Motshwane	Ministry of Trade and Industry/Department of International Trade
7	Portia L.A. Mannathoko	Ministry of Trade and Industry/Department of International Trade
8	Kelebogile M. Lekaukau	Ministry of Trade and Industry/Department of International Trade
9	Yvonne Chileshe	Ministry of Trade and Industry/Department of International Trade
10	Charity Kelaotswe	Ministry of Trade and Industry/Department of International Trade
11	Jenamiso J. Mphake	Association of Consulting Engineers Botswana
12	Shadrack Kobole	Association of Consulting Engineers Botswana
13	Mpho Makgosa	Botswana Youth Contractors Association
14	Gorata Moleboge	Ministry of Infrastructure, Science & Technology
15	Michael Moji	Setlogelwa Tsatsing Association

BOTSWANA NATIONAL CONSTRUCTION SECTOR PROFILE

BOTSWANA		
Share of Construction as % of total employment (2010)	9.2	
Construction Sector share in GDP, 2012 (%)	7.4	
Trade Value of Exports and Imports (Million USD)	Exports (2012) 4.71	Imports (2012) 7.88
Origin of foreign operators	China, South Africa	
Number of firms		
Kind of regulatory regime	Concessions, procurement, government regulation	
Regulator and Regulatory Bodies	Department of Architecture and Building Services, Ministry of Infrastructure and Public Works, Public Procurement and Asset Disposal Board, Architects Registration Council, Engineers Registration Board	
Relevant Legislation	Development Control Code Building Control Regulations Town and Country Planning Act of 1977 Architects Registration Act, 2008 Engineers Registration Act, 2008	
Procurement preferences	Yes	

Source: SADC Statistics Unit, WTO, ILO Database, Consultant research

1. The construction sector in Botswana accounted for 7.4% of GDP in 2012 and 9.2% of total employment for 2010. Botswana is a net importer of construction services, with imports in 2012 reaching nearly double the value of exports.
2. The construction sector is generally open. The government is the biggest client and public expenditure drives Botswana's construction sector. Property development is an increasingly growing segment. The construction sector is comprised of small, medium local firms and large foreign construction companies. In 2000 there was an estimated 1000 operating construction firms out of which, 211 companies were not registered with the Registrar of Companies.²⁹⁷ Several international construction firms are active in the Botswana construction sector including South African and Chinese firms.
3. There is concern amongst citizen owned construction sector operators as to the existing and future loss of opportunity to foreign construction companies. While the PPADB does make procurement reservation for Botswana nationals, there, gaps in implementation may exist. For instance even though Grade E of contractor registration is reserved for nationals, in reality very few Grade E contractors beg international contracts.
4. At the same time, Botswana construction service suppliers need to be build supply capacity and look beyond supplying the national market. ²⁹⁸ Local firms have benefitted from some degree of construction subcontracting within the country but also increasingly subcontracting work from outside the region. Eg. Chinese construction firm in Zambia. However sub-contracting work does give visibility to Botswana construction firms.

Regulation and Regulatory Structure:

5. Several legislations pertaining to Botswana's construction sector are currently underway. This includes the Architects Act passed in 2008, and the Engineering Act passed by Parliament in 1998 and amended in 2008 to be implemented in 2014. These Acts provides for registration of domestic and foreign professionals with recognized degrees, work experience as well as the conclusion of MRAs.
6. The Botswana construction industry is also in the process of setting up a Construction industry specific policy based on existing models in South Africa and Kenya. The emerging Botswana Construction industry policy envisages the creation of a Construction Industry Regulatory Body and the setting up of Register of Contractors. Currently contractors are only registered by PPADB. 78695It is hoped this Construction Sector wide policy will bring more regulation within the sector. ²⁹⁹
7. *Specification for technical standards* is set by the Botswana bureau of Standards and is a combination of national British and South African standards.

²⁹⁷ Kaboyakgosi and Sengwaketse, Construction and Related Services in Botswana, Botswana Institute for Development Policy Analysis, SATRN Working Paper No. 4, April 2003

²⁹⁸ Inputs from Botswana National Consultations held on 29th October 2014, Gaborone, Botswana.

²⁹⁹ Inputs from Botswana National Consultations held on 29th October 2014, Gaborone, Botswana.

8. *Mode 3 Related regulations*

- No fixed ratio of equity between foreign and local construction companies. But foreign investors are encouraged to enter into joint ventures with local investors.³⁰⁰
- When foreign investors sell their interests in resident companies, locals to be given priority to purchase such interests.³⁰¹
- Mandatory registration requirements for both foreign and local firms with Registrar of Companies³⁰²

9. *Mode 4 related regulation*

- All non-citizen employees and self-employed persons are required to have work and resident permits. Foreign investors who need to recruit non-citizen staff to fill the skills gap are required to apply for work permits.
- Work permits granted on the basis of a labor market test and submission by the employer of a program to train citizen replacement for each position.³⁰³ It has been argued that requirements for work permits and delays in obtaining them can sometimes defeat the contractor's objectives of completing projects on schedule and within budget.³⁰⁴
- Professional foreign natural persons must be registered in countries of origin.³⁰⁵
- Qualifications of foreign professional employed by company should be recognized by appropriate legislative Council and in its absence Botswana Institute of Engineers.³⁰⁶
- Provision for temporary registration of professionals such as architects
- provision in the architect registration act 2008, for conclusion of MRAs

10. *Procurement*

- For the award of a contract, construction service and works providers must be registered with the Central Tender Board - Supplies Regulations Procedures, 1988. For foreign firms to register with the PPADB, they must satisfy the following requirements:
 - Provide financial profile
 - Provide a list of projects undertaken internationally
 - Provide references
- Certain categories of contractor grading are reserved for citizens or require the setting up of joint ventures. Contractor categories are reserved for Categories OC, A and B for 100% citizen owned companies. Categories C and D are for citizen majority owned joint ventures (51% citizen owned and 49% or less foreign

³⁰⁰ Botswana WTO Schedule of commitments

³⁰¹ Botswana WTO Schedule of commitments

³⁰² Kaboyakgosi and Sengwaketse, Construction and Related Services in Botswana, Botswana Institute for Development Policy Analysis, SATRN Working Paper No. 4, April 2003, Botswana WTO Schedule of commitments

³⁰³ Kaboyakgosi and Sengwaketse, Construction and Related Services in Botswana, Botswana Institute for Development Policy Analysis, SATRN Working Paper No. 4, April 2003, Botswana WTO Schedule of commitments

³⁰⁴ Kaboyakgosi and Sengwaketse, Construction and Related Services in Botswana, Botswana Institute for Development Policy Analysis, SATRN Working Paper No. 4, April 2003, Botswana WTO Schedule of commitments

³⁰⁵ Botswana WTO Schedule of commitments

³⁰⁶ Botswana WTO Schedule of commitments

owned) and category E has no restrictions by nationality, as such 100% foreign owned companies can participate in this category.³⁰⁷ Firms that are 100% foreign owned are restricted to register in grade E category of the procurement authority. The contract value for Grade E contractors varies between sub categories: for construction work for buildings it is for projects over P8 million. Civil engineering, for projects whose contract value is over P40 million. For installation and assembly for projects over P1 million.

- Entry of foreign firms is still possible at categories reserved for 100% citizen owned firms if citizen capacity is inadequate or not available. Projects over P50 million are open for international competitive bidding.

11. *Others*

- Repatriation of Profits: Fees payable to non-resident service supplier are subject to approval of the Bank of Botswana

12. *Land Use*

- Foreign firms are required to produce a certificate of registration when they apply for use of tribal or state land. Acquisition of land is subject to approval by the Minister of Lands.³⁰⁸ Generally leasing of land is made on 50-year lease. Many of the 50-year leases are coming up for renewal.

