

**LEGAL ASPECTS OF FAIRTRADE OBJECTIVES AND SOCIO-ECONOMIC
DEVELOPMENT IN SOUTH AFRICA**

By

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Submitted in fulfilment of the requirements for the degree of Master of
Laws,

Nelson Mandela University

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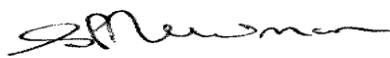
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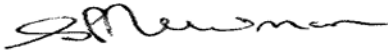
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LIST OF ABBREVIATIONS

AfCTFA	African Continental Free Trade Agreement
African Charter	African Charter on Human and Peoples' Rights
AGOA	African Growth and Opportunity Act
AgriBEE	AgriBEE Sector Code
AU	African Union
B-BBEE	Broad-based Black Economic Empowerment
B-BBEE Act	Broad-based Black Economic Empowerment Act
CSR	Corporate Social Responsibility
EFTA	European Fair Trade Association
ESTA	Extension of Security of Tenure Act
FLO	Fairtrade Labelling Organisation
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GMOs	Genetically modified organisms
ICESCR	International Covenant on Economic, Social and Cultural Rights
IGWG	Intergovernmental Working Group on the Right to Development
LEWC	Land expropriation without compensation
LRAD	Land Redistribution for Agricultural Development
MFN	Most Favoured Nation
MNC	Multinational Corporation
MTS	Multilateral Trading System
NDP	National Development Plan

NGO	Non-governmental Organisation
PEPUDA	Promotion of Equality and Prevention of Unfair Discrimination Act
RECs	Regional Economic Communities
RTA	Regional Trade Agreement
S&D Treatment	Special and Differential Treatment
SAPs	Structural Adjustment Programmes
SDGs	Sustainable Development Goals
SPS	Sanitary and Phyto-sanitary Measures
STDF	Standards and trade Development Facility
TFA	Trade Facilitation Agreement
TRIMS	Trade Related Investment Measures
UN	United Nations
UNCTAD	United Nation Conference on Trade and Development
USA / US	United States of America
WFTO	World Fair Trade Organisation
WTO	World Trade Organisation

TABLE OF CONTENTS

	Page
PLAGIARISM DECLARATION	ii
PERMISSION TO SUBMIT	iii
ACKNOWLEDGEMENTS	v
LIST OF ABBREVIATIONS	viii
TABLE OF CONTENTS	x
SUMMARY	xiii
KEYWORDS	xiv
CHAPTER 1: INTRODUCTION	1
1.1 Introduction.....	1
1.2 Background to the problem	6
1.3 Problem statement	11
1.4 Research questions.....	15
1.5 Research methodology.....	16
1.6 Limitations	16
1.7 Chapter outline	17
CHAPTER 2: FAIRTRADE IN THE INTERNATIONAL TRADE LAW SYSTEM	20
2.1 Introduction.....	20
2.2 Public international trade law.....	21
2.2.1 A brief history of public international trade law	21
2.2.2 Current policies	24
2.2.3 Developing countries in international trade.....	25
2.3 Fairtrade globally	28
2.3.1 Market access and small producers	28
2.3.2 The need for Fairtrade.....	30
2.3.3 Global goals of Fairtrade	31
2.4 Fairtrade and sustainable development	34
2.4.1 Sustainable development in international law.....	34
2.4.2 Fairtrade and the sustainable development goals	38
2.5 Conclusion.....	41
CHAPTER 3: FAIRTRADE IN AFRICA	43
3.1 Introduction.....	43
3.2 Trade in Africa	45
3.2.1 International trade policies and their effects on Africa	45
3.2.2 Existing policies to address Africa’s underdevelopment.....	49

3.3	Development as an objective and a right in African regional law.....	52
3.3.1	Agenda 2063	52
3.3.2	The African continental free trade area	54
3.3.3	The right to development in the African Charter	56
3.4	Fairtrade in Africa	60
3.4.1	Fairtrade aims for Africa	60
3.4.2	Connections between Fairtrade and international and regional policies..	61
3.4.3	Challenges to Fairtrade in Africa	63
3.4.4	Fairtrade impacts as illustrated by case studies conducted in African countries.....	65
3.5	Conclusion.....	67

CHAPTER 4: SOUTH AFRICA’S SOCIO-ECONOMIC DEVELOPMENT GOALS

.....		70
4.1	Introduction.....	70
4.2	Historical development of the agricultural sector in South Africa.....	71
4.3	The constitutional imperative.....	74
4.3.1	Transformative constitutionalism and development.....	74
4.3.2	Socio-economic rights	78
4.3.3	The interdependence of equality, dignity and socio-economic rights	81
4.4	Socio-economic development policies in South Africa	83
4.4.1	The National Development Plan (NDP).....	83
4.4.1.1	Challenges and objectives outlined in the NDP	83
4.4.1.2	Progress in the Achievement of NDP Objectives	86
4.4.2	Broad-based black economic empowerment.....	88
4.4.2.1	The Broad-based Black Economic Empowerment Act	88
4.4.2.2	AgriBEE.....	89
4.4.4	Land reform	90
4.4.4.1	The Land Reform Framework.....	90
4.4.4.2	Rationale for land reform.....	92
4.4.4.3	Failures of land reform.....	94
4.5	Conclusion.....	96

CHAPTER 5: THE LEGAL CONNECTIONS BETWEEN FAIRTRADE AND SOCIO-ECONOMIC DEVELOPMENT IN SOUTH AFRICA

.....		98
5.1	Introduction.....	98
5.2	Fairtrade standards in South Africa	99
5.2.1	General Fairtrade standards.....	99
5.2.2	The Fairtrade standard for hired labour farms in South Africa	102
5.3	Fairtrade and the constitutional imperative.....	104
5.3.1	The Constitution as an enabling document	104
5.3.2	Fairtrade and substantive equality.....	106
5.3.3	Fairtrade and the redistribution of socio-economic resources	110
5.3.4	Fairtrade and the right to development.....	115
5.4	Fairtrade and the national development plan objectives	116
5.4.1	Gaining global market share.....	116
5.4.2	Building an inclusive rural economy	118
5.4.3	Fostering regional integration	118
5.4.4	Combatting the negative effects of COVID-19.....	120
5.5	Fairtrade and broad-based black economic empowerment.....	121

5.6	Fairtrade and land reform	124
5.6.1	The links between Fairtrade and land reform	124
5.6.2	Can Fairtrade address the failures of land reform?	125
5.7	Conclusion.....	127
CHAPTER 6: CONCLUSION.....		130
6.1	Introduction and overall finding.....	130
6.2	Discussion of key findings	130
6.2.1	Fairtrade in the context of the international trade law system.....	130
6.2.2	The role of Fairtrade in Africa and its relation to Africa's development needs	132
6.2.3	South Africa's socio-economic development goals	133
6.2.4	Connections between Fairtrade objectives and South Africa's socio- economic development goals in the legal context	135
6.3	Contributions of the research	137
6.4	Recommendations for future research	138
6.6	Conclusion.....	139
READING LIST		141
Table of international instruments		141
Table of statutes.....		143
Table of cases.....		144
Bibliography		145
Books and chapters in books		145
Journal articles		146
Government documents		153
Internet sources		153
Newspaper articles and magazines.....		159
Lectures/Conference papers/Theses/Memoranda		159
Agreements/Reports/Plans/Guides		160

SUMMARY

This dissertation aims to draw connections between Fairtrade and the socio-economic development objectives for South Africa in order to identify whether Fairtrade can contribute to socio-economic development in South Africa. In order to draw these connections, Fairtrade is examined in the context of the international trade system, Fairtrade is analysed in terms of socio-economic development in Africa, and the specific socio-economic development objectives for South Africa are outlined. Thereafter, in chapter 5, connections are drawn between Fairtrade and the socio-economic development objectives for South Africa. Finally, the research is concluded by summarising the main finding of whether Fairtrade can contribute to socio-economic development in South Africa, and setting out the key findings that were reached in answer to the sub-questions posed.

This research is conducted by way of a literature review that draws from various research fields due to the nature of the socio-economic issues involved. The findings indicate that Fairtrade is sufficiently aligned to the socio-economic development objectives for South Africa to be used as a tool to contribute towards socio-economic development in South Africa. The research also suggests ways in which the connections between Fairtrade and South Africa's socio-economic development objectives can be strengthened.

KEYWORDS

Fairtrade, socio-economic development, international trade, sustainable development, transformative constitutionalism, broad-based black economic empowerment, the National Development Plan, Land Reform.

CHAPTER 1

INTRODUCTION

1.1 Introduction

This dissertation aims to identify the objectives of Fairtrade internationally, and draw connections between these objectives and the specific socio-economic development goals of South Africa. Fairtrade can be defined as a trading partnership between buyers in the Global North and producers in the Global South, which challenges the conventional practices of international trade, aiming to create equitable international trade by ensuring the protection of marginalised producers and workers' rights.¹ The objective is to enable the drawing of close connections between Fairtrade objectives and how these might contribute to socio-economic development in South Africa, specifically from a legal perspective.

Buying products in local shops is no longer a transaction contained by national borders. Instead, such transactions will often span international borders, from production and manufacturing, to the shop where the product ends up being sold to consumers. The dominant international trading systems have been developed and shaped in the context of globalisation. This international trade has led to the emergence of Fairtrade organisations, seeking ways of adding moral or ideological considerations to the value of products.²

The world is becoming increasingly globalised and has been doing so exponentially since World War II, when economic ties between nations were strengthened.³ The development of communication, improved transport technology and infrastructure increased the mobility of products and raw materials between nations and continents.⁴ This has affected economic, social and political landscapes globally.

Globalisation should be understood as a process which gives rise to interactions, flows of activity and the exercise of power across continents and regions, instead of within

¹ EFTA "Fair Trade Definition" (February 2009) <http://www.european-fair-trade-association.org/efta/Doc/What.pdf> (accessed 2021-06-18) 1.

² Verdier-Stott "Labels, Lies and the Law: Opportunities and Challenges in Mainstreaming Fair Trade" 2009 1 *Law, Social Justice and Global Development* 1 5.

³ Raynolds, Murray and Wilkinson *The Challenges of Transforming Globalization* (2007) 6.

⁴ Rodrigue "Globalization and International Trade" (undated) <https://transportgeography.org/contents/chapter7/globalization-international-trade/> (accessed 2021-03-30).

States.⁵ These flows of activity include information flows, ideological flows, human flows and flows of capital.⁶ Globalisation transforms how social relations and transactions take place spatially, in that these transactions can now span greater distances and have impacts much further afield than would otherwise have been possible.⁷ Factors which have moulded the impact of globalisation include technological developments, the increasing prominence of multinational corporations (MNCs), the creation of international production systems and changes in the nature of work. In addition, new international role-players such as non-governmental organisations (NGOs) have come in to play.⁸ Globalisation is not a new phenomenon and does not only refer to market integration and free trade.⁹

Narrower definitions of globalisation have also been proposed. Lee and Vivarelli¹⁰ suggest that globalisation should be understood as the actual increase in trade openness¹¹ and Foreign Direct Investment.¹² In this way, the impacts of globalisation can be objectively measured, without referring to liberalisation policies.¹³ Such policies do not provide significant insight into the measurable positive or negative consequences of globalisation, and are frequently viewed as ineffective.¹⁴

While globalisation as a whole should not be understood only in a legal, social or economic sense, one can pinpoint how globalisation operates in each of these contexts, as it necessarily encompasses all three facets.¹⁵ In the legal context, globalisation has taken place in tandem with the development of new legal institutions

⁵ Snyder "Economic Globalisation and the Law in the 21st Century" in Sarat (ed) *The Blackwell Companion to Law and Society* (2004) 2.

⁶ Garcia "Globalization, Power, States and the Role of Law" 2013 36 *Boston College International and Comparative Law Review* 903 906.

⁷ Garcia 2013 *Boston College International and Comparative Law Review* 906.

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ Lee and Vivarelli "The Social Impact of Globalization on Developing Countries" Discussion Paper No. 1925 *Institute for the Study of Labour (IZA)* (January 2006) 4.

¹¹ Trade Openness is defined as the ratio of total trade (imports and exports) to Gross Domestic Product (GDP). However, this denotes a purely empirical measure, and trade openness can also indicate how exposed an economy is to external shocks, or the degree to which an economy maintains its outward orientation in trade; Fuji "What Does Trade Openness Measure?" (September 2017) CESifo Working Paper No. 6656 1, 2.

¹² "Foreign Direct Investment (FDI) is an investment from a party in one country into a business or corporation in another country with the intention of establishing a lasting interest;" Corporate Finance Institute "Foreign direct investment (FDI)" (undated) <https://corporatefinanceinstitute.com/resources/knowledge/economics/foreign-direct-investment-fdi/> (accessed 2021-05-06).

¹³ *Ibid.*

¹⁴ Lee and Vivarelli Discussion Paper No. 1925 *Institute for the Study of Labour* 4.

¹⁵ *Ibid.*

and regimes.¹⁶ Traditionally, States have fulfilled the role of ensuring peace and security, and the regulation of everyday life. Now, globalisation has brought with it fast-changing and novel challenges that may span national borders and States might not be able to address these challenges effectively.¹⁷ The response to these challenges which go beyond the regulatory power of one State, has been the emergence of governance by international organisations.¹⁸ Whilst State law is still used to manage certain meta-territorial aspects such as the global financial market, collective problems have to be dealt with through multilateralism.¹⁹ One such international organisation is the United Nations (UN). With 193 Member States, the UN provides a platform for States to collaborate on shared issues of international peace and security, human rights protection, sustainable development and upholding international law.²⁰

In the social context, globalisation creates some sense of a global community. This produces a space for acknowledging the circumstances of others and working towards social justice on the global level.²¹ In recognition of this emerging global community, international law has been described not as the law of nations, but rather as the law of the global community.²² There are, however, problems with this view of international law as it lacks an effective means of global wealth transfers, and does not include effective political representation on a global level.²³ The development of international law and international organisations has created the space for parties with competing interests to cooperate in addressing global social issues such as environmental protection, working conditions and human rights concerns.²⁴

Globalisation in the economic sense refers to the expansion of economic transactions across national borders, and the creation of global economic organisations.²⁵ International trade therefore lies at the heart of globalisation, as it necessitates international economic transactions. Production processes are regulated on a global

¹⁶ Snyder in Sarat (ed) *The Blackwell Companion to Law and Society* 2.

¹⁷ Garcia 2013 *Boston College International and Comparative Law Review* 906.

¹⁸ Garcia 2013 *Boston College International and Comparative Law Review* 906.

¹⁹ Multilateralism in this context refers to participation by three or more governments; Garcia 2013 *Boston College International and Comparative Law Review* 906.

²⁰ United Nations "Our Work" (undated) <https://www.un.org/en/our-work> (accessed 2021-06-21).

²¹ Garcia "A 'Fair' Trade Law of Nations or a 'Fair' Global Law of Economic Relations" 2007 45 *Alberta Law Review* 303 313.

²² Garcia 2007 *Alberta Law Review* 314.

²³ *Ibid.*

²⁴ Garcia 2007 *Alberta Law Review* 313.

²⁵ Nayyar "Globalisation and Democracy" 2015 19 *Economic and Political Weekly* 47 47.

level, and this regulation has in recent years been characterised by privatisation and the advancement of the concept of free trade.²⁶ Free trade is the idea that governments should impose as few barriers to international trade as possible.

However, the increased mobility of products and raw materials as a result of globalisation, facilitated the need for greater regulation of international trade, leading to the imposition of tariffs, quotas and limitations to foreign ownership.²⁷ Barriers in international trade include import tariffs and export subsidies.²⁸ One global international organisation which emerged from the increase in international trade, and the concomitant need to regulate it, is the World Trade Organisation (WTO). The WTO deals with the rules of trade between member nations, trade agreement negotiations and trade settlement disputes. One of the aims of the WTO is to allow trade to flow as freely as possible between Member States.²⁹

In the public international law realm, international trade under the WTO relies on a multilateral trading system (MTS) based on a general rule known as the most-favoured-nation (MFN) principle. This principle provides that all products being imported or exported from or to a certain country, subject to any privileges or immunity from tariffs, shall be treated with the same privileges or immunities when being exported or imported from or to any other member country.³⁰ An exception to this rule is the allowance made by the WTO for regional trade agreements (RTAs), which operate only amongst signatories to the RTA in efforts to remove trade barriers among them.³¹ The MTS has become increasingly difficult to rely on for WTO member countries. The many competing interests between them, and the fact that so many countries make up the MTS, makes it difficult for countries to reach an agreement. This has led to a proliferation of RTAs, and seemingly a move away from the MTS founded on the legal requirements of the MFN principle.³² Under an RTA, countries may establish a free-trade area or a customs union. Both of these concepts liberalise

²⁶ Verdier-Stott 2009 *Law, Social Justice and Global Development* 5.

²⁷ López-Córdova and Meissner "The Globalization of Trade and Democracy, 1870-2000" Working Paper, National Bureau of Economic Research 2005 4.

²⁸ Bondarenko "Free Trade Economics" (undated) <https://www.britannica.com/topic/free-trade> (accessed 2021-05-12).

²⁹ World Trade Organisation "The WTO" (2021) https://www.wto.org/english/thewto_e/thewto_e.htm (accessed 2021-04-28).

³⁰ Lee "International Trade Law Post Neoliberalism" 2020 68 *Buffalo Law Review* 413 439.

³¹ RTAs may also be bilateral agreements. Lee 2020 *Buffalo Law Review* 439.

³² Lee 2020 *Buffalo Law Review* 451.

trade amongst participating countries, but in a free-trade area each country still maintains its own trade policy, whilst a customs union also creates common external trade policies for participating countries.³³ Another feature of international trade law, which has been in place since the General Agreement on Tariffs and Trade (GATT)³⁴ “Enabling Clause” of 1979, is that more favourable treatment may be afforded to developing countries under RTAs.³⁵

The MTS has liberalised trade between countries by reducing trade tariffs globally. Although RTAs are not permitted to contravene this by raising trade barriers for countries not part of that RTA, they do adversely affect non-participants by creating exclusive trade preferences. Such exclusivity is created by reducing tariff or non-tariff barriers between RTA members.³⁶ The public international trade system at present is therefore a fragmented one, with RTA rules possibly varying from WTO provisions.³⁷

The public law international trade system levels the playing field for States, allowing them to compete equally with one another, but it does not assist specific producers within those States. The WTO determines the rules for States taking part in international trade, but private entities (producers in the context of this research) make up the majority of traders. The regulations developed by the WTO necessarily impact on the private entities involved in international trade.³⁸ Thus, while trade between countries is liberalised, access by private individuals within countries to this liberalised market is still dominated by large commercial companies.³⁹

Whilst free trade may be beneficial in many respects, it also fosters a situation where large numbers of mass-produced goods that are typically inexpensive flood the market.⁴⁰ Multinational corporations (MNCs) play a major role in international trade, and global production networks are now controlled largely by MNCs. The decisions

³³ Lee 2020 *Buffalo Law Review* 443.

³⁴ General Agreement on Tariffs and Trade (GATT) 1994, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 187, 33 I.L.M. 1153 (1994).

³⁵ Lee 2020 *Buffalo Law Review* 444.

³⁶ Non-tariff barriers may be, for example, safety or sanitary requirements; Lee 2020 *Buffalo Law Review* 447.

³⁷ Lee 2020 *Buffalo Law Review* 448.

³⁸ Messenger “The Public-private Distinction at the World Trade Organization: Fundamental Challenges to Determining the Meaning of ‘Public Body’” 2017 15 *International Journal of Constitutional Law* 60 61.

³⁹ Ngqangweni, Mmbengwa, Myeki, Sotsha and Khoza “Measuring and Tracking Smallholder Market Access in South Africa” National Agricultural Marketing Council Working Paper 2016 5.

⁴⁰ Groos “International Trade and Development: Exploring the Impact of Fair Trade Organizations in the Global Economy and the Law” 1999 34 *Texas International Law Journal* 379 388.

and actions taken by MNCs inform the distribution of resources in international trade.⁴¹ This leads to small producers, who often make small quantities of high-quality, handcrafted goods or farm agricultural products, not being able to compete in the global market.⁴²

1.2 Background to the problem

The processes of globalisation and international trade have resulted in a situation where MNCs and transnational corporations⁴³ are in a position to seek out and capitalise on the lowest production costs. These lowest costs, both human and environmental are typically found in the Global South, which consists of those countries found mainly in the southern hemisphere that are characterised by poverty and minimal industrialisation.⁴⁴ Being able to produce goods in foreign countries gave the Global North⁴⁵ access to cheaper production costs, and therefore cheaper and more readily available food and other products. This led to vast increases in wealth predominantly in the North, thus widening income disparities between global regions. In addition, income disparities within and between countries also widened.⁴⁶

International trade therefore creates much potential for exploitation. It is arguable that current trade policies under the WTO do not adequately assist developing countries, nor do they help small producers within countries gain market access in a system dominated by large commercial producers.⁴⁷ This has given rise to alternative trade campaigns and initiatives aimed at redefining traditionally exploitative North-South trade relations, and assisting small producers in gaining market access.⁴⁸ Alternative trade campaigns are seen as a “new globalisation” movement, hoping to create novel ways of trading internationally in order to ensure greater social equity globally, as well

⁴¹ Ballor and Aydin “Multinational Corporations and the Politics of International Trade in Multidisciplinary Perspective” 2020 22 *Business and Politics* 573 574.

⁴² Groos 1999 34 *Texas International Law Journal* 388.

⁴³ Defined as “[a] company that is controlled from its home country but has large operations in many different countries”. Oxford Reference “Transnational Corporation” (undated) <https://www.oxfordreference.com/view/10.1093/oi/authority.20110803105436546> (accessed 2021-05-06).

⁴⁴ Reynolds *et al The Challenges of Transforming Globalization* 6.

⁴⁵ The Collins Dictionary defines the Global North as consisting of “the richest and most industrialized countries, which are mainly in the northern part of the world”. Collins Dictionary “Global North” (undated) <https://www.collinsdictionary.com/dictionary/english/global-north#:~:text=also%20Global%20North,northern%20part%20of%20the%20world> (accessed 2021-05-06).

⁴⁶ Reynolds *et al The Challenges of Transforming Globalization* 6.

⁴⁷ Lee 2020 *Buffalo Law Review* 425.

⁴⁸ Reynolds *et al The Challenges of Transforming Globalization* 4.

as bring sustainability issues to the fore. Such campaigns include eco-labelling initiatives, anti-sweatshop movements and Fairtrade.⁴⁹

At the outset, it is important to differentiate between the terms Fairtrade and fair trade. The former refers to organisations involved in the certification process of goods which may be classified and traded under the internationally recognised banner of 'Fairtrade'. The Fairtrade group of organisations deals exclusively with agricultural Fairtrade.⁵⁰ The term 'fair trade' on the other hand, refers to a wider trade movement as a whole, inclusive of eco-initiatives and similar schemes, which has the objective of bringing an element of social conscience to trade generally and which does not focus on any particular sector.⁵¹ This dissertation deals with Fairtrade as a group of organisations that certify agricultural products as fairly traded according to their specific certification standards.

A widely-accepted definition of Fairtrade, is that it is “a trading partnership between buyers in the Global North and producers in the Global South, which challenges the conventional practices of international trade”.⁵² Fairtrade does this through opening up dialogue, transparency and respect between those involved in trading partnerships, and aims to create equitable international trade by ensuring the protection of marginalised producers and workers' rights.⁵³

Fairtrade practices aim to ensure that better trading conditions are offered to those marginalised workers or small producers who typically lack economic and political power in the trade relationship.⁵⁴ The lack of equity in current trading systems stems from issues such as dominance of markets by MNCs, unpredictable and low commodity prices, and producers not having access to information, credit and markets, as well as the tough working conditions producers and farm workers face.⁵⁵

⁴⁹ *Ibid.*

⁵⁰ Fairtrade America “Fairtrade vs. Fair Trade” (undated) <https://www.fairtradeamerica.org/get-certified/resources-support/fairtrade-vs-fair-trade/> (accessed 2022-10-29).

⁵¹ Darko, Lynch and Smith “The Impact of Fairtrade: A Review of Research Evidence 2009-2015” Overseas Development Institute (September 2017) 7.

⁵² EFTA “Fair Trade Definition” (February 2009) <http://www.european-fair-trade-association.org/efta/Doc/What.pdf> (accessed 2021-06-18) 1.

⁵³ Verdier-Stott 2009 *Law, Social Justice and Global Development* 4.

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

The central concerns of Fairtrade, are both the human rights and the economic well-being of producers and farm workers.⁵⁶

Although there is no official record of when Fairtrade began, fair trade projects have been around globally since at least 1946, even if they were not labelled as such.⁵⁷ In its initial stages, Fairtrade was referred to in terms of the wider alternative trade movement as a whole, and as such there was not yet differentiation between Fairtrade and fair trade and it was therefore referred to using the latter term. The first fair trade projects were typically started by church organisations in the United States, who initiated trade relationships with poor communities in South America. An official fair trade shop was established in the United States in 1958, which sold goods traded through fair trade networks.⁵⁸ Around the same time in the United Kingdom, a group called the Oxford Committee for Famine Relief sold artefacts made by refugees and communities in developing countries in its shops.⁵⁹

The 1968 United Nations Conference on Trade and Development (UNCTAD) articulated the growing alternative trade trend, with developing countries advocating for “trade not aid”.⁶⁰ This is the idea that developing countries can be more effectively assisted through equitable trade practices rather than monetary donations.⁶¹ However, “trade not aid” was never fully translated into national agendas, and fair trade continued to be largely led by citizen initiatives.⁶² One such initiative was Fair Trade Original, which had branches throughout Europe and imported products to the first World Shop established in 1969 in the Netherlands. Sugarcane, handicrafts and coffee produced in developing countries were among the first products to be sold here.⁶³

Further developments in the 1980s saw the emergence of fair trade labelling organisations, culminating in the creation of the Fairtrade Labelling Organisation (FLO) in 1997. This association operates internationally and brings uniformity to Fairtrade labelling. The labelling of Fairtrade products allowed them to be sold in large

⁵⁶ Groos 1999 *Texas International Law Journal* 381.

⁵⁷ Bondarenko <https://www.britannica.com/topic/fair-trade> (accessed 2021-05-12).

⁵⁸ *Ibid.*

⁵⁹ Bondarenko <https://www.britannica.com/topic/fair-trade> (accessed 2021-05-12).

⁶⁰ *Ibid.*

⁶¹ Vramo “Trade not Aid: Imagining Ethical Economy” in Carrier and Luetchford (eds) *Ethical Consumption: Social Value and Economic Practice* (2012) 83.

⁶² Bondarenko <https://www.britannica.com/topic/fair-trade> (accessed 2021-05-12).

⁶³ *Ibid.*

supermarkets, alongside those that were not Fairtrade certified, thereby expanding their market.⁶⁴ Another development which assisted in bringing uniformity to the movement, was the establishment of the World Fair Trade Organisation (WFTO) in 1989.⁶⁵ Fairtrade International, established in 1997, is an umbrella organisation that coordinates the activities of the producer networks and national Fairtrade organisations that constitute its membership.⁶⁶

Fairtrade has many stated aims including trade justice, consumer awareness, agricultural capacity-building, sustainable production, fair working conditions and minimising fluctuations in producer incomes.⁶⁷ The foundation of all of these aims, is that Fairtrade certified products are bought at a guaranteed minimum price (unless the market price for that product is higher than the guaranteed minimum). Over and above this guaranteed minimum, a social premium is also paid to producers in an effort to encourage community development or improve production conditions.⁶⁸

Several components make up the overall Fairtrade structure. The first component, and the one for whose benefit the organisation is working, are the grass roots producer organisations in poorer countries. These organisations are made up of small producers of agricultural products, as well as farms employing hired labourers.⁶⁹ Buyers, wholesalers, importers and retailers in rich countries form the second component of Fairtrade, and are known as Alternative Trade Organisations. The first and second components work together to forge lasting trade partnerships, enforce standards and certify products for Fairtrade. Another novel component is the well-established supermarkets and shops starting to sell Fairtrade items.⁷⁰

Small-scale farmer producer groups (known as cooperatives), as well as hired-labour farms can constitute producers for the purposes of Fairtrade.⁷¹ However, Fairtrade

⁶⁴ Bondarenko <https://www.britannica.com/topic/fair-trade> (accessed 2021-05-12).

⁶⁵ The World Fair Trade Organisation (WFTO) is a global community of verified social enterprises that practice Fair Trade.

⁶⁶ Fairtrade International “Fairtrade International” (undated) <https://www.fairtrade.net/about/fairtrade-international> (accessed 2021-07-05).

⁶⁷ Fairtrade International <https://www.fairtrade.net/about/fairtrade-international> (accessed 2021-07-05).

⁶⁸ Linton “Growing Fair Trade in South Africa” 2012 9 *Globalizations* 725 725.

⁶⁹ Poe and Kyle “Fair trade – Is it Really Better for Workers? A Case Study of Kaisa Grass Baskets in Bangladesh” 2006 21 *Cornell University* 1 2.

⁷⁰ *Ibid.*

⁷¹ Jari, Snowball and Fraser “Is Fairtrade on Commercial Farms Justifiable? Its Impact on Commercial and Small-scale Producers in South Africa” 2013 52 *Agrekon* 66 68.

guards against the possibility of larger hired-labour farms monopolising the market by ensuring that small producers make up half of Fairtrade members, and that their products make up at least half of Fairtrade products.⁷² Fairtrade on small-scale farms is aimed at improving the lives of the farm owners themselves as well improving their means of production. In contrast, on hired-labour farms, Fairtrade aims to channel the benefits through to the farm workers.⁷³

To be certified as a Fairtrade producer, certain standards have to be upheld. For small-scale farmers, the standards fall into the categories of production and business and development. Environmental sustainability, fair labour conditions and producer-led development initiatives form part of these standards.⁷⁴ For hired-labour farms, the standards fall under categories of trade, social development, environmental development and labour conditions. Here, the Fairtrade social premium must be put towards projects that meet workers needs and cannot be used for company purposes.⁷⁵ In addition to these general standards, each country might impose its own standards for local producers.⁷⁶

Fairtrade in South Africa has been adapted to fit the country's unique socio-political background.⁷⁷ Since 2004, Fairtrade in South Africa has included uniquely South African standards to promote transformation.⁷⁸ The need to promote transformation stems from the apartheid legacy, which resulted in a highly skewed land distribution, with ownership of commercial agriculture being dominated by the white population whilst black farm workers were vulnerable to exploitation and poverty.⁷⁹ The inclusion of transformative measures is mandated by the Constitution of the Republic of South

⁷² Darko *et al* *Overseas Development Institute* 8.

⁷³ Jari *et al* 2013 *Agrekon* 67.

⁷⁴ These terms will be addressed in more detail in later chapters. Darko *et al* *Overseas Development Institute* 8.

⁷⁵ Darko *et al* *Overseas Development Institute* 9.

⁷⁶ Linton 2010 *Globalizations* 726.

⁷⁷ Fairtrade Foundation "Impacts of Fairtrade in South Africa" (June 2010) https://www.fairtradenederland.nl/app/uploads/2019/11/2010_Impact_of_Fairtrade_in_South_Africa.pdf (accessed 2021-06-19) 5.

⁷⁸ Moseley "Fair Trade Wine: South Africa's Post-apartheid Vineyards and the Global Economy" 2008 5 *Globalizations* 291 299. Transformation in the South African context "envisages a complete transformation of the legal system as well as a dismantling of the structures which still help to perpetuate the disgraceful racial and gender inequality in our society and continues to subjugate the majority of South Africans – both economically and socially". Transformation in this sense will be explored in chapter 4 of this dissertation. De Vos "What do we Talk about when we Talk about Transformation?" (12 August 2010) <https://constitutionallyspeaking.co.za/what-do-we-talk-about-when-we-talk-about-transformation-2/> (accessed 2021-06-28).

⁷⁹ Moseley 2008 *Globalizations* 292.