13. *Access to Finance*: In terms of Access to finance, several government schemes exist including reservation for citizens, CIDA and increasingly the National development bank is moving into construction financing. Citizen contractors are given payment advances for mobilization. So owned, controlled and registered (PPADB and Registrar of companies) in Botswana.

14. *Botswana's Possible Trade Interests*: In terms of export potential, working with international construction firms, there is the possibility for Botswana to build up its supply capacity in subcontracting work. Further, export potential specifically in the high skilled category exists. Countries of potential interest include South Africa, Zambia.³⁰⁹ However, South Africa's BEE policy is perceived as a potential trade barrier. The conclusion of MRAs would be crucial to the process of high skilled movement.³¹⁰ In countries such as Angola, Mozambique, language and the complicated regulatory structure was perceived as a potential issue. The potential export of Makoro bricks and tiles adhesive to South Africa is also a possibility. Botswana can also use Mozambique timber.

15. However concerns relating construction sector liberalization, are that foreign construction firms could corner key contracts, without including local firms or employees, non use of local material and equipment and repatriation of profits by foreign firms.

³⁰⁷ Kaboyakgosi and Sengwaketse, Construction and Related Services in Botswana, Botswana Institute for Development Policy Analysis, SATRN Working Paper No. 4, April 2003

³⁰⁸ Kaboyakgosi and Sengwaketse, Construction and Related Services in Botswana, Botswana Institute for Development Policy Analysis, SATRN Working Paper No. 4, April 2003

³⁰⁹ Inputs from Botswana National Consultations held on 29th October 2014, Gaborone, Botswana.

³¹⁰ Inputs from Botswana National Consultations held on 29th October 2014, Gaborone, Botswana.

MOZAMBIQUE NATIONAL CONSTRUCTION SECTOR PROFILE**PROGRAM FOR MOZAMBIQUE'S CONSTRUCTION SECTOR NATIONAL CONSULTATIONS****DATE:** 1-2 December 2014**TIME:** 10.00 HRS**LOCATION:** Ministry of Trade Headquarters – Maputo

- | | |
|---|--|
| 9. Opening remarks | <i>Ministry of Trade and Industry</i> |
| a. SADC Protocol on Trade in Services: why construction is a priority sector and purpose of sector study | |
| b. What do we mean by trade in services? | |
| 10. Objectives of study and information requirements from sector | <i>Presentation by Short Term Expert</i> |
| 11. Market structure of construction sector in Mozambique and participation of foreign companies | <i>Speaker from Ministry of Public Works</i> |
| 12. Professional services: Market structure of architectural and engineering sector in Mozambique and participation of foreign companies | <i>Speaker from architects association</i> |
| 13. Future development of construction sector and ambitions for regional export growth - strengths and weaknesses in Mozambique | <i>General discussion</i> |
| 14. Detailed discussion of questionnaire for national consultations | <i>Discussion led by Short Term Expert</i> |
| 15. Review of proposed SADC regulatory benchmark for the construction sector | <i>Presentation by Short Term Expert</i> |
| 16. Conclusion and way forward | <i>Ministry of Trade and Industry</i> |

LIST OF PARTICIPANTS

- MIC/DRI- Ministry of Industry and Trade/Directorate of International Relations;
- MOPH – Ministry of Public Works;
- CPI – Investment Promotion Centre;
- INE – National Institute of Statistics;
- MITRAB – Ministry of Labor;
- CTA – Confederation of Trade Associations.

MOZAMBIQUE		
Share of Construction as % of total employment (2012)	0.1	
Construction Sector share in GDP, 2012 (%)	3.2	
Trade Value of Exports and Imports (Million USD)	Exports (2012) 39.3	Imports (2012) 1 979.67
Origin of foreign operators	Portugal, Brazil, China, Italy, South Africa, India	
Kind of regulatory regime	Mixed, regulation by ministry and concession contracts	
Regulator and Regulatory Bodies	Ministry of Public Works and Housing The Institution of Engineers (ORDEMO) Unit for the Supervision of Acquisitions Association of Engineers of Mozambique (ODENG)	
Relevant Legislation	Procurement statute, Decree 15/2010 of 24 May 2010, "Mega Projects law" Law No. 15/2011 was passed in August 2011	
Procurement preferences	Yes, Upto 15% margin for local firms Low value projects reserved	

Source: SADC Statistics Unit, WTO, ILO Database, Consultant research

297. In 2012 the construction sector in Mozambique, accounted for 3.2% of GDP. As in the case of Angola, Mozambique's imports of construction services massively outweigh its exports of construction services owing to infrastructure development related construction and "mega projects". As a result of Mozambique's high imports, the balance of trade suffered with a 51% increase in the current account deficit in 2012, to 36% of GDP.³¹¹ In terms of employment, the construction sector in Mozambique is ranked 3rd in terms of number of employees absorbed by sector, after services and transport.
298. Similar to Angola, the construction sector in Mozambique is driven by large-scale infrastructure construction and the exploitation of natural resources. The recent discoveries of extensive coal basins and gas reserves have led to related infrastructure construction. These sectors have also opened up the possibility of developing value-added products locally, such as iron, steel, power and a diversity of downstream hydrocarbon related industries.³¹² This in turn is likely to lead to a need for commercial construction in particular, industrial and office space. The development of an efficient infrastructure network in Mozambique is likely to facilitate trade, particularly within the SADC region, enhancing Mozambique's position as entry point to hinterland countries including Botswana, Zambia, Malawi and Zimbabwe.

³¹¹ Mozambique Country Profile, African Economic Outlook, 2014, available at: http://www.africaneconomicoutlook.org/fileadmin/uploads/aeo/2014/PDF/CN_Long_EN/Mozambique_EN.pdf

³¹² African Economic Outlook 2014, Southern Africa, Joint Report of the African Development Bank, OECD and UNDP

299. There is heavy reliance on government and donor financing to undertake infrastructure related projects, in particular the rehabilitation and expansion of the road and rail network. Rehabilitation of port and airport facilities also figures prominently on government and donor agendas. Apart from government financing, there have also been strong FDI flows into Mozambique's construction sector, totaling USD 3.5 billion during the second quarter of 2013.³¹³
300. In terms of residential construction, despite huge needs and very high demand, formal housing construction is currently limited to the very high end of the market (e.g. luxurious houses in Maputo). The rest of the housing construction consists of informal construction in slums and rural areas.³¹⁴ Construction of rural health and education facilities offers possibilities for additional sales. More generally, construction costs in Mozambique are on the higher side for the SADC region (more than 30% higher than in South Africa) due to high costs of materials (most material is imported), low productivity and high financing costs.³¹⁵
301. Mozambique's construction sector is dominated by a few relatively large vertically integrated and well-managed foreign construction companies from Italy, Portugal, Brazil, South Africa, China and Italy who focus largely on the infrastructure and civil engineering related construction sector.³¹⁶ Chinese expertise for instance focuses on roads and bridges, water and sanitation. Domestic firms do however; capture some degree of subcontract work with South African, Portuguese or Italian companies³¹⁷ as well as small private construction projects operating in the areas of architecture, turnkey projects, and supervision. Construções e Serviços, SARL (CETA) is one of the largest local construction company, which used to be state owned and is currently the 5th largest employer in the country.³¹⁸
302. There is limited availability of skilled expertise, which is one of the factors behind the exclusion of local companies from major internationally funded construction projects. In some skill sets such as qualified inspectors and quantity surveyors, the lack of qualified suppliers is critical. Availability of semi-skilled workers such as carpenters and plumbers has also been limited as a result of which Chinese construction companies for instance tend to rely on imported labor.³¹⁹
303. *Mode 3 related Regulation*
- Mozambique's construction sector is relatively open, characterized by a concessions based regime and privatization. Main issues relate to a lack of clarity