African, 1996 (the Constitution) with its preamble promoting transformation, and its equality clauses providing that measures must be taken to advance persons disadvantaged by unfair discrimination.⁸⁰ Black Economic Empowerment (BEE)⁸¹ standards therefore form part of Fairtrade in South Africa, in that at least 25 percent of the shares in a Fairtrade certified farm must be held by farm workers.⁸² Introducing these transformative standards prevents the situation where the international market is inundated with Fairtrade produce originating from white-owned industrialised commercial farms in South Africa. This would not accord with the social justice objectives of Fairtrade,⁸³ or the pressing need for equitable change in South Africa.⁸⁴

1.3 Problem statement

The first issue to be addressed relates to the objectives of Fairtrade within the international trade law context. Fairtrade aims, amongst other objectives, to contribute to eliminating poverty, create food security, achieve better working conditions, foster economic development and create responsible consumption. How does it aim to achieve these on an international level? International Trade Organisations are increasingly acknowledging 'social conscience' issues such as socio-economic impacts and sustainability. An initial glance at the WTO website's home page is evidence of this.⁸⁵ Issues of food security and strengthening Africa's capacity to trade appear prominently there, which speaks to the potential for development through international trade and the fact that trade organisations are cognisant of that potential.⁸⁶

The legal principles embraced by the WTO represent neo-liberal ideals in that they promote privatisation, trade liberalisation and trade that is as free from government intervention as possible.⁸⁷ At the outset it might seem that Fairtrade is inimical to these

⁸⁰ Section 9(2) of the Constitution.

⁸¹ BEE is a legislative measure introduced in 2003 to measure companies' black empowerment progress in order to address the entrenched racial inequalities which characterise the South African economy; Linton 2012 *Globalizations* 728.

⁸² Linton 2012 *Globalizations* 733.

⁸³ Social Justice is defined by the Oxford English Dictionary as "justice in terms of the distribution of wealth, opportunities, and privileges within a society"; The Oxford Learner's Dictionary (undated) <https://www.oxfordlearnersdictionaries.com/definition/english/social-justice> (accessed 2021-05-21).

⁸⁴ Linton 2012 *Globalizations* 733.

⁸⁵ World Trade Organisation <https://www.wto.org/> (accessed 2021-05-27).

⁸⁶ *Ibid.*

⁸⁷ Lee 2020 *Buffalo Law Review* 415.

ideals. It is a form of intervention into free trade, and yet the WTO is supportive of it.⁸⁸ It is therefore important to understand firstly how Fairtrade fits into the context of the dominant practices of international trade law.

The second issue to be explored is the significance of Fairtrade in Africa. At the end of 2016, African and Middle Eastern farms made up 67 percent of Fairtrade certified farms worldwide, and 53 percent of global Fairtrade workers were in Africa and the Middle East.⁸⁹ Fairtrade is becoming progressively more important for Africa.⁹⁰ Fairtrade Africa is the branch of Fairtrade International which represents producers in Africa and the Middle East who are Fairtrade certified.⁹¹ Fairtrade in Africa is unique in that it has been moulded by colonial structures of landholding, farmer organisations, and marketing practices. The traditional cooperative model of farmer organisation in African countries was government-led and aimed at feeding the increasing number of people living in urban cities.⁹² One of the challenges for Fairtrade in Africa has been to do away with and reshape some of the issues with this traditional structure.⁹³

Development is a major feature of many African instruments of international law. The African Charter on Human and Peoples' Rights (the African Charter)⁹⁴ affirms the right to development.⁹⁵ It is the only hard law⁹⁶ guarantee of the right to development in the arena of international law.⁹⁷ The African Charter places a duty on State Parties to

⁸⁸ For example, searching the term "Fairtrade" on the WTO's website brings up many results on Public Forums held by the WTO where issues of market access, inclusive trade, sustainable agriculture and redress for trade imbalances are discussed. World Trade Organisation https://www.wto.org/search/search_e.aspx?search=basic&searchText=Fairtrade&method=pagination&pag=0&roles=%2Cpublic%2C (accessed 2022-11-10).

⁸⁹ Fairtrade International "Monitoring the Scope and Benefits of Fairtrade: Monitoring Report 9th edition" (2018) https://files.fairtrade.net/publications/FairtradeMonitoringReport_9thEdition_lores.pdf (accessed 2021-06-21) 125.

⁹⁰ Tallontire "Fairtrade and Development in African Agriculture" in Raynolds and Bennet (eds) *Handbook of Research on Fair Trade* (2015) 1.

⁹¹ Fairtrade Africa "About Fairtrade" (undated) <https://fairtradeafrica.net/about-fairtrade/> (accessed 2021-06-21).

⁹² Tallontire in Raynolds and Bennet (eds) *Handbook of Research on Fairtrade 2*.

⁹³ Tallontire in Raynolds and Bennet (eds) *Handbook of Research on Fairtrade 4*.

⁹⁴ 1981 UNTS 1520. Adopted; 27.06.1981. EIF: 21.10.1986.

⁹⁵ Article 22 of the African Charter on Human and Peoples Rights (the African Charter) 1981 UNTS 1520. Adopted; 27.06.1981. EIF: 21.10.1986.

⁹⁶ Hard law in the realm of international law refers generally to binding legal obligations created for the parties involved, and these legal obligations may be enforced by a court. This term will be further explored in chapter 3 of this dissertation. European Center for Constitutional and Human Rights (undated) <https://www.ecchr.eu/en/glossary/hard-law-soft-law/> (accessed 2021-06-30).

⁹⁷ Okafor "A Regional Perspective: Article 22 of the African Charter on Human and People's Rights" 2013 *United Nations Realising the Right to Development: Implementing the Right to Development* 373 374.

ensure that all people can exercise the right to development.⁹⁸ With 54 out of 55 African States as parties to the African Charter, this right to development is particularly significant for Africa. The African Continental Free Trade Area (AfCFTA)⁹⁹ was established by members of the African Union (AU) in 2018. The AfCFTA aims to liberalise trade amongst AU members, as well as enable sustainable development and inclusive growth in Africa.¹⁰⁰ These instruments and policies set the scene in which Fairtrade operates in Africa.

In order to analyse the extent to which Fairtrade can contribute towards socio-economic development in South Africa, one first must have an understanding of the relevant development law and policy already in place in the country. This will be the third issue discussed in this dissertation. The Constitution sets the tone for development in South Africa. Having a justiciable Bill of Rights is a means through which development can be enforced by holding the government accountable for the duties it has on issues such as promoting equality, the right to fair labour practices, and access to socio-economic well-being.¹⁰¹

It is important for domestic policy to take into account patterns in global trade and investment, as world economic changes have vast impacts on the domestic environment.¹⁰² These international factors are external drivers of change, and it is necessary to broaden opportunities into the global market for South Africans, in order to stay abreast of such changes so that the economy can develop along with the global

⁹⁸ Article 22(2) of the African Charter.

⁹⁹ Agreement Establishing the African Continental free Trade Area (AfCFTA) (adopted; 21.03.2018. EIF; 30.05.2019; https://au.int/sites/default/files/treaties/36437-treaty-consolidated_text_on_cfta_-_en.pdf (accessed 2021-06-30).

¹⁰⁰ African Union “The AfCFTA Secretariat and UNDP Sign a Strategic Partnership Agreement to Promote Trade in Africa” (29 March 2021) <https://au.int/en/pressreleases/20210329/afcfta-and-undp-sign-strategic-partnership-agreement-promote-trade> (accessed 2021-06-30).

¹⁰¹ Sections 9, 23, 26 and 27 of the Constitution. Section 7(2) of the Constitution places a duty on the State to respect, protect, promote and fulfil the rights in the Bill of Rights.

¹⁰² For example, the fact that China and India have fast growing developing economies means that urbanisation and industrialisation are likely to continue there for a decade or more. This in turn means that the demand for natural resources is likely to remain high for that period. National Planning Commission “National Development Plan” (2011) https://www.gov.za/sites/default/files/gcis_document/201409/devplan2.pdf (accessed 2021-05-28) 7.

trends.¹⁰³ A major factor contributing to reducing poverty in developing countries has been the increase of exports, which has stimulated economic growth.¹⁰⁴

The South African government has acknowledged the significance of international trade in our country's development in the 2011 National Development Plan (NDP).¹⁰⁵ The NDP formulates a broad range of targets that the government aims to meet by 2030. It sets poverty elimination and reducing inequality as two of the most pressing issues that South Africa has to address.¹⁰⁶ Under these two broad goals, are a number of more specific objectives to be achieved; reducing unemployment to 6 percent by 2030, gaining global market share in key industries, and boosting the rural economy by encouraging small-scale agriculture are included.¹⁰⁷ The NDP highlights the need for citizens to become actively involved, and thus move away from a citizenry reliant on the State to one where citizens have the capacity to develop themselves. Terms such as "building capabilities", "involving communities in their own development" and "expanding opportunities" are used in the NDP.¹⁰⁸ There is a strong correlation between these ideals and those at the heart of Fairtrade. The first of the ten principles of Fairtrade, as outlined by the WFTO, is "creating opportunities for economically disadvantaged producers" in order for them to move away from poverty to become economically self-sufficient.¹⁰⁹ This principle is therefore directly in line with what the NDP is proposing.

BEE and land reform are also development policies in place in South Africa that are applicable in the context of this research. Both of these policies are geared towards

¹⁰³ National Planning Commission https://www.gov.za/sites/default/files/gcis_document/201409/devplan2.pdf (accessed 2021-05-28) 7.

¹⁰⁴ National Planning Commission https://www.gov.za/sites/default/files/gcis_document/201409/devplan2.pdf (accessed 2021-05-28) 7, 50.

¹⁰⁵ National Planning Commission https://www.gov.za/sites/default/files/gcis_document/201409/devplan2.pdf (accessed 2021-05-28) 7 and 50.

¹⁰⁶ National Planning Commission https://www.gov.za/sites/default/files/gcis_document/201409/devplan2.pdf (accessed 2021-05-28) 1.

¹⁰⁷ National Planning Commission https://www.gov.za/sites/default/files/gcis_document/201409/devplan2.pdf (accessed 2021-05-28) 90, 107 and 117.

¹⁰⁸ National Planning Commission https://www.gov.za/sites/default/files/gcis_d/201409/devplan2.pdf (accessed 2021-05-28) 2.

¹⁰⁹ World Fair Trade Organisation "10 Principles of Fair Trade" (December 2017) <https://thefairtraderstore.com.au/blogs/be-inspired/10-principles-of-fair-trade> (accessed 2021-06-02).

the support and development of marginalised groups, of which the rural poor and farm workers are a part. Which of these South African specific goals and development policies might be better achieved through the expansion or refinement of Fairtrade, and the reflection of Fairtrade objectives in the legal framework?

The fourth and final issue addressed draws on the conclusions reached from the preceding issues to explore whether better legal connections can be drawn between Fairtrade and South Africa's socio-economic development goals which Fairtrade might be relevant to. This will entail an examination of the objectives and practical achievements of Fairtrade in light of the socio-economic development goals in South Africa which will have been outlined under the third issue. It will then be possible to question how legal connections between the objectives of Fairtrade, and those specific development goals of South Africa can be drawn closer. The end goal for making these connections is to give producers the chance to participate in the international market so that they may pursue their own development.

Fairtrade has been shown to have positive impacts in several key areas. Fairtrade producers have benefitted from the set minimum prices during times of low conventional market prices, and the Fairtrade premium has aided in community-wide development.¹¹⁰ Organisational structures of producer organisations have been strengthened, and the incomes and well-being of producers have been positively impacted. In addition, Fairtrade has been shown to benefit workers on hired-labour farms through better working conditions and worker empowerment.¹¹¹ Are these areas of development relevant to the South African context, and will they contribute to the specific development needs of our country, as outlined under the third issue above? These are all questions which the research aims to address.

1.4 Research questions

This research will investigate whether Fairtrade, which is a global strategy for development, can contribute to socio-economic development in South Africa. In

¹¹⁰ Fairtrade International "The Impact of Fairtrade: A Review of Research Evidence 2009-2015" (2017)
https://files.fairtrade.net/publications/2017_ODI_FairtradeImpact_ManagementResponse.pdf
(accessed 2021-06-06) 2-10.

¹¹¹ Fairtrade International
https://files.fairtrade.net/publications/2017_ODI_FairtradeImpact_ManagementResponse.pdf
(accessed 2021-06-06) 2-10.

answering this question, it will be necessary to first identify how Fairtrade fits in to the international trade law system, and what the objectives of Fairtrade are internationally. Following on from this, the role of Fairtrade in the African context and how Fairtrade fits in to Africa's development needs will be examined. Fairtrade in Africa may be substantially different to Fairtrade in other Global South regions, and it is important to investigate whether or how Fairtrade has been adapted to fit the African context. Once Fairtrade has been examined in both the global and regional contexts, the research will turn to South Africa, examining specific socio-economic development goals of South Africa, and what objectives Fairtrade aims to achieve in South Africa. It will then be possible to discern whether the Fairtrade objectives link up to South Africa's socio-economic development goals in a legal context, and consequently whether Fairtrade is able to contribute to development in South Africa.

1.5 Research methodology

This research will be conducted through a literature survey of existing publications on the topics of international trade, Fairtrade and development in South Africa. This information will be taken from a variety of credible authors and journals. Government policies will also feature prominently in identifying South Africa's development goals, and existing legislation and policies aiming to contribute to development in South Africa will be highlighted. International and regional legal instruments will be used in outlining the international trade context and the regional development laws for Africa.

1.6 Limitations

This topic has the potential to encompass a wide variety of disciplines and will likely be broader than a normal qualitative study. It is important to note that this will not be a study in land reform, BEE law, the NDP or specific constitutional provisions such as the right to equality. It will, however, draw on these fields in assessing Fairtrade's potential to achieve development in South Africa. Whilst international trade law and the law of development will be the focus of the study, it is important to note that this will not be a purely legal dissertation, as development and the policies aimed at development necessarily include socio-economic aspects. This research will not cover the entire range of development goals for South Africa. It will focus purely on those socio-economic goals which Fairtrade might be most relevant to, and these goals must have a legal basis or be part of the South Africa's legal framework.

The focus of this dissertation will be Fairtrade as a certification programme for agricultural development, and not 'fair trade' as a broad term encompassing various sustainability initiatives and products. Whilst Fairtrade does regulate standards to be adhered to by Fairtrade companies, manufacturers and purchasers, the emphasis in this dissertation will be on the supply-side of the agricultural value chain. The standards for small-scale producers and hired-labour farms will be the main concern.

This dissertation will not propose that Fairtrade has the ability to fundamentally change existing structures and result in the achievement of all of South Africa's socio-economic development goals. Fairtrade is only one tool, which if used more effectively, has the potential to contribute to achieving socio-economic development in South Africa. It is a tool which may be used to complement the legislative measures already in place which are geared towards socio-economic development.

1.7 Chapter outline

1.7.1 Chapter 1 – Background to the problem

This chapter provides an introduction and background to the problem. It explains the context in which Fairtrade was developed. This context is one of a globalised world in which international trade and the laws governing it have far-reaching impacts. The reasons why there was a need for alternative trade movements such as Fairtrade are also highlighted. An overview of Fairtrade and its operation is provided. This chapter also sets out the problem statement, research questions, limitations and explains the research methodology.

1.7.2 Chapter 2 – Fairtrade in the international trade law system

This chapter will define the international context into which Fairtrade fits. It will examine the dominant principles of public international trade law, as well as outline the practices of private international trade law. Most of the principles of public international trade law will be drawn from the GATT, which forms the basis of international trade under the WTO. Although Fairtrade forms part of private international trade law, the public law realm has informed the need for Fairtrade. The objectives that Fairtrade aims to achieve globally will be identified. In this way, it will be possible to see how and where Fairtrade is placed in the international trade law system.

1.7.3 Chapter 3 – Fairtrade in the African context

This chapter will address the second issue, narrowing the international context outlined in chapter two, to the regional African context. Africa's position within the international trade system will be examined and Africa-specific trade policies outlined. Agreements such as the African Charter, the AfCFTA and Agenda 2063 will be considered in light of their development and trade policies. In addition, a brief history of how trade in Africa has evolved will be provided. This chapter will draw comparatives between regional trade and development instruments and Fairtrade objectives, and investigate whether Fairtrade has aided development in other African countries.

1.7.4 Chapter 4 – South Africa's socio-economic development goals

In understanding the South African context, it will be necessary to briefly outline the history of agriculture and trade in the country, showing why there is a need for assistance from alternative trade movements. Following on from this, the socio-economic development goals of South Africa will be identified and explored in this chapter. The Constitution, the NDP, BEE and land reform are indicators of specific socio-economic development goals. These goals cover a broad range of development areas, so it will be necessary to focus on those goals that Fairtrade may be relevant to. The Constitution forms the foundation for the country's development goals, and the government has developed policies to promote such development. Fields such as competition law have also evolved to include development aspects with the incorporation of public interest conditions for mergers.¹¹² The purpose of this chapter is to identify South Africa's relevant development goals, in order for legal connections to be drawn between them and Fairtrade in the following chapter.

1.7.5 Chapter 5 – Drawing legal connections between fairtrade and socio-economic development in South Africa

This chapter will address the fourth issue. The specific standards governing Fairtrade in South Africa, and what these standards are aimed at achieving, will be discussed. Having identified specific South African development goals in the previous chapter, the aim of this chapter will be to find out the extent to which Fairtrade aligns with the type of development envisioned for South Africa, and how Fairtrade may be refined or expanded for the South African context. Drawing on the insights gained in the preceding three chapters, this chapter will attempt to create legal connections between

¹¹² Sections 12A(1)(b) and 12A(3) of the Competition Act 89 of 1998.

Fairtrade objectives and the socio-economic development goals of South Africa. In making these connections, it will be possible to answer the question whether Fairtrade could be used to contribute to development in South Africa.

1.7.6 Chapter 6 – Conclusion

The conclusion wraps up the research, highlighting the overall finding and summarising the key findings. Contributions of the research will be demonstrated and recommendations for future research will be proposed.

CHAPTER 2

FAIRTRADE IN THE INTERNATIONAL TRADE LAW SYSTEM

2.1 Introduction

One of the top priorities listed in the Marrakesh Agreement Establishing the WTO (the WTO Agreement),¹¹³ is that of facilitating development.¹¹⁴ The preamble to the WTO Agreement notes that the achievement of growth in developing countries is dependent on them securing a share in the growth of international trade.¹¹⁵ The WTO does not define developing or developed countries and it is WTO members who declare which category they fall into themselves. This has resulted in a very diverse group of countries within the 'developing country' category.¹¹⁶ There is no generally accepted criterion used to classify developing countries, because development encompasses economic, environmental and social dimensions.¹¹⁷

Certain countries which four decades ago were considered developing countries, most of them in East Asia, have since achieved significant economic development.¹¹⁸ International trade was a notable driver of these countries' economic development.¹¹⁹ At the time when these countries were developing, the legal framework of public international trade law allowed them to implement trade policies conducive to their development. It has been suggested that the current legal framework for international trade hinders developing countries from effectively utilising trade in order to grow their economies in the same way as those East Asian countries were able to expand.¹²⁰

There are current WTO policies designed to assist developing countries.¹²¹ For the purposes of this dissertation, it is important to note that this assistance from the WTO is provided to the developing country as a whole. It is then private companies and producers within these countries that operate within the more favourable trade terms. However, it is generally the large, established companies and producers who have

¹¹³ Marrakesh Agreement Establishing the World Trade Organization (The WTO Agreement) (1867 UNTS 154, (1994) 33 ILM 1144; adopted: 15.04.1994; EIF: 01.01.1995).

¹¹⁴ The Preamble to the WTO Agreement.

¹¹⁵ *Ibid.*

¹¹⁶ Kasteng, Karlsson and Lindberg "Differentiation between Developing Countries in the WTO" *Swedish Board of Agriculture Report 2004:14 E6*.

¹¹⁷ Vaggi "The Rich and the Poor: A Note on Countries' Classification" 2017 70 *PSL Quarterly Review* 59 59.

¹¹⁸ South Korea, Taiwan, Singapore and Hong Kong are examples of these.

¹¹⁹ Lee *Reclaiming Development in the World Trading System* (2006) 4.

¹²⁰ Lee *Reclaiming Development in the World Trading System* 6.

¹²¹ Lee *Reclaiming Development in the World Trading System* 25.

access to the international markets under these favourable terms. Small producers within developing countries still struggle for access to the international trade market and the WTO policies do not address the problem of small producer market access. Thus, the need for Fairtrade arises. The WTO policies regulate aspects of public international law, whilst Fairtrade, which works with producers rather than countries, falls within the realm of private international trade law.

This chapter will identify the dominant rules and practices of public international trade law, as well as illustrate why there is a need for Fairtrade. A brief history of public international trade law is provided, along with a discussion of current issues within this system in relation to developing countries and small-scale producers. Next, this chapter outlines the objectives of Fairtrade internationally. The Sustainable Development Goals (SDGs)¹²² and the Draft Convention on the Right to Development¹²³ are also relevant to the discussion of Fairtrade within the international trade system, and are included in this chapter. In answering the question of whether Fairtrade can contribute to socio-economic development in South Africa, it is necessary to understand the international context for Fairtrade and the factors informing the need for Fairtrade.

2.2 Public international trade law

2.2.1 A brief history of public international trade law

Prior to the development of the GATT in 1947, international trade was regulated by bilateral trade treaties, as opposed to the current multilateral trading system.¹²⁴ These bilateral treaties were characterised by minimal trade barriers, no quantitative restrictions on trade, and no real trade discrimination.¹²⁵ This system allowed international trade to grow successfully from the late 1800s until 1913 and the commencement of World War I when countries began adopting protectionist trade policies.¹²⁶ Increased tariffs, import quotas and foreign-exchange controls are

¹²² UN General Assembly “Transforming Our World: The 2030 Agenda for Sustainable Development” (2015-10-21) A/RES/70/1 <https://www.refworld.org/docid/57b6e3e44.html> (accessed 2021-11-11).

¹²³ UN General Assembly “Draft Convention on the Right to Development” (17 January 2020) https://www.ohchr.org/Documents/Issues/Development/Session21/4_A_HRC_WG.2_21_2_Ad_d.1_RegisteredVersion.pdf (accessed 2022-01-27).

¹²⁴ Irwin “The GATT in Historical Perspective” 1995 85 *The American Economic Review* 323 323.

¹²⁵ Trade discrimination refers to countries trading on less favourable terms with certain countries, thereby discriminating against them in relation to countries for whom they provide more favourable trading terms.

¹²⁶ Irwin 1995 *The American Economic Review* 323.

examples of protectionist policies, as they are put in place in an attempt to protect a country's own economy by limiting imports and promoting exports.¹²⁷ These protectionist measures continued in the period between World War I and II, without any effective institutional framework to negotiate for a reduction of trade barriers. The economic depression of the 1930s only heightened trade protectionism, resulting in slow economic recovery and very poor economic performance.¹²⁸ The failures of the international trading system during this period created a pressing need for reform after World War II. The GATT of 1947 was the outcome of this reform, regulating the reduction of trade barriers and doing away with trade discrimination.¹²⁹ In this way, the GATT aimed to liberalise trade.

The rationale behind liberalising trade was largely based on Adam Smith's theory of absolute advantage. This is the idea that a nation should focus on producing those goods that it can produce most efficiently, and then trade these goods with other nations for whatever that nation is best at producing.¹³⁰ Trading in this way would, according to Smith, result in an efficient division of labour internationally.¹³¹ David Ricardo's theory of comparative advantage also advocates for trade liberalisation. This theory recognises that some nations may have inferior production capabilities in all goods, but should still engage in trade by producing those goods in which they have the greatest relative cost advantage compared to other goods they may produce.¹³² Both of these theories propose that under these conditions, where nations trade freely with one another, production becomes efficient, thereby enhancing global output.¹³³ This is thought to lead to economic prosperity and higher standards of living in all nations.¹³⁴

¹²⁷ Economics Online "Trade Protectionism" (undated) https://www.economicsonline.co.uk/Global_economics/Trade_protectionism.html (accessed 2021-10-14).

¹²⁸ Irwin 1995 *The American Economic Review* 324.

¹²⁹ *Ibid.*

¹³⁰ Yigzaw "On the Obituary of the Doha Round: A Path for Reinventing the WTO's Future" 2021 22 *The Estey Journal of International Law and Trade Policy* 31 37.

¹³¹ *Ibid.*

¹³² Jari *An Investigation into the Impact of Fairtrade in South Africa* (doctoral thesis, Rhodes University) 2012 14.

¹³³ Jari *The Impact of Fairtrade in South Africa* 14.

¹³⁴ Yigzaw 2021 *The Estey Journal of International Law and Trade Policy* 34.

Public international trade law is found in the Agreements establishing the World Trade Organisation.¹³⁵ These Agreements provide a framework for international trade regulated by rules agreed upon through multilateral negotiations.¹³⁶ Prior to the development of the WTO, international trade was regulated not by an international trade organisation, but by the GATT. The GATT is a multilateral agreement and international treaty regime first signed in 1947.¹³⁷ Several rounds of trade negotiations took place under the GATT, with amendments made to the agreement in efforts to liberalise the multilateral trading system.¹³⁸ These rounds of negotiations each ran for several years, with the end goal being the signing of agreements named after the place where the negotiations were conducted. The Uruguay Round of negotiations ran from 1986 to 1994, and resulted in the GATT 1994 superseding the GATT 1947.¹³⁹

Another outcome of the Uruguay Round was the establishment of The WTO in 1995 as the first international institution directed at regulating trade and facilitating multilateral trade negotiations.¹⁴⁰ The GATT 1994 is still operative as part of the WTO framework and contains a number of policies, discussed below, which ensure the liberalisation of international trade between WTO member countries.¹⁴¹ The agreements signed during the Uruguay Round are still those which make up the current WTO system. This is because the Doha Round of negotiations which commenced in 2001, has not yet resulted in any agreements being signed.¹⁴² The Doha Round was declared a 'development round' as opposed to previous rounds under the GATT which focussed on tariff reduction and trade expansion.¹⁴³ The failure of the Doha Round points to the vast differences among WTO member states. Both developing countries and industrialised nations are reluctant to make further concessions, making any agreement impossible.¹⁴⁴

¹³⁵ Marrakesh Agreement Establishing the World Trade Organization (The WTO Agreement) (1867 UNTS 154, (1994) 33 ILM 1144; adopted: 15.04.1994; EIF: 01.01.1995).

¹³⁶ Schlemmer "International Trade Law" in Strydom (ed) *International Law* 2ed (2020) 492.

¹³⁷ Van Niekerk and Schultze *The South African Law of International Trade: Selected Topics* 4ed (2016) 6.

¹³⁸ World Trade Organization "The GATT Years: From Havana to Marrakesh" (undated) https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact4_e.htm#top (accessed 2021-09-13).

¹³⁹ Van Niekerk and Schultze *The South African Law of International Trade* 6.

¹⁴⁰ Schlemmer in Strydom (ed) *International Law* 493.

¹⁴¹ Van Niekerk and Schultze *The South African Law of International Trade* 6.

¹⁴² World Trade Organisation "Overview: a Navigational Guide" (undated) https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm1_e.htm (accessed 2021-09-13).

¹⁴³ Yigzaw 2021 *The Estey Journal of International Law and Trade Policy* 47.

¹⁴⁴ Yigzaw 2021 *The Estey Journal of International Law and Trade Policy* 50.

2.2.2 Current policies

Traditional trade policies have been founded on the economic theory that complete liberalisation of the global market will facilitate growth and create economic efficiency. International trade policies are therefore designed to advance free trade, allowing minimal government control of international trade.¹⁴⁵ Government control could be in the form of subsidies to promote exports, or government substitution of imports.¹⁴⁶ The theories behind the elimination of these government regulations show that the free operation of markets allows resources to be allocated efficiently, based on supply and demand.¹⁴⁷ In addition, free trade is said to create equal opportunities for those competing in the market, thereby making trade “fair”. However, the term “fair” in relation to economic gains and international trade has not been sufficiently defined. There is much debate around what should be considered fair in international trade. This debate is exacerbated by the vast differences between nations competing in the international market.¹⁴⁸

There are a number of features of trade under the WTO that advance free trade and remove trade barriers.¹⁴⁹ The first of these is the Most Favoured Nation (MFN) principle, as outlined in chapter one of this dissertation. The second central feature is National Treatment. Whilst the MFN rule results in the equal treatment of products from all of a country’s trading partners, National Treatment results in the equal treatment of all imports in relation to local products of that importing country.¹⁵⁰

The third core principle of international trade under the WTO is the commitment by Member States that they will bind themselves to a maximum level of import duty, charge or restriction for specified goods. This principle aims to reduce tariffs.¹⁵¹ The fourth fundamental principle under the WTO is the prohibition on Member States adopting protective measures other than tariffs. Protective measures include import duties, or restrictions on the quantities of imports or exports. This rule is however

¹⁴⁵ Jari *The Impact of Fairtrade in South Africa* 15.

¹⁴⁶ Lee *Reclaiming Development in the World Trading System* 24.

¹⁴⁷ These include the theory of absolute advantage and theory of comparative advantage. For further discussion of these theories see Jari *The Impact of Fairtrade in SA* 14.

¹⁴⁸ Suranovic “A Positive Analysis of Fairness with Applications to International Trade” 2000 23 *World Economy* 283 285.

¹⁴⁹ Ribeiro “Navigating the Turbulent Waters Connecting the World Trade Organization and Corporate Social Responsibility” 2009 16 *Indiana Journal of Global Legal Studies* 245 251.

¹⁵⁰ The WTO Agreements Series 2 *General Agreement on Tariffs and Trade* (undated) 3.

¹⁵¹ *Ibid.*

subject to certain exceptions.¹⁵² These fundamental principles are contained in the WTO Agreement,¹⁵³ adopted at the culmination of the Uruguay Round of trade negotiations in 1994 which established the WTO.¹⁵⁴

2.2.3 Developing countries in international trade

Exceptions to the prohibition on protective measures, alluded to above, form part of Special and Differential Treatment (S&D Treatment) measures which were agreed on at the Uruguay Round. S&D Treatment rules are provisions conferring preferential treatment on developing countries.¹⁵⁵ There are numerous S&D Treatment provisions, aimed at various outcomes. These outcomes include: increased trade opportunities for developing countries, safeguarding developing country interests, flexibility afforded to developing countries with respect to their WTO commitments and providing technical assistance to developing countries.¹⁵⁶ An example of a provision aimed at increasing trade opportunities for developing countries is Article XXXVI of the GATT 1994. This Article provides that, because developing countries depend on the export of a few primary products, access to world markets for these products should be provided on the most favourable conditions possible.¹⁵⁷

Several criticisms of the S&D Treatment measures have been raised. One criticism is that they hinder developing countries seeking to gain from the S&D Treatment by imposing regulatory obstacles.¹⁵⁸ An example of a regulatory impediment is found in Article XVIII of the GATT. This Article permits developing country members to raise tariffs above the set maximum under WTO disciplines. Before doing so, however, the developing country member must negotiate with other members who will be affected by the tariff increase, and offer compensation. If the compensation offered is insufficient, the affected member may alter their own trade concessions.¹⁵⁹ Negotiations and compensation may not be feasible for developing countries, which

¹⁵² The WTO Agreements Series 2 *General Agreement on Tariffs and Trade* 2. Exceptions to the prohibition on protective measures are outlined in section 2.2.3 of this study.

¹⁵³ See articles 1, 2, 3, 5.

¹⁵⁴ Lee "International Trade Law Post Neoliberalism" 2020 68 *Buffalo Law Review* 415 416.

¹⁵⁵ Lee 2020 *Buffalo Law Review* 424.

¹⁵⁶ WTO Secretariat *Special and Differential Treatment Provisions in WTO Agreements and Decisions* WTO Doc. WT/COMTD/W/196 (14 June 2013).

¹⁵⁷ GATT 1994, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 187, 33 I.L.M. 1153 (1994).

¹⁵⁸ Lee 2020 *Buffalo Law Review* 424.

¹⁵⁹ Article XVIII of the GATT.

makes invoking Article XVIII inefficient.¹⁶⁰ Another criticism raised against S&D Treatment measures is that they do not go far enough in providing preference to developing countries.¹⁶¹ For example, there is a restriction on safeguard measures¹⁶² being applied to products coming from a developing country member. However, for this restriction to apply, the developing country must not hold more than three percent share of the imports of that product in the importing member country.¹⁶³

There are certain features of the GATT of 1947 which hindered developing countries from benefitting from the initial push for trade liberalisation. The GATT originally only regulated the trade of manufactured goods, leaving developed countries free to continue subsidising their agricultural sectors. When developing countries were integrated into the trading system during the Uruguay Round, the agricultural sector was also included in trade liberalisation efforts.¹⁶⁴ Developing countries were not permitted to introduce new subsidies in their agricultural sectors, whilst subsidy reduction in the agricultural sectors of developed countries was slow.¹⁶⁵ Developing countries depend largely on agricultural commodities for the development of their economies, and they also have comparative advantage in these commodities.¹⁶⁶ Developing countries were not able to utilise their comparative advantage in agricultural products while developed countries were still permitted to subsidise their own agricultural production.¹⁶⁷

Whilst trade policies may not be the only driver of economic development in developing countries, the trading system should be such that it facilitates rather than hinders the economic development of developing countries. The legal framework for international trade currently does not allow for the adoption of trade-related subsidies, which were instrumental in the successful economic development of East Asian countries in the past.¹⁶⁸ For example, before South Korea joined the WTO in 1995, it

¹⁶⁰ Lee 2020 *Buffalo Law Review* 426.

¹⁶¹ Lee 2020 *Buffalo Law Review* 425.

¹⁶² Safeguard measures are applied to protect a domestic industry when an increase in imports threatens to cause serious injury to a domestic industry. These measures could be in the form of increased tariffs and quotas. Lee *Reclaiming Development in the World Trading System* 86.

¹⁶³ Article 9.1 Agreement on Safeguards (1869 U.N.T.S. 154, adopted: 15.04.1994), Annex 1A to The WTO Agreement (1867 UNTS 154, (1994) 33 ILM 1144; adopted: 15.04.1994; EIF: 01.01.1995).

¹⁶⁴ Jari *The Impact of Fairtrade in South Africa* 16.

¹⁶⁵ Jari *The Impact of Fairtrade in South Africa* 17.

¹⁶⁶ Jari *The Impact of Fairtrade in South Africa* 15, 17.

¹⁶⁷ Jari *The Impact of Fairtrade in South Africa* 17.

¹⁶⁸ Lee *Reclaiming Development in the World Trading System* 6.

adopted an export-oriented trade system fuelled by government subsidies and tariff protection.¹⁶⁹ This resulted in an influx of foreign capital which was used to develop industries in South Korea, leading to rapid economic growth.¹⁷⁰ Currently, developing countries under the WTO would not be permitted to adopt similar trade policies to contribute to their economic development.

The Doha Round of trade negotiations prioritised the interests of developing countries and is thus often referred to as the Doha Development Agenda.¹⁷¹ Decisions at these trade negotiations are made by way of a single undertaking in which all items being negotiated are part of a package. Members must agree on the whole package by consensus, meaning that either everything is agreed or nothing is agreed.¹⁷² This way of reaching decisions is one of the reasons for the impasse that has been reached in the Doha Round.¹⁷³ One of the most contentious issues at that Round was agriculture. The agricultural sector is one in which there are vast differences in interests between developed and developing countries. Developing countries felt that the Uruguay Round did not deliver the benefits promised to them. Therefore, they pushed for practical outcomes from the Doha Round for developing countries, whilst at the same time resisting any liberalisation of their own agricultural markets.¹⁷⁴ Developed countries, in response to this, opposed any decrease in their access to developing countries' markets whilst also resisting any restraints placed on the agricultural subsidies that they could provide for their producers.¹⁷⁵

Having looked into the historical development of public international trade law, its current policies, and the failure of the Doha Round of trade negotiations, it is clear that developing countries are not in a strong position in the global market. Whilst policies aimed at assisting developing countries are in place, these policies still operate within the overall free trade system, which ultimately favours developed countries. The next

¹⁶⁹ Lee *Reclaiming Development in the World Trading System* 9.

¹⁷⁰ Lee *Reclaiming Development in the World Trading System* 7.

¹⁷¹ World Trade Organisation "Trade and Development" (undated) https://www.wto.org/english/tratop_e/devel_e/devel_e.htm (accessed 2021-09-15).

¹⁷² World Trade Organisation "Doha Round: What are they negotiating?" https://www.wto.org/english/tratop_e/dda_e/update_e.htm (accessed 2021-09-15).

¹⁷³ Martin and Mercurio "Doha Dead and Buried in Nairobi: Lessons for the WTO" 2017 16 *Journal of International Trade Law and Policy* 49 50.

¹⁷⁴ Martin and Mercurio 2017 *Journal of International Trade Law and Policy* 51.

¹⁷⁵ *Ibid.*

step is to assess the position of small producers within developing countries. Fairtrade is aimed at assisting this category of producers.

2.3 Fairtrade globally

2.3.1 Market access and small producers

The effects of opening markets in line with trade liberalisation are measured largely in terms of aggregate economic welfare.¹⁷⁶ WTO policies designed to assist developing countries are therefore aimed at having a positive impact on the aggregate economic welfare of that country. These policies, and any consequential increase in economic welfare for the country, are not likely to have a positive effect on small producers within developing countries.¹⁷⁷ This is because small producers often do not have access to the mainstream national market.¹⁷⁸ As a result of their lack of market access, they are not able to benefit from the developing countries integration into the international market.¹⁷⁹ The lack of market access for small producers is therefore a barrier to them benefitting from the international trade policies designed to assist developing countries under the WTO.

Market access refers to a producer or trader's ability to make use of available market opportunities. When talking of a small producer's lack of market access, this does not mean that such producers do not have access to any market opportunities, but rather that they cannot access lucrative markets that will generate enough profits for them to grow and expand.¹⁸⁰ The lack of market access for small producers is usually attributed to supply-side issues such as production methods, location and business organisation. More specifically, barriers to market access are a result of poor access to market information, lack of producer bargaining power, low production volumes, poor rural infrastructure, lack of capital and little trust between producers and buyers.¹⁸¹ Small producers are also usually not able to sell directly to supermarkets or

¹⁷⁶ Yigzaw 2021 *The Estey Journal of International Law and Trade Policy* 44.

¹⁷⁷ *Ibid.*

¹⁷⁸ Obi, van Schalkwyk and van Tilburg "Market Access, Poverty Alleviation and Socio-economic Sustainability in South Africa" in van Schalkwyk, Groenewald, Fraser, Obi and van Tilburg (eds) *Unlocking Markets to Smallholders* (2012) 13.

¹⁷⁹ Van Schalkwyk *et al* *Unlocking Markets to Smallholders* 7.

¹⁸⁰ Ngqangweni, Mmbengwa, Myeki, Sotsha and Khoza "Measuring and Tracking Smallholder Market Access in South Africa" *National Agricultural Market Council Working Paper* (NAMC/WP/2016/03) 2.

¹⁸¹ Van der Heijden and Vink "Good for Whom? Supermarkets and Small Farmers in South Africa – A Critical Review of Current Approaches to Increasing Access to Modern Markets" 2013 52 *Agrekon* 68 69.

exporters because they produce smaller quantities which are sometimes of a lower quality, they lack suitable storage facilities and do not have the required management skills or experience. This is problematic because direct sale to supermarkets is one of the most profitable avenues for producers.¹⁸²

The problem of market access should not be viewed only with reference to factors on the supply-side of the value chain. The modern market is characterised by increased supermarket prominence in developing countries.¹⁸³ Supermarket procurement negatively affects small producers and contributes to their lack of market access.¹⁸⁴ There are a number of reasons for this. One direct negative impact on small producers is the fact that the supermarket procurement model favours big producers and creates a risky and costly environment for small producers.¹⁸⁵ In agricultural markets where supermarkets dominate, these supermarkets are able to direct certain costs back up the supply chain in order to protect their profits. Supermarkets will only be willing to deal with those producers that are able to bear these costs.¹⁸⁶ An indirect negative effect is that the increase of supermarkets also detracts from wholesale and fresh produce markets. These wholesale markets are crucial in providing market access to small farmers who do not supply the supermarkets.¹⁸⁷ Another negative effect of supermarket domination, is the reduction of market share for those local retail outlets that tend to buy from small producers. As supermarkets expand into smaller towns and rural areas, local outlets find it difficult to compete and may be forced out of business, thus closing another market access point for small producers.¹⁸⁸

In 2019, the South African Competition Commission held an inquiry into supermarket dominance in the country. The South African grocery retail sector is characterised by a small number of major retailers holding the majority of the market share.¹⁸⁹ One of the issues that this market dominance presents for suppliers, is that these major

¹⁸² Ngqangweni *et al National Agricultural Market Council Working Paper 2.*

¹⁸³ Van der Heijden and Vink 2013 *Agrekon* 71.

¹⁸⁴ Da Nair, Chisoro and Ziba "The Implications for Suppliers of the Spread of Supermarkets in Southern Africa" 2018 35 *Development in Southern Africa* 334 335.

¹⁸⁵ Van der Heijden and Vink 2013 *Agrekon* 71.

¹⁸⁶ Van der Heijden and Vink 2013 *Agrekon* 72; Da Nair *et al* 2018 *Development in Southern Africa* 335.

¹⁸⁷ Van der Heijden and Vink 2013 *Agrekon* 73; Da Nair *et al* 2018 *Development in Southern Africa* 336.

¹⁸⁸ Van der Heijden and Vink 2013 *Agrekon* 74.

¹⁸⁹ Competition Commission South Africa "The Grocery Retail Market Inquiry: Final Report" (25 November 2019) <https://www.compcom.co.za/wp-content/uploads/2019/12/GRMI-Non-Confidential-Report.pdf> (accessed 2021-09-16) 29.

retailers in South Africa have buyer power.¹⁹⁰ When a buyer (such as the major grocery retailers in South Africa) is able to secure goods from a supplier at more favourable terms than other buyers would be able to, or on more favourable terms than would be anticipated in normal competitive conditions, that buyer is said to have buyer power.¹⁹¹ Where suppliers do not have alternative selling opportunities, a retailer with buyer power is able to drive down the price they pay for the suppliers goods. At the same time, the retailer has many supply channels and does not rely on any specific supplier, whilst the supplier relies heavily on that buyer.¹⁹²

To remedy the effects of buyer power on small suppliers, the Competition Commission made several recommendations centred around small suppliers being better positioned to supply the national supermarket chains. One recommendation was that the draft regulations designating agro-processing and grocery wholesale/retail, be confirmed. These regulations designate specific unfair practices, and would give small suppliers more bargaining power in negotiations with large national supermarket chains.¹⁹³ These regulations would also address the procurement practices of large national supermarket chains.¹⁹⁴ Another recommendation by the commission was that a formal programme to develop small and historically disadvantaged suppliers is developed and implemented by national supermarket chains.¹⁹⁵

2.3.2 The need for Fairtrade

The need for Fairtrade is informed by both the public international trade system, in which developing countries find it tough to compete, as well as the lack of market access for small producers. This lack of market access makes it even more difficult for small producers within developing countries to take advantage of any benefits that international trade may bring. Whilst trade liberalisation and expansion may foster overall economic growth and wealth creation, it does not necessarily ensure that people achieve higher standards of living in terms of better health, education, nutrition

¹⁹⁰ Competition Commission <https://www.compcom.co.za/wp-content/uploads/2019/12/GRMI-Non-Confidential-Report.pdf> (accessed 2021-09-16) 248.

¹⁹¹ Competition Commission <https://www.compcom.co.za/wp-content/uploads/2019/12/GRMI-Non-Confidential-Report.pdf> (accessed 2021-09-16) 223; Da Nair *et al* 2018 *Development in Southern Africa* 337.

¹⁹² Competition Commission <https://www.compcom.co.za/wp-content/uploads/2019/12/GRMI-Non-Confidential-Report.pdf> (accessed 2021-09-16) 224 and 226.

¹⁹³ Competition Commission <https://www.compcom.co.za/wp-content/uploads/2019/12/GRMI-Non-Confidential-Report.pdf> (accessed 2021-09-16) 265.

¹⁹⁴ *Ibid.*

¹⁹⁵ *Ibid.*

and freedom.¹⁹⁶ Therefore, there is a need to connect trade and its potential for wealth creation, and translate that into higher standards of living for those at the very beginning of the value chain. Fairtrade finds application in achieving these higher standards of living.

Free trade encourages a 'survival of the fittest' system of international trade, which ultimately results in some traders losing out.¹⁹⁷ This is not to say that competition in international trade should be abandoned. However, where the system is structured in such a way that certain participants in trade cannot compete effectively, whilst others continue to profit from that system, assistance can be provided to the marginalised participants. Instead of decreasing competition, assisting marginalised producers brings more traders into the system, thereby boosting competition in international trade. One of the core goals of Fairtrade in providing this assistance is to achieve a more equitable distribution of the benefits of trade along the global value chain.¹⁹⁸

2.3.3 Global goals of Fairtrade

According to Fairtrade International, there are three development areas which Fairtrade standards aim to address.¹⁹⁹ The first of these is social development. Fairtrade requires that small-scale producers be organised in democratic producer organisations (called cooperatives), which allows them to bring products to the market. For hired labour producers, social rights must be provided to the farm workers by the company. These rights include non-discriminatory employment practices, access to collective bargaining processes, freedom of association, the provision of employment conditions that are above the legal minimum and working conditions that comply with health and safety requirements.²⁰⁰ Fairtrade aims to empower producers to be better organised and have access to more resources and support. In this way, they can take control in overcoming marginalisation.²⁰¹ Social justice is a big part of Fairtrade, and Fairtrade has been shown to be effective in enforcing bans on child labour, increasing

¹⁹⁶ Yigzaw 2021 *The Estey Journal of International Law and Trade Policy* 35.

¹⁹⁷ Jari *The Impact of Fairtrade in South Africa* 26.

¹⁹⁸ Fairtrade International "Changing Trade, Changing Lives: 2016 – 2020" 2016 1 *Fairtrade Global Strategy* 1 7.

¹⁹⁹ Fairtrade International "Aims of the Fairtrade Standards" (undated) <https://www.fairtrade.net/standard/aims> (accessed 2021-11-10).

²⁰⁰ *Ibid.*

²⁰¹ Mook and Overdeest "Does Fairtrade Certification Meet Producers' Expectations Related to Participating in Mainstream Markets? An Analysis of Advertised Benefits and Perceived Impact" 2018 26 *Sustainable Development* 269 271.

gender equality in producer organisations and strengthening democratic decision-making.²⁰²

The second area of development that Fairtrade standards are geared towards is economic development. The set minimum price that buyers are required to pay for Fairtrade produce ensures that producers are able to cover the costs of sustainable production. The Fairtrade premium, money over and above the minimum price, is intended to advance the quality of life for small-scale producers and the workers on hired labour farms.²⁰³ It is up to the farmers or the workers as the case may be, whether they choose to invest the premium in health, education, environment, economic or other areas of need.²⁰⁴ Fairtrade also opens up new market opportunities for producers. This market access, in addition to increased incomes and economic stability resulting from the Fairtrade minimum price, creates the potential for economic development amongst Fairtrade beneficiaries.²⁰⁵

The third area in which Fairtrade aims to achieve development is the environment, by encouraging environmentally sound and sustainable agricultural practices. It is not a requirement that Fairtrade produce is organically produced, but the safe use of agrochemicals, proper waste management, maintenance of soil fertility and water resources and prohibition on the use of genetically modified organisms (GMOs) are some of the standards that ensure environmental development on Fairtrade farms.²⁰⁶ Sustainable agriculture is encouraged by Fairtrade not only as an environmental measure, but also as a means for producers to increase the quality of their produce and meet consumer standards.²⁰⁷ Fairtrade encourages the use of the Fairtrade premium by small producers for increasing their expertise and equipment.²⁰⁸ Fairtrade

²⁰² Mook and Overdevest 2018 *Sustainable Development* 271.

²⁰³ *Ibid.*

²⁰⁴ Fairtrade International <https://www.fairtrade.net/standard/aims> (accessed 2021-11-10).

²⁰⁵ Mook and Overdevest 2018 *Sustainable Development* 270. The economic incentives for Fairtrade certification have, however, been criticised for not actually creating the promised benefits for small producers. The reason for this is that small producers are not able to compete on the Fairtrade market with large industrialised farms who are also Fairtrade certified. The certification of industrialised farms therefore maintains conventional market relations, and might hinder small producers from benefitting from the economic development that is stipulated as a goal of Fairtrade.

²⁰⁶ Fairtrade International <https://www.fairtrade.net/standard/aims> (accessed 2021-11-10).

²⁰⁷ Mook and Overdevest 2018 *Sustainable Development* 270.

²⁰⁸ *Ibid.*

certification has been linked to increased certification according to environmental standards.²⁰⁹

In 2016, Fairtrade International developed a five-year global strategy for Fairtrade. Included in this document are five goals along with strategies for how Fairtrade contributes to their achievement.²¹⁰ The first goal is building benefits for smallholders and workers. The Fairtrade minimum price and the Fairtrade premium have been shown to protect producers from volatile global commodity markets and prompt development respectively.²¹¹ In efforts to increase these benefits, the goal is to get more producers to sell at least 30 to 50 percent of their produce as Fairtrade. In addition, more focus is to be placed on the coffee, cocoa and banana commodities as these are staples in Fairtrade markets and have the most potential for advancing transformation.²¹²

The second goal is to make a greater impact through services and programmes.²¹³ This involves the provision of farmer and worker support programmes involving national Fairtrade organisations, companies, NGOs, trade unions and governments. These programmes will address several key areas, the first of which is strengthening democratic farmer organisations such as cooperatives. Programmes to strengthen workers' rights, address gender inequality and help farmers adjust to and alleviate the effects of climate change are also included.²¹⁴

Fairtrade markets form the content of the third goal.²¹⁵ With the objective of building Fairtrade markets, Fairtrade International will engage with companies and consumers, and work towards creating more awareness about Fairtrade through social media.²¹⁶

²⁰⁹ Mook and Overdeest 2018 *Sustainable Development* 270. For example, a 2004 study found that 52% of Fairtrade coffee producers were also certified organic producers; TransFair USA "2004 Fair Trade Coffee Facts and Figures" (2005) <http://www.transfairusa.org/> (accessed 2022-10-30).

²¹⁰ Fairtrade International 2016 *Fairtrade Global Strategy*. In 2022, Fairtrade published a new five-year global strategy for 2021-2025. This strategy contains goals along the same lines as those in the 2016 five-year plan, with two additions; making Fairtrade a voice for social and environmental justice, and increasing farmers access to information through digitalisation. Fairtrade International "The future is fair: introduction to the Fairtrade Global Strategy 2021-2025" (2022) <https://www.fairtrade.org.uk/wp-content/uploads/2022/01/Fairtrade-Global-2021-2025-Strategy-The-future-is-fair.pdf> (accessed 2022-12-03) 11, 13.

²¹¹ Fairtrade International 2016 *Fairtrade Global Strategy* 10.

²¹² *Ibid.*

²¹³ Fairtrade International 2016 *Fairtrade Global Strategy* 11.

²¹⁴ Fairtrade International 2016 *Fairtrade Global Strategy* 12.

²¹⁵ Fairtrade International 2016 *Fairtrade Global Strategy* 13.

²¹⁶ Fairtrade International 2016 *Fairtrade Global Strategy* 14.

The fourth goal aims to broaden the reach of Fairtrade by influencing government policies. This entails placing pressure on governments to set and enforce living income regulations, taking farmer and worker concerns to key policy debates and strengthening links with the organisations that are part of the wider fair trade movement globally.²¹⁷

The fifth and final goal set out in the Fairtrade global strategy is building a strong global trading system. Fairtrade operates through a partnership of global, continental and national Fairtrade organisations. A strong global system requires the correct global-local balance, as well as transparency and accountability in all spheres of Fairtrade. Producer networks should have strong leadership, encouraging bottom-up ownership having their members interests at the forefront. Producer organisations are built from Fairtrade's own resources, whilst other Fairtrade programmes are provided for through partnerships with companies, donors and civil society organisations.²¹⁸

2.4 Fairtrade and sustainable development

2.4.1 Sustainable development in international law

Sustainable development is when development, which involves using resources, making investments, institutional change and technological advancement, takes place in a manner that strengthens both the current and future potential to meet human needs. The widely accepted definition of sustainable development is “meeting the needs of the present without compromising the ability of future generations to meet their own needs.”²¹⁹ This in essence means that development needs to address current human needs, whilst at the same time considering the environmental impacts of fulfilling those needs.²²⁰ Sustainable development promotes finding a balance between fulfilling current human needs and ensuring that those needs will still be able to be fulfilled for future UN is said to rest on three pillars, one of which is sustainable development (the other two pillars are human rights and international peace and security).²²¹

²¹⁷ Fairtrade International 2016 *Fairtrade Global Strategy* 16.

²¹⁸ Fairtrade International 2016 *Fairtrade Global Strategy* 18.

²¹⁹ World Commission on Environment and Development “Our Common Future” 1987 *Oxford University Press* 43.

²²⁰ Jari *The Impact of Fairtrade in South Africa* 51.

²²¹ Pribytkova “Global Obligations for Sustainable Development: Harmonizing the 2030 Agenda for Sustainable Development and International Human Rights Law” 2020 41 *University of Pennsylvania Journal of International Law* 1031 1040.

The UN 2030 Agenda for Sustainable Development²²² is an action plan that was developed in 2015 to achieve sustainable development through the eradication of poverty and the realisation of human rights. It recognises that the four dimensions of sustainable development that need to be balanced are the economic, social, political and environmental dimensions.²²³ Contained in Agenda 2030 are 17 sustainable development goals (SDGs) that address a range of different development issues. These goals are ambitious, with the first goal being to “end poverty in all its forms everywhere.”²²⁴ Additional goals address, amongst other things, hunger, gender equality, proper sanitation and climate change.²²⁵ The 2030 Agenda differs from its predecessor, the Millennium Declaration,²²⁶ in that it applies universally and not only to developing countries. The SDGs in the 2030 Agenda are more comprehensive, and many of them require complete rather than partial achievement (e.g. eradication rather than the mere reduction of hunger). The 2030 Agenda calls for multilateral State partnerships, as opposed to bilateral relationships in which one country is a donor and the other a recipient.²²⁷

The sustainable development agenda works alongside the human rights agenda, both of which share the ultimate goal of eradicating poverty globally and “freeing people from the tyranny of want”.²²⁸ These two agendas, however, are different in terms of their status in international law and the nature of the obligations they impose. Human rights obligations are based on legal agreements, are claimable against concrete duty bearers, have specific criteria to measure their adequacy, and are justiciable. On the other hand, sustainable development commitments are political agreements for humanitarian self-obligations, are not claimable as there are no specified duty bearers, and are measured by internal SDG indicators.²²⁹ The SDGs are also not justiciable but

²²² UN General Assembly <https://www.refworld.org/docid/57b6e3e44.html> (accessed 2021-11-25).

²²³ Pribytkova 2020 *University of Pennsylvania Journal of International Law* 1041.

²²⁴ UN General Assembly <https://www.refworld.org/docid/57b6e3e44.html> (accessed 2021-11-25) 19.

²²⁵ UN General Assembly <https://www.refworld.org/docid/57b6e3e44.html> (accessed 2021-11-25) 18.

²²⁶ G.A. Res. 55/2, United Nations Millennium Declaration (Sept. 8, 2000).

²²⁷ Pribytkova 2020 *University of Pennsylvania Journal of International Law* 1048.

²²⁸ Pribytkova 2020 *University of Pennsylvania Journal of International Law* 1034.

²²⁹ Pribytkova 2020 *University of Pennsylvania Journal of International Law* 1051.

rather monitored periodically, and the 2030 Agenda encourages Member States to conduct reviews of SDG progress at the national level.²³⁰

It has been proposed that the human rights framework and the sustainable development agenda could and should be better connected.²³¹ A human rights-based approach to development perceives development as a transformative human process, much like the right to equality which is transformative in nature.²³² A human rights approach bases development on normative international human rights standards, and recognises development as a means to promote and protect human rights.²³³ The 2030 Agenda and 17 SDGs endorse a human rights-based approach to development, but it has been suggested that more could be done to integrate development and human rights in practice.²³⁴ One step to achieve such integration is to apply the four dimensional model of transformative equality to the drafting, implementation and evaluation of sustainable development policies. The four dimensions encompassed in this model include, (1) breaking the cycle of disadvantage, (2) promoting dignity, (3) achieving structural change and (4) promoting social and political inclusion.²³⁵ Whilst the four-dimensional model might seem applicable only in the context of the right to equality, the principles it follows can be used as a framework for the realization of all the SDGs.²³⁶

A more formal integration of human rights and development is found in the Draft Convention on the Right to Development, which could change the status of sustainable development in international law to a human right comparable to all other human rights.²³⁷ Drafted in 2020 by the UN Expert mechanism on the Right to Development (a subsidiary to the Human Rights Council), the Draft Convention acknowledges that the right to development can only be realised if such development is sustainable.²³⁸

²³⁰ UN General Assembly “Transforming Our World: The 2030 Agenda for Sustainable Development” (2015-10-21) A/RES/70/1 <https://www.refworld.org/docid/57b6e3e44.html> (accessed 2021-11-11) par [79].

²³¹ Fredman, Kuosmanen and Campbell “Transformative Equality: Making Sustainable Development Goals Work for Women” 2016 30 *Ethics and International Affairs* 177 180.

²³² Fredman, Kuosmanen and Campbell 2016 *Ethics and International Affairs* 177.

²³³ Fredman, Kuosmanen and Campbell 2016 *Ethics and International Affairs* 179.

²³⁴ Fredman, Kuosmanen and Campbell 2016 *Ethics and International Affairs* 180.

²³⁵ *Ibid.*

²³⁶ Fredman, Kuosmanen and Campbell 2016 *Ethics and International Affairs* 185.

²³⁷ UN General Assembly “Draft Convention on the Right to Development” (17 January 2020) https://www.ohchr.org/Documents/Issues/Development/Session21/4_A_HRC_WG.2_21_2_Ad_d.1_RegisteredVersion.pdf (accessed 2022-01-27).

²³⁸ Article 3(e) of the Draft Convention on the Right to Development.

The right to development provides every human person the right to participate in and enjoy the benefits of economic, social, cultural, civil and political development.²³⁹ This draft convention, if adopted, would place a duty to respect, promote and fulfil the right to development on State Parties to the convention.²⁴⁰ Regional law has already recognised sustainable development as a human right in the African Charter.²⁴¹ The African Charter in relation to sustainable development will be further discussed in chapter three of this dissertation.

The revised Draft Convention on the Right to Development was reviewed by the Intergovernmental Working Group on the Right to Development (IGWG) in May 2022.²⁴² In reviewing the revised draft convention, the adoption and implementation of a right to development was considered.²⁴³ A contentious change made in the revised draft convention was the change in terminology from the “duty of everyone to respect human rights” to the “responsibility of everyone to respect human rights.”²⁴⁴ The word “duty” as opposed to “responsibility” denotes a direct legal obligation on every non-State actor to refrain from violating all human rights.²⁴⁵ This terminology change could potentially reduce the obligation borne by non-State actors to respect all human rights, including a right to development.²⁴⁶ Positive changes recorded in the revised draft have also been noted. The right to self-determination has been explicitly included as a peoples right and not a State’s right.²⁴⁷ The duty to cooperate in Article 13 of the revised draft incorporates some new positive elements, including corruption prevention, stronger labour rights and more emphasis on environmental protection.²⁴⁸

²³⁹ Article 4 of the Draft Convention on the Right to Development.

²⁴⁰ Article 8(1) of the Draft Convention on the Right to Development.

²⁴¹ Article 22 of the African Charter.

²⁴² UN General Assembly “Draft Convention on the Right to Development” (6 April 2022) <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/302/62/PDF/G2230262.pdf?OpenElement> (accessed 2022-11-08).

²⁴³ International Institute for Sustainable Development “Intergovernmental Working Group Continues to Work to Develop a Draft Convention on the Right to Development” (4 July 2022) <https://www.iisd.org/itn/en/2022/07/04/intergovernmental-working-group-continues-work-to-develop-a-draft-convention-on-the-right-to-development/> (accessed 2022-11-08).

²⁴⁴ Article 7 of the Revised Draft Convention on the Right to Development.

²⁴⁵ Nakagiri “Struggles to Reconcile Theory and Politics: Comments on the Revised Draft Convention on the Right to Development” (19 September 2022) *EJIL:Talk!* <https://www.ejiltalk.org/struggles-to-reconcile-theory-and-politics-comments-on-the-revised-draft-convention-on-the-right-to-development/> (accessed 2022-11-08).

²⁴⁶ *Ibid.*

²⁴⁷ *Ibid.*

²⁴⁸ *Ibid.*

A further contentious issue from the revised draft is the perceived shift in focus from a human rights-based approach to development, towards a development-based approach to human rights. The former implies that human rights are a prerequisite for development, whilst the latter implies that development will lead to the realisation of human rights.²⁴⁹ Whilst there is strong motivation for the adoption of the convention, it might prove difficult to reach the international consensus necessary for its wide-spread ratification and implementation.²⁵⁰ Developed and developing countries hold different assumptions relating to the right to development, which has proven to be a divisive issue. Developed countries are sceptical of the right to development as creating enforceable obligations upon them to assist developing countries in realising the right. They are also concerned about the large-scale changes to the international economic order that would ensue if the right to development is recognised.²⁵¹ Developing countries, on the other hand, are of the view that previous international human rights projects have been largely founded on developed country interests, and that the formulation of the right to development in a treaty is a developing country project that developed countries should in turn support.²⁵² It is clear that there are still contentious issues to resolve and a second revised draft convention is to be drafted and considered by the IGWG at its 24th session for intergovernmental negotiation.²⁵³

2.4.2 Fairtrade and the sustainable development goals

Fairtrade, along with the wider Fair Trade movement, is relevant to a number of SDGs as a mechanism by which the SDGs can be achieved. These relevant SDGs include:²⁵⁴

- Goal 1. Ending poverty in all its forms everywhere
- Goal 2. Ending hunger, achieving food security, improved nutrition and promoting sustainable agriculture

²⁴⁹ Nakagiri <https://www.ejiltalk.org/struggles-to-reconcile-theory-and-politics-comments-on-the-revised-draft-convention-on-the-right-to-development/> (accessed 2022-11-08).

²⁵⁰ Schrijver "A new Convention on the human right to development: Putting the cart before the horse?" 2020 38 *Netherlands Quarterly of Human Rights* 84 92.

²⁵¹ Schrijver 2020 *Netherlands Quarterly of Human Rights* 85.

²⁵² Schrijver 2020 *Netherlands Quarterly of Human Rights* 89.

²⁵³ United Nations "AFTERNOON - Human Rights Council Adopts 21 Texts and Rejects One Draft Decision, Extends Mandates on Older Persons, Right to Development, Arbitrary Detention, Mercenaries, Slavery, Indigenous Peoples, Safe Drinking Water and Sanitation" (6 October 2022) <https://www.ungeneva.org/en/news-media/meeting-summary/2022/10/le-conseil-des-droits-de-lhomme-adopte-dix-neuf-resolutions-une> (accessed 2022-11-17).

²⁵⁴ Fair Trade Advocacy Office *Localising the Sustainable Development Goals (SDGs) through Fair Trade – Toolkit* (2016) 7.

- Goal 5. Achieving gender equality and empowering women and girls
- Goal 8. Promoting sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all
- Goal 10. Reducing inequality within and among nations
- Goal 12. Ensuring sustainable consumption and production patterns
- Goal 13. Combatting climate change and its impacts
- Goal 17. Strengthening the means of implementation and revitalising the Global Partnership for Sustainable Development

Of particular importance to Fairtrade in the agricultural sector are SDGs 1, 2, 5, 8 and 12. Fairtrade organisations have acknowledged their role as a tool in the achievement of sustainable development. However, Fairtrade’s ability to have tangible positive impacts in achieving the relevant SDGs has been called into question.²⁵⁵ For example, Fairtrade claims that the Fairtrade minimum price, social premium and Fairtrade standards all contribute to the achievement of SDG 1, ending poverty. Ensuring decent, stable incomes in various agricultural sectors protects farmers and workers from price fluctuations. These farmers and workers are often those who live below the poverty line.²⁵⁶ The other side to this is that the minimum price, intended to cover production costs and allow poorer producers to enter the market, makes Fairtrade products more expensive. This means that these products may not be able to compete in the market, and sellers will not readily buy from small Fairtrade producers.²⁵⁷

In terms of SDG 2, ending hunger, Fairtrade acknowledges that small-scale farmers provide food for 70 percent of the world’s population. This places them at the centre of combatting world hunger. It is important that those farmers who provide food for the majority of the world’s population have the financial stability and support they need to ensure food security for their communities.²⁵⁸

Fairtrade contributes to SDG 5, achieving gender equality, through its work in closing the farming gender gap. The majority of the world’s food is grown by women, but very

²⁵⁵ Macbeth *Fair Trade: The Successes and Failures as seen through the Sustainable Development Goals* (honors thesis, Rhode Island College) 2021 3.