³¹³ African Economic Outlook 2014, Southern Africa, Joint Report of the African Development Bank, OECD and UNDP

³¹⁴ World Bank, Mozambique – CEM – Construction sector draft, Available at: <http://siteresources.worldbank.org/INTDEBTDEPT/Resources/468980-1218567884549/5289593-1259608803444/MozambiqueCEMConstruction20090821.pdf>

³¹⁵ World Bank, Mozambique – CEM – Construction sector draft, Available at: <http://siteresources.worldbank.org/INTDEBTDEPT/Resources/468980-1218567884549/5289593-1259608803444/MozambiqueCEMConstruction20090821.pdf>

³¹⁶ Portugal (e.g. Teixeira Duarte, Emocil, Soares da Costa and Jomofi Construcoes), South Africa (e.g. SB Construction and Group Five), Italy (CMC Africa Austral) and China (SOGEOA and CCM)

³¹⁷ UNCTAD study 2008

³¹⁸ KPMG, Top 100 Companies in Mozambique, Thirteenth Edition, 2011

³¹⁹ World Bank, Mozambique – CEM – Construction sector draft, Available at: <http://siteresources.worldbank.org/INTDEBTDEPT/Resources/468980-1218567884549/5289593-1259608803444/MozambiqueCEMConstruction20090821.pdf>

in the concessions regulatory regime and the informal characteristic of some segments.³²⁰

- a new law governing public-private partnerships, large-scale ventures and business concessions, Law No. 15/2011 (often referred to as the “Mega-Projects Law”) was passed in August 2011 requires the participation of Mozambican persons in the share capital of all such undertakings in a percentage ranging from 5% to 20% of the equity capital of the project company.
- License requirements exist for the construction sector, apart from Ministry of Trade there is a need to consult with the Ministry of public works who assesses participants on their work experience, registrations, qualifications and verify credentials of representatives of construction companies. Minimum capital is not a major issue in the assessment.³²¹
- Foreign construction companies entering the Mozambique market for the first time are required to register or obtain a license. Foreign contractors have to meet certain requirements relating to experience, documentation of work completed in country of origin.

304. *Mode 4 Related Regulations*

- Employment of foreign workers by national or foreign entities is subject to the authorization of the Ministry of Labor.
- Foreign workers must possess professional qualifications, and may only be contracted where there are no similarly qualified Mozambicans available.
- Quotas for foreign workers exist, quota levels depend on the size of the company. All investment project proposals must specify the number and category of Mozambican and foreign workers to be employed. The quota system requires the number of foreign employees to be no larger than 10% of a company's workforce. Standard quotas are: (i) for small size companies (up to 10 employees), 10% (ii) for medium-sized companies (more than 10 employees and up to 100 employees), 8% (iii) for large companies (more than 100 employees) 5%. The quota employment system in Mozambique maybe undergoing some changes.³²²

305. *Procurement Regime*

- The Unit for the Supervision of Acquisitions governs procurement. The updated procurement statute, Decree 15/2010 of 24 May 2010, requires:
- bidders for public works projects to comply with minimum requirements as to legal and financial standing, technical qualifications and payment of tax.
- Foreign construction companies can only bid for public works tenders if they have been operational in Mozambique for 10 years, this ensures foreign capital is retained, the company gains experience and trust and can be made to subcontract to local firms.³²³
- all documents relating to procurement to be in Portuguese
- Measures favour domestic bidders by restricting the participation of foreign bidders in lower-value projects and applying margins (of up to 15%) in favor of domestic-bidder preference on other projects. To qualify as a domestic bidder, a bidding

³²⁰ Marconini Mario, Analytic Report on Mozambique and Trade in Services undertaken for SADC Secretariat, 2013

³²¹ Mozambique National consultation meeting 1-2nd December, 2014

³²² Mozambique National consultation meeting 1-2nd December, 2014

³²³ Information provided by Mozambique at the SADC construction workshop of December 8, 2014.

company must be incorporated in Mozambique and be 50% owned (directly or indirectly) by natural persons of Mozambican nationality.³²⁴

306. *Other Regulation*

- Land rights: Private ownership of land is not allowed in Mozambique. Instead the government grants land-use concessions for periods of up to 50 years, with options to renew, called “DUATs” (Direitos de Uso e Aproveitamento de Terra, or a land title). The system of DUAT requires registration at both the Ministry of Justice and municipality.³²⁵ While the land cannot be sold, constructed structures maybe sold.³²⁶
- Technical standards: The authority that awards the license decides on applicable technical standards.³²⁷

307. *Trade interests:* It was indicated that Mozambique could have a potential interest in architecture and engineering services, provided qualifications are recognized. Mozambique Engineers already operating in Malawi, Angola and South Africa. A clear recognition of qualifications and work experience would be key to underpin any trade commitments.³²⁸ Setting up regional education institutions for architects, engineers but also technicians with lower skill requirements such as plumbers, supervisors etc. could help in creating a regional workforce.³²⁹ In terms of defensive interests, the need to build domestic capacity in particular among smaller contracting firms and enforcing existing procurement and quota preferences was highlighted.³³⁰

³²⁴ <http://www.frontiermarketnetwork.com/article/3933-opportunities-for-construction-companies-in-mozambique#.VDOxUKA6Y0Q>

³²⁵ World Bank, Mozambique – CEM – Construction sector draft, Available at: <http://siteresources.worldbank.org/INTDEBTDEPT/Resources/468980-1218567884549/5289593-1259608803444/MozambiqueCEMConstruction20090821.pdf>

³²⁶ Mozambique National consultation meeting 1-2nd December, 2014

³²⁷ Mozambique National consultation meeting 1-2nd December, 2014

³²⁸ Mozambique National consultation meeting 1-2nd December, 2014

³²⁹ Mozambique National consultation meeting 1-2nd December, 2014

³³⁰ Mozambique National consultation meeting 1-2nd December, 2014

SOUTH AFRICA NATIONAL CONSTRUCTION SECTOR PROFILE**PROGRAM FOR SOUTH AFRICA CONSTRUCTION SECTOR NATIONAL CONSULTATIONS****DATE:** 5 December 2014**TIME:** 10.00 HRS**LOCATION:** Ministry of Trade and Industry Headquarters – Pretoria

- 17. Opening remarks** *Ministry of Trade and Industry*
- a. **SADC Protocol on Trade in Services: why construction is a priority sector and purpose of sector study**
 - b. **What do we mean by trade in services?**
- 18. Objectives of study and information requirements from sector** *Presentation by Short Term Expert*
- 19. Market structure of construction sector in South Africa and participation of foreign companies** *Speaker from Ministry of Public Works*
- 20. Professional services: Market structure of architectural and engineering sector in South Africa and participation of foreign companies** *Speaker from architects association*
- 21. Future development of construction sector and ambitions for regional export growth - strengths and weaknesses in South Africa** *General discussion*
- 22. Detailed discussion of questionnaire for national consultations** *Discussion led by Short Term Expert*
- 23. Review of proposed SADC regulatory benchmark for the construction sector** *Presentation by Short Term Expert*
- 24. Conclusion and way forward** *Ministry of Trade and Industry*

LIST OF PARTICIPANTS

NO.	NAME	ORGANISATION
1	Joseph Komane	Skills Development Practitioner, Council of Built Environment, South Africa
	Nana Maholongo	President, Council of Built Environment, South Africa
3	Kobus Duploy	Director, Department of Trade, South Africa
6	Morgenie Pillai	Assistant Director, Department of Trade, South Africa
7	Sizwe	Assistant Director, Department of Trade, South Africa
8	Lorraine Ngwenya	Director African Cooperation and Middle East, Department of Public Works, South Africa
9	Mariella O'Reilly	Registrar, South African Council for the Architectural Profession, South Africa
10		Engineers Association of South Africa
11		