²⁵⁶ Fairtrade International “Fairtrade: Sustainable Trade for Sustainable Development” (2020) https://files.fairtrade.net/publications/2020-01-Updated_FairtradeSustainableTradeDevelopment_EN.pdf (accessed 2022-01-24).

²⁵⁷ Macbeth *Fair Trade* 13. For a further discussion on decreasing the minimum price, see section 5.4.1 of this dissertation on page 115.

²⁵⁸ Fairtrade International https://files.fairtrade.net/publications/2020-01-Updated_FairtradeSustainableTradeDevelopment_EN.pdf (accessed 2022-01-24).

few landowners are women.²⁵⁹ Fairtrade runs specific gender leadership schools, and Fairtrade standards ban any form of gender discrimination as well as set rights for parental leave and pregnant women.²⁶⁰ These standards, however, fail to take into account vast differences in social-cultural values that exist in many developing country farming regions. In regions where gender roles are strictly defined and adhered to, the universal gender equality standards set by Fairtrade might deter farmers from becoming Fairtrade certified. Any Fairtrade policies promoting gender equality will have no influence in such regions. Instead of universal gender equality standards, an approach better suited to negotiation may increase the reach of Fairtrade benefits.²⁶¹

Fairtrade International notes its contribution to SDG 8 through its focus on decent work and decent incomes, which leads to economic growth. Fairtrade standards promote better terms of employment for farm workers as well as safer working environments.²⁶² The links between decent work and incomes and economic growth, however, is not clarified by Fairtrade International.

The twelfth SDG seeks to encourage responsible and sustainable consumption and production. Fairtrade plays a part in SDG 12 by setting stringent environmental standards for the growing, harvesting and manufacturing of Fairtrade products, as well as through its transparency in sourcing, marketing and contracting.²⁶³ The “responsible consumption” part to SDG 12 is somewhat catered for by Fairtrade through its standard for traders.²⁶⁴ A trader for purposes of the standard is any company that is subject to the trader standard (any company that is Fairtrade certified). Traders are required to adhere to international environmental law, to not use hazardous materials on Fairtrade products, to minimise their direct negative

²⁵⁹ Macbeth *Fair Trade* 14.

²⁶⁰ Fairtrade International https://files.fairtrade.net/publications/2020-01-Updated_FairtradeSustainableTradeDevelopment_EN.pdf (accessed 2022-01-24).

²⁶¹ Macbeth *Fair Trade* 15.

²⁶² Fairtrade International https://files.fairtrade.net/publications/2020-01-Updated_FairtradeSustainableTradeDevelopment_EN.pdf (accessed 2022-01-24).

²⁶³ Fairtrade International https://files.fairtrade.net/publications/2020-01-Updated_FairtradeSustainableTradeDevelopment_EN.pdf (accessed 2022-01-24).

²⁶⁴ Fairtrade International “Fairtrade Trader Standard” (2019) https://files.fairtrade.net/TS_EN.pdf (accessed 2022-11-01). The reason that responsible consumption is only ‘somewhat’ catered for, is that the environmental standards in the trader standard are vague and unspecific. Not having specific environmental targets makes it easy for traders to achieve the bare minimum in terms of environmental protection but still qualify for Fairtrade certification.

environmental impacts, reduce their carbon footprint and maximise the use of recyclable materials for packaging.²⁶⁵

2.5 Conclusion

International trade is an important tool that can be used to foster development. However, a combination of historical factors and current trade policies, make it difficult for developed countries to reap effectively the benefits of engaging in international trade. The Doha Round of trade negotiations, intended to negotiate terms that would foster development for developing countries, has reached an impasse. The interests of developing and developed countries in international trade are incompatible, making any agreement at the Doha Round unlikely.

Even if an agreement was reached at the Doha Round that did assist developing countries to compete more equally in international trade, small producers within these developing countries would still struggle to obtain access to the international trade market. This is because they have to compete for a position in international markets with large, industrialised producers. The increasing prominence of supermarkets, and the buyer power held by major retailers have presented problems for small producers in having access to markets in which they can sell their products. This is where Fairtrade can assist, providing access to an international market for small producers in developing countries.²⁶⁶

The Fairtrade guaranteed minimum prices bring stability for typically vulnerable small producers. This, along with the Fairtrade premium, technical assistance and access to credit means that small producers have a better chance of developing and therefore being able to compete in the international trade market. Market access for small producers is not the only objective of Fairtrade. The global goals of Fairtrade cover a range of issues from fostering gender equality to encouraging sustainable development and environmentally sound farming practices. The stated aims of Fairtrade are broad, encompassing social, environmental and economic dimensions.

²⁶⁵ Fairtrade International https://files.fairtrade.net/TS_EN.pdf 24 (accessed 2022-11-01) 25.

²⁶⁶ Although Fairtrade was initially aimed at assisting small producers, the need for Fairtrade is no longer only informed by the needs of small producers and their lack of market access. For South Africa especially, Fairtrade also provides important assistance to workers on hired labour farms. This is discussed more in chapters 4 and 5 of this dissertation.

The type of development at the forefront of international development law is sustainable development. Fairtrade has been explicitly linked to several SDGs as a tool that can contribute to eradicating poverty, achieving food security, fostering gender equality, promoting inclusive and sustainable economic growth, and ensuring sustainable consumption and production. The Fairtrade standard sets requirements that oblige producers and consumers to meet certain targets in order to become Fairtrade certified. These targets relate to the achievement of the above SDGs. Fairtrade could present an important space for the intersection of the sustainable development and human rights agendas through applying the four dimensions of transformative equality to the Fairtrade standard.

Fairtrade's place in the international trade system is as a programme that operates within the prevailing rules and structures, aiming to assist those marginalised by this structure to participate on a more equitable basis. Having clarified Fairtrade's position and within international trade, and the global need for Fairtrade, the next chapter will examine Fairtrade's position in Africa and how it aligns with certain uniquely African challenges and policies.

CHAPTER 3

FAIRTRADE IN AFRICA

3.1 Introduction

African countries have often been described as ‘vulnerable’ and ‘fragile’ and face numerous challenges in achieving economic growth and development.²⁶⁷ Despite a period of growth in African economies in the 2000s, this growth was not sustained and has slowed since 2010.²⁶⁸ The African continent is home to the majority of the world’s poor.²⁶⁹ Inequality in various forms is rife, and the gap between the rich and the poor has continued to widen in many African countries.²⁷⁰ Furthermore, African countries depend to a great extent on imports, and their exports are mostly commodity-based natural resources. Africa’s share in global trade has been steadily declining for the past 50 years.²⁷¹ Africa holds a minimal share of global wealth, and the overall global poverty decline has not been achieved to the same extent in Africa.²⁷²

Whilst the above paragraph paints a dire picture of Africa and her potential for development, there is hope to be found in various policies and frameworks being implemented within the continent. The formation of the AfCFTA presents growth opportunities through increased intraregional trade in Africa.²⁷³ Increased trade among countries on the continent could foster inclusive growth and sustainable development.²⁷⁴ Inclusive growth is a central aspiration set out in African regional policies, and refers to economic growth that simultaneously reduces both poverty and inequality. Inclusive growth improves well-being as well as the distribution of well-being.²⁷⁵ Well-being is a multi-dimensional measure of quality of life that includes the

²⁶⁷ Sampath “Industrial Development for Africa: Trade, Technology and the Role of the State” 2014 6 *African Journal of Science, Technology, Innovation and Development* 439 439.

²⁶⁸ UNCTAD “Reaping the Potential Benefits of the African Continental Free Trade Area for Inclusive Growth: Economic Development in Africa Report” *United Nations Publication* UNCTAD/ALDC/AFRICA/2021 (2021) 4 https://unctad.org/system/files/official-document/aldcafrica2021_en.pdf (accessed 2022-03-15).

²⁶⁹ UNCTAD https://unctad.org/system/files/official-document/aldcafrica2021_en.pdf (accessed 2022-03-15) 4.

²⁷⁰ *Ibid.*

²⁷¹ *Ibid.*

²⁷² Nwozor, Okidu and Adedire “Agenda 2063 and the Feasibility of Sustainable Development in Africa: Any Silver Bullet?” 2021 52 *Journal of Black Studies* 688 699.

²⁷³ Agreement Establishing the African Continental Free Trade Area (AfCFTA) (58 *I.L.M.* 1028, 1067. Adopted; 21.03.2018. EIF; 30.05.2019).

²⁷⁴ *Ibid.*

²⁷⁵ UNCTAD https://unctad.org/system/files/official-document/aldcafrica2021_en.pdf (accessed 2022-03-15) 5.

realisation of basic human needs, income and people's ability to live well and with dignity.²⁷⁶ Thus, the distribution of well-being refers to how well-being is apportioned across societal divides such as different income groups and genders.²⁷⁷ Agenda 2063 is a 50-year plan for Africa's development, prepared by the African Union (AU) Commission. It comprises of eight prioritised agendas for the Continent, including agendas for social and economic development, the right to self-determination and democratic governance.²⁷⁸

A further beacon of hope for Africa, is the fact that the right to development is recognised in the African Charter.²⁷⁹ Development is a fundamental pillar of many African legal instruments and policies, and the African Charter is currently the only international instrument that guarantees a right to development.²⁸⁰ The African Charter provides that everyone has a right to their economic, social and cultural development, and places a duty on Member States to ensure the exercise of the right to development.²⁸¹

The idea of a developmental State is central to debates regarding strategies to promote inclusive sustainable growth that will be effective across countries.²⁸² The developmental State approach to economic growth acknowledges that State intervention in trade in the form of government regulation of trade policies, was a large contributor to the rapid and sustained economic growth experienced by many East Asian countries since the 1960s.²⁸³ The developmental State approach refutes the free-market theories of development, dominant since the 1980s, that markets should be free from government influence and if countries exploit their comparative

²⁷⁶ OECD "Discussion Paper for Session 3.1: Measuring Well-being for Development" 2013 OECD Global Forum on Development (4-5 April 2013) <https://www.oecd.org/site/oeecdgfd/Session%203.1%20-%20GFD%20Background%20Paper.pdf> (accessed 2022-03-28).

²⁷⁷ Van Gent "Beyond Buzzwords: What is 'Inclusive Development'?" Synthesis Report 2017 Include: Knowledge Platform on Inclusive Development Policies <https://includeplatform.net/wp-content/uploads/2017/09/Beyond-buzzwords.pdf> (accessed 2022-03-28) 10.

²⁷⁸ African Union Commission *Agenda 2063 Framework Document* (2015) 23.

²⁷⁹ 1981 UNTS 1520. Adopted; 27.06.1981. EIF: 21.10.1986.

²⁸⁰ Article 22 of the African Charter.

²⁸¹ *Ibid.*

²⁸² Sampath 2014 *African Journal of Science, Technology, Innovation and Development* 439.

²⁸³ Bishop, Payne, Sen, Breslin, Öniş, Muzaka, Booth, Lindsay and Yeung "Revisiting the Developmental State" (2018) Sheffield Political Economy Research Institute Paper No. 43 2 <http://speri.dept.shef.ac.uk/wp-content/uploads/2018/11/SPERI-Paper-No.-43-Revisiting-the-developmental-state.pdf> (accessed 2022-03-19).

advantages, economic growth through trade will follow.²⁸⁴ However, globalisation has led to a situation where only one institutional policy approach for rapid economic growth is widely accepted as being effective. This accepted approach is free trade and liberalisation of markets.²⁸⁵ Despite the implementation of liberal trade policy, however, many African countries remain underdeveloped and inclusive economic growth is elusive.²⁸⁶

It is important to identify the trade-related reasons for underdevelopment in Africa, which necessitates a discussion of international trade policies and how these have affected economic growth and development in African countries. Whilst certain international trade policies have had negative impacts on African development, other international policies have been instituted in efforts to counter these negative impacts. Section 3.2 of this chapter outlines the international policies which have had unfavourable outcomes for Africa, as well as those aimed at boosting African development. Understanding the context for Fairtrade in Africa also requires insight into certain regional policies such as Agenda 2063 and the AfCFTA, which are included along with the right to development in the African Charter under a discussion of development in African regional law. Thereafter, the specific aims and challenges of Fairtrade in Africa will be considered. With trade being an important driver of economic growth, this chapter seeks to identify Fairtrade's position in Africa, how Fairtrade fits in with African regional policies, and whether better connections can be drawn between Fairtrade and these regional policies.

3.2 Trade in Africa

3.2.1 International trade policies and their effects on Africa

Multilateral agreements that govern international trade policy are geared towards increasing free trade globally. Governments are bound by such policies once they have agreed to them.²⁸⁷ Three international trade policies that have impacted Africa in

²⁸⁴ Bishop *et al* (2018) Sheffield Political Economy Research Institute Paper No. 43 2 <http://speri.dept.shef.ac.uk/wp-content/uploads/2018/11/SPERI-Paper-No.-43-Revisiting-the-developmental-state.pdf> (accessed 2022-03-19).

²⁸⁵ Wade "The Developmental State: Dead or Alive" 2018 49 *Development and Change* 518 519; See also Zahongo "Trade and Economic Growth in Developing Countries: Evidence from Sub-Saharan Africa" 2016 3 *Journal of African Trade* 41 42.

²⁸⁶ Inclusive development is that which reduces both poverty and inequality; UNCTAD "Economic Development in Africa Report 2021" (undated) <https://unctad.org/webflyer/economic-development-africa-report-2021> (accessed 2022-02-28).

²⁸⁷ World Trade Organisation *Understanding the WTO* 5ed (2015) 9.

a largely negative manner, are trade liberalisation, the Agreement on the Application of Sanitary and Phyto-sanitary Measures (SPS Agreement),²⁸⁸ and the Agreement on Trade Related Investment Measures (TRIMS Agreement).²⁸⁹

Trade liberalisation, as discussed in the previous two chapters, entails the removal or reduction of government regulated barriers to free trade in the form of tariffs, licensing rules and quotas.²⁹⁰ The process of trade liberalisation in Africa began prior to the establishment of the WTO. Global economic crises in the 1970s, which severely affected African countries' economies, led to the implementation of Structural Adjustment Programmes (SAPs) by the World Bank and the International Monetary Fund.²⁹¹ SAPs are essentially economic reform packages for developing countries, intended to shift them from administratively controlled economies to a more market-based system.²⁹²

SAPs prompted, among other things, a reduction of tariff barriers in countries in which they operated.²⁹³ A primary goal of SAPs was to shift relative prices in favour of agriculture.²⁹⁴ This required the liberalisation of the agricultural sector through, for example, the reduction or elimination of government subsidies for the sector.²⁹⁵ Agricultural liberalisation was intended to foster economic growth and reduce poverty, especially in rural areas. However, the general consensus is that SAPs did not have the desired effect on economic growth in Africa.²⁹⁶ The failure of SAPs to achieve the intended outcomes has been attributed to the Uruguay Round of negotiations and formation of the WTO.²⁹⁷

²⁸⁸ Agreement on the Application of Sanitary and Phyto-sanitary Measures (SPS) (1867 U.N.T.S. 493; adopted: 15.04.1994.

²⁸⁹ TRIMS Agreement: Agreement on Trade-Related Investment Measures, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1868 U.N.T.S. 186. Jari *The Impact of Fairtrade in South Africa* 15.

²⁹¹ Heidhues and Obare "Lessons from Structural Adjustment Programmes and their Effects in Africa" 2011 50 *Quarterly Journal of International Agriculture* 55 58.

²⁹² Sulaiman, Migiro and Aluko "The Structural Adjustment Program in Developing Economies: Pain or Gain? Evidence from Nigeria" 2014 3 *Public and Municipal Finance* 41 41.

²⁹³ Heidhues and Obare 2011 *Quarterly Journal of International Agriculture* 58.

²⁹⁴ Heidhues and Obare 2011 *Quarterly Journal of International Agriculture* 59.

²⁹⁵ Commander "Structural Adjustment Policies and Agricultural Growth in Africa" 1988 23 *Economic and Political Weekly* A98 A100.

²⁹⁶ Heidhues and Obare 2011 *Quarterly Journal of International Agriculture* 59 - 60.

²⁹⁷ Iloh "Between Trade and Development: An Analysis of the Impacts of International Trade Policies on Africa's Development" 2018 15 *African Renaissance* 67 73.

The conclusion of the Uruguay Round, the subsequent formation of the WTO and the and resultant GATT 1994 were all aimed at accelerating trade liberalisation.²⁹⁸ The agricultural sector was, for the first time, included in GATT regulations, which meant that developed countries were now obliged to liberalise their agricultural sectors.²⁹⁹ Despite this obligation on developed countries, their agricultural sectors remained greatly protected. The implication of this for African countries was that they already had liberalised agricultural policies brought about by SAPs but were not allowed to introduce any new subsidies to counter the continuing subsidisation of agricultural markets by developed countries. The repercussions for African producers were that they were exposed to unfair competition from producers in developed countries, in a sector which is of vital importance to African countries and their export markets.³⁰⁰

The second international trade policy that has had detrimental effects on trade for Africa is the SPS Agreement, which sets international rules for food safety and animal and plant health standards.³⁰¹ SPS standards are intended to be a health protection measure, and the SPS Agreement explicitly prohibits countries from using sanitary measures to disguise a restriction on trade.³⁰² Despite the prohibition, the nature of these regulations is that they result in restrictions on trade by acting as a non-tariff barrier that effectively restricts developing countries' products from reaching developed countries' markets.³⁰³ The fact that not all countries have equal capital and capacity to institute an internationally acceptable SPS framework means that SPS regulations may act as trade restrictions. Many African countries lack funds to create and implement adequate quality control measures that have been set by the developed world, and the SPS Agreement therefore restricts their ability to trade.³⁰⁴ One empirical study noted that lower-income countries are unable to compete with exporters in developed countries who do not face the same costs of complying with

²⁹⁸ General Agreement on Tariffs and Trade (GATT) 1994, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 187, 33 I.L.M. 1153 (1994).

²⁹⁹ Jari *The Impact of Fairtrade in South* 16.

³⁰⁰ Iloh 2018 *African Renaissance* 74.

³⁰¹ World Trade Organisation "Understanding the WTO Agreement on Sanitary and Phyto-sanitary Measures" (May 1998) https://www.wto.org/english/tratop_e/sps_e/spsund_e.htm (accessed 2022-02-22).

³⁰² Preamble to the Agreement on the Application of SPS.

³⁰³ Iloh 2018 *African Renaissance* 76.

³⁰⁴ *Ibid.*

SPS product standards.³⁰⁵ The SPS Agreement, therefore, acts as a non-tariff barrier to trade that disadvantages African countries.

The third international trade policy that has negative impacts for trade expansion and development in African countries is the prohibition on Trade Related Investment Measures, set out in the TRIMS Agreement.³⁰⁶ TRIMS are not defined in the agreement, but a list of TRIMS is included as examples. TRIMS that are prohibited by the agreement may include local content requirements, domestic sales requirements, or obligations to balance the amount or percentage of exports with that of imports.³⁰⁷ TRIMS were implemented widely in the 1970s, when they were used by governments in both developed and developing countries to balance the practices of MNCs which distorted trade.³⁰⁸ Governments achieved this balance by setting rules promoting their own country's exports or reducing imports, or rules promoting economic and social policy goals and encouraging technology transfer.³⁰⁹

The prohibition on TRIMS applies to governments, but there is no similar application to MNCs.³¹⁰ Countries are therefore limited in the potential gains they can derive from foreign direct investments, and their bargaining power is also curtailed by the TRIMS restrictions. MNCs operating in a host country, on the other hand, are able to conduct their trade freely because the host country cannot impose TRIMS. MNCs can no longer be compelled to source their raw materials locally or hire local staff.³¹¹ Host countries cannot require that the repatriation of foreign currency back to an MNCs home country must be approved by that host country, which results in a loss of capital

³⁰⁵ Murina and Nicita "Trading with Conditions: The Effect of Sanitary and Phyto-sanitary Measures in the Agricultural Exports from Low-income Countries." 2017 40 *The World Economy* 168 180.

³⁰⁶ Article 2 of TRIMS.

³⁰⁷ International Trade Administration "WTO Agreement on Trade-related Investment Measures" (undated) <https://www.trade.gov/trade-guide-wto-trims> (accessed 2022-02-23). Local content requirements refer to "the purchase or use by an enterprise of products of domestic origin or from any domestic source". Domestic sales requirements are when "the exportation of products is restricted in terms of particular products, volume or value of products, or volume or value of local production". Trade balancing requirements are "import restrictions related to the enterprise's volume or value of local production that it exports". UNCTAD "Elimination of TRIMS: The Experience of Selected Developing Countries" United Nations Publication UNCTAD/ITE/IIA/2007/6 (2007) https://unctad.org/system/files/official-document/iteiia20076_en.pdf (accessed 2022-03-18).

³⁰⁸ UNCTAD https://unctad.org/system/files/official-document/iteiia20076_en.pdf (accessed 2022-03-18) 1.

³⁰⁹ Iloh 2018 *African Renaissance* 79.

³¹⁰ Iloh 2018 *African Renaissance* 80.

³¹¹ *Ibid.*

that could have been re-invested in the host country.³¹² The issue of prohibiting TRIMS was proposed at the Uruguay Round by the United States. Its proposition was supported by other developed countries who were home to MNCs with large overseas investments, and who would therefore gain from a prohibition on TRIMS. Developing countries strongly opposed the inclusion of the TRIMS agenda as it removes an important bargaining tool and minimises their ability to obtain concessions and benefits from foreign investors.³¹³ The TRIMS agenda did end up being included in the Uruguay Round, although the final agreement on TRIMS lacked novelty and was essentially a restatement of existing GATT obligations. However, through the negotiations, TRIMS were placed in the spotlight and eventually prohibited under the TRIMS Agreement.³¹⁴

It has been shown that the policies discussed above, whilst intended to boost trade and therefore economic growth globally, have had some negative effects on African countries. This is evidence of the fact that a one-size-fits-all approach to economic growth through trade does not have the same results for all countries. Historical factors, context and a myriad of other factors contribute to the success or otherwise of trade and development policies. For this reason, policies to address Africa's underdevelopment have been put into place to address context-specific issues.

3.2.2 Existing policies to address Africa's underdevelopment

The WTO posits that the multilateral trading system has been the driver of the worldwide economic development that has taken place over the last decades. Integration into the world market has enabled developing countries to access emerging markets and the beneficial opportunities they create.³¹⁵ The multilateral trading system overseen by the WTO is seen as placing all countries' economies on equal footing through the predictable, non-discriminatory policies it imposes.³¹⁶ A WTO report from 2021 noted that Africa's share of global exports and imports has remained constant at around 3 percent for the past 15 years.³¹⁷ 15 percent of exports from Africa

³¹² Iloh 2018 *African Renaissance* 81.

³¹³ UNCTAD https://unctad.org/system/files/official-document/iteiia20076_en.pdf (accessed 2022-03-18) 1.

³¹⁴ *Ibid.*

³¹⁵ World Trade Organisation "Strengthening Africa's Capacity to Trade" (2021) https://www.wto.org/english/res_e/booksp_e/strengthening_africas_capacity_to_trade_e.pdf (accessed 2022-03-18) 6.

³¹⁶ *Ibid.*

³¹⁷ WTO https://www.wto.org/english/res_e/booksp_e/strengthening_africas_capacity_to_trade_e.pdf (accessed 2022-03-18) 13.

are agricultural products. Of Africa's total exports, 15 percent are estimated to fall under intra-African trade.³¹⁸

Despite the equal footing or level playing field of all countries that are a part of the multilateral trading system, the WTO acknowledges that African countries require additional assistance in building their trade capacities. Various programmes aimed at achieving this have been implemented by relevant bodies under the WTO.³¹⁹ Some of these policies will be outlined in this section.

The Aid for Trade initiative is geared towards building the capacity and infrastructure needed by developing countries to implement and benefit effectively from WTO agreements.³²⁰ The programme aims to identify under-utilised market opportunities for developing countries and enhance their integration into the global economy.³²¹ It promotes the use of trade amongst developing country governments to foster development, and aims to address supply-side resource constraints as well as trade-related infrastructure constraints faced by developing countries.³²²

The Trade Facilitation Agreement (TFA)³²³ is another measure undertaken by the WTO and its members to boost trade for poorer countries. By boosting cooperation for customs compliance between economies, the movement and clearance of goods is accelerated, thereby reducing trade costs.³²⁴ Developing countries should derive the most benefit from the TFA, as traders in these countries face more hurdles to efficient

³¹⁸ WTO
https://www.wto.org/english/res_e/booksp_e/strengthening_africas_capacity_to_trade_e.pdf
(accessed 2022-03-18) 13.

³¹⁹ WTO
https://www.wto.org/english/res_e/booksp_e/strengthening_africas_capacity_to_trade_e.pdf
(accessed 2022-03-18) 3.

³²⁰ WTO
https://www.wto.org/english/res_e/booksp_e/strengthening_africas_capacity_to_trade_e.pdf
(accessed 2022-03-18) 17.

³²¹ *Ibid.*

³²² World Trade Organization "Aid for Trade" (undated)
https://www.wto.org/english/tratop_e/devel_e/a4t_e/aid4trade_e.htm (accessed 2022-11-01).
The latest Aid for Trade Global review took place from the 27th to the 29th of July 2022. The full publication of the global review can be accessed at: World Trade Organization "Aid for Trade Global Review 2022: Empowering Connected, Sustainable Trade" (2022)
https://www.wto.org/english/tratop_e/devel_e/a4t_e/a4tpublicationgr22_e.htm (accessed 2022-11-01).

³²³ Agreement on Trade Facilitation (TFA) Annex 1A of the Marrakesh Agreement Establishing the World Trade Organization (The WTO Agreement) (1867 UNTS 154, (1994) 33 ILM 1144; adopted: 15.04.1994; EIF: 01.01.1995).

³²⁴ WTO
https://www.wto.org/english/res_e/booksp_e/strengthening_africas_capacity_to_trade_e.pdf
(accessed 2022-03-18) 3.

trade such as corruption, delays and complicated requirements.³²⁵ A 2021 report noted that full implementation of the TFA could reduce trade costs in the African region by an average of 16.5 percent.³²⁶

In order to support developing countries in meeting international SPS requirements, the WTO set up the Standards and Trade Development Facility (STDF). The facility assists with the strengthening of sanitary capacity in various industries in developing countries, so that the sanitary and phytosanitary policy framework can be adhered to.³²⁷ The SDTF operates mainly as a platform for coordination between stakeholders in the fields of agriculture, health, trade and development, donors and developing country experts.³²⁸ To illustrate, the SDTF is coordinating and funding a three-year project in Mozambique and South Africa to establish areas that are free from fruit fly pests. The prevalence of such pests in these two countries restricts their fruit exports, due to rules contained in the relevant International Standards for Phytosanitary Measures.³²⁹ The SDTF coordinates the implementing entity, which is the Agricultural Research Council of South Africa, and six other partners involved in the project.³³⁰

The African Growth and Opportunity Act (AGOA)³³¹ is a preferential trade agreement that is the United States of America's (US) dominant trade and economic policy in relation to Africa.³³² By allowing certain African countries access to the US market for specific products duty-free, AGOA creates firm economic ties between the two regions and increases market opportunities for African countries. However, in order to be

³²⁵ Gregorsson *A Legal Analysis of the New WTO Agreement on Trade Facilitation – with focus on Developing Countries* (Thesis in International Law, Stockholm University) 2014 26.

³²⁶ WTO
https://www.wto.org/english/res_e/booksp_e/strengthening_africas_capacity_to_trade_e.pdf
(accessed 2022-03-18) 33.

³²⁷ WTO
https://www.wto.org/english/res_e/booksp_e/strengthening_africas_capacity_to_trade_e.pdf
(accessed 2022-03-18) 4.

³²⁸ Standards and Trade development Facility “Commission on Phytosanitary Measures Fifteenth session: Written Reports from Relevant International Organisations – The Standards and Trade Development Facility (SDTF) Overview”
https://www.ippc.int/static/media/files/publication/en/2020/02/INF_05_CPM_2020_STDF_overview-2020-02-22.pdf (accessed 2022-03-28).

³²⁹ Standards and Trade Development Facility “Fruit Fly Free: Pest-free and Low Prevalence Areas to Support Fruit Production and Exports” (undated) <https://www.standardsfacility.org/PG-567>
(accessed 2022-03-28).

³³⁰ *Ibid.*

³³¹ African Growth and Opportunity Act (AGOA) Public Law 106-200.

³³² Moyo and Chikwanha “African Agency for Development: Progress, Contradictions, and Complexities in the Era of Globalisation” 2022 16 *International Journal of African Renaissance Studies* 17.

eligible under AGOA, African countries are required to eliminate barriers to US trade and investment, and their economies must function on a free-market system.³³³

Much like the S&D Treatment measures discussed in Chapter 2 of this dissertation, it is clear that the above policies are aimed at assisting the country as a whole to improve their trade capacity. Being international policies, their success is measured based on a country's overall performance, without investigating which producers within a country are benefitting.

3.3 Development as an objective and a right in African regional law

3.3.1 Agenda 2063

The distinct and external policies intended to boost African development and boost trade have resulted in a loss of agency for African countries. The requirements for qualifying for benefits such as AGOA means that African States' freedom to implement certain trade and development policies is curtailed, thus depriving them of agency.³³⁴ In an effort to regain African agency, the AU has devised a framework continental agenda called 'Agenda 2063: the Africa we want.'

Agenda 2063 was prepared by the AU Commission as "[a] shared strategic framework for inclusive growth and sustainable development and a global strategy to optimize the use of Africa's resources for the benefit of all Africans".³³⁵ It is an agenda which, through the classification of seven priority areas of concern, aims to contribute to the development and progress of the African continent as a whole.³³⁶ The prioritised aspirations act as bases for incorporation into regional and national development plans.³³⁷ Many initiatives claiming to provide development opportunities for Africa have been formed by international organisations, but these have yet to materialise into development breakthroughs for the continent.³³⁸ Thus, Agenda 2063 endeavours to find African solutions by African stakeholders, to address Africa-centred problems.³³⁹ The underlying theme of the Agenda is that, through improvement in the use and

³³³ Moyo and Chikwanha 2022 *International Journal of African Renaissance Studies* 8.

³³⁴ *Ibid.*

³³⁵ African Union Commission *Agenda 2063 Framework Document*.

³³⁶ African Union Commission *Agenda 2063 Framework Document* 23.

³³⁷ *Ibid.*

³³⁸ Nwozor *et al* 2021 *Journal of Black Studies* 689.

³³⁹ Nwozor *et al* 2021 *Journal of Black Studies* 692.

distribution of Africa's wealth of resources, the development objectives of African people will be achieved.³⁴⁰

Agenda 2063 is necessarily linked to trade. There exists the idea that the challenges facing Africa have resulted from the continent's reliance on general international trade policies and programmes that are not suited to the needs of African countries.³⁴¹ In efforts to combat this reliance, Agenda 2063 and its related plans aim to foster African trade cooperation in order for Africa to finance its own development.³⁴² The first ten year implementation plan, which ends in 2023, pushes for an integrated Africa where goods and capital move freely among Member States. In addition, the aspiration was set that intra-African trade was to treble in volume by 2023.³⁴³ The AfCFTA is one of the key flagship projects of Agenda 2063 and is therefore strongly correlated to the achievement of the objectives set in the agenda.³⁴⁴

Whilst Agenda 2063 certainly is a platform for African agency and the ability to generate uniquely African solutions, the question remains as to whether such agency will foster development on the Continent.³⁴⁵ In order to result in substantial development, Agenda 2063 needs to be action-oriented.³⁴⁶ Practical flagship programmes set out in the ten-year implementation programme include the creation of an integrated high speed train network, instituting an African passport for the free movement of people by 2018, and the establishment of African continental financial institutions.³⁴⁷ One of the flagship programmes which has been implemented, is the establishment of the Continental Free Trade Area, as evidenced by the AfCFTA.³⁴⁸ The prioritisation of these flagship programmes has been argued to be contradictory to the people-centred development aspirations of Agenda 2063. The prioritised

³⁴⁰ Nwozor *et al* 2021 *Journal of Black Studies* 693.

³⁴¹ Stevens "Reviving the Right to Development within the Multilateral Trade Framework Affecting (African) Countries to Actualise Agenda 2063" 2019 19 *African Human Rights Law Journal* 470 472.

³⁴² African Union Commission "Agenda 2063: The Africa we want: A shared Strategic Framework for Inclusive Growth and Sustainable Development: First Ten-year Implementation Plan 2014-2023" (2015) <https://www.nepad.org/agenda-2063/publication/agenda-2063-first-ten-year-implementation-plan-2014-2023-0> (accessed 2022-03-22) 21.

³⁴³ African Union Commission <https://www.nepad.org/agenda-2063/publication/agenda-2063-first-ten-year-implementation-plan-2014-2023-0> 23.

³⁴⁴ Moyo and Chikwanha 2022 *International Journal of African Renaissance Studies* 9.

³⁴⁵ Moyo and Chikwanha 2022 *International Journal of African Renaissance Studies* 2.

³⁴⁶ Moyo and Chikwanha 2022 *International Journal of African Renaissance Studies* 17.

³⁴⁷ African Union Commission <https://www.nepad.org/agenda-2063/publication/agenda-2063-first-ten-year-implementation-plan-2014-2023-0> 124.

³⁴⁸ *Ibid.*

programmes seem to pursue capital interests, rather than the upliftment of underprivileged Africans.³⁴⁹ However, it could be argued that an increase in capital will result in more resources being available for such upliftment projects.

With the Agenda being one geared towards full achievement by 2063, its success is hard to measure now, 41 years prior to its 'end-date'. The fact that the Agenda is divided into implementation plans for shorter time periods does make progress in the achievement of the Agenda easier to monitor. As a broad strategic framework, at the very least Agenda 2063 sets the groundwork for more focussed initiatives to take action in addressing the issues it highlights.

3.3.2 The African continental free trade area

Regional integration involves increasing the interdependence of sovereign states by forming closer economic links and reducing trade barriers among a group of countries that are usually geographically close to each other.³⁵⁰ The free movement of goods, services, people and capital between nations that are regionally integrated fosters sustainable socio-economic development in that region. Regional integration creates more opportunities for competing in the global market which in turn leads to economic growth, reduced unemployment and poverty elimination.³⁵¹

Regional integration in Africa has been achieved to some extent due to the existence of eight regional economic communities (RECs) on the continent. However, not all of the RECs are at the same stage of integration and there is no cross-continental uniformity in REC policies.³⁵² In efforts to facilitate better regional integration in Africa, the AfCFTA was established.³⁵³ The AfCFTA is a RTA that establishes the African Continental Free Trade Area. The Agreement entered into force in May 2019 and is the world's largest RTA, connecting more States and covering a larger geographical area than any other RTA.³⁵⁴ The AfCFTA is aimed at facilitating social and economic

³⁴⁹ Moyo and Chikwanha 2022 *International Journal of African Renaissance Studies* 13.

³⁵⁰ Okafur and Udibe "Can the African Continental Free Trade Agreement Foster a New Paradigm of Development Assistance within Africa?" 2020 7 *Journal of African Foreign Affairs* 7 8.

³⁵¹ *Ibid.*

³⁵² United Nations Economic Commission for Africa Report "The Continental Free Trade Area (CFTA) in Africa – A Human Rights Perspective" (2017) https://www.ohchr.org/sites/default/files/Documents/Issues/Globalization/TheCFTA_A_HR_ImpactAssessment.pdf (accessed 2022-03-16) 24.

³⁵³ Agreement Establishing the African Continental Free Trade Area (AfCFTA) (58 *I.L.M.* 1028, 1067. Adopted; 21.03.2018. EIF; 30.05.2019).

³⁵⁴ Kuhlmann and Agutu "The African Continental Free Trade Area: Toward a New Legal Model for Trade and Development" 2020 51 *Georgetown Journal of International Law* 753 755.

development through trade. The formation of a large and unified trading bloc creates more potential for regional trade, thereby increasing Africa's market prospects.³⁵⁵ Unlike WTO agreements, which are only reached by way of an 'all-or-nothing' consensus between all Member States, the AfCFTA is a platform where agreements may be reached incrementally through negotiations that are geared towards the priorities of negotiating parties.³⁵⁶

Development forms the focal point of the AfCFTA, and it is therefore closely linked to the AU's Agenda 2063, as well as the 17 SDGs. It is hoped that the legal harmonisation of these development objectives within the AfCFTA framework will lead to inclusive development in Africa.³⁵⁷ The AfCFTA follows a liberalising approach to trade, by requiring that state parties gradually eliminate tariff and non-tariff barriers to trade.³⁵⁸ The Agreement echoes WTO policies in certain aspects, by including National Treatment, the MFN principle, S&D Treatment and substantial liberalisation as principles governing the AfCFTA.³⁵⁹

The AfCFTA affects trade in Africa in several ways. In the past, agricultural products from developing countries have carried higher tariff rates, but the elimination or reduction of tariffs and duties in line with the AfCFTA changes this.³⁶⁰ Quantitative restrictions, which are restrictions on the quantities of imports or exports to or from a country, are also eliminated or reduced in the AfCFTA.³⁶¹ Quantitative restrictions are typically used to limit competition in domestic markets and keep domestic prices low.³⁶² The AfCFTA also seeks to restrict the use of non-tariff barriers such as sanitary and phytosanitary requirements, government procurement of domestic products and customs processes.³⁶³ Whilst non-tariff barriers are intended to protect domestic markets, they pose a serious hurdle to intra-African trade.³⁶⁴

³⁵⁵ Kuhlmann and Agutu 2020 *Georgetown Journal of International Law* 759.

³⁵⁶ Kuhlmann and Agutu 2020 *Georgetown Journal of International Law* 758.

³⁵⁷ Kuhlmann and Agutu 2020 *Georgetown Journal of International Law* 756.

³⁵⁸ Article 4 of the AfCFTA.

³⁵⁹ Article 2, 4, 5, and 6 of the Protocol on Trade in Goods to the AfCFTA.

³⁶⁰ Article 2(a) and (b) of the Protocol on Trade in Goods to the AfCFTA.

³⁶¹ Article 9 of the Protocol on Trade in Goods to the AfCFTA.

³⁶² UN Economic Commission for Africa Report https://www.ohchr.org/sites/default/files/Documents/Issues/Globalization/TheCFTA_A_HR_ImpactAssessment.pdf 85.

³⁶³ Article 12 of the Protocol on Trade in Goods to the AfCFTA.

³⁶⁴ UN Economic Commission for Africa Report https://www.ohchr.org/sites/default/files/Documents/Issues/Globalization/TheCFTA_A_HR_ImpactAssessment.pdf 85.

The above measures all contribute to the opening up of African markets in line with trade liberalisation and the fostering of free trade amongst African countries. Whilst these liberalisation policies will boost intra-African trade, domestic markets might suffer some adverse effects. In order to counter these adverse effects, the AfCFTA makes provision for exclusion lists and the use of trade remedies and safeguards.³⁶⁵ Exclusions lists are lists of products that are exempt from liberalisation policies.³⁶⁶ Trade remedies and safeguards are temporary government measures such as anti-dumping rules and import safeguards, implemented to protect important domestic products that might be exposed to competition on the global market.³⁶⁷

Whilst the AfCFTA has great potential to expand markets and grow economies, doubts have been raised as to the AfCFTA's potential to result in the equitable distribution of expansion and growth.³⁶⁸ With no explicit provisions for improving living standards and the well-being of African people, and much emphasis on trade liberalisation, the AfCFTA is likely to benefit those African countries that already have advanced economies.³⁶⁹ There is no guarantee within the AfCFTA that development benefits from increased inter-continental trade will be equitably redistributed.³⁷⁰

3.3.3 The right to development in the African Charter

The right to development has been a part of African regional law since the adoption of the African Charter in 1981.³⁷¹ Article 22 of the African Charter states:

“1. All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.

2. States shall have the duty, individually or collectively, to ensure the exercise of the right to development.”³⁷²

³⁶⁵ Article 17 and 19 of the Protocol on Trade in Goods to the AfCFTA.

³⁶⁶ UN Economic Commission for Africa Report https://www.ohchr.org/sites/default/files/Documents/Issues/Globalization/TheCFTA_A_HR_ImpactAssessment.pdf 85.

³⁶⁷ *Ibid.*

³⁶⁸ Ngang “Right to Development governance in the advent of the African continental free trade area” 2021 65 *Journal of African Law* 172, 173.

³⁶⁹ *Ibid.*

³⁷⁰ *Ibid.*

³⁷¹ Piron “The Right to Development: A Review of the Current State of Debate for the Department for International Development” (2002) <https://cdn.odi.org/media/documents/2317.pdf> (accessed 2022-03-29) 7.

³⁷² Article 22 of the African Charter.

The inclusion of Article 22 makes the right to development a hard law rule of international law, although the right is only guaranteed within Africa.³⁷³ The development referred to in Article 22 is not measured purely by economic growth but includes social and cultural components as explicitly set out in the article. This type of development follows a rights-based approach that incorporates the cultivation of equity within and among states, the mainstreaming of gender interests, and a participatory element to development.³⁷⁴ This right has also been defined as “human development” in that it allows the development of full human potential in order for people to live productively according to their needs and interests.³⁷⁵

Ngang makes several important clarifications regarding the concept of the right to development as formulated in the African Charter.³⁷⁶ The right to development is not an appeal for cooperation and development assistance. Instead, it is a declaration of cultural and socio-economic self-determination in Africa.³⁷⁷ Practically, the right to development will be implemented in different ways, depending on the context. It allows collective participation by Africans in implementing the right in such a way that human rights protection and justice in development prevail.³⁷⁸ States Parties are obligated under the African Charter to create an environment in which the right to development can effectively be put into practice.³⁷⁹

Agenda 2063 aligns with the above concepts of the right to development. The Agenda, in its list of aspirations, promotes an Africa of good governance, democracy, respect for human rights and justice. It also envisions an Africa with a strong cultural identity and common values and ethics. The Agenda aspires for people-driven development that relies on the potential of African people.³⁸⁰ Thus, Agenda 2063 promotes the social and cultural, as well as the economic aspects of the right to development.

³⁷³ Okafur “A Regional Perspective: Article 22 of the African Charter on Human and Peoples’ Rights” in *Realizing the Right to Development* (2013) 374.

³⁷⁴ Okafur *Realizing the Right to Development* 375.

³⁷⁵ United Nations Development Programme “About Human Development” (undated) [About Human Development | Human Development Reports \(undp.org\)](#) (accessed 2022-03-31).

³⁷⁶ Ngang “Towards a Right-to-Development Governance in Africa” 2018 17 *Journal of Human Rights* 107 113.

³⁷⁷ *Ibid.*

³⁷⁸ Ngang 2018 *Journal of Human Rights* 114.

³⁷⁹ Ngang 2018 *Journal of Human Rights* 114.

³⁸⁰ African Union Commission *Agenda 2063 Framework Document* 106.

The right to development in the African Charter is inherently flexible, due to the fact that it can be viewed through a human rights, economic, social, political, legal or cultural lens. It is this flexibility which makes the right to development, its interpretation and implementation central to the achievement of Agenda 2063, the strengthening of regional economic integration and addressing inequity in multilateral trade.³⁸¹ This idea also sets trade at the centre of the revival and realisation of the right to development.³⁸²

The concept of the right to development has been further refined in several regional cases dealing with the matter. In *Kevin Mgwangwa Gunme v Cameroon*,³⁸³ the African Commission on Human and Peoples' Rights noted that the respondent State bore an obligation to invest its resources in such a manner as to maximise the attainment of the progressive realisation of the right to development.³⁸⁴ In a State with scarce resources, this inevitably means that the resources will not reach some groups or individuals, but this does not mean that a violation of the right to development has occurred.³⁸⁵

In *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of the Endorois Welfare Council v The Republic of Kenya (Endorois case)*,³⁸⁶ perhaps the most authoritative case on the right to development, the African Commission on Human and Peoples' Rights held that article 22 of the African Charter creates a right that requires fulfilment of both procedural and substantive elements.³⁸⁷ Article 22 applies as both a means to an end and an end in itself.³⁸⁸ The African Commission on Human and Peoples' Rights (the Commission) held that the procedural element of the right to development means that, where a

³⁸¹ Stevens "Reviving the Right to Development within the Multilateral Trade Framework Affecting (African) Countries to Actualise Agenda 2063" 2019 19 *African Human Rights Law Journal* 470 473.

³⁸² Stevens 2019 *African Human Rights Law Journal* 489.

³⁸³ *Kevin Mgwangwa Gunme v Cameroon (Southern Cameroon case)* (Judgement of 27.05.2009) (communication no. 266/2003) 2009 ACHPR 99.

³⁸⁴ *Southern Cameroon Case supra* par [206].

³⁸⁵ *Ibid.*

³⁸⁶ *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of the Endorois Welfare Council v The Republic of Kenya (Endorois case)* (judgement of 25.11.2009) (communication no.276/2003) [\(276/03 Centre for Minority Rights Development \(Kenya\) and Minority Rights Group \(on behalf of Endorois Welfare Council\) / Kenya \(ihrda.org\)\)](https://www.ahrda.org/276/03_Centre_for_Minority_Rights_Development_(Kenya)_and_Minority_Rights_Group_(on_behalf_of_Endorois_Welfare_Council)_/Kenya_(ihrda.org)) (accessed 2022-03-30).

³⁸⁷ *Ibid.*

³⁸⁸ *Endorois supra* par [277].

development project affects a community, that community's democratic participation in decision-making, as well as their prior informed consent is required for the development process to adhere to article 22.³⁸⁹ The substantive element of the right to development was also outlined in the *Endorois* case. Substantively, development must lead to empowerment of the community and an improvement in their well-being.³⁹⁰

Okafur has outlined five minimum components of the right to development, extracted from judgments dealing with Article 22.³⁹¹ First is that the enjoyment of peace must form part of the framework of the process and goals of development. Second, that in addition to the enjoyment of peace, human rights must also form part of the procedural and substantive elements of development.³⁹² Thirdly, any inequality in the distribution of the benefits of development equates to a lack of development. Fourth, people's participation in their own development is an essential minimum requirement. Lastly, the right to development includes the rights to the means, processes and outcomes of development.³⁹³

The implementation and immediate application of the right to development is, however, constrained by the resources available to the duty-bearing State.³⁹⁴ In the face of major resource constraints on most African countries, the implementation of the right to development is limited. Despite this limitation, the right to development, a uniquely African right thus far, provides an important foundation for development projects in Africa, where people are most in need of upliftment. It also serves to protect any person or groups who have been or will be affected by development, by requiring their consent and participation in the project.³⁹⁵

³⁸⁹ Ashamu "Centre for Minority Rights Development (Kenya) and Minority Rights Group International on Behalf of Endorois Welfare Council v Kenya: A Landmark Decision from the African Commission" 2011 55 *Journal of African Law* 300 310.

³⁹⁰ Ashamu 2011 *Journal of African Law* 311.

³⁹¹ Okafur *Realizing the Right to Development* 377.

³⁹² A rights-based approach to development finds justification on normative, pragmatic and ethical grounds. Talking about development in terms of rights brings in normative elements of values and a vision of what ought to be. Pragmatically, a rights framework implies duties, and along with duties comes increased accountability. Ethically, a rights-based approach necessitates an examination of participation and the power dynamics involved in development; see Cornwall and Nyamu-Musembi "Putting the 'Rights-based Approach' to Development into Perspective" 2004 25 *Third World Quarterly* 1415 1417.

³⁹³ Okafur *Realizing the Right to Development* 377 – 378.

³⁹⁴ Okafur *Realizing the Right to Development* 382.

³⁹⁵ Ashamu 2011 *Journal of African Law* 310.

3.4 Fairtrade in Africa

3.4.1 Fairtrade aims for Africa

Fairtrade Africa visualises Fairtrade as creating “[a] world in which all producers can enjoy secure and sustainable livelihoods, fulfil their potential and decide on their future.”³⁹⁶ The four broad strategies listed to achieve this vision include product and market development, policy and advocacy, sustainable farming systems, and transformed and strengthened producer organisations.³⁹⁷ These strategies are part of the Fairtrade Africa 2021 – 2025 strategic plan.³⁹⁸

In addition to the strategies forming part of the strategic plan, Fairtrade Africa continues to implement projects falling under five thematic areas of concern. Fairtrade Africa’s 2020 annual report recounts ongoing projects aimed at addressing these five areas.³⁹⁹ The first area of concern is climate change, which African farmers are particularly vulnerable to as a result of widespread poverty and farmer’s limited capacity to adapt to changing conditions. Projects aimed at using solar technology in coffee production, diversifying livelihoods of cocoa producers, and promoting climate-resilient crops are part of Fairtrade Africa’s strategy to combat climate change and its affects, in line with SDG 13.⁴⁰⁰ In efforts to address the second area of concern, that of poverty amongst smallholder farmers and farm workers, Fairtrade Africa has implemented projects to generate decent livelihoods amongst these groups.⁴⁰¹ These projects intervene in various ways to promote income diversification, secure better economic deals and enable partnerships for investment. In this way, Fairtrade Africa advances SDG 8 on decent work and economic growth.⁴⁰²

Several Fairtrade Africa programmes are geared towards addressing gender inequality, which is the third area of concern. By providing leadership training and mentoring, rights education and specific skills training, all for women producers,

³⁹⁶ Fairtrade Africa “Vision, Mission and Strategy” (undated) <https://fairtradeafrica.net/vision-mission-and-strategy/> (accessed 2022-05-10).

³⁹⁷ Fairtrade Africa <https://fairtradeafrica.net/vision-mission-and-strategy/> (accessed 2022-05-10).

³⁹⁸ Fairtrade Africa “Fairtrade Africa Strategic Plan 2021 – 2025 at a Glance” (undated) [*Strategic-Plan-2021-2025.pdf](https://fairtradeafrica.net/wp-content/uploads/2021/08/Fairtrade-Africa-2021-2025-at-a-Glance.pdf) (accessed 2022-05-10).

³⁹⁹ Fairtrade Africa “Annual Report 2020” (undated) <https://fairtradeafrica.net/wp-content/uploads/2021/08/Fairtrade-Africa-2020-Annual-Report-Final-.pdf> (accessed 2022-05-10) 27.

⁴⁰⁰ *Ibid.*

⁴⁰¹ Fairtrade Africa <https://fairtradeafrica.net/wp-content/uploads/2021/08/Fairtrade-Africa-2020-Annual-Report-Final-.pdf> (accessed 2022-05-10) 28.

⁴⁰² *Ibid.*

Fairtrade Africa is encouraging gender equality and enabling women to improve their livelihoods.⁴⁰³ This aligns with SDG 5, achieving gender equality and empowering women and girls.⁴⁰⁴ The fact that Africa's population is a very young one, has driven Fairtrade Africa to make youth inclusion its fourth area of concern. In efforts to increase the number of youth involved in farming, youth projects and forums have been initiated.⁴⁰⁵ Child labour is the final area of concern for Fairtrade Africa, as the continent has the largest number of child labourers globally.⁴⁰⁶ Various community-based monitoring programmes are in place to combat child labour.⁴⁰⁷

3.4.2 Connections between Fairtrade and international and regional policies

In assessing Fairtrade's position in Africa, it is important to evaluate how the international and regional policies discussed in this chapter link up to Fairtrade. Are there connections between Fairtrade's goals in Africa and what these international and regional policies aim to achieve? Comparing and contrasting Fairtrade with international and regional trade and development policies will help to highlight any connections or contrasts between them.

The international trade policies discussed in 3.2.2 of this chapter are aimed at assisting producers in developing countries adhere to internationally set trade standards and access the international market that operates according to those standards. Fairtrade on the other hand, works from both sides of the value chain, setting new rules and standards according to which producers and buyers trade, as well as providing assistance to producers to reach these standards. To illustrate, the Aid for Trade initiative aims to identify under-utilised market opportunities for developing countries and AGOA aims to increase mainstream market opportunities for African countries. In contrast to these, Fairtrade aims to create new market opportunities for specific producers within developing countries.⁴⁰⁸ Whilst the ultimate aim of increasing market

⁴⁰³ Fairtrade Africa <https://fairtradeafrica.net/wp-content/uploads/2021/08/Fairtrade-Africa-2020-Annual-Report-Final-.pdf> (accessed 2022-05-10) 30.

⁴⁰⁴ UN General Assembly "Transforming Our World: The 2030 Agenda for Sustainable Development" (2015-10-21) A/RES/70/1 <https://www.refworld.org/docid/57b6e3e44.html> (accessed 2022-05-27) 18.

⁴⁰⁵ Fairtrade Africa <https://fairtradeafrica.net/wp-content/uploads/2021/08/Fairtrade-Africa-2020-Annual-Report-Final-.pdf> (accessed 2022-05-10) 31.

⁴⁰⁶ Fairtrade Africa <https://fairtradeafrica.net/wp-content/uploads/2021/08/Fairtrade-Africa-2020-Annual-Report-Final-.pdf> (accessed 2022-05-10) 32.

⁴⁰⁷ *Ibid.*

⁴⁰⁸ WTO https://www.wto.org/english/res_e/booksp_e/strengthening_africas_capacity_to_trade_e.pdf (accessed 2022-05-10) 17. The idea of the "Fairtrade market" indicates the presence of a new

access and opportunities is a common thread connecting Fairtrade and these international policies, their methods and target groups are different. This demonstrates that international policies to address underdevelopment in Africa, and Fairtrade, are not mutually exclusive and certainly both have their role to play in boosting trade, economic growth and development on the Continent.

Agenda 2063 and the AfCFTA are both regional policies seeking to foster growth and development in Africa. In the same way that Agenda 2063 seeks to bring a sense of agency back to Africans in generating their own development, Fairtrade aims to empower producers by providing them with training, knowledge and market opportunities, essentially equipping them to develop themselves. The Agenda recognises trade cooperation as a means to finance development.⁴⁰⁹ Fairtrade is a means of facilitating trade cooperation. Agenda 2063 specifically refers to trade cooperation within Africa. This might present new opportunities for intra-African Fairtrade, as opposed to the typical North-South Fairtrade relationship.

The AfCFTA provides several prospects for economic growth in Africa. Providing access to new markets for African companies, reducing barriers to trade across the Continent, stimulating intra-African exports and imports and creating opportunities for the processing of produce into finished products are all possibilities under the AfCFTA.⁴¹⁰ Whilst these prospects may very well benefit the continent as a whole, the increase in intra-African trade also presents challenges for small producers in Africa. Small producers in poorer African countries will be faced with increased competitive pressure from large, industrialised farms in higher income African countries. In addition, the fact that the AfCFTA provides for lower tariffs on foreign goods means that small local producers will not be viable market contenders in the face of cheaper produce from other African states.⁴¹¹ Fairtrade may proffer some solutions to the challenges that increased intra-African trade creates for small producers. By creating a Fairtrade market, small producers are provided with another avenue for their produce where they can avoid having to compete with large, industrialised farmers

market, where the rules for trade are set by Fairtrade standards and not by WTO rules; Fairtrade International 2016 *Fairtrade Global Strategy* 13.

⁴⁰⁹ African Union Commission <https://www.nepad.org/agenda-2063/publication/agenda-2063-first-ten-year-implementation-plan-2014-2023-0> (accessed 2022-06-01) 21.

⁴¹⁰ Okafur and Udibe 2020 *Journal of African Foreign Affairs* 17-18.

⁴¹¹ Okafur and Udibe 2020 *Journal of African Foreign Affairs* 16.

who dominate the mainstream intra-African market. The AfCFTA may also present more opportunities for intra-African Fairtrade. Fairtrade products are available in some African countries, but the increase in intra-African trade can be seen as an opportunity to create a robust African Fairtrade market, allowing African consumers to contribute to development on the continent by purchasing Fairtrade products.⁴¹²

There are connections between Fairtrade and the right to development in the African Charter. Fairtrade is essentially a development project, aimed at providing the tools and market access required for producers in developing countries to achieve social, economic and environmental development.⁴¹³ Fairtrade organisations do not bear a duty to ensure the right to development, as this duty falls on States Parties to the African Charter. Despite this, Fairtrade organisations should take guidance from the right to development and the requirements outlined as essential for the achievement of this right, in order to work towards the type of development endorsed by the African Charter.

3.4.3 Challenges to Fairtrade in Africa

Fairtrade in Africa, particularly in agriculture, has been shaped by historical institutional structures inherited from the colonial era. Farmer cooperatives, patterns of landholding, and social, ethnic and gender relations are all part of the colonial legacy that has both facilitated and presented challenges for Fairtrade in Africa.⁴¹⁴

Cooperatives are not novel institutions in Africa, having been introduced during colonisation as top-down state-led public sector organisations.⁴¹⁵ Cooperatives in the colonial and post-colonial era were viewed as inefficient, bureaucratic and geared towards protecting the interests of wealthy farmers. Members did not actively participate in the governance of cooperatives.⁴¹⁶ Fairtrade has played an important role in changing the way cooperatives are run by promoting democratic governance by members and working to improve members technical and marketing skills.⁴¹⁷

⁴¹² Fairtrade Africa “African Markets” (undated) <https://fairtradeafrica.net/african-markets/> (accessed 2022-06-01).

⁴¹³ Fairtrade International “Aims of the Fairtrade Standards” (undated) <https://www.fairtrade.net/standard/aims#:~:text=Fairtrade%20Standards%20ensure%20fairer%20terms,build%20thriving%20farms%20and%20organizations> (accessed 2022-04-20).

⁴¹⁴ Tallontire *Handbook of Research on Fair Trade* (2015) 1-2.

⁴¹⁵ Tallontire *Handbook of Research on Fair Trade* 2.

⁴¹⁶ Tallontire *Handbook of Research on Fair Trade* 3.

⁴¹⁷ *Ibid.*

Although Fairtrade has worked to improve the capacity of small producer organisations such as cooperatives, much of this capacity remains within the organisations' leadership rather than being disseminated to members.⁴¹⁸ This points to a general lack of awareness and agency among the workers and small producers that Fairtrade is ultimately aimed at benefitting.

There are a number of impediments relating to trade infrastructure in Africa that present constraints for successful Fairtrade on the continent. Some of these are categorised as “hard infrastructure” challenges, which include poor transport infrastructure and the absence of a manufacturing industry (relative to other regions). The fact that produce from Africa has to be shipped elsewhere to be processed means that the final product costs consumers more, thereby making it less competitive.⁴¹⁹ In addition, producers in Africa face various “soft infrastructure” challenges. These challenges relate to the laws and rules facilitating agricultural trade, such as meeting international standards, efficient and sustainable production, and effective product marketing.⁴²⁰

Gender inequality and the lack of women's representation and land ownership on African farms, particularly at the small producer level, is a further challenge for Fairtrade in Africa.⁴²¹ For a small producer to belong to a cooperative oftentimes requires that producer to grow sufficient volume and consistent quality of produce, to buy shares in the organisation, and to own land.⁴²² Traditional land tenure systems in most African communities mean that women are less likely to own land, and therefore less likely to be members of cooperatives or small producer organisations.⁴²³ This makes it much harder for Fairtrade benefits to reach women producers. To illustrate, in the context of coffee production in Kenya, tradition dictates that female family members take part in coffee production, but do not have ownership of any of the coffee bushes. Women are also highly underrepresented in coffee production organisations. They, therefore, miss out on valuable training provided by these organisations, and do not have direct access to the income generated by the coffee they have helped

⁴¹⁸ Tallontire *Handbook of Research on Fair Trade* 5.

⁴¹⁹ Tallontire *Handbook of Research on Fairtrade* 4.

⁴²⁰ *Ibid.*

⁴²¹ Tallontire *Handbook of Research on Fairtrade* 5.

⁴²² *Ibid.*

⁴²³ *Ibid.*

produce.⁴²⁴ The idea that any inequality in how the benefits of development are distributed equates to a lack of development, means that Fairtrade cannot disregard the obstacles that women in farming face.⁴²⁵ For Fairtrade to align with the right to development, Agenda 2063 and the SDGs, gender inequality issues cannot be ignored.

3.4.4 Fairtrade impacts as illustrated by case studies conducted in African countries

A number of studies have been conducted analysing the impacts of Fairtrade on specific countries in Africa, or on producers of specific products in African countries. One study compared the poverty impacts of three sustainability standards on coffee producers in Uganda.⁴²⁶ The results of this study, which focussed on the socio-economic impacts of sustainability standards, indicated that Fairtrade certification significantly improved household living standards of the certified producers.⁴²⁷ According to the study, Fairtrade certification also halved the likelihood of being poor for certified producers, and reduced the poverty gap among certified producers.⁴²⁸ The reasons for these positive outcomes stem from the Fairtrade guaranteed minimum price which in turn increased the average price received by farmers. In addition, the Fairtrade premium was used for investing in infrastructure and training programs.⁴²⁹ Neither of the other two sustainability certification schemes included in the study provided such price guarantees and premiums.⁴³⁰

Another study was conducted to assess the poverty impact of Fairtrade on Ghanaian cocoa producers, by comparing non-certified and certified producers.⁴³¹ In contrast to the above findings of the Ugandan coffee study, Fairtrade certification was found not to have any significant impact on Ghanaian cocoa producers with regard to their

⁴²⁴ Fairtrade Africa “Performance Report 2010 – 2013” (undated) <https://fairtradeafrica.net/wp-content/uploads/2020/04/SOCIAL-IMPACT-REPORT.pdf> (accessed 2022-05-13) 18.

⁴²⁵ Okafur *Realizing the Right to Development* 377 – 378.

⁴²⁶ Chiputwa, Spielman and Qaim “Food Standards, Certification, and Poverty among Coffee Farmers in Uganda” 2015 66 *World Development* 400 – 412.

⁴²⁷ Chiputwa *et al* 2015 *World Development* 409.

⁴²⁸ *Ibid.*

⁴²⁹ *Ibid.*

⁴³⁰ *Ibid.*

⁴³¹ Nelson, Opoku, Martin, Bugri and Posthumus “Assessing the Poverty Impact of Sustainability Standards: Fairtrade in Ghanaian Cocoa” (2013) <http://fairtradekookboek.files.wordpress.com/2013/12/apiss-fairtradeinghanaiancocoa.pdf> (accessed 2022-05-9).

household income, household food security, or cocoa production.⁴³² The absence of a difference in household income between certified and non-certified producers could be put down to the fact that the Ghana Cocoa Board sets the cocoa prices for Ghana, and at the time of this study, this set price was above the Fairtrade Minimum Price.⁴³³ Some positive results were recorded with regard to crop diversification, though cocoa remained the main source of income for most farmers.⁴³⁴ It was also observed that Fairtrade certified producers were provided with significantly more training opportunities than their non-certified counterparts.⁴³⁵ No wider transformational impact on Ghana's local or national economy was evidenced, though structural issues including diversification, land reform, rural banking and scientific research would minimise any large-scale influence that Fairtrade might have.⁴³⁶

It must be noted that these two studies were conducted on very specific groups operating in different countries and therefore subject to a variety of factors that could influence the effectiveness of Fairtrade. An important takeaway from these studies is that Fairtrade does not operate in a vacuum. Structural issues, government trade laws and commodity-specific value chains impact the lives of producers whether they are Fairtrade certified or not. The value in Fairtrade lies perhaps in its ability to minimize the negative impacts of these external factors on certified producers, taking guidance from regional policies such as Agenda 2063, the AfCFTA and the right to development.

Prohibiting child labour and increasing women's representation and land ownership are two social issues in African agriculture that Fairtrade policies address. The

⁴³² Nelson *et al* 2013 *Natural Resources Institute* 110 – 111.

⁴³³ Nelson *et al* 2013 *Natural Resources Institute* iv.

⁴³⁴ Nelson *et al* 2013 *Natural Resources Institute* 111; crop diversification is where more than one variety of crops belonging to the same or different species are cultivated in a given area. In communities that rely on agricultural production for their livelihoods, crop diversification creates a more resilient agricultural system, allowing for more stable food stocks and incomes; see Mango, Makate, Mapemba and Sopo "The Role of Crop Diversification in Improving Household Food Security in Central Malawi" 2018 7 *Agriculture and Food Security* 1 2.