SOUTH AFRICA		
Share of Construction as % of total employment (2012)	7.6	
Construction Sector share in GDP, 2012 (%)	4	
Trade Value of Exports and Imports (Million USD)	Exports (2012) 60.85	Imports (2012) 8.01
Origin of foreign operators		
Kind of regulatory regime	Regulation by government and industry body, PPP and procurement regime	
Regulator and Regulatory Bodies	Ministry of Public Works Construction Industry Development Board Council for the Built Environment	
Relevant Legislation	Construction Industry Development Board act of 2000, CIDB Regulations 2004, Standard for Uniformity in Construction Procurement, Council for the Built Environment, 2000, Architectural Professions Act 2000, Engineering Profession Act 2000, National Building Regulations and Building Standards Act No. 103 of 1977, Employment Equity Act 1998, Labor Relations Act No. 66 of 1995, Preferential Procurement Policy Framework Act 2000, Black Economic Empowerment (BEE) Charter, Broad Based Black Economic Empowerment Act 2004	
Procurement preferences	Yes	

Source: SADC Statistics Unit, WTO, ILO Database, Consultant research

1. In 2012 the construction sector in South Africa accounted for 4% of GDP and 7.6% of the share of total employment. The uncertainty in local and global economic

- conditions has impeded construction activity in South Africa in particular for the private sector. In the residential sector, demand for residential, retail and commercial buildings remains low, except for premium properties. However, strong demand is experienced in the “smaller-sized” housing segment driven by increasing urban population and middle-income households.³³¹ The retail sector expansion is expected to increase within the SADC region.³³²
2. In terms of infrastructure, the government infrastructure plan is expected to provide strong impetus to South Africa’s Construction sector. The government has allocated a substantial part of the budget (South Africa’s Treasury approved USD 79 billion package in 2013 for public sector projects over the next three years)³³³ to infrastructure development in transport, energy, water, communication and housing, with spill over effects in other sectors including agriculture, mining and tourism.
 3. Significant activity is forecast in South Africa’s transport sector through targeted infrastructure investment in rail, road and mining-related transport. (Eg. 146-kilometre Mpumalanga- Swaziland railway line). The energy and utilities sector is a cornerstone of government’s infrastructure development plan.³³⁴ Infrastructures spending on water projects revolve around dam construction and water distribution.³³⁵ In the health care sector large allocations have been set-aside in national and provincial budgets for hospital infrastructure building, renovation and maintenance. At the end of 2012 there were approximately 50 public sector health mega-projects at feasibility stage and 29 projects in the financing stage for the period 2012–2020.³³⁶
 4. Within SADC, South Africa is the largest exporter of construction services, its exports outstripping its imports by a wide margin. South Africa boasts a number of large and extremely competent construction firms that dominate the regional market as well as highly skilled internationally competitive segment of engineers and architects in the region. South Africa dominance of the construction sector as compared to other SADC member states arises from the possession of necessary skills; capital, regional know how and material required to undertake basic infrastructure projects in nearby countries.³³⁷ The skilled construction labor force though is dwindling owing to emigration, ageing and inadequate replenishment. Yet, South Africa is able to export professional skills relevant to the construction sector to other SADC countries.³³⁸
 5. The Department of public works is the key custodian of construction services. The Council of Built environment (CBE) is responsible for regulation of qualified

³³¹ AECOM Africa Property and Construction Handbook 2013, ISBN 978-0-620-55244-8

³³² AECOM Africa Property and Construction Handbook 2013, ISBN 978-0-620-55244-8

³³³ The larger package announced by South Africa is a spending of USD 400 billion infrastructure program over the next two decades, 85 billion over the next 3 years. Projects will be split between government departments and state owned enterprises such as logistics company Transnet and national electricity utility Eskom. See du Venage Gavin, International Construction Regional Report: Southern Africa, 17th July 2013

³³⁴ AECOM Africa Property and Construction Handbook 2013, ISBN 978-0-620-55244-8

³³⁵ Examples include Kamati Water Scheme augmentation Project; Lesotho Highlands Water Project; and Olifants River Water Project.

³³⁶ AECOM Africa Property and Construction Handbook 2013, ISBN 978-0-620-55244-8

³³⁷ UNCTAD study 2008

³³⁸ UNCTAD study 2008

suppliers in the construction sector including quantity surveyors, project managers, property evaluators. The Construction Industry Development Board regulates the registration and categorization of contractors, (local and international) as well as looks into development of contractors.³³⁹

6. *Mode 1 related regulation*

Architectural services for building less than 500 sq metres, limited to local architects³⁴⁰

7. *Mode 3 related regulation*

Foreign contractor can apply under CIDB, the process takes several months and the cost depends on specific grade of registration sought.

8. *Mode 4 related regulation*

- Foreigner can work in South Africa only if they have a work permit. To employ a foreigner, it has to be shown that the appropriate skills are not available locally.
- The Immigration Act 2002 provides for 5 types of temporary work permits, the latest being work quota work permit which allows a work seeker to enter without secure employment. This work quota work permit is subject to an annual quota list in specific sectors termed “national scarcity and critical skills list”.

9. *Registration requirements*

10. In South Africa registration of construction sector professionals is not compulsory. This provides a challenge in terms of having an idea of the number and kind of construction services related professionals as well as in areas of safety and liability. South Africa is however moving towards compulsory registration.³⁴¹

11. *Procurement Regime*

Procurement Preferences exist for economically and historically disadvantaged sections of the population including women, handicapped individuals etc. as well as in order to support industry. This is covered under the preferential procurement policy framework act, which also makes provision for the support of national industry programs relating to SMEs, micro enterprises, job creation, promotion of local enterprises in specific provinces, rural areas etc. The Construction Industry Development Regulations, 2004 require the Register of Contractors to reflect the BBBEE score.

12. *Other Regulation*

13. Exchange controls: limited exchange rules apply to expatriate individuals, which do not form significant restrictions, as long as status as temporary workers is confirmed with authorized dealer.
14. Local borrowing by South African registered companies with a non-resident shareholding of 25 per cent or more is limited.³⁴² It has been pointed out that is a limitation and not a prohibition, which is maintained in order to prevent foreign owned companies from borrowing money in South Africa and going

³³⁹ South Africa National Consultations, 5th December 2015, Johannesburg

³⁴⁰ South Africa, WTO GATS Schedule of Specific commitments, 1994

³⁴¹ South Africa National Consultations, December 5, 2014

³⁴² Exchange Control Regulations as promulgated by Government Notice R1111 of 1 December 1961 and amended up to Government Notice No. R.885 as of 23

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- bankrupt.³⁴³ There is the possibility of this limitation being removed in the near future.
15. New withholding tax on services fees for non-residents to come into effect on 1 January 2015.
 16. Access to Export Credit Insurance Corporation only to South African firms.
17. *Potential areas of trade interest:* Within SADC, South Africa is the largest exporter of construction services at several levels and kinds. However South Africa could potentially import construction services from within SADC, in particular professionals and semi-skilled services related to the construction sector. South Africa's Strategic Integrated Projects skills division has identified several construction related areas as areas of scarcity. These include both skilled (surveyors, materials engineers/technicians/technologist, electronic engineering technicians) and semi skilled occupations (welders, plant and machine operators and assemblers).³⁴⁴