⁴³⁵ Nelson *et al* 2013 *Natural Resources Institute* 111; economic growth in Africa relies heavily agricultural transformation. However, in order to achieve agricultural transformation, upgraded skills sets are needed across the whole agricultural value chain. Agricultural skills development (referred to in this section as 'training') includes all activities undertaken to acquire knowledge, attributes and capacities to facilitate efficient and effective agricultural production. Thus, training is vital for development, especially the type of people-driven development promoted in the African Charter and Agenda 2063; see Maiga and Kazianga "The Role of Agricultural Skills Development in Transforming African Agriculture" *African Transformation Report* 2017 https://acetforafrica.org/acet/wp-content/uploads/publications/2018/01/ACET_ATR2_agriculturalskills_Sep2016_singlepages.pdf (accessed 2022-06-6) 5.

⁴³⁶ Nelson *et al* 2013 *Natural Resources Institute* 108.

Ghanaian cocoa study noted that child labour is prevalent in West Africa.⁴³⁷ High labour costs lead to children being brought in, often from different countries, to work on Ghanaian cocoa farms. Fairtrade standards prohibit farmers from engaging in this form of child labour.⁴³⁸ The Ghanaian Fairtrade certified cooperative, Kuapa Kokoo, has a policy forbidding any members from using child labour on their farms, and has established a multi-level monitoring system to ensure that this policy is adhered to.⁴³⁹ This policy advances SDG 8, which incorporates as one of its goals to end all forms of child labour by 2025.⁴⁴⁰

In terms of policies for women empowerment, Kuapa Kokoo was found to support women's participation and representation much more than other non-certified cooperatives in Ghana.⁴⁴¹ Supporting women smallholders, building women's capacity to take up leadership positions, and setting quotas for women's representation at different levels are all part of Kuapa Kokoo's policy on gender equality.⁴⁴² Another example of Fairtrade promoting women's empowerment is found in a Western Kenyan Fairtrade certified coffee cooperative and their establishment of a "Women in Coffee" group.⁴⁴³ Through this initiative, the cooperative has increased its female membership and encouraged its male members to transfer ownership of some of their coffee bushes to their female family members.⁴⁴⁴ These initiatives align with the inclusive development embraced in the African Charter and Agenda 2063. They also promote the achievement of SDG 5.⁴⁴⁵

3.5 Conclusion

There are a many regional policies, international initiatives and projects underway to address the underdevelopment that is so prevalent in Africa. Fairtrade is one of these,

⁴³⁷ Nelson *et al* 2013 *Natural Resources Institute* 109.

⁴³⁸ Nelson *et al* 2013 *Natural Resources Institute* 101.

⁴³⁹ Nelson *et al* 2013 *Natural Resources Institute* 101.

⁴⁴⁰ UN General Assembly "Transforming Our World: The 2030 Agenda for Sustainable Development" (2015-10-21) A/RES/70/1 <https://www.refworld.org/docid/57b6e3e44.html> (accessed 2022-05-27) 20.

⁴⁴¹ Nelson *et al* 2013 *Natural Resources Institute* 79.

⁴⁴² *Ibid.*

⁴⁴³ Fairtrade Africa <https://fairtradeafrica.net/wp-content/uploads/2020/04/SOCIAL-IMPACT-REPORT.pdf> (accessed 2022-05-13) 18.

⁴⁴⁴ *Ibid.*

⁴⁴⁵ UN General Assembly "Transforming Our World: The 2030 Agenda for Sustainable Development" (2015-10-21) A/RES/70/1 <https://www.refworld.org/docid/57b6e3e44.html> (accessed 2022-05-27) 18.

aiming to foster development and reduce poverty through encouraging and implementing better trade terms and agricultural practices amongst farmers in Africa.

Fairtrade operates in the context of regional initiatives such as the AfCFTA and Agenda 2063, both of which seek to facilitate socio-economic development, the former through trade and the latter through a broad strategic framework. The right to development contained in the African Charter provides a solid foundation in regional law for all of these policies. Regional integration (as evidence by the AfCFTA and Agenda 2063) and human rights are mutually reinforcing in that they create legal commitments that regional institutions then have a binding duty to implement.⁴⁴⁶ Fairtrade is another policy that can be used by African regional institutions in fulfilling their duty to realise the right to development.

Whilst Fairtrade is a development initiative, it cannot be said that its implementation in Africa has resulted in large-scale improvements in overcoming poverty, ensuring food security or addressing other issues facing the majority of producers in rural Africa. Whilst there has been some improvement in specific circumstances, large-scale progress in key development areas is still elusive. Historical factors, the international trade structure and Africa-specific barriers to trade might still diminish any visible benefits Fairtrade is generating. The Fairtrade Africa objectives also give the impression that there is a very broad focus, with too many areas of concern for one organisation to make any real impact in any of them. Whilst certain issues specific to Africa are addressed in the Fairtrade goals, there may be a need for further narrowing of the focus to identify and confront the structural issues and barriers present in specific countries.

Whilst the AfCFTA's value lies in creating new trade opportunities for African producers, small producers without proper support still find it difficult to compete for these opportunities. Fairtrade can be used to boost small producers' chances of benefitting from the new opportunities afforded by regional integration in Africa. Despite minimal obvious large-scale progress achieved through Fairtrade, it is an initiative that advances the right to development contained in the African Charter and supports what is contained in both Agenda 2063 and the AfCFTA. Both of these

⁴⁴⁶ UN Economic Commission for Africa Report "The Continental Free Trade Area (CFTA) in Africa" 29.

regional policies acknowledge the importance of trade in attaining development, and Fairtrade aims to advance trade amongst those who are most in need of the developmental benefits of trade.

CHAPTER 4

SOUTH AFRICA'S SOCIO-ECONOMIC DEVELOPMENT GOALS

4.1 Introduction

In considering the potential that Fairtrade has to contribute to socio-economic development in South Africa, an understanding of the development challenges faced by the country is needed. The socio-economic development of a country can only take place effectively if the specific challenges to that country's development are tackled. For a policy such as Fairtrade to be successfully implemented, it needs to account for the specific social and economic context in which it will be applied. The context needs to inform the goals and standards of the policy.⁴⁴⁷

The overall aim of this chapter is to set the scene for Fairtrade in South Africa through an examination of the socio-economic development goals and policies in place in the country. This is necessary in order to draw legal connections between Fairtrade and socio-economic development in South Africa in the following chapter. Firstly, an outline of the agricultural sector in South Africa is provided, tracing its historical development as shaped by past discriminatory policies. The chapter then turns to the socio-economic development goals for South Africa. The Constitution, as the supreme law of the land according to which all law and conduct is measured, forms the starting point of the discussion.⁴⁴⁸ The constitutional rights and values highlight the essence of development at the root of the Constitution. The constitutional objectives need to be examined so that it can be determined in the following chapter whether Fairtrade is an effective mechanism for achievement of these objectives.

Following on from the constitutional discussion, a comprehensive socio-economic development policy in the form of the National Development Plan (NDP) is outlined to the extent that it is relevant to Fairtrade.⁴⁴⁹ The NDP is relevant to Fairtrade insofar as it sets targets for gaining global market share, building an inclusive rural economy

⁴⁴⁷ Ngwangu "Debating the Role of Fair Trade in the Context of Socio-Economic Transformation in South Africa" 2021 3 *Journal of Fair Trade* 20 21.

⁴⁴⁸ Section 2 of the Constitution.

⁴⁴⁹ National Planning Commission
https://www.gov.za/sites/default/files/gcis_document/201409/devplan2.pdf (accessed 2021-05-28).

and fostering regional integration.⁴⁵⁰ The links between these targets and Fairtrade will be discussed in chapter five. Thereafter, Broad-based Black Economic Empowerment (B-BBEE) and land reform are examined as two policies adopted in South Africa to address specific socio-economic challenges. B-BBEE and land reform are particularly relevant for this dissertation because aspects of B-BBEE have been included in the Fairtrade standards for South Africa, and land reform is a pertinent issue in the context of agriculture.

This chapter will only provide brief accounts of the connections between Fairtrade and the law and policy discussed in order to clarify their relevance to this dissertation. A detailed analysis of Fairtrade and its connection to socio-economic development in South Africa follows in the next chapter.

4.2 Historical development of the agricultural sector in South Africa

South Africa's agricultural sector has been shaped by social relations historically embedded by colonialism and apartheid.⁴⁵¹ Agricultural policies introduced during apartheid have been reformed in keeping up with the global trend of liberalisation and democracy, by the fiscal need to improve efficiency within the agricultural sector, and in the hopes of achieving key national development goals.⁴⁵² Despite major reform, South Africa's agricultural sector is still characterised by a minimal number of commercial farms producing the majority of the total output, in contrast to a large number of small-scale and subsistence farmers not able to participate meaningfully in the market.⁴⁵³

The stark contrast in South Africa in terms of contribution to national agricultural output is accompanied by a clear division along racial lines in terms of participation in the agricultural market.⁴⁵⁴ During apartheid, the agricultural market was controlled by a small group of white commercial farmers.⁴⁵⁵ Black small-scale farmers could not

⁴⁵⁰ National Planning Commission https://www.gov.za/sites/default/files/gcis_document/201409/devplan2.pdf (accessed 2021-05-28).

⁴⁵¹ Ngwangu 2021 *Journal of Fair Trade* 22.

⁴⁵² Sandrey, Punt, Jensen and Vink "Agricultural Trade and Employment in South Africa" 2011 *OECD Trade Policy Working Papers No. 130* OECD Publishing 8-9.

⁴⁵³ Sandrey *et al* 2011 *OECD Trade Policy Working Papers No. 130* 8.

⁴⁵⁴ Bhorat, Lilenstein, Oosthuizen and Thornton "Structural Transformation, Inequality and Inclusive Growth in South Africa" 2020 WIDER Working Paper, No. 2020/50. The United Nations University World Institute for Development Economics Research 3.

⁴⁵⁵ Jari *The Impact of Fairtrade in South Africa* 85.

compete and were forced to farm in crowded and low productivity areas.⁴⁵⁶ The discriminatory laws restricting the ownership of land by black South Africans outside of specific 'homelands' during apartheid, meant that commercial agriculture was completely dominated by white South Africans.⁴⁵⁷ The South African agricultural sector was characterised by large numbers of farm workers employed on plantation-style estates.⁴⁵⁸ Before 1994 and the end of apartheid, this large group of farm workers did not have any legal protection and were often exploited by farm owners.⁴⁵⁹

Agricultural policy in South Africa has undergone several reforms since the discriminatory land ownership policies were put in place. White-owned commercial farms were heavily subsidised up until around 1980, when general deregulation of the financial sector began. Agricultural policy shifts in the 1980s included subsidy reductions for farmers and reduced budget for agricultural expenditure. Also in this period, many people moved from rural to urban areas as rules around the movement of labour were lifted.⁴⁶⁰

The democratisation of South Africa in 1994 marked another shift in agricultural policy initiatives. Trade liberalisation, land reform, labour market policy reforms and new laws regarding the marketing of agricultural products were all policies introduced after democratisation.⁴⁶¹ South Africa's ratification of the Marrakesh Agreement in 1994 meant that prevailing quantitative restrictions, specific duties and price controls, and import and export permits were eliminated.⁴⁶² In their place, tariffs under the Marrakesh Agreement had to be complied with, although South Africa lowered tariffs in agriculture below the rates required by the Agreement.⁴⁶³

⁴⁵⁶ Jari *The Impact of Fairtrade in South Africa* 85.

⁴⁵⁷ Moseley "Neoliberal Agricultural Policy Versus Agrarian Justice: Farm Workers and Land Redistribution in South African's Western Cape" 2007 89 *South African Geographical Journal* 4 4; the homelands on which black South Africans were permitted to own land was for the most part not arable land; Porter and Howard "Agricultural Issues in the Former Homelands of South Africa: The Transkei" 1997 24 *Review of African Political Economy* 185 187.

⁴⁵⁸ Hughes, McEwan, Bek and Rosenberg "Embedding Fairtrade in South Africa: Global Production Networks, National Initiatives and Localised Challenges in the Northern Cape" 2014 18 *Competition and Change* 291 298.

⁴⁵⁹ Jari *The Impact of Fairtrade in South Africa* 85.

⁴⁶⁰ Sandrey *et al* 2011 *OECD Trade Policy Working Papers No. 130* 9.

⁴⁶¹ *Ibid.*

⁴⁶² Marrakesh Agreement Establishing the World Trade Organization (The WTO Agreement) (1867 UNTS 154, (1994) 33 ILM 1144; adopted: 15.04.1994; EIF: 01.01.1995).

⁴⁶³ Sandrey *et al* 2011 *OECD Trade Policy Working Papers No. 130* 9.

The agricultural sector in South Africa has been described as dualistic due to the fact that a small number of commercial farmers still dominate the market, whilst a large number of small-scale farmers lack market access.⁴⁶⁴ Government efforts to boost disadvantaged small-scale farmer participation in the agricultural market after 1994 have not had significant success in addressing the inequalities that exist in the agricultural sector.⁴⁶⁵ The small-scale farming sector is important for the rural population as an alternative means of income and for food stability.⁴⁶⁶ Despite this, the population of rural communities remain poor and small-scale farmers face numerous constraints on their ability to compete for market access.⁴⁶⁷

Much like small-scale farmers in other developing countries, typical barriers to market access include lack of access to arable land, freshwater and pest-control measures. Transportation is a major issue for many small-scale farmers, as accessing the formal market requires high transport costs as well as being able to supply sufficient quality and quantity of produce.⁴⁶⁸ Small-scale farmers are not able to take advantage of the most profitable formal market channels such as selling directly to supermarkets or exporting produce. Poor management skills and the absence of consistent market connections result in most small-scale farmers only being able to sell their produce in informal markets.⁴⁶⁹

Farm workers on hired labour farms in South Africa are faced with a variety of challenges and have been identified as a particularly vulnerable group.⁴⁷⁰ For many farm workers, their homes are linked to their employment on the farm. If farm owners decide to employ casual workers instead of full-time employees, farm workers are vulnerable to eviction, losing both their homes and the security of full-time employment.⁴⁷¹ Farm worker wages are very low, there are high levels of illiteracy amongst farm workers, and they are often subject to labour rights violations.⁴⁷² The

⁴⁶⁴ Ndlovu and Masuku "Small-Scale Farming and Access to Market: Challenges and Opportunities in South Africa" 2021 2 *Journal la Sociale* 50 50.

⁴⁶⁵ Jari *The Impact of Fairtrade in South Africa* 85.

⁴⁶⁶ Ndlovu and Masuku 2021 *Journal la Sociale* 50.

⁴⁶⁷ Ndlovu and Masuku 2021 *Journal la Sociale* 51.

⁴⁶⁸ *Ibid.*

⁴⁶⁹ Ndlovu and Masuku 2021 *Journal la Sociale* 52.

⁴⁷⁰ Devereux and Solomon "Farm Workers, Let down by Politicians, Face New Threats to their Security" (2019-07-17) *GroundUp* <https://www.groundup.org.za/article/farm-workers-let-down-politicians-face-new-threats-their-security/> (accessed 2022-11-07).

⁴⁷¹ Devereux and Solomon (2019-07-17) *GroundUp*.

⁴⁷² Fairtrade South Africa "Impacts of Fairtrade in South Africa" 2010 *Fairtrade Foundation Impact Briefing Paper* 6; Devereux and Solomon (2019-07-17) *GroundUp*.

labour rights violations and poor working conditions faced by farm workers persist despite legal protection extended to farm workers under the Basic Conditions of Employment Act:⁴⁷³ Sectoral Determination 13: Farm Worker Sector.⁴⁷⁴

4.3 The constitutional imperative

4.3.1 Transformative constitutionalism and development

The relevance of the Constitution for Fairtrade lies in the fact that transformation and development are at the heart of the Constitution's ethos. This chapter gives an account of the constitutional ideals of substantive equality, transformation, development and the improvement of well-being. The following chapter will then examine Fairtrade's implementation in South Africa in order to determine whether it is optimally geared to contribute towards these ideals.

The Constitution is the supreme law of South Africa, enacted in order to "heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights" as well as to "improve the quality of life of all citizens and free the potential of each person."⁴⁷⁵ As the supreme law of the country, all law and conduct has to be consistent with the Constitution's provisions, which also bind the legislature, the executive, the judiciary and all organs of State.⁴⁷⁶ The Constitution is the cornerstone of South African democracy founded on human dignity, equality and freedom of all people in the country.⁴⁷⁷ At the heart of the Constitution, and informing its whole ethos, are the primary purposes of redistributing socio-economic resources and tearing down the patterns of inequality entrenched in our society.⁴⁷⁸

The Constitution aims to transform fundamentally unjust socio-economic structures, thus resulting in the idea of transformative constitutionalism often associated with the South African Constitution.⁴⁷⁹ Transformation in the context of social rights entails that social and economic resources be more fairly distributed, that existing hierarchies based on race be dismantled, and that new patterns of exclusion do not take root.⁴⁸⁰

⁴⁷³ 75 of 1997.

⁴⁷⁴ Devereux and Solomon (2019-07-17) *GroundUp*.

⁴⁷⁵ Preamble to the Constitution.

⁴⁷⁶ Sections 2 and 8(1) of the Constitution.

⁴⁷⁷ Section 7(1) of the Constitution.

⁴⁷⁸ Liebenberg "Social Rights and Transformation in South Africa: Three Frames" 2015 31 *South African Journal on Human Rights* 446 446; Preamble to the Constitution.

⁴⁷⁹ Langa "Transformative Constitutionalism" 2006 3 *Stellenbosch Law Review* 351 351.

⁴⁸⁰ Liebenberg 2015 *South African Journal on Human Rights* 447. Social rights, also called socio-economic rights, are those constitutional rights aimed at improving society by positively impacting

The analogy of a bridge has been used to understand the idea of the Constitution as a transformative document, taking South Africa from an unjust and deeply divided society, to a democratic society that recognises human rights and provides development opportunities for all.⁴⁸¹ The language employed in discussions of transformative constitutionalism in South Africa presents a radical view in which transformative constitutionalism requires the complete reconstruction of State and society, the redistribution of power and resources, and the eradication of structural disadvantage.⁴⁸²

The new society that transformative constitutionalism aspires to, is one founded on substantive equality. Substantive equality entails the equitable redistribution of resources and power, the elimination of systemic disadvantage on unjust grounds, and the creation of opportunities allowing all people to realise their full human potential.⁴⁸³ Sections 9, 26, 27, 28 and 29 of the Constitution mandate substantive equality by creating justiciable socio-economic rights that must be distributed equitably taking into account the need to address past discrimination.⁴⁸⁴

Several critiques have been weighed against transformative constitutionalism. The idea of transformation is used widely across diverse contexts and employed by people with differing ideological standpoints. For this reason, Sibanda argues that there is no consensus as to the scope and meaning of transformation, aside from the fact that it involves change in some way.⁴⁸⁵ In addition, whilst transformative constitutionalism is understood to involve the radical and complete restructuring of society, our court-led process of legal interpretation is inherently limited in its ability to facilitate radical transformation.⁴⁸⁶ Furthermore, Sibanda claims that transformative constitutionalism

on individuals social welfare. Examples of social rights in the Constitution include the rights to housing, health care, food, water, social security, children's rights and the right to education; Christiansen "Exporting South Africa's Social Rights Jurisprudence" 2007 5 *Loyola University Chicago International Law Review* 29 30.

⁴⁸¹ Epilogue to the Constitution of the Republic of South Africa Act 200 of 1993.

⁴⁸² Albertyn and Goldblatt "Facing the Challenge of Transformation: Difficulties in the Development of an Indigenous Jurisprudence of Equality" 1998 14 *South African Journal on Human Rights* 248 248; Klare "Legal Culture and Transformative Constitutionalism" 1998 14 *SAJHR* 146; Sibanda "Transformation and Transformative Constitutionalism" 2020 24 *Law, Democracy and Development* 384 396.

⁴⁸³ Langa 2006 *Stellenbosch Law Review* 352.

⁴⁸⁴ Rosa "Transformative Constitutionalism in a Democratic Developmental State" 2011 3 *Stellenbosch law Review* 542 544.

⁴⁸⁵ Sibanda 2020 *Law, Democracy and Development* 393.

⁴⁸⁶ Sibanda 2020 *Law, Democracy and Development* 396.

has reached its full potential. Having achieved rights and law-based changes, transformative constitutionalism has little to offer in the way of practical institutional or structural power shifts.⁴⁸⁷

In addition to flaws inherent in transformative constitutionalism, other factors have also limited the potential for transformation in South Africa. Despite the framing of the Constitution as a transformative one, the free-market capitalist ideologies embraced by the post-apartheid government were not suited to the achievement of radical transformation. By pitting the underprivileged against the privileged to compete economically on the same playing field, free-market capitalism leads to the exclusion of the poor, underprivileged masses.⁴⁸⁸ This is not to say that free-market capitalism is never beneficial, but in a country like South Africa where inequality abounds, relying only on free-market strategies will not achieve the transformation envisioned by the Constitution. The influence of the free-market strategies on the drafting of the Constitution is evident from the focus on individual rights aimed at empowering individuals as opposed to providing redress for disadvantages suffered as a result of past injustice.⁴⁸⁹ Thus, whilst the Constitution envisions transformation, relying solely on the rights contained therein may not be the most effective tool for achieving transformation.

Although the Constitution does not contain a right to development like the African Charter,⁴⁹⁰ the Bill of Rights creates an implied reading of the right to development within the overall constitutional arrangement.⁴⁹¹ Evidence of the implied right to development can be found in the inclusion of civil, political, socio-economic, cultural and environmental rights. Furthermore, the Bill of Rights enshrines the right to self-determination, access to information and administrative justice.⁴⁹² The transformational character of the Constitution and the values of freedom, equality and dignity laid out in the preamble also highlight the underlying theme of development. It

⁴⁸⁷ Sibanda 2020 *Law, Democracy and Development* 402.

⁴⁸⁸ Ngang "Radical Transformation and a Reading of the Right to Development in the South African Constitutional Order" 2019 35 *South African Journal on Human Rights* 25 36.

⁴⁸⁹ Ngang 2019 *SAJHR* 36.

⁴⁹⁰ Article 22 of the African Charter.

⁴⁹¹ Ngang 2019 *SAJHR* 30.

⁴⁹² S235, 32 and 33 of the Constitution.

has been argued that a right to development needs to be explicitly included in the Constitution in order to achieve the true transformation it envisions.⁴⁹³

The foundational values of human dignity, equality and the advancement of human rights and freedoms lay the foundation on which transformation and development must take place in South Africa.⁴⁹⁴ It is universally recognised that the improvement of well-being is essentially a human rights matter.⁴⁹⁵ Section 24 of the Constitution makes specific mention of well-being in the context of the right to an environment that is not harmful to well-being.⁴⁹⁶ Significant economic and social consequences flow from the environmental influence on human health and well-being, which again is evidence of the interdisciplinary nature of development.⁴⁹⁷ Du Plessis uses the inclusion of well-being in section 24 to extend the meaning of the environmental right. She suggests that the right to an environment that is not harmful to well-being is informed by, *inter alia*, access to resources, the provision of adequate livelihoods, food security, adequate shelter and freedom of choice and action.⁴⁹⁸

Improving well-being in the South African context also demands that the poor be equipped with the capabilities to compete on fair terms.⁴⁹⁹ This is done through equalising the opportunities for advancement. Whilst the Constitution does provide certain prerequisites for development in the form of civil and political rights, it has been argued that it does not demand the fair playing field that would lead to the improvement of well-being.⁵⁰⁰ Private bodies may also, due to the horizontal application of the Bill of Rights, be responsible and accountable for people's well-being in terms of section 24 of the Constitution.⁵⁰¹ The transformative goals of the Constitution cannot be achieved without improvement of the well-being of South Africans. For this reason, all

⁴⁹³ Ngang 2019 *SAJHR* 29.

⁴⁹⁴ Section 1(a) of the Constitution.

⁴⁹⁵ Ngang 2019 *SAJHR* 37; Du Plessis "The Promise of 'Well-being' in Section 24 of the Constitution of South Africa" 2018 34 *SAJHR* 191 196.

⁴⁹⁶ Section 24(a) of the Constitution.

⁴⁹⁷ European Environment Agency "Report of the EEA Scientific Committee Seminar on Environment, Human Health and Well-Being" (20 May 2014) <https://www.eea.europa.eu/about-us/governance/scientific-committee/reports/report-of-the-eea-scientific/view> (accessed 2022-11-04) iv.

⁴⁹⁸ Du Plessis 2018 *SAJHR* 207.

⁴⁹⁹ Ngang 2019 *SAJHR* 37.

⁵⁰⁰ *Ibid.*

⁵⁰¹ Du Plessis 2018 *SAJHR* 207. The constitutional mandate to care for well-being, whilst explicitly included in Section 24 of the Constitution, is implicit in various legal provisions.

spheres of government as well as the private sector must heed to the constitutional mandate to care for the well-being of all people in South Africa.⁵⁰²

4.3.2 Socio-economic rights

Fairtrade, although a socio-economic development project, cannot be linked to the fulfilment of any one of the specific socio-economic rights entrenched in the Constitution. However, through the inclusion of socio-economic rights, the Constitution prescribes the manner in which socio-economic development policies should be implemented in order to achieve the constitutional objectives. Therefore, when examining Fairtrade's potential as a socio-economic development policy, reference must be made to how socio-economic rights are catered for in the Constitution.

The socio-economic rights of access to housing, health care, food, water, social security and the right to education are provided for in the Constitution.⁵⁰³ The realisation of these rights, however, is at the mercy of "available resources", the quantity of which determines the budget for provision of socio-economic rights and prioritisation of funds.⁵⁰⁴ Despite the restriction in the form of available resources, there is an unambiguous mandate in the Constitution that the obligations imposed by it must be fulfilled.⁵⁰⁵ A caveat to the rights to housing, health care, food, water and social security, is that the duty on the State is only for the progressive realisation of these rights.⁵⁰⁶ This does not, however negate the fact that a positive duty is placed on the State to take reasonable legislative and other measures to ensure the fulfilment of these rights.⁵⁰⁷

Davis has argued that the transformative potential of the socio-economic rights included in the Constitution has been curtailed by the conservative interpretation of these rights adopted by the courts.⁵⁰⁸ The creation of a reasonableness test for socio-economic rights and the decision against the right to claim "sufficient water" immediately from the State, are evidence of this conservative approach. According to

⁵⁰² Du Plessis 2018 *SAJHR* 207.

⁵⁰³ Sections 26, 27 and 29 of the Constitution.

⁵⁰⁴ Heyward "Economic Policy and the Socio-economic Rights in the South African Constitution, 1996-2021: Why don't they talk to each other?" 2021 11 *Constitutional Court Review* 341 343.

⁵⁰⁵ Section 2 of the Constitution.

⁵⁰⁶ Sections 26(2) and 27(2) of the Constitution.

⁵⁰⁷ *Ibid.*

⁵⁰⁸ Davis "Transformation: The Constitutional Promise and Reality" 2010 26 *South African Journal on Human Rights* 85 97.

Davis, different interpretations could have been adopted to aid transformation.⁵⁰⁹ Subsequent to Davis' argument, the International Covenant on Economic, Social and Cultural Rights (ICESCR) has been ratified by the South African government.⁵¹⁰ The implication of such ratification is that domestic law in South Africa now needs to be reflective of the obligations imposed under the ICESCR.⁵¹¹ Ratification also means that the courts should interpret socio-economic rights to include the minimum core obligations imposed by the ICESCR.⁵¹² This comes after the Constitutional Court rejected the notion of a minimum core obligation in favour of a reasonableness test for assessing measures taken by government to realise socio-economic rights.⁵¹³ Minimum core obligations are more stringent obligations than the reasonableness test typically employed by the courts when interpreting obligations imposed by socio-economic rights.⁵¹⁴ Despite ratification of the ICESCR, the Constitutional Court has been reluctant to apply the minimum core approach to interpreting socio-economic rights, deferring instead to the legislature and executive in this regard.⁵¹⁵

Of particular importance for the purposes of this dissertation, is the question of who bears the duties imposed by the rights in the Bill of Rights? Section 7(2) of the Constitution places a duty on the State to "respect, protect, promote and fulfil the rights in the Bill of Rights." The question of what duties the Constitution places on private individuals, specifically whether private individuals might sometimes bear a positive duty to fulfil socio-economic rights, does not have a clear-cut answer to be found in

⁵⁰⁹ Davis 2010 *SAJHR* 94 – 97; the reasonableness test was developed in the case of *Government of the Republic of South Africa v Grootboom* 2001 (1) SA 46 (CC). It was held in *Mazibuko v City of Johannesburg* 2010 (3) BCLR 239 (CC) that the right to water did not mean the right to claim sufficient water from the State immediately.

⁵¹⁰ International Covenant on Economic, Social and Cultural Rights (ICESCR) (993 UNTS 3. Adopted; 16.12.1966.EIF: 03.01.1976); the ICESCR was ratified by the South African government on 12 January 2015.

⁵¹¹ Basson "The Compliance of the South African Social Security System with the International Covenant On Economic, Social and Cultural Rights" 2020 41 *Obiter* 850 851.

⁵¹² UN Committee on Economic, Social and Cultural Rights "General Comment No 3: The Nature of State's Parties Obligations (Art.2, Para 1, of the Covenant)" (1990-12-14) <https://www.refworld.org/pdfid/4538838e10.pdf> (accessed 2022-11-04) par [10].

⁵¹³ *Government of the Republic of South Africa v Grootboom* par [41].

⁵¹⁴ Petherbridge "South Africa's Pending Ratification of the International Covenant on Economic, Social and Cultural Rights: What Are the Implications?" 2016 <http://blogs.sun.ac.za/seraj/files/2012/11/South-Africas-pending-ratification-of-the-ICESCR.pdf> (accessed 2022-11-03).

⁵¹⁵ Ssenyonjo "The influence of the International Covenant on Economic, Social and Cultural Rights in Africa" 2017 64 *Netherlands International Law Review* 259 279.

the Constitution and has thus been the topic of much academic debate.⁵¹⁶ A positive obligation is one that would require some action to be taken in order to fulfil a right, as opposed to a negative obligation which requires that no action be taken so as not to interfere with a right.⁵¹⁷ Section 8(2) of the Constitution provides that:

“[a] provision of the Bill of Rights binds a natural or juristic person if, and to the extent that, it is applicable, taking into account the nature of the right and the nature of the duty imposed by the right.”⁵¹⁸

Any duty imposed by the Constitution on a private person, as opposed to a duty imposed on the State, is termed horizontal application. In *Daniels v Scribante*, the Constitutional Court acknowledged the possibility of private persons bearing a positive obligation to fulfil the Bill of Rights.⁵¹⁹ Although this judgment did not decide definitively on the matter, the Constitutional Court interpreted section 8(2) to mean that where the State bears a positive obligation imposed by socio-economic rights, such positive obligations could also be imposed on private persons.⁵²⁰

The above interpretation of section 8(2) does not take the primary responsibility for the fulfilment of rights away from the State or imply that private persons are bound by exactly the same duties as the State. Rather, the scope of section 8(2) limits a private person’s obligation to fulfil a right only to situations where that right is applicable, and only to the extent that it is applicable.⁵²¹ Meyersfeld outlines the circumstances under which a private person may bear a positive obligation to fulfil socio-economic rights.⁵²² These circumstances include where a special relationship exists between a juristic person and an individual and where that juristic person possesses all the capabilities of fulfilling that individual’s rights.⁵²³ In addition to these circumstances, factors to be considered in determining whether a private person bears a positive obligation have been expressed in several judgements.⁵²⁴ These factors include: whether the right is important for sustaining a constitutional democracy;⁵²⁵ whether the fulfilment of the

⁵¹⁶ Meyersfeld “The South African Constitution and the Human-Rights Obligations of Juristic Persons” 2020 136 *SALJ* 439-439.

⁵¹⁷ Meyersfeld 2020 *SALJ* 444.

⁵¹⁸ Section 8(2) of the Constitution.

⁵¹⁹ *Daniels v Scribante* 2017 (4) SA 341 (CC).

⁵²⁰ *Daniels v Scribante supra* par [43].

⁵²¹ Meyersfeld 2020 *SALJ* 442.

⁵²² Meyersfeld 2020 *SALJ* 445.

⁵²³ *Ibid.*

⁵²⁴ Meyersfeld 2020 *SALJ* 446-447.

⁵²⁵ *Governing Body of the Juma Masjid Primary School v Essay N.O* 2011 (8) BCLR 761 (CC) par [46].

right is urgent or immediately realisable;⁵²⁶ whether the private person has the power to decide on the allocation of how the right is fulfilled;⁵²⁷ and the extent to which right-holder can be considered a vulnerable person.⁵²⁸ Based on the above circumstances, there is the possibility that the positive obligations imposed by the Constitution, both on the State and on private persons, might be carried out through the standards and requirements set by Fairtrade. This will be explored in the following chapter.

4.3.3 The interdependence of equality, dignity and socio-economic rights

An important right underlying the whole Bill of Rights, and one which must inform the realisation of socio-economic rights, is the right to equality.⁵²⁹ The interrelatedness of equality and other rights is evident from section 9(2) which notes that “equality includes the full and equal enjoyment of all rights and freedoms.”⁵³⁰ The reality in South Africa is that socio-economic marginalisation usually occurs in conjunction with group-based forms of discrimination, resulting in the worst forms of disadvantage. Approaching socio-economic rights as interrelated with the right to equality acknowledges this reality, and such an approach is more likely to fulfil the transformative objectives of the Constitution.⁵³¹

Equality in the Constitution is accepted to be substantive equality, which means that achieving equality entails redistribution of resources.⁵³² Measures which may at first glance appear to be unequally benefitting a certain group, are in fact informed by the need to facilitate redistribution of resources which is in accordance with the right to substantive equality.⁵³³ Providing the resources for people to develop is an objective of substantive equality, and creates the link between substantive equality and socio-

⁵²⁶ *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties39 (Pty) Ltd* 2012 (2) SA 104 (CC) par [47] and *Juma Masjid v Essay N.O* par [37].

⁵²⁷ *Black Sash Trust v Minister of Social Development* 2018 (12) BCLR 1472 (CC) par [8].

⁵²⁸ *University of Stellenbosch Legal Aid Clinics v Minister of Justice and Correctional Services; Association of Debt Recovery Agents NPC v University of Stellenbosch Legal Aid Clinic; Mavava Trading 279 (Pty) Ltd v University of Stellenbosch Legal Aid Clinic* 2016 (6) SA 596 (CC) par [131-132].

⁵²⁹ Section 9 of the Constitution.

⁵³⁰ Section 9(2) of the Constitution. The fact that the advancement of equality is one of the foundational values of the Constitution, enshrined in the preamble, is also evidence of its interrelation to all other constitutional rights.

⁵³¹ Liebenberg and Goldblatt “The Interrelationship between Equality and Socio-Economic Rights under South Africa’s Transformative Constitution” 2007 23 *South African Journal on Human Rights* 335 339.

⁵³² Liebenberg and Goldblatt 2007 *South African Journal on Human Rights* 342.

⁵³³ See, for example, the Broad-based Black Economic Empowerment Act 53 of 2003, discussed below in section 4.3.1 of this dissertation.

economic rights since socio-economic rights are founded on the need to improve access to resources.⁵³⁴

Another key to utilising the right to equality as a means to address socio-economic disadvantage is having a transformative understanding of dignity which, like equality, is both an underlying value and a self-standing right in the Constitution.⁵³⁵ Dignity has been worked into the test for unfair discrimination, as developed in *Harksen v Lane N.O.*⁵³⁶ In this case, it was held that discrimination which does or is likely to impair the fundamental human dignity of any individual will be unfair.⁵³⁷

Socio-economic status is not included as a listed ground of discrimination in the Constitution. However, the Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA),⁵³⁸ allows for unlisted grounds of discrimination.⁵³⁹ PEPUDA contains a directive that special consideration be given to including socio-economic status as a listed prohibited ground of discrimination.⁵⁴⁰ Socio-economic status is defined in the Act as including “a social or economic condition or perceived condition of a person who is disadvantaged by poverty, low employment status or lack of or low-level educational qualifications.”⁵⁴¹ Therefore, a failure to dedicate available resources and take reasonable measures towards the realisation of socio-economic rights may under certain circumstances be held to constitute unfair discrimination on the basis of socio-economic status.⁵⁴² Unfortunately, the recently proposed

⁵³⁴ Liebenberg and Goldblatt 2007 *South African Journal on Human Rights* 343.

⁵³⁵ *Ibid.*

⁵³⁶ (1997) 11 BCLR 1489 (CC).

⁵³⁷ *Harksen v Lane* par [50].

⁵³⁸ 4 of 2000.

⁵³⁹ Section 1 of Act 4 of 2000. The definition of “prohibited grounds” includes any other ground that has not been listed but where discrimination based on that unlisted ground; causes or perpetuates systemic disadvantage, undermined human dignity, or adversely affects the equal enjoyment of a person’s rights and freedoms in a serious manner that is comparable to discrimination on a listed ground.

⁵⁴⁰ Section 34 of Act 4 of 2000. The status of the directive principle is that it awaits special consideration by the Minister of Justice and Constitutional Development and the Equality Review Committee, as per section 34(1)(b) of PEPUDA. This was meant to have taken place within one year of the directive principle, but the Equality Review Committee has not yet been formed, nor has the directive been given special consideration. See Basson *Poverty as a Ground of Unfair Discrimination in Post-Apartheid South Africa* (dissertation, Stellenbosch University) 2022 7.

⁵⁴¹ Section 1 of Act 4 of 2000.

⁵⁴² Heyward 2021 *Constitutional Court Review* 350; see for example *Minister of Basic Education v Basic Education for All* 2016 (4) SA 63 (SCA); *Social Justice Coalition v Minister of Police* 2019 (4) SA 82 (WCC). The Constitutional Court’s recent confirmation of poverty as an unlisted ground of discrimination in the *Social Justice Coalition* case is further referred to in section 5.3.3 at page 108.

amendments to PEPUDA still do not include socio-economic status as a listed grounds of discrimination.⁵⁴³

For Fairtrade to align with the South African context, it needs to cater for the intersection of constitutional rights, or rather the possibility of several rights being impaired simultaneously. For example, socio-economic marginalisation and group-based forms of disadvantage are often experienced simultaneously, and this is particularly relevant in the case of farm workers or rural farmers. The inclusion of AgriBEE and land reform objectives into the Fairtrade standard for South Africa shows recognition of the intersection of constitutional rights. This discussion will be expanded on in the following chapter.

4.4 Socio-economic development policies in South Africa

4.4.1 The National Development Plan (NDP)

4.4.1.1 Challenges and objectives outlined in the NDP

In contrast to B-BBEE and land reform policies, aimed at addressing specific challenges faced in South Africa, several more general socio-economic development policies also have bearings on development and socio-economic growth through agriculture and trade.

The NDP is a government policy drafted in 2011 which aims to eliminate poverty and greatly reduce inequality by 2030, by taking actions designed to achieve targets set under 13 areas of concern.⁵⁴⁴ Some of the critical challenges faced by South Africa, as identified in the NDP, include high levels of unemployment, poor education standards, divisive spatial arrangements resulting in the exclusion of the poor from development benefits and continued inequality.⁵⁴⁵ The two overall targets of the NDP, which all other target areas are ultimately aimed at, are set out as follows:

- “By 2030, the number of households living below R418 a month per person (in 2009 rands) should fall from 39 percent to zero.

⁵⁴³ The Promotion of Equality and Prevention of Unfair Discrimination Amendment Bill 2021 https://www.groundup.org.za/media/uploads/documents/pepuda_amendment_bill.pdf (accessed 2022-10-30). This means that socio-economic status is still not a listed ground of discrimination, but it can be enforced through analogous grounds.

⁵⁴⁴ National Planning Commission https://www.gov.za/sites/default/files/gcis_document/201409/devplan2.pdf (accessed 2022-10-30) 28 - 39.

⁵⁴⁵ National Planning Commission https://www.gov.za/sites/default/files/gcis_document/201409/devplan2.pdf (accessed 2022-10-30) 3.

- The level of inequality as measured by the Gini co-efficient should fall from 0.7 in 2009 to 0.6 in 2030.⁵⁴⁶

The NDP is a broad plan, addressing many target areas and only those areas relevant to this dissertation will be discussed here. With regards to the economy and employment generally, one of the actions set in order to reach the employment and gross domestic product (GDP) targets is to gain global market share.⁵⁴⁷ By promoting exports of South African products, production would expand. This, combined with land reform, farmer support and higher agricultural output would, according to the NDP, increase economic participation in rural areas and simultaneously encourage employment in agriculture.⁵⁴⁸

The next relevant NDP objective is building an inclusive rural economy. Some of the actions listed to achieve this include creating additional jobs in agriculture, improving rural infrastructure, improving services to small farmers and creating tenure security for communal farmers.⁵⁴⁹ Rural areas depend primarily on agriculture as the main economic activity. Supporting and developing rural agriculture, assisting viable land reform beneficiaries to enter commercial agriculture, and linking small-scale farmers to markets will increase agricultural output, greatly increasing employment opportunities in agriculture.⁵⁵⁰ Increased output needs to be accompanied by increased foreign and domestic market demand.⁵⁵¹ The NDP acknowledges the limited ability of large-scale commercial farming to contribute to job creation.⁵⁵² It also

546 National Planning Commission
https://www.gov.za/sites/default/files/gcis_document/201409/devplan2.pdf (accessed 2022-10-30) 28.

547 National Planning Commission
https://www.gov.za/sites/default/files/gcis_document/201409/devplan2.pdf (accessed 2022-10-30) 29.

548 National Planning Commission
https://www.gov.za/sites/default/files/gcis_document/201409/devplan2.pdf (accessed 2022-11-03) 93.

549 National Planning Commission
https://www.gov.za/sites/default/files/gcis_document/201409/devplan2.pdf (accessed 2022-11-03) 32 - 33.

550 National Planning Commission
https://www.gov.za/sites/default/files/gcis_document/201409/devplan2.pdf (accessed 2022-11-03) 197 and 205.

551 National Planning Commission
https://www.gov.za/sites/default/files/gcis_document/201409/devplan2.pdf (accessed 2022-11-03) 200.

552 National Planning Commission
https://www.gov.za/sites/default/files/gcis_document/201409/devplan2.pdf (accessed 2022-11-03) 204.

notes that if land reform is properly implemented and the beneficiaries thereof farm on a small scale, jobs are likely to be created.⁵⁵³ Despite this, and somewhat confusingly, the plan states that government spending on agriculture will not be targeted at small-scale farmers. The expansion of agricultural production contemplated by the plan is expansion of the current structure of large-scale commercial farming.⁵⁵⁴ According to the NDP, small-scale farmers are to be supported through improving tenure security and forging market linkages, which may require assistance from new intermediaries such as cooperatives.⁵⁵⁵

The final development objective in the NDP relevant to this dissertation is that of regional integration, with targets to increase South Africa's trade with regional neighbours to 30% of our total trade.⁵⁵⁶ The benefits of regional integration include the stabilisation of the regional political economy, more opportunity to profit from comparative advantages, dealing more effectively with agricultural deficits and surpluses, and the expansion of African trade with the rest of the world.⁵⁵⁷ Since the drafting of the NDP, substantial regional integration has been accomplished through the formation of the AfCFTA⁵⁵⁸ in 2019, discussed in chapter 3 of this dissertation. Noting the fact that it has only been three years since the formation of the AfCFTA, the benefits for South Africa are still to be seen.

The challenges and objectives of the NDP that have been outlined above give an indication of some of the major obstacles to development in South Africa. If Fairtrade is able to assist in overcoming these obstacles to development, it can be used as a tool to contribute towards socio-economic development in South Africa. Many of these

553 National Planning Commission https://www.gov.za/sites/default/files/gcis_document/201409/devplan2.pdf (accessed 2022-11-03) 199.

554 National Planning Commission https://www.gov.za/sites/default/files/gcis_document/201409/devplan2.pdf (accessed 2022-11-03) 204.

555 National Planning Commission https://www.gov.za/sites/default/files/gcis_document/201409/devplan2.pdf (accessed 2022-11-03) 205.

556 National Planning Commission https://www.gov.za/sites/default/files/gcis_document/201409/devplan2.pdf (accessed 2022-11-03) 33.

557 National Planning Commission https://www.gov.za/sites/default/files/gcis_document/201409/devplan2.pdf (accessed 2022-11-03) 216 - 225.

558 Agreement Establishing the African Continental Free Trade Area (AfCFTA) (58 *I.L.M.* 1028, 1067. Adopted; 21.03.2018. EIF; 30.05.2019).

challenges are interlinked, with the two main issues of unemployment and poverty potentially being alleviated by mitigation of the other more specific challenges.

4.4.1.2 Progress in the Achievement of NDP Objectives

A State of the Nation report for 2022 reveals little progress, and in many cases actual regress, in the achievement of the objectives set out in the NDP.⁵⁵⁹ Poverty levels are rising, inequality remains obstinately pervasive, and unemployment continues to increase.⁵⁶⁰ The food poverty line is now at R624 per person monthly, which means that people who have less than this amount for food each month are considered to be below the poverty line.⁵⁶¹ Statistics from 2021 show that 13.8 million people in a population of roughly 59.3 million live below this poverty line.⁵⁶² The current national unemployment rate stands at 34.5%. This is well above the 14% that the NDP set as the goal for 2020, and is even a 7.5% increase from 2011 when the NDP was drafted.⁵⁶³ As of 2022, South Africa is ranked as the world's most unequal country according to the Gini coefficient which measures disparities in income and consumption.⁵⁶⁴ Economic prospects and employment levels are not expected to improve within the next year, with the country facing interest rate hikes and rising inflation.⁵⁶⁵

The COVID-19 pandemic and ensuing lockdowns have contributed greatly to the unemployment and poverty issues that were already a critical problem in South Africa prior to the pandemic. Statistics after the first hard-lockdown in April 2020 showed that there had been a 40% net decline in employment, with 20% of this being attributed to

⁵⁵⁹ Hofmeyer, Moosa, Patel and Murithi "State of the Nation: South Africa 2022" 2022 Policy Brief No. 38 *The Institute for Justice and Reconciliation*.

⁵⁶⁰ Hofmeyer *et al* 2022 *the Institute for Justice and Reconciliation* 7.

⁵⁶¹ Statista "National Poverty Line in South Africa as of 2021" 2022 <https://www.statista.com/statistics/1127838/national-poverty-line-in-south-africa/> (accessed 2022-06-22). At the time of writing, 624 ZAR equates to USD 33.93 and EUR 18.96.

⁵⁶² Businesstech "How Much Money the Poorest in South Africa are Living on Each Month" (9 September 2021) <https://businesstech.co.za/news/finance/519958/how-much-money-the-poorest-in-south-africa-are-living-on-each-month/#:~:text=According%20to%20the%20Pietermaritzburg%20Economic,below%20the%20food%20poverty%20line> (accessed 2022-06-22).

⁵⁶³ Stats SA "South Africa's Youth Continues to Bear the Burden of Unemployment" (1 June 2022) <https://www.statssa.gov.za/?p=15407#:~:text=According%20to%20the%20Quarterly%20Labour,stands%20at%2034%2C5%25> (accessed 2022-06-22); National Planning Commission https://www.gov.za/sites/default/files/gcis_document/201409/devplan2.pdf (accessed 2022-06-22) 28.

⁵⁶⁴ Stoddard "South Africa the World's Most Unequal Country – World Bank Report" (13 March 2022) *Daily Maverick*.

⁵⁶⁵ Hofmeyer *et al* 2022 *the Institute for Justice and Reconciliation* 9.

outright job losses.⁵⁶⁶ This job-loss was estimated to result in between three and five-and-a-half-million more people falling into poverty in South Africa.⁵⁶⁷

COVID-19 has also had a negative impact on small-scale farmers who, due to the small-scale of their operations and lack of resources, do not have the capability to sustain themselves during times of general economic decline such as those resulting from the lockdowns.⁵⁶⁸ Despite overall growth in the agricultural sector in South Africa since the pandemic, the dualistic nature of the sector means that this growth is only experienced by large-scale, commercial farmers who have international market access.⁵⁶⁹ Small-scale farmers, who are mostly black, experienced reduced demand for their produce during the pandemic. The first reason for this is the closure of restaurants and the stopping of large events, which many of these small farmers would supply. The second reason is that the people who small-scale farmers sell to had less money to spend due to general economic decline and income losses.⁵⁷⁰ This contrast in the effects of the pandemic on different farmers reinforces the inequalities existing in the agricultural sector, and indeed in the country.⁵⁷¹

The relevance of the NDP for Fairtrade is whether Fairtrade, as a socio-economic development tool, can contribute to the achievement of some of the objectives set out in the NDP. For example, does Fairtrade aid in gaining global market share, increasing economic participation in rural areas and encouraging employment in agriculture? Does Fairtrade provide the support to small-scale farmers envisioned in the NDP and could it assist small-scale farmers in entering commercial agriculture and thus boosting the rural economy? Does Fairtrade result in increased regional integration and the expansion of African trade? These are all questions to be examined in the next chapter.

⁵⁶⁶ Jain, Budlender, Zizzamia and Bassier “The Labor Market and Poverty Impacts of Covid-19 in South Africa” 2020 *Southern Africa Labour and Development Research Unit Working Paper Series* Number 264 Version 1 https://www.opensaldru.uct.ac.za/bitstream/handle/11090/980/2020_264_Saldrup.pdf?sequence=1 (accessed 2022-07-20) 2.

⁵⁶⁷ Budlender *et al* 2020 *SALDRU Working Paper* https://www.opensaldru.uct.ac.za/bitstream/handle/11090/980/2020_264_Saldrup.pdf?sequence=1 (accessed 2022-07-20) 2-3.

⁵⁶⁸ Wegerif “The Impact of Covid-19 on Black Farmers in South Africa” 2022 61 *Agrekon* 52 64.

⁵⁶⁹ Wegerif 2022 *Agrekon* 63 and 64.

⁵⁷⁰ Wegerif 2022 *Agrekon* 60.

⁵⁷¹ Wegerif 2022 *Agrekon* 64.

4.4.2 Broad-based black economic empowerment

4.4.2.1 The Broad-based Black Economic Empowerment Act

Inequality in South Africa, resulting from years of marginalisation of the black majority, remains pervasive despite the country's transition to democracy in 1994.⁵⁷² Many government-led socio-economic development policies and initiatives have therefore been aimed at righting the highly racially skewed distribution of wealth, resources and opportunities in South Africa. One such law is the Broad-based Black Economic Empowerment Act (B-BBEE Act),⁵⁷³ geared towards promoting the economic empowerment of black South Africans through increased employment and more equitable distribution of income.⁵⁷⁴ The Act recognises that, because of apartheid, the majority of South Africans are excluded from owning productive assets and possessing advanced skills.⁵⁷⁵ B-BBEE was born from a recognition that the structural inequality in South Africa was undermining the stability and prosperity of the country's economy and inhibiting economic growth.⁵⁷⁶ The motivations for B-BBEE, therefore, included both social reform and economic growth.

The term "broad-based black economic empowerment" is defined in the Act as the economic empowerment of all black people through certain socio-economic strategies.⁵⁷⁷ Some of the strategies listed include increasing the number of black people that manage, own and control productive assets, facilitating ownership and management of productive assets by communities, workers and cooperatives, skills development, and investing in enterprises that are owned or managed by black people.⁵⁷⁸ The objectives of the B-BBEE Act align, to some degree, with these listed socio-economic strategies. The Act aims to promote the meaningful participation of black people in the economy; substantially change the racial composition of ownership and skilled work; and increase access for communities, cooperatives and workers to economic activities, infrastructure and skills training.⁵⁷⁹ Black women are specifically mentioned with the objective of increasing their ownership and management of

⁵⁷² Herman "Tactical Ethics: How the Discourses of Fairtrade and Black Economic Empowerment Change and Interact in Wine Networks from South Africa to the UK" 2012 43 *Geoforum* 1121 1123.

⁵⁷³ 53 of 2003.

⁵⁷⁴ Preamble of Act 23 of 2003.

⁵⁷⁵ *Ibid.*

⁵⁷⁶ Herman 2012 *Geoforum* 1123.

⁵⁷⁷ Section 1 of Act 23 of 2003.

⁵⁷⁸ Sections 1(a), (b), (c) and (f) of Act 23 of 2003.

⁵⁷⁹ Sections 2(a), (b) and (c) of Act 23 of 2003.

enterprises.⁵⁸⁰ Rural communities are also listed as a target group for enabling their access to economic activities, land, infrastructure, ownership and skills.⁵⁸¹

It is clear that many of the listed objectives and socio-economic strategies in the B-BBEE Act are in line with what Fairtrade aims to achieve, although Fairtrade typically does not differentiate between producers on racial grounds. In order to give credibility to Fairtrade certification in the South African context, B-BBEE has been incorporated into the Fairtrade standards and objectives for South Africa since 2007.⁵⁸² The criteria for Fairtrade certification in South Africa include the four B-BBEE elements that are relevant for benefitting small-scale farmers and farm workers. These elements are ownership, management control, employment equity and skills development.⁵⁸³

4.4.2.2 AgriBEE

There are industry-specific B-BBEE codes, intended to drive transformation in specific sectors. The AgriBEE Sector Code (AgriBEE)⁵⁸⁴ is aimed at removing barriers to entry into the agricultural sector, as well as accelerating transformation in the sector.⁵⁸⁵ In order to qualify for AgriBEE status, a scorecard has been developed which measures enterprises based on five criteria. These five criteria are ownership, management control, skills development, enterprise and supplier development, and socio-economic development.⁵⁸⁶ Each of these criteria are measured in terms of the number of black people involved in the specific criteria in that particular enterprise. For example, skills development is measured according to the enterprise's expenditure on skills development programmes such as learnerships or internships for black people.⁵⁸⁷ Enterprises are differentiated according to their annual turnover, and the criteria are measured differently for different sized enterprises.⁵⁸⁸ The AgriBEE code is a combination of B-BBEE and land reform objectives, as transformation in agriculture requires the participation of black people throughout the agricultural value chain, as well as the de-racialisation of land ownership.⁵⁸⁹

⁵⁸⁰ Section 2(d) of Act 23 of 2003.

⁵⁸¹ Section 2(f) of Act 23 of 2003.

⁵⁸² Jari *The Impact of Fairtrade in South Africa* 94.

⁵⁸³ Herman 2012 *Geoforum* 1124.

⁵⁸⁴ GN 1354 in GG 41306 of 2017-12-08.

⁵⁸⁵ Nel "What are the Expectations of AgriBEE" 2019 16 *TFM Magazine* 19 19.

⁵⁸⁶ Section 4.1 of AgriBEE.

⁵⁸⁷ Nel 2019 *TFM Magazine* 22.

⁵⁸⁸ Section 5.2 of AgriBEE.

⁵⁸⁹ Nel 2019 *TFM Magazine* 20.

B-BBEE and Fairtrade, when implemented in conjunction with each other are potentially mutually beneficial. The auditing processes whereby farms' continued compliance with Fairtrade standards are assessed, brings more accountability to the B-BBEE project. For Fairtrade, bringing in the B-BBEE dimension makes it relevant to the South African context and ensures its effectiveness within this context.⁵⁹⁰ The fact that AgriBEE elements are included in South African Fairtrade standards is evidence of the relevance of B-BBEE to this dissertation. The extent to which the objectives of Fairtrade are better achieved through the inclusion of AgriBEE standards will be examined in the next chapter.

4.4.4 Land reform

4.4.4.1 The Land reform framework

One of the features of both colonialism and apartheid in South Africa, was the dispossession of land from the black population.⁵⁹¹ This dispossession of land was introduced into legislation by the 1913 Land Act,⁵⁹² which reserved only 13% of land for ownership by the black majority. The reserved land was typically situated in areas of infertility, and the capability of black farmers to contribute and benefit from the country's agricultural industry was non-existent.⁵⁹³ The beginning of democracy in South Africa brought with it the need to reform the extremely unequal distribution of land that was a direct result of these discriminatory policies. Land reform was therefore one of the crucial policies adopted by the newly elected democratic government in 1994.⁵⁹⁴

Land reform is the umbrella term incorporating programmes for land redistribution, land restitution and tenure reform. These are the three pillars of land reform.⁵⁹⁵ The

⁵⁹⁰ Herman 2012 *Geoforum* 1121.

⁵⁹¹ Akinola "Land Reform in South Africa: Interrogating the Securitisation of Land Expropriation without Compensation" 2020 47 *Politikon* 215 216.

⁵⁹² The Natives Land Act 27 of 1913.

⁵⁹³ Akinola 2020 *Politikon* 218.

⁵⁹⁴ Institute for Poverty, Land and Agrarian Studies University of the Western Cape "Diagnostic Report on Land Reform in South Africa" (2016) https://www.parliament.gov.za/storage/app/media/Pages/2017/october/High_Level_Panel/Commissioned_Report_land/Diagnostic_Report_on_Land_Reform_in_South_Africa.pdf (accessed 2022-06-13) 4.

⁵⁹⁵ Land redistribution is aimed at broadening access to land for the black majority in the country. Land restitution serves to restore land or provide compensation for those disposed of their land due to past racially discriminatory laws or practices. Land tenure reform is the process of securing the rights of those who live under insecure arrangements on land that is owned by others; Institute for Poverty, Land and Agrarian Studies (undated) https://www.parliament.gov.za/storage/app/media/Pages/2017/october/High_Level_Panel/Com

overall land reform policy objectives, as described by the three pillars are; redistributing land to those in need who cannot afford it, the restitution of land to those dispossessed of their land by past discriminatory policies, and providing secure title deeds to land for informal land users or workers on the land.⁵⁹⁶

The legal framework for land reform is built on section 25 of the Constitution, which provides for expropriation with compensation, security of tenure, land restitution and places an obligation on the government to take legislative measures that enable citizens equitable access to land.⁵⁹⁷ These measures must be taken in the public interest, which includes the country's commitment to land reform.⁵⁹⁸ The White Paper on South African Land Policy, released in 1997, sets out the broad government policy on land reform, with various pieces of legislation enacted to govern each of the three tenets of land reform, namely restitution, redistribution and security of tenure.⁵⁹⁹ Of particular importance to agriculture and Fairtrade, are the land redistribution and tenure reform policies. This is because Fairtrade certified commercial farms in South Africa are required to transfer 25 percent ownership of their farms to the workers gradually, thus facilitating land redistribution and giving workers security of tenure.⁶⁰⁰

Land redistribution has proven to be the pillar that is most important for land reform but has also caused the most contention surrounding how it should be implemented.⁶⁰¹ Land redistribution is currently facilitated by way of 'the willing buyer willing seller' policy, introduced at a time when liberal agendas were the foundation of most policy-making worldwide and in South Africa. Land redistribution policy-making was consistent with the liberal agenda in that the willing buyer willing seller model is market-led, dependent on applicants being able to offer fair compensation for land of their choice to a willing seller.⁶⁰² Assistance for land redistribution applicants is provided by way of a grant system under the Land Redistribution for Agricultural Development

[missioned_Report_land/Diagnostic_Report_on_Land_Reform_in_South_Africa.pdf](#) (accessed 2022-06-13) 4.

⁵⁹⁶ Akinola 2020 *Politikon* 218.

⁵⁹⁷ Sections 25(2), (5), (6) and (7) of the Constitution.

⁵⁹⁸ Section 25(4) of the Constitution.

⁵⁹⁹ Department of Land Affairs "White Paper on South African Land Policy" 1997. For legislation governing various aspects of land reform, see for example the Provision of Certain land for Settlement Act 126 of 1993, the Land Reform (Labour Tenants) Act 3 of 1996 and the Restitution of Land Rights Act 22 of 1994.

⁶⁰⁰ Jari *The Impact of Fairtrade in South Africa* 91.

⁶⁰¹ Jari *The Impact of Fairtrade in South Africa* 91 and Akinola 2020 *Politikon* 219.

⁶⁰² Akinola 2020 *Politikon* 219.

(LRAD) programme, aimed at promoting commercially oriented agriculture.⁶⁰³ The grants are provided in order to help people who, without such assistance would not be able to purchase land, to purchase property of their own from a willing seller and thereby enter the land market.⁶⁰⁴

Tenure reform in the context of agriculture in South Africa requires the protection of the rights of farm workers and labour tenants occupying either privately owned farms or typically communal State land. During apartheid, occupiers of farmland were in a particularly precarious position as they were often arbitrarily evicted and had no security of tenure.⁶⁰⁵ The case of *Daniels v Scribante* concerned the right of a farmland occupier to make improvements to her residence under the Extension of Security of Tenure Act (ESTA).⁶⁰⁶ The Constitutional Court in this case rejected a narrow reading of ESTA that would exclude occupiers from having the right to make improvements.⁶⁰⁷ Instead, the court reframed the issue as one involving restoration of the right to dignity for those in possession of insecure land rights due to apartheid policies.⁶⁰⁸ This case serves to show how the court has used constitutional rights to advance transformation and tenure reform. Some success has been achieved in strengthening the rights of labour tenants, specifically those who occupy land on white-owned farms and pay for their use of this land through the provision of labour.⁶⁰⁹ Labour tenants now have the right to acquire ownership of the land they occupy through the Land Reform (Labour Tenants) Act.⁶¹⁰

4.4.4.2 Rationale for land reform

Land reform, like B-BBEE, is a measure intended to contribute to the transformation of our country in line with the transformative goals of the Constitution. The land issue goes beyond mere ownership of land. A more equitable landholding pattern in South Africa would give those most in need the opportunity to lift themselves out of poverty

⁶⁰³ Binswanger-Mkhize, Bourguignon and van den Brink *Agricultural Land Redistribution* (2009) 176.

⁶⁰⁴ Binswanger-Mkhize *et al Agricultural Land Redistribution* 176.

⁶⁰⁵ *Daniels v Scribante supra* par [21].

⁶⁰⁶ Act 62 of 1997.

⁶⁰⁷ *Daniels v Scribante supra* par [29].

⁶⁰⁸ Madlalate “Dismantling Apartheid Geography: Transformation and the Limits of the Law” 2019 9 *Constitutional Court Review* 195 214; see also *Daniels v Scribante supra* par [31].

⁶⁰⁹ Binswanger-Mkhize *et al Agricultural Land Redistribution* 175.

⁶¹⁰ Act 3 of 1996.

and our society could move away from the deeply entrenched inequalities that currently exist.⁶¹¹

The basis upon which land reform is pursued, is correcting past injustices by creating opportunities and providing access to secure incomes for those who have been made vulnerable by such past injustices. Creating a more equitable society in South Africa requires that generational wealth be created for those who have suffered past injustices. Effective land reform policies give those most in need the opportunity to create generational wealth.⁶¹² Apart from the obvious benefit of more equitable land distribution, land reform has the potential to generate wider benefits including rural development, creating large-scale employment opportunities, increasing rural incomes and raising productivity.⁶¹³ Land reform was primarily aimed at benefitting the rural poor. The White Paper on South African Land Policy specifically mentions farm workers, small-scale farmers, women and youth as intended beneficiaries within the rural poor group.⁶¹⁴

Countries which have successfully attained a more equal distribution of landholding, which in turn has reduced rural poverty, have been shown to achieve greater overall economic growth.⁶¹⁵ Conversely, countries like South Africa are still characterised by very unequal land distribution, large-scale industrialised farms that make little use of labour, and significant public investment in these large farms. These characteristics do not lend themselves to the creation of employment opportunities, reduction of rural poverty, or overall economic growth.⁶¹⁶ One of the rationales behind redistributing land is that small-scale farms typically employ more labour relative to their farm size than large, industrialised farms do.⁶¹⁷ The process of land redistribution often leads to an increase in the number of small farms, as the grants provided enable individuals to purchase small amounts of land. The increase in small farms as a result of land

⁶¹¹ Akinola 2020 *Politikon* 216.

⁶¹² Akinola 2020 *Politikon* 216.

⁶¹³ Institute for Poverty, Land and Agrarian Studies “https://www.parliament.gov.za/storage/app/media/Pages/2017/october/High_Level_Panel/Commissioned_Report_land/Diagnostic_Report_on_Land_Reform_in_South_Africa.pdf (accessed 2022-06-13) 4.