³⁴³ South Africa National Consultations, 5th December 2015, Johannesburg

³⁴⁴ South Africa National Consultations, December 5, 2014

ZAMBIA NATIONAL CONSTRUCTION SECTOR PROFILE**PROGRAM FOR ZAMBIA CONSTRUCTION SECTOR NATIONAL CONSULTATIONS**

DATE: 27 November 2014

TIME: 10.00 HRS

LOCATION: Ministry of Trade and Industry Headquarters – Lusaka

- 25. Opening remarks** *Ministry of Trade and Industry*
- a. **SADC Protocol on Trade in Services: why construction is a priority sector and purpose of sector study**
 - b. **What do we mean by trade in services?**
- 26. Objectives of study and information requirements from sector** *Presentation by Short Term Expert*
- 27. Market structure of construction sector in Zambia and participation of foreign companies** *Speaker from construction sector*
- 28. Future development of construction sector and ambitions for regional export growth - strengths and weaknesses in Zambia** *General discussion*
- 29. Detailed discussion of questionnaire for national consultations** *Discussion led by Short Term Expert*
- 30. Review of proposed SADC regulatory benchmark for the construction sector** *Presentation by Short Term Expert*
- 31. Conclusion and way forward** *Ministry of Trade and Industry*

LIST OF PARTICIPANTS

NO.	NAME	ORGANISATION
1	Victor Kunda	Acting Regional Manage, National Construction Council
2	Michael Nyirenda	President, Association of Building Construction and Engineering Contractors
3	Saul Jere	Acting Assistant Director, Ministry of Mines Energy and Water Development
4	Mr. Kamoyo	President, Zambia Architects Association
5	Engineer Mwape,	National Construction Council
6	Nombulelo Mbuzi	Zambia Ministry of Trade
7	Mr Felix Kaitisha	Export Development Specialist, Zambia Development Agency
8	Mr Mulenga Chikupule Mulenga	Trustee, Association of Building Construction and Engineering Contractors

ZAMBIA		
Share of Construction as % of total employment (2000)	1.3	
Construction Sector share in GDP, 2012 (%)	23.1	
Trade Value of Exports and Imports (Million USD)	Exports (2012) ----	Imports (2012) 66.68
Origin of foreign operators	Chinese, South African	
Kind of regulatory regime	Regulation by government and industry, PPP and procurement regime	
Regulator and Regulatory Bodies	National Council for Construction, Zambia Public Procurement Authority, Association of Consulting Engineers of Zambia, Engineering Registration Board, Zambia Institute of Architects, Private Public Partnership Unit	
Relevant Legislation	National Council for Construction Act No 13 of 2003, National Council for Construction (Contractors) (Code of Conduct) Regulations, 2008, Zambia Public Procurement Act, 2008, supported by Public Procurement Regulations of 2011, Public-Private Partnership Act, 2009 Citizens Economic Empowerment Act, 2006, Engineering Institution Of Zambia Act, 2010, Zambia Institute of Architects Act, The Citizens Economic Empowerment Act 2006 ³⁴⁵	
Procurement preferences	Yes	

Source: SADC Statistics Unit, WTO, ILO Database, Consultant research

345 Zambia, The Citizens Economic Empowerment Act, 2006, http://www.ncc.org.zm/wp-content/uploads/2013/03/citizens_economic_empowerment_act_2006.pdf

1. The construction sector in Zambia accounted for 23.5% of GDP in 2012 and in 2000 accounted for 1.3% of employment. It is currently the biggest growth sector in the economy, with an average growth rate of 17.5% per year for the last seven years. Mining and government financing for infrastructure development have been the driving force of growth in Zambia's construction sector. The government's increased allocation for infrastructure (e.g. Link 8000 and Pave Zambia), with more than USD 5 billion in the road projects, will ensure that growth in construction remains buoyant.³⁴⁶
2. The privatization of the former state/party-owned construction companies in the early 1990s has meant that no single construction company dominates the Zambian construction market.³⁴⁷ The sector however continues to be dominated by foreign contractors mainly from South Africa and China.³⁴⁸ -International contractors who account for less than 5% and get about 95% of the contracts. All companies must register with the Commissioner of Domestic Revenue, Zambia Revenue Authority and receive a taxpayer identification number. The tax regime features incentives aimed at promoting national economic development, such as relief from VAT and import duties in respect of plant and machinery for certain infrastructure and utilities projects.
3. Conversely, Zambian contractors account for an average 93% of registration but account for only 7% of the market. Further, despite the existence of capacity, smaller and medium Zambian contractors are relegated to inconsequential jobs such as drainage marking. Barriers sometimes exist against Zambian entities as for instance the availability of incentives for investors above USD\$250000. Some foreign contractors undertake questionable practices, like fronting, inaccurate CVs amongst others. There is no problem with big contractors but they must subcontract, transfer knowledge and know-how and be monitored.
4. Despite explicit preference clauses in Zambia's construction bidding documents, local contractors are yet to achieve a dominant role in the Zambian construction sector, as they face financial and operation problems, coupled with plant and machinery inadequacies as well as lack of technical competencies. Further it was felt that there is a strong need to encourage local contractors and suppliers participation right from commencement of designing the contract or tender. In this regards it was felt using international standard contracts such as those issued by FDIC would be useful to bring Zambia on par with international specifications.³⁴⁹
5. In terms of construction sector related personnel, there is a large skills gap in diploma level technicians required for the sector while smaller gaps for professional and craftsman do exist. The need to revived technical institutes was felt.³⁵⁰

³⁴⁶Zambia Country Profile, African Economic Outlook, 2014,

³⁴⁷ UNCTAD study 2008

³⁴⁸ Centre for Chinese Studies Stellenbosch University, China's Interest and Activity in Africa's Construction and Infrastructure Sectors, A research undertaking evaluating China's involvement in Africa's construction and infrastructure sector prepared for DFID China, November 2006

³⁴⁹ Zambia National meeting with Construction sector stakeholders, November 27-28, 2014

³⁵⁰ Zambia National meeting with Construction sector stakeholders, November 27-28, 2014

6. The National Council for Construction (NCC), established in September 2003, is responsible for the promotion, development and regulation of the construction industry in Zambia. The registration of contractors, originally administered by the Ministry of Works and Supply, is now the responsibility of the NCC, as the regulatory body for all government contracts.³⁵¹

7. *Mode 3 related Regulation*

- Citizens Economic Empowerment Act 2006: strongly encourages foreign investment through partnerships and JVs for targeted citizens, firms, companies in different kinds of legislation, requiring foreign firms to take into account stipulated provisions.
- *Registration Requirements*
- No Architectural, Surveying, Engineering or Contracting company registered or incorporated outside the country is allowed to undertake any construction business in Zambia, unless it is registered with respective Professional Institute i.e. Zambia Institute of Architects, Surveyors Institute of Zambia, Engineering Institution of Zambia or the National Council for Construction: under the various respective Acts³⁵²
- No foreign construction companies registered or incorporated outside Zambia are allowed to undertake any construction business in Zambia, unless they are registered with the National Council for Construction under the National Council for Construction Act No. 13 of 2003.³⁵³ The NCC awards Grades 1-6, (Grade 1 is the highest) in the categories of building, civil, road. Foreign contractors are restricted to Grades 1 and 2, with no category restrictions. There is no discrimination for contractors in terms of conditions to be met for qualification, or on import of personnel and equipment.

8. *Mode 4 related Regulation*

- No foreign professional person is allowed to conduct his profession unless registered with Engineering Institution of Zambia, the Zambia Institute of Architects, the Surveyors Institute of Zambia.
- All foreign construction workers including professionals required to prove that they are registered professionals with their respective professional bodies or expatriates with a valid work permit.³⁵⁴
- Foreign construction professionals may be required to sit an examination to ascertain their qualification and experiences
- Engineer MRAs³⁵⁵: Section 44 provides for (i) recognition of local and foreign qualification and their registration. (ii) Recognition of a foreigner as an engineer if that person is to work as such under an international agreement between Government of Zambia.

³⁵¹ Centre for Chinese Studies Stellenbosch University, China's Interest and Activity in Africa's Construction and Infrastructure Sectors, A research undertaking evaluating China's involvement in Africa's construction and infrastructure sector prepared for DFID China, November 2006

³⁵² The Zambia Institute of Architects (ZIA) Act being CAP 442, The Surveyors Institute of Zambia (SIZ) Act being CAP, The Engineering Institution of Zambia (EIZ) Act No. 27 of 1992, The National Council for Construction Act No. 13 of 2003.

³⁵³ National Council for Construction Act No. 13 of 2003

³⁵⁴ Zambia Labour Act

³⁵⁵ The Engineering Institution of Zambia Act 2010

9. *Procurement regime*

- Open national bidding for procurement below specified threshold is open only to Zambian firms, nationals etc. Open international bidding is open to all bidders i.e citizen, local and foreign bidders, requirement for foreign bidder to partner with citizen or local supplier/bidder.³⁵⁶
- To benefit from preferences, citizens/local suppliers should be part of an identified target group either from a particular region/industry/ economic sector or enterprises which are SMEs, or owned by women³⁵⁷
- Contract for construction works cannot be awarded to a foreign company/firm without approval of Council Licensing requirement. Council will ascertain whether the award for contract can be undertaken by Zambian company/firm,³⁵⁸ Further, any contract for construction works to foreign company/firm can be made only if they undertake to implement in partnership with Zambian company/firm.³⁵⁹
- Social objectives eg. Participation of local communities/ NGOs, increased utilization of local know how and materials, maybe reflected in project components³⁶⁰
- preferences may also take the form of reserves or set aside certain procurement requirements for target group etc.³⁶¹

10. *Others*

- Attempts are being made to make finance available to the domestic construction sector and agreements have been signed with 7 banks, but are yet to be being implemented.³⁶²
- About 80% of the land is under customary (traditional) custodianship and land leased for construction is granted by local government
- Technical standards utilized are mostly South African and British, but Zambia is in the process of development technical standards with the Zambia Bureau of Standards, 40 of which relate to the construction sector and have already been approved.

11. *Possible trade interests:* Zambia is already highly liberalized, the need to build capacity in Zambia was considered important, and in order to achieve this the focus on monitoring and implementation of preferences so that benefits can accrue to nationals was highlighted.³⁶³ In the short and medium, it was felt there is a need to build and leverage existing capacity of Zambian firms in the contracting sector. However, potential export capacity already exists in the architecture and engineering services sector. Zambian architects and engineers already operate in Botswana, Namibia and Rwanda. MRAs are important.³⁶⁴

³⁵⁶ Zambia Public Procurement Act, 2008, Sections 26 and 28

³⁵⁷ Zambia Public Procurement Act, 2008, Sections 26 and 28

³⁵⁸ Section 23, Zambia National Council for Construction Act 2003

³⁵⁹ Zambia National Council for Construction Act 2003

³⁶⁰ Zambia Public Procurement Act, 2008, Sections 36

³⁶¹ Zambia Public Procurement Act, 2008, Section 63

³⁶² Zambia National meeting with Construction sector stakeholders, November 27-28, 2014

³⁶³ Zambia National meeting with Construction sector stakeholders, November 27-28, 2014

³⁶⁴ Zambia National meeting with Construction sector stakeholders, November 27-28, 2014

ANNEX D: “POSSIBLE PRINCIPLES FOR SADC REGULATORY BENCHMARK IN CONSTRUCTION SECTOR”

INTRODUCTION

1. There is no SADC Protocol or cooperation framework in the construction sector, which provide a framework to support liberalization commitments in the construction sector that member states intend to undertake.
2. The Regulatory Benchmark features principles, based on international best practices and common elements across SADC focus country construction related legislation.
3. The Regulatory Benchmark is not intended to be exhaustive, but illustrative and any correction, clarification and modifications can be carried out.

I. DEFINITIONS

II. SCOPE

These regulatory Benchmarks may cover:

- a) Construction and engineering services, related professional services and covered procurement as defined by SADC member states to the extent possible with reference to the W120 and the UN CPC.
- b) The scope, extent and terms of coverage of construction services will be determined by individual SADC member states
- c) Limitations and specifications will be specified by SADC member states in their schedule of commitments

III. GENERAL PRINCIPLES

A. NON DISCRIMINATION

Where SADC member states have undertaken commitments in construction and engineering services or related procurement coverage, they will treat each other's suppliers in the same manner as domestic construction service suppliers (National Treatment) and construction service suppliers of another Party (MFN). In the case of covered procurement a locally established supplier will be treated on par with other locally established supplier irrespective of their degree of foreign affiliation or ownership, subject however to limitations that SADC member states may decide to maintain including those related to economic empowerment and preferences.

B. GENERAL EXCEPTIONS

Provision:

- i. Enable SADC members to take necessary action or disclose necessary information for the protection of essential security interests or national defense purposes. Subject to the requirements that such measures are not applied in a manner, which is arbitrary, acts as a disguised restriction to trade or results in unjustifiable discrimination between SADC member states and their suppliers.
- ii. Further SADC member states are not prevented from imposing/enforcing measure necessary for the protection of public morals, order, safety, human animal/plant life, intellectual property or relating to philanthropic institutions or prison labor.

C. TRANSPARENCY

SADC member states will make available through publication, laws, regulations, and in the case of covered procurement, decisions on procurement outcome and standard contract clauses that are referred to in covered procurement notices or tenders. Such information shall be made available without delay.

D. ACCOUNTABILITY

- i. SADC member states will ensure that there is transparency and accountability in the award of construction services related licenses, quotas, permissions, including in covered areas of procurement. Evaluation of applications for licenses, quotas, permissions shall be carried out in a transparent and impartial manner, avoiding conflict of interests, using widely accepted methods and avoiding corrupt practices.
- ii. Further SADC member states will ensure effective review procedures which suppliers can appeal to if they wish to seek clarification or further information and/or challenge decisions made as they relate to the grant of permissions, licenses quotas and awards. Such clarification/information shall be provided at the earliest and shall not be unreasonably withheld. Where possible such processes and their application thereof shall be automated, enhancing accountability.

E. MARKET ACCESS

- i. SADC members shall specify the sectors and modes of construction services related commitments (including where intended covered procurement in construction services) that they would like to undertake in their schedule of commitments, along with any limitations that they may wish to retain therein. To the extent possible, keeping in mind national development and social objectives, SADC member states will endeavor to create greater construction trade integration within SADC including through more open market access and better treatment of SADC construction services suppliers
- ii. Construction Services Schedules could include:
 - d) construction services and engineering services
 - e) professional services requiring specific qualifications and registrations directly related to construction sector including architects, engineers, quantity surveyors, contractors
 - f) procuring entities covered by SADC member states in their schedule of commitments. For procuring entities the threshold value above which procurement activities are covered can be specified as well as exceptions to this coverage

F. ECONOMIC EMPOWERMENT

In keeping with their development, social objectives and existing legislation, SADC member states, may maintain preferences and limitations, which will be specified in their schedule of commitments

IV. REGISTRATION SYSTEMS AND QUALIFICATION PROCEDURES OF PROFESSIONAL SERVICES AND QUALIFIED SUPPLIERS

- i. SADC member states recognize the need for registration of professional services suppliers in the construction sector. All professional services and qualified suppliers are required to have some form of affiliation nationally to government recognized bodies and boards. This applies to architects, engineers, quantity surveyors and contractors in particular. Several member states have already set up such Registers to ensure quality, safety, education and monitoring of construction related professional and qualified services suppliers and firms.
- ii. SADC member states including procuring entities may maintain a professional and qualified a supplier registration system under which interested suppliers are required to register and provide stipulated

information as long as such as registration system or qualification procedure is not created with the intention of creating unnecessary obstacles to the participation of suppliers of another Party in its construction sector and covered procurement.³⁶⁵

- iii. Most registration requirements contain the potential outline of MRAs, and allow for temporary registration provisions, providing for acceptance of recognized or equivalent qualifications and work experience.
- iv. For the purpose of information sharing and as a first step towards the creation of MRAs, details of such registers shall be shared and made available through the SADC region. In the case of cancellation or suspension from the Registers for whatever reason including non observance of regulations and professional misconduct, such suspension shall be shared amongst other SADC member states.

V. TECHNICAL SPECIFICATIONS AND STANDARDS

- i. SADC members will strive to recognize each others technical standards in the construction sector. Efforts will also be made to use international standards as common reference points for incorporation.
- ii. Technical specification will to the extent possible focus on performance and functional requirements rather than design or descriptive characteristics and will be based on international or widely accepted regional standards where such standards exist, otherwise on national technical regulations, recognized national standards or building codes. Technical standards may also promote conservation of natural resources and protection of the environment.³⁶⁶

VI. CONTRACTORS

- i. Each SADC member state shall maintain a register of contractors, which they share with and make available as requested by other SADC member states. Such a register could include the following details of a registered contractor name, category of registration, fees paid, financial statement, tax clearance certificate or proof that all taxes have been paid in the country of origin, certified copies of the identity documents of the principal or principals, proof of registration of employed qualified persons. In the case of a contracting company details to be included are the registration number and the certificate of incorporation and in the case of a trust a copy of the trust deed

³⁶⁵ Also contained in WTO revised GPA under “qualified suppliers”

³⁶⁶ Drawn from WTO revised GPA

- ii. Broadly indicators that SADC member states will endeavor to take into account during the process of registration include:
 - a. Financial capability of the contractor Eg: annual turnover in preceding financial years, value of previous construction contracts undertaken, contractors' access to capital
 - b. Work Capability Eg. Contractors ability to requisition qualified persons, meeting requirements of specified class of construction work, completion of construction work in the category in which the contractor seeks registration.
- iii. To the extent possible SADC member states will endeavor to develop a regional Register of Contractors and Contracting Firms.
- iv. Contractors or contracting firms operating within a SADC national jurisdiction should be registered within that jurisdiction either on a permanent basis or for the duration of their work contract.
- v. A contractor or contracting firm maybe required to execute a performance bond or collectable financial guarantee by one person to another (beneficiary).³⁶⁷

VII. PROFESSIONAL SERVICES ARCHTECTURAL, ENGINEERING, QUANTITY SURVEYING RELATED SERVICES

- i. *Define who can be considered a SADC engineer or architect:* coverage of educational qualifications, work experience, compliance with professional, technical or ethical code.
- ii. *Method of application:* for SADC regional wide operation and obligation on individual professionals to abide by laws/regulations, bound by codes of conduct, other conditions of operation.
- iii. *Role of National architect/engineering regulatory authority:* in terms of evaluating and authorizing applications for registration from professionals, monitoring and assessment of professionals activity, reporting to and co-ordinating with international bodies including SADC regional body, information exchange on professionals/contractors who have been delisted or suspended, excahgne of informational on legal and regulatory developments including with a view to regional and/or international harmonization.
- iv. *SADC regional body* (informal or formal): promote acceptance of professionals and qualified suppliers in SADC member states, develop, monitor, maintain mutually acceptable standards and criteria for facilitating practice by SADC Professional Engineers/Architects throughout SADC, gain an understanding of trade barriers and assist government/licensing

³⁶⁷ SA CIDR 2004 Section 10

authorities to reduce barriers in an effective and non-discriminatory manner, identify best practice for the preparation and assessment of Engineers/Architects intending to practice at the professional level, inform all national Regulatory Authorities when a Professional architect/Engineer is no longer qualified to undertake independent professional engineering practice in the Country of Origin.

VIII. PROCUREMENT REGIME

A. Coverage of procurement of construction services³⁶⁸

- i. SADC member states may wish to include procurement in construction services as part of their Schedules of Commitment or as Procurement annexes. Covered procurement means procurement for governmental purposes of construction and related services, as SADC member states intend to include which are:
 - a) not procured with a view to commercial sale or resale, or for use in the production or supply of goods or services for commercial sale or resale
 - b) by any contractual means, including public-private partnership contracts
 - c) for which the value, as estimated by SADC member states, equals or exceeds the relevant threshold specified in SADC member states Annexes and Schedules.
- ii. Covered procurement would not include:
 - a) express exclusions contained in SADC members Annexes and Schedules
 - b) acquisition or rental of land, other immovable property
 - c) non-contractual agreements eg. cooperative agreements, grants, loans, equity infusions, guarantees, and fiscal incentives
 - d) procurement or acquisition of fiscal agency or depository services
 - e) public employment contract
 - f) procurement conducted for purposes of defense, international assistance, or procurement projects involving international/regional funding
- iii. When SADC member states intend on including procurement in construction services they should specify:
 - a) the entities covered (central, sub-central, others)
 - b) construction services covered
 - c) professional services, other than construction services, covered
 - d) thresholds of coverage

³⁶⁸ Drawn from WTO Revised GPA

B. Conditions for Participation

- i. SADC procuring entities to ensure that procurement evaluation is based on essential factors such as supplier's legal and financial capacities and the commercial and technical abilities to undertake the relevant procurement
- ii. In terms of tender documentation, the procuring entity shall make available to suppliers tender documentation that includes all information necessary to permit suppliers to prepare and submit responsive tenders including the nature and quantity of construction services to be procured, conditions for participation of suppliers, applicable evaluation criteria, technological requirements for submission, terms of payment, manner of submission, dates for delivery, any other relevant terms and conditions.

C. Treatment of Tenders and Awarding of Contracts

- i. A procuring entity shall receive, open and treat all tenders under procedures that guarantee the fairness and impartiality of the procurement process, and the confidentiality of tenders.
- ii. Information Provided to Suppliers: A procuring entity shall promptly and within a reasonable timeframe inform participating suppliers of the entity's contract award decisions
- iii. Maintenance of Documentation, Reports and Electronic Traceability: Each procuring entity shall, maintain the documentation and reports of tendering procedures and contract awards relating to covered procurement.
- iv. Maintenance of preferences: SADC member states may apply preferences agreed on in national law, in their evaluation of bids.

IX. REGIONAL INSTITUTIONS

In order to enhance regional integration in the construction sector, SADC member states can set up a Committee on Construction Services. The SADC Committee on Construction Services will be composed of representatives from each SADC member state. The purpose of such a Committee on Construction Services is to meet as necessary, to take stock, enhance the SADC construction integration agenda, resolve any issues of concern and review the implementation of SADC construction cluster integration.

If necessary additional formal/informal working groups for contractors, professionals (engineers, architects, quantity surveyors), procurement may be set up when required. The purpose and functions of these groups could include maintenance of information of Registers of Contractors, Architects, Engineers and Suppliers, develop and operationalize MRAs in their respective areas, share information on market developments in their respective sectors, report to the SADC Committee on Construction Services developments of the sector.

X. ENVIRONMENT PROVISIONS

As per national environment legislation, SADC member states will establish procedures for Environmental Impact Assessment (EIA) of projects and enforce their application.

XI. HEALTH AND SAFETY

Provision: SADC member states shall ensure that construction service supplier's demonstrate a sufficiently documented health and safety plan, with adequate risk assessment and covering the entire duration of the project under consideration.

XII. LABOUR LAWS

Provision: Each SADC member state will ensure national and where possible international labor standards relating to minimum wages, hours of work, conditions of work, annual leave, unfair dismissal, provision of protective clothing and safety equipment, etc. are preserved. Where possible SADC member states will endeavor to set up health and safety committees to ensure workers minimum conditions of labour are preserved throughout the region.

XIII. FINANCING MECHANISMS FOR THE CONSTRUCTION SECTOR

- i. In order to enable better access to finance by SMEs and MMEs in the SADC construction sector, SADC member states may explore the possibility of setting up a
- ii. SADC wide Construction Industry Development Fund. The Fund will provide working capital and guarantees on easier terms than traditional banks to contractors, consultants and the informal sector. The Fund will also provide loans for equipment and will act as a guarantor for loans secured through banks and other credit schemes.
- iii. SADC member states will also promote private sector participation in financing construction and infrastructure projects public private type partnerships. To this end SADC member states will share experiences on the use of different public-private models and utilize the SADC infrastructure unit's database and program's to enhance this facility.
- iv. SADC member states will also explore possibilities of making available access to and supply of construction equipment on a region wide and competitive basis.

XIV. CONSULTATIONS AND DISPUTE SETTLEMENT

SADC member states should have or establish systems for consultation, domestic review and dispute settlement, which are timely, effective, independent, transparent and non-discriminatory. These systems permit suppliers to challenge breaches of contractual arrangements and awarded tenders and/or national legislation. The review body, which may be an administrative authority or a court, must have the authority to implement remedial measures and/or to insure compensation for the loss or damages suffered by a supplier. Interim measures must also be available to preserve a supplier's opportunity to participate in construction/procurement activities, where appropriate.

ANNEX 9: ARCHITECTURE AND ENGINEERING SERVICES QUESTIONNAIRE

Instructions

- Please answer to the best of your knowledge, information available, with latest data.
- All monetary information can be recorded in local currency
- This questionnaire is adapted from information and data collected by the SADC Secretariat.

Coverage

Architectural Services and engineering services as classified by the WTO in W120, include : Architectural services (CPC 8671) advisory and pre-design architectural services, architectural design services, contract administration services, combined architectural design and contract administration services and other architectural services.

Engineering services (CPC 8672) includes all engineering activities except integrated engineering services, such as advisory and consultative engineering services, engineering design services for the construction of foundations and building structures, engineering design services for mechanical and electrical installations for buildings, engineering design services for the construction of civil engineering works, engineering design services for industrial processes and production, engineering design services, other engineering services during the construction and installation phase and other engineering services

Integrated engineering services (CPC 8673) include engineering services related to turnkey projects such as integrated engineering services for transportation infrastructure turnkey projects, integrated engineering and project management services for water supply and sanitation works turnkey projects, integrated engineering services for the construction of manufacturing turnkey projects and integrated engineering services for other turnkey projects.

Urban planning and landscape architectural services (CPC 8674) which covers urban planning services and landscape architectural services

Two parts of this questionnaire:

- I. Market Structure Section
- II. Policy Section

Contact information of Respondent, whom we can contact in case of clarifications:

Name:

Designation:

Email address:

Tel:

I. MARKET STRUCTURE

1. **Share of architectural services/engineering services in total GDP and/or in value terms (give date)**
2. **Is there a wide prevalence of foreign provision of architecture/engineering services?**
 Yes No
3. **Are foreign architecture/engineering services more widely provided on an individual basis or on a firm basis?**
4. **Total number of architecture/engineering professionals operating domestically:**
 - a. How many are foreign architecture/engineering professionals?
 - b. If they are foreign architecture/engineering professionals are they qualified domestically?
5. **Total number of architecture/engineering firms operating domestically:**
 - a. How many are foreign architecture/engineering firms
 - b. What kind of legal form do they operate as i.e branches, subsidiaries, representative offices?
 - c. Number of fully domestically owned architecture/engineering firms?
 - d. Number of fully owned foreign architecture/engineering firms?
 - e. Number of foreign minority JVs architecture/engineering firms?
 - f. Number of foreign majority JVs architecture/engineering firms?
6. **Are there an adequate number of architecture/engineering services to meet domestic market needs?**
 Yes No
 - a. If yes, is their a potential to export architecture/engineering services within the region?
 Yes No
 - b. What will be required to be done in order to achieve this?

- c. If no, is there the potential to import architecture/engineering services from the region?

Yes No

What will be required to be done in order to achieve this?

7. How are foreign professionals or firms regulated (give act/regulation)?

8. If they are foreign architecture/engineering firms are they qualified domestically?

II POLICY SECTION

Market Access – commercial presence (mode 3) and movement of natural persons (mode 4)

9. Are there policy restrictions on the entry of:

a. Foreign architecture/engineering firms s
No

i. If yes, what kind of restriction (eg qualifications, total number allowed, kind of service they can provide)

ii. Under which Act/Regulation are these restrictions contained?

b. Foreign architecture/engineering professional s
No

i. If yes, what kind of restriction (eg qualifications, total number allowed, kind of service they can provide)

ii. Under which Act/Regulation are these restrictions contained?

10. What are the reasons for these restrictions?

- Market saturated, sufficient domestic capacity
- Concerns of qualifications of professional
- Inadequate regulatory and supervisory capacity
- Loss of revenue

11. Are foreign architecture/engineering firms required to establish locally through a particular legal form?

Yes No

12. What kind of legal form? (indicate relevant Act/Regulation)

13. Are architecture/engineering firms required to establish as JVs with domestic companies?

Yes No

14. In the construction sector, are foreign construction firms, required to utilize domestic architecture/engineering professionals?

Yes No

If yes in what capacity (please specific relevant Act/Regulation)?

15. For foreign architecture/engineering professionals are there limitations on temporary intra firm transfers?

Yes No

If yes specify what kind (please specific relevant Act/Regulation)?

16. Are foreign architecture/engineering professionals restricted by time period on the kind of advice they may provide i.e in terms of short contracts as opposed to long stay advice?

17. Are their residency or national requirements or quotas for the operation of foreign architecture/engineering professionals in domestic markets?

Yes No

If yes specify what kind (please specific relevant Act/Regulation)?

18. Are their labour market tests for intra corporate transferees or foreign architecture/engineering professionals in domestic markets?

Yes No

If yes specify what kind (please specific relevant Act/Regulation)?

19. Is there a regulator to monitor the operation of the architecture/engineering sector?

Yes No

If yes specify:

Name:

Broad Functions:

Act/Regulation under which created?

Please specify the kind of body (government, quasi government, private)

20. For a foreign architecture/engineering professional / firm to operate domestically, do they need to?

- Register domestically: if yes what is the procedure and under which Act/Regulation?
- Qualify domestically?
- Can operate freely?
- Meet local sector specific regulations?
- Subject to domestic disciplinary action?
- Other? (please specify)

21. Which is the body that regulates the operation of foreign architecture/engineering professional/firm?

22. In your view should there be a preference for domestic architecture/engineering professionals and company in particular in procurement contracts?

23. Are foreign architecture/engineering professional/firms treated on par with domestic ones?

Yes No

If No, how are they treated differently?

24. Are their specific Mutual Recognition Agreements or preferential treatment which enable domestic architects / engineers to provide advice or services abroad?

Yes No

If yes,

- Which countries have they been concluded with?
- What are they called?
- How do they operate?

25. Do you think intra SADC movement of architecture / engineering is a good idea?

Yes No

What problems, if any do you foresee?

If there was to be an intra SADC common regulatory benchmark for your sector what kind of elements would you like to see in this benchmark paper?

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