⁶¹⁴ Department of Land Affairs “White Paper” 1997.

⁶¹⁵ For example, the economic growth and poverty reduction that took place in China in the 1980’s has been linked to the achievement of more equitable landholding in the country. Binswanger-Mkhize *et al Agricultural Land Redistribution* 9.

⁶¹⁶ *Ibid.*

⁶¹⁷ *Ibid.*

redistribution therefore generates more employment, as well as revitalises rural economies.⁶¹⁸ Equality in landholding is thus correlated to increased economic growth.

4.4.4.3 Failures of land reform

An effective land reform programme would be one that brings equality to land ownership whilst at the same time assisting new landowners to effectively utilise their land, resulting in a reduction in rural poverty and general economic growth. Does Fairtrade present opportunities to contribute to effective land reform by the drawing of closer connections between the two policies? In order to answer this question in the following chapter, it is necessary to explore the possible reasons for why land reform has not been successful in South Africa.

Despite high expectations for land reform after democracy in South Africa, land ownership remains highly unequal.⁶¹⁹ The initial aim was to distribute 30 percent of land through land reform by 1999. The government did not come close to achieving this goal, and by 2018 less than 10 percent of land had been distributed.⁶²⁰ Of the land that has been transferred, the majority of it is not used productively.⁶²¹ Kloppers and Pienaar have suggested that because land reform progress has been measured largely in terms of numbers of hectares transferred, the actual ability of such transfers to create sustainable livelihoods for beneficiaries has been neglected.⁶²²

The failure to achieve substantial land reform has been put down to a number of factors, ranging from changes in intended beneficiaries to poor post-settlement support. Initially, land redistribution grants were provided only to the poor, defined according to a means test.⁶²³ This focus shifted in the early 2000s, providing larger grant amounts to small groups of better-off applicants with more commercial forms of

⁶¹⁸ Binswanger-Mkhize *et al Agricultural Land Redistribution* 9.

⁶¹⁹ Akinola 2020 *Politikon* 220.

⁶²⁰ Akinola 2020 *Politikon* 216.

⁶²¹ Kloppers and Pienaar "The Historical Context of Land Reform in South Africa and Early Policies" 2014 17 *PER/PELJ* 676 678.

⁶²² The focus on number of hectares transferred has meant that post-settlement support has been disregarded, and land reform beneficiaries do not have access to financial or institutional support from the government. Despite the fact that the White Paper on land Reform acknowledges the importance of government post-settlement support for effective land reform, such government support has not been forthcoming; Kloppers and Pienaar 2014 *PER/PELJ* 695.

⁶²³ Institute for Poverty, Land and Agrarian Studies https://www.parliament.gov.za/storage/app/media/Pages/2017/october/High_Level_Panel/Commissioned_Report_land/Diagnostic_Report_on_Land_Reform_in_South_Africa.pdf (accessed 2022-06-13)16.

production.⁶²⁴ The focus on commercial agriculture meant that fewer small farmers benefitted from land redistribution, and the benefits that come with having more small-scale farms such as employment and the boosting of rural economies were not achieved. This shift in land grant beneficiaries essentially stripped land reform down to the simple de-racialisation of commercial agriculture, instead of the complete reform of landholding patterns that was envisioned.⁶²⁵

Another downfall of land reform in South Africa has been the lack of support provided to grant beneficiaries once the land has been transferred to them.⁶²⁶ Constraints faced by land reform beneficiaries include access to credit, training, transport and produce markets. Government services to farmers have been cut down since the move to liberalised agriculture in the 1980s, and small farmers who do not have access to private services therefore find it difficult to overcome these constraints.⁶²⁷

The 'willing buyer, willing seller' model of land redistribution has not yielded sufficient results for land reform. A number of factors have contributed to its unsatisfactory performance, including limited government funds, the unwillingness of landowners to sell their land, and the financial incapacity of the rural poor to buy farms with inadequate government financial support.⁶²⁸ The slow progress in land reform has led to debates around an amendment to section 25 of the Constitution that would explicitly allow for land expropriation without compensation (LEWC). A proper interpretation of the current section 25 does allow for LEWC, but an amendment has been proposed in order to make this interpretation explicit.⁶²⁹

The government formally put forward LEWC in 2018 in order to commence the radicalisation of land reform policy.⁶³⁰ LEWC was proposed as a means to address the myriad of problems facing South Africa, from unemployment and inequality, to mass poverty and economic decline. It was put forward as the only policy instrument that could address these issues.⁶³¹ The resolution to amend section 25 of the

⁶²⁴ Binswanger-Mkhize *et al Agricultural Land Redistribution* 182.

⁶²⁵ Binswanger-Mkhize *et al Agricultural Land Redistribution* 182.

⁶²⁶ Binswanger-Mkhize *et al Agricultural Land Redistribution* 185.

⁶²⁷ *Ibid.*

⁶²⁸ Akinola 2020 *Politikon* 219.

⁶²⁹ Akinola 2020 *Politikon* 226.

⁶³⁰ Akinola 2020 *Politikon* 223.

⁶³¹ Akinola 2020 *Politikon* 225.

Constitution to provide explicitly for LEWC was not passed in December 2021.⁶³² There are serious arguments to be made against LEWC. Whilst one important and necessary benefit, that of seeing more black farmers enter the agricultural sector, might be achieved through LEWC, the economic implications could be disastrous.⁶³³ Not compensating farmers for their land would leave mortgages unpaid, creating a crisis for the banking industry and leading to economic catastrophe.⁶³⁴ On a constitutional level, serious concerns have also been voiced about the breach of individual property rights.⁶³⁵

The question relating to land reform that is relevant for this dissertation is two-fold. Firstly, can the implementation of land reform policies in conjunction with Fairtrade result in socio-economic benefits for land reform beneficiaries? Secondly, does Fairtrade address the failures of land reform, thereby presenting opportunities for a more successful land reform project in South Africa? These questions will be explored in chapter five.

4.5 Conclusion

This chapter has sought to introduce socio-economic development laws and policies in South African law that are relevant to Fairtrade. The Constitution, with transformation at its core, outlines the broad objectives required for such transformation to take place. The NDP sets out the constitutional goal for transformation in a practical manner, identifying the core impediments to socio-economic development and the steps necessary to overcome these impediments. B-BBEE and land reform narrow the focus to address specific issues that are perpetuating the state of inequality that exists in South Africa.

For Fairtrade to have credibility in South Africa, it needs to be founded on standards that would be considered fair in the South African context. The Constitution provides the framework for these South African standards of fairness. The constitutional mandate of substantive equality dictates that socio-economic development initiatives must be implemented in such a way that fosters substantive equality, thereby aligning

⁶³² Fasken “Expropriation without Compensation – It Is Not the End of the Road and Is Still on the Table” (15 December 2021) <https://www.fasken.com/en/knowledge/2021/12/15-expropriation-without-compensation> (accessed 2022-06-29).

⁶³³ Akinola 2020 *Politikon* 227.

⁶³⁴ *Ibid.*

⁶³⁵ Section 25 of the Constitution sets out property rights; Akinola 2020 *Politikon* 227.

with the Constitution's transformative agenda. Policies such as B-BBEE and land reform are examples of measures seeking to transform South Africa by creating opportunities for the achievement of substantive equality.

The law and policies summarised in this chapter are included because they give an account of the challenges facing South Africa, and some of the measures that are being taken to remedy these issues. Having provided an overview of the socio-economic development agenda for South Africa, the aim of the following chapter will be to examine the extent to which Fairtrade's implementation in South Africa is aligned with this agenda. In drawing connections between Fairtrade and South Africa's socio-economic development goals, the overall research question for this dissertation can be addressed: can Fairtrade be utilised to contribute to socio-economic development in South Africa?

CHAPTER 5

THE LEGAL CONNECTIONS BETWEEN FAIRTRADE AND SOCIO-ECONOMIC DEVELOPMENT IN SOUTH AFRICA

5.1 Introduction

Having outlined several significant development challenges facing South Africa, this chapter examines whether Fairtrade objectives are linked to those challenges. Once these connections have been drawn, it will be possible to explore to what extent Fairtrade can contribute to ameliorating the challenges to development and achieving South Africa's socio-economic development objectives.

The previous chapters have provided some context and understanding of international trade, the position of developing countries (specifically African ones) within the international trade system, the motivations for an alternative trading system, and the major obstacles to socio-economic development in South Africa. Fairtrade in agriculture, the focus of this dissertation, is the common thread linking these topics. It finds application within the international trading system, despite providing its own rules for trade. Fairtrade's target beneficiaries are small producers in developing countries. Therefore, an understanding of Fairtrade requires an understanding of the trade issues facing developing countries.

The South African context presents unique challenges for Fairtrade. This country's history of racial inequality and oppression has created circumstances which cannot be ignored by a project which aims to create conditions of "fairness." What is fair in the South African setting may differ from what is considered fair in another country. This is why additional Fairtrade standards have been developed for South African producers. Without these additional standards, implementing Fairtrade in South Africa could reinforce the existing inequalities. This chapter will begin with an examination of the South African specific Fairtrade standards.

In assessing whether Fairtrade can contribute to socio-economic development in South Africa, it is important to be mindful of the type of development envisaged by the Constitution. Chapter four of this dissertation highlighted the transformational character of the Constitution, with transformation being founded on ensuring human dignity, substantive equality and the advancement of socio-economic rights. The nature of socio-economic rights in the Constitution and the obligations imposed by

these rights were also considered. This chapter will examine whether Fairtrade is a tool which might contribute to the achievement of this type of development.

The NDP, land reform and B-BBEE are all policies already in place to address issues of inequality and poverty in South Africa. These policies have had limited success in reducing inequality and poverty. There are, however, links between these policies and what Fairtrade aims to achieve. This chapter will seek to identify those links in examining whether the socio-economic development envisioned in these policies could be better achieved by drawing of closer connections with Fairtrade.

The chapter begins with an explanation of the Fairtrade standard that applies to South African farmers, both small-scale and commercial. This discussion is a necessary starting point to understand the links between Fairtrade in South Africa and the country's socio-economic development objectives. The Fairtrade standard dictates the impact of Fairtrade and its ability to contribute to socio-economic development. Once the Fairtrade standard for South Africa has been outlined, this chapter will follow a similar structure to that of chapter four. Firstly, Fairtrade will be examined in terms of its connection to the Constitution. This entails measuring Fairtrade against the ideal of transformative constitutionalism, specifically whether Fairtrade advances substantive equality and socio-economic redistribution. Thereafter, the potential of Fairtrade to contribute to the achievement of the NDP goals highlighted in chapter four will be assessed. Next, the links between Fairtrade and B-BBEE will be identified. These links are already evidenced by the incorporation of AgriBEE into the Fairtrade standards. The final socio-economic development policy that Fairtrade will be measured against is land reform. Having drawn legal connections between Fairtrade and the relevant policies, it will then be possible to understand Fairtrade's capacity to contribute to socio-economic development in South Africa.

5.2 Fairtrade standards in South Africa

5.2.1 General Fairtrade standards

International Fairtrade standards, both for producers and traders who purchase Fairtrade products, are set by Fairtrade International.⁶³⁶ This dissertation focusses on the supply side of the Fairtrade value chain, and so a brief overview of the general

⁶³⁶ Fairtrade International "Fairtrade Standards" (undated) <https://www.fairtrade.net/standard> (accessed 2022-08-27).

standards for producers will be provided. The standards for producers are divided into those for hired-labour farms, and those for small-scale producers.⁶³⁷ Compliance with the Fairtrade standard for hired-labour farms entrenches worker empowerment conditions. For small-scale farmers, their access to the Fairtrade market is through small-producer organisations (often called cooperatives). If Fairtrade certified, these cooperatives must adhere to the Fairtrade standard themselves and ensure that their members adhere to the standard. An overview of the general Fairtrade standard is necessary in order to better understand the incorporation of specific South African Fairtrade standards, which will be examined in the following section.

For small-scale producers, the standard applies to cooperatives and their members, who are the farmers themselves.⁶³⁸ The standard for cooperatives is divided into the categories of trade, production, and business and development.⁶³⁹ The production standard ensures that there is a regulation of environmental issues such as soil and water use, protection of biodiversity, pest management, genetically modified crops as well as training provided by the cooperative about these matters.⁶⁴⁰ The production standard also regulates labour conditions, banning discrimination, forced labour and child labour, and provides for good practices regarding conditions of employment.⁶⁴¹

The Fairtrade standard for hired-labour farms is separated into four categories, namely, social development, labour conditions, environmental development and trade.⁶⁴² It is the employer company itself that must adhere to this standard. Social development standards prescribe that the Fairtrade premium must be managed by a committee of elected worker members and appointed advisors from management, with the number of workers on the committee being significantly higher than that of

⁶³⁷ Fairtrade International <https://www.fairtrade.net/standard> (accessed 2022-08-27). Producer standards are also set for specific products, but these will not be examined in this dissertation which is not focussing on any specific Fairtrade product.

⁶³⁸ Fairtrade International “Fairtrade Standard for Small-Scale Producer Organisations” (2019) https://files.fairtrade.net/standards/SPO_EN.pdf (accessed 2022-08-27).

⁶³⁹ Fairtrade International https://files.fairtrade.net/standards/SPO_EN.pdf (accessed 2022-08-27) 5.

⁶⁴⁰ Fairtrade International https://files.fairtrade.net/standards/SPO_EN.pdf (accessed 2022-08-27) 23-35.

⁶⁴¹ Fairtrade International https://files.fairtrade.net/standards/SPO_EN.pdf (accessed 2022-08-27) 36-45.

⁶⁴² Fairtrade International “Fairtrade Standard for Hired Labour” (2014) https://files.fairtrade.net/standards/HL_EN.pdf (accessed 2022-08-27); the hired labour standard was due to be reviewed in 2019, however, the standard referenced here is the latest available version on the Fairtrade International website. Unlike the small-producer standard which was updated in 2019, the hired labour standard has not been reviewed since 2014.

management advisors.⁶⁴³ There are boundaries set regarding what the Fairtrade premium may be used for, although the ultimate decision lies with the Fairtrade Premium Committee, as decided and justified by the workers themselves.⁶⁴⁴ Social development standards also regulate capacity building by ensuring the development of workers' skills, women empowerment, equity in the workplace and raising awareness amongst workers about Fairtrade.⁶⁴⁵ Equity in the workplace is listed as a development requirement, meaning that continuous improvements must be made which will be audited against a scoring system set by the certification body (Flocert). On the other hand, core requirements are standards that must be complied with in full.⁶⁴⁶

Labour condition standards for hired-labour farms prevent any discrimination against workers. Discrimination is "any unfair distinction in the treatment of one person over another on grounds that are not related to ability or merit, or based on stereotypes".⁶⁴⁷ Like the labour conditions for small-scale farmers, workers on hired labour farms are protected by the Fairtrade standard from forced labour and child labour. Workers' freedom of association, good working conditions, and an hourly wage not below the minimum wage are also ensured.⁶⁴⁸ Environmental development standards require hired-labour farms to adhere to rules surrounding sustainable water use, waste, biodiversity, soil fertility and the use of pesticides.⁶⁴⁹ Standards falling under the trade category for hired-labour farms dictate rules to be followed when Fairtrade products are sold.⁶⁵⁰

⁶⁴³ Fairtrade International https://files.fairtrade.net/standards/HL_EN.pdf 12 (accessed 2022-08-27). The Fairtrade premium, as explained in chapter 1 of this dissertation, is a social premium consisting of money paid to producers over and above the Fairtrade minimum price. It is intended to be used for community development on hired-labour farms and the improvement of production conditions on small-scale farms.

⁶⁴⁴ Fairtrade International https://files.fairtrade.net/standards/HL_EN.pdf (accessed 2022-08-27) 18.

⁶⁴⁵ Fairtrade International https://files.fairtrade.net/standards/HL_EN.pdf (accessed 2022-08-27) 19-20.

⁶⁴⁶ Fairtrade International https://files.fairtrade.net/standards/HL_EN.pdf (accessed 2022-08-27) 4.

⁶⁴⁷ Fairtrade International https://files.fairtrade.net/standards/HL_EN.pdf (accessed 2022-08-27) 22.

⁶⁴⁸ Fairtrade International https://files.fairtrade.net/standards/HL_EN.pdf (accessed 2022-08-27) 24-45.

⁶⁴⁹ Fairtrade International https://files.fairtrade.net/standards/HL_EN.pdf (accessed 2022-08-27) 46-57.

⁶⁵⁰ Fairtrade International https://files.fairtrade.net/standards/HL_EN.pdf (accessed 2022-08-27) 58-60.

5.2.2 The Fairtrade standard for hired labour farms in South Africa

Fairtrade is not merely a market-based programme for economic growth through trade. The objectives it aims to achieve clearly show that Fairtrade is as much about social upliftment as it is about trade facilitation and economic growth. If the social context in which Fairtrade operates, is one characterised by inequality and injustice, and Fairtrade merely operates in this environment without being tailored to address these issues, the 'fairness' of Fairtrade products coming from this environment will be called into question. Given the distinct challenges faced in South Africa, especially in the agricultural sector, Fairtrade standards for the country need to be justified according to their ability to achieve the Fairtrade objectives within the South African context. That is, they need to be tailored to tackle issues faced by South Africa.⁶⁵¹

The initial Fairtrade certification of South African farms in the early 2000s, mostly white-owned, was met with criticism from two angles. Firstly, Fairtrade organisations in other countries criticised this certification on the basis that the social justice goals of Fairtrade would be weakened.⁶⁵² Social justice in South Africa necessitated proactive policies to correct the highly unjust legacy of apartheid.⁶⁵³ The certification of white-owned farms that had benefitted from apartheid policies did not advance social justice in South Africa.⁶⁵⁴ A socially just policy in the context of Fairtrade would be one that uplifted previously disadvantaged black farmers to compete on more of an equal playing field with the large, established white-owned farms. Socially just policy would also ensure that black farm workers, typically taken advantage of under apartheid policies, were provided with opportunities for socio-economic development and empowerment.⁶⁵⁵ This critique does not suggest that any certification of white-owned farms would be an issue. Rather, it proposes that the certification of white-owned farms in South Africa would be an issue where that farm does not have any plans in place to advance the development of its previously disadvantaged workers.⁶⁵⁶

The second critique came from labour activists in South Africa, who contended that certification according to the general Fairtrade standard would mitigate the possibility

⁶⁵¹ Ngwangu 2021 *Journal of Fair Trade* 20-23.

⁶⁵² Linton "Growing Fair Trade in South Africa" 2012 9 *Globalizations* 725 733.

⁶⁵³ Govender "Social Justice in South Africa" 2016 16 *Civitas* 237 251.

⁶⁵⁴ Linton 2012 *Globalizations* 733.

⁶⁵⁵ Subreenduth "Theorizing Social Justice Ambiguities in an Era of Neoliberalism: The Case of Post-apartheid South Africa" 2013 63 *Educational Theory* 581 582.

⁶⁵⁶ Linton 2012 *Globalizations* 733.

of equitable change in the country.⁶⁵⁷ Because the South African government already mandated AgriBEE standards for hired labour, large white-owned farms could easily gain Fairtrade certification by simply complying with existing law.⁶⁵⁸ This would result in an over-supply of produce from industrialised South African farms in the international Fairtrade market, stifling any competition from producers with much less developed production methods. Thus, the outcome of simply inserting generalised Fairtrade standards into the South African context would not accord with Fairtrade's small-scale farmer and worker empowerment objectives, nor would it promote empowerment in the South African context.⁶⁵⁹

In response to these criticisms, the Fairtrade standard has been customised for the South African context through the incorporation of AgriBEE and land reform into the Fairtrade standard for hired-labour farms. South African products bearing the Fairtrade label have therefore been produced according to standards which incorporate the country's social transformation goals.⁶⁶⁰ In this way, the Fairtrade certification of commercial white-owned farms is validated because it ensures that programmes for worker development are in place on these farms.

Land reform and AgriBEE are policies out in place by the South African government to address inequality in land ownership and the marginalisation of poor farmers and farm workers.⁶⁶¹ The Fairtrade standard for South Africa has been formulated with the purpose of supporting these policies.⁶⁶² The AgriBEE codes are incorporated into South Africa's Fairtrade certification policy to measure worker empowerment.⁶⁶³ Whilst land reform policies are not explicitly included in the South African standards, they do form part of the AgriBEE scheme. Therefore, with the incorporation of the AgriBEE code into the South African Fairtrade standard, land reform objectives are also included to a certain extent.⁶⁶⁴ The specific South African Fairtrade certification policy applies only to hired-labour farms as these are companies employing workers. Small-

⁶⁵⁷ Kruger and Du Toit "Reconstructing Fairness: Fair Trade Conventions and Worker Empowerment in South African Horticulture" in *Fair Trade: The Challenges of Transforming Globalization* (2007) 200.

⁶⁵⁸ Linton 2012 *Globalizations* 733.

⁶⁵⁹ *Ibid.*

⁶⁶⁰ Linton 2012 *Globalizations* 726.

⁶⁶¹ Jari *The Impact of Fairtrade in South* 90.

⁶⁶² Fairtrade South Africa 2010 *Fairtrade Foundation Impact Briefing Paper* 5.

⁶⁶³ *Ibid.*

⁶⁶⁴ Jari *The Impact of Fairtrade in South Africa* 90.

scale farmers in South Africa only have to comply with the international Fairtrade standard for small-scale farmers, and not with any of the additional country-specific standards.⁶⁶⁵

AgriBEE works on a scoring system where farms are expected to work gradually towards specific compliance targets according to set criteria. These farms will be awarded a BEE score based on how many compliance targets they have reached.⁶⁶⁶ The AgriBEE compliance targets are incorporated into the Fairtrade standard for commercial farms. For example, workers must hold at least 25 percent of the shares in the farm and there must be worker participation at all levels of operational management. Skills-development and capacity-building programmes must be in place and must be auditable.⁶⁶⁷ Further examination of the relationship between Fairtrade and B-BBEE will be conducted later in this chapter.⁶⁶⁸ For now, the link between Fairtrade and B-BBEE has been introduced in so far as it is necessary to understand the Fairtrade standard for hired-labour farms in South Africa.

5.3 Fairtrade and the constitutional imperative

5.3.1 The Constitution as an enabling document

The general optimism that came with South Africa's transition to democracy, the understanding of the Constitution as a transformative document, and the triumphant claims that it was the best Constitution in the world, may have generated false hope amongst South Africans that the Constitution itself would resolve the entrenched issues faced by the country.⁶⁶⁹ Many South Africans have suffered and still feel disillusioned due to the poverty, inequality and unemployment that persists today, 26 years after the commencement of the Constitution. The preamble to the Constitution promises to "[i]mprove the quality of life of all citizens and free the potential of each

⁶⁶⁵ Fairtrade South Africa 2010 *Fairtrade Foundation Impact Briefing Paper 5*.

⁶⁶⁶ GN 1354 in GG 41306 of 2017-12-08.

⁶⁶⁷ Linton 2012 *Globalizations* 733; it is worth noting that there are a lack of primary sources regarding the Fairtrade standards for commercial farms in South Africa. When attempting to access the sources used by the authors referenced here, the pages were no longer available. The Fairtrade South Africa website (Fairtrade.org.za) is not operational, and emails sent to that address came back as "undeliverable". I contacted the Fairtrade certification organisation for Africa, Flocert Africa. I was informed that there are no country-specific standards. However, the generic standards do state that all national legislation in the country must be adhered to. The specific Fairtrade standards for commercial farms in South Africa do not seem to be clearly set out in any official document, which may present issues of uncertainty.

⁶⁶⁸ See section 5.5 at page 121.

⁶⁶⁹ Albertyn "(In)equality and the South African Constitution" 2019 36 *Development Southern Africa* 751 754.

person.”⁶⁷⁰ An examination of the substantive social and economic objectives promised in the Constitution reveals that these objectives have not been achieved. The sense of disillusionment amongst South Africans is therefore understandable.⁶⁷¹

The general dissatisfaction with the current South African situation should not, however, be directed at the Constitution. The Constitution, whilst explicitly transformative in nature, should be understood as an enabling document. It provides the foundations and framework around which an activist state, strong institutions and civil society must construct the mechanisms to achieve the constitutional objectives.⁶⁷² Sound policies that align with the Constitution’s ethos and objectives need to be chosen. These policy choices, coupled with the effective implementation thereof, is what is needed for the achievement of the transformation envisaged in the Constitution.⁶⁷³ Fairtrade could constitute a policy which, if found to align with the Constitution’s ethos and objectives, can contribute to the achievement of transformative constitutionalism, as expanded upon below.

Important elements of transformative constitutionalism were identified in chapter four of this dissertation. Substantive equality and the redistribution of socio-economic resources are two pertinent elements of transformative constitutionalism.⁶⁷⁴ Attaining substantive equality and the redistribution of socio-economic resources would lead to the development and the improvement of well-being, which are further elements of transformative constitutionalism. Fairtrade’s connection to substantive equality and socio-economic redistribution will be examined in order to determine whether the effective implementation of Fairtrade can contribute to the achievement of the transformative constitutional promise.

⁶⁷⁰ Preamble to the Constitution.

⁶⁷¹ Albertyn 2019 *Development Southern Africa* 752.

⁶⁷² Albertyn 2019 *Development Southern Africa* 751; see also Kok “Is Law able to Transform Society?” 2010 127 *South African Law Journal* 59 – 83, where he discussed the constraints on the potential that law has to meaningfully transform societies. Some constraints mentioned include; the minimal influence that law has on the daily decisions of citizens, the fact that humans are not rational beings (which the law assumes that they are), the fact that new law must be compatible with existing institutional values, and the limited resources available to provide effective protection for the violation of rights.

⁶⁷³ *Ibid.*

⁶⁷⁴ Refer to section 4.3.1 at page 74.

5.3.2 Fairtrade and substantive equality

It was established in chapter four of this dissertation that the type of equality that the Constitution strives for is substantive equality. For Fairtrade to be aligned with substantive equality, it would need to create the socio-economic conditions necessary for full human development and seek to secure conditions necessary for all people to be provided with choices amongst real and equivalent options.⁶⁷⁵ Substantive equality requires more than just social inclusion or meeting a minimum threshold of basic needs within an existing system.⁶⁷⁶ Working towards substantive equality necessitates attention to patterns of group-based disadvantage, and requires redistribution in light of these patterns.⁶⁷⁷ This type of redistribution, termed “remedial equality,” is catered for in section 9(2) of the Constitution and is an integral element of the substantive conception of equality.⁶⁷⁸

Fredman proposes a four-dimensional approach to substantive equality that can be used to evaluate the likelihood of a law or policy fulfilling the right to equality.⁶⁷⁹ The four dimensions include; redressing disadvantage, countering prejudice based on a protected characteristic, enhancing voice and participation, and achieving structural change.⁶⁸⁰ These four dimensions are not suggested as definitive of substantive equality, but rather as a means of assessing and modifying policies to better achieve substantive equality.⁶⁸¹ In order to determine the extent to which Fairtrade is capable of contributing to achieving substantive equality, it can be assessed in light of these four dimensions.

For a policy to redress disadvantage, the first dimension of substantive equality, it would need to focus on the group which has suffered the disadvantage. This aligns with the first requirement highlighted in *Minister of Finance v Van Heerden* as being necessary for a remedial measure to be declared constitutional in terms of section 9(2) of the Constitution.⁶⁸² The apparent contradiction between affirmative action measures

⁶⁷⁵ Albertyn 2019 *Development Southern Africa* 759.

⁶⁷⁶ *Ibid.*

⁶⁷⁷ Liebenberg and Goldblatt “The Interrelationship between Equality and Socio-Economic Rights under South Africa’s Transformative Constitution” 2007 23 *SAJHR* 335 342.

⁶⁷⁸ *Minister of Finance v Van Heerden* 2004 (6) SA 121 (CC) par [30 – 31].

⁶⁷⁹ Fredman “Substantive Equality Revisited” 2016 14 *International Journal of Constitutional Law* 712 714.

⁶⁸⁰ Fredman 2016 *International Journal of Constitutional Law* 727.

⁶⁸¹ Fredman 2016 *International Journal of Constitutional Law* 728.

⁶⁸² *Minister of Finance v Van Heerden supra* par [37].

(such as B-BBEE) and the right that everyone has to equality, is in fact justified because it is substantive equality and not equality of treatment that the Constitution endorses.⁶⁸³ Thus, the incorporation of AgriBEE standards for Fairtrade certified hired-labour farms in South Africa accords with the need to redress disadvantage and focus on groups which have suffered disadvantage. In fact, it can be argued that the whole Fairtrade policy is aimed at redressing the socio-economic disadvantage faced by those rural farmers excluded from the mainstream agricultural market, as well as farm workers who historically have been amongst the poorest in the South African society.⁶⁸⁴

The second of Fredman's dimensions turns to the humanities aspect of redress, by stating that a policy that advances substantive equality should redress stigma, stereotyping and humiliation that causes prejudice.⁶⁸⁵ This dimension is somewhat more difficult to pin down in terms of how it would practically be advanced in a policy, as it speaks to more abstract notions of dignity and the recognition of one's identity.⁶⁸⁶ A study on the impact of the Fairtrade premium on workers and farmers where it was found that the Fairtrade premium impacted positively on the dignity of these groups provides a useful example. One reason for this positive impact was put down to the fact that the Fairtrade premium enabled workers and farmers to contribute to the improvement of their communities, and thus to become respected members of their communities.⁶⁸⁷ In addition, where Fairtrade improves the socio-economic standing of farm workers and farmers, it would, by implication, also positively impact their dignity.

A policy that generates substantive equality would provide people with the "resources and the opportunities to develop, participate and flourish equally as human beings".⁶⁸⁸ The third of Fredman's four dimensions of substantive equality is enhancing voice and participation.⁶⁸⁹ Social inclusion is based on the understanding that "to be fully human

⁶⁸³ Fredman 2016 *International Journal of Constitutional Law* 729.

⁶⁸⁴ *Ibid.*

⁶⁸⁵ Fredman 2016 *International Journal of Constitutional Law* 730.

⁶⁸⁶ *Ibid.*

⁶⁸⁷ Loconto, Silva-Castaneda, Arnold and Jimenez "Participatory Analysis of the Use and Impact of the Fairtrade Premium" (25 February 2019) *Technical Report: HAL Open Science* <https://hal.archives-ouvertes.fr/hal-02048855/document> (accessed 2022-10-19) 4 and 76.

⁶⁸⁸ Liebenberg and Goldblatt 2007 *SAJHR* 343.

⁶⁸⁹ Fredman 2016 *International Journal of Constitutional Law* 731. For the purposes of creating links between Fairtrade and substantive equality, political voice is not relevant because Fairtrade does not relate to political participation. The social inclusion aspect of participation is what is catered for by the Fairtrade standard.

includes the ability to participate on equal terms in community and society more generally”.⁶⁹⁰ Ngcobo J in *Doctors for Life International v Speaker of the National Assembly* outlines how participation is central to the kind of democracy envisaged in the Constitution.⁶⁹¹ Accountability, responsiveness and openness are included as part of the values upon which our constitutional democracy is established.⁶⁹² The South African democracy is not only representative, but also participatory in that people shall participate in the law-making process.⁶⁹³ Participation in democracy for historically marginalised groups who lack higher education and access to resources is of particular importance and is a constitutive element of dignity.⁶⁹⁴ Ngcobo J also connects the achievement of participatory democracy to advancing the transformative goals of the Constitution.⁶⁹⁵

The participatory element of substantive equality is a recurring theme in the Fairtrade standard, which encourages worker capacity development and ensures that workers form part of certain managerial committees. It is worth noting however, that many of the capacity building standards are development standards, and not core standards.⁶⁹⁶ The incorporation of Agri-BEE standards further enhances the participation of farm workers in areas from which they were typically excluded. The fact that workers must hold at least 25 percent of shares in the farm and must participate in all levels of operational management secures their participation as a core requirement for Fairtrade certification, rather than merely a development standard.⁶⁹⁷ These standards are important for providing workers with the ability not just to participate, but to participate on equal terms in the agricultural community.

⁶⁹⁰ Fredman 2016 *International Journal of Constitutional Law* 732.

⁶⁹¹ 2006 (12) BCLR 1399 (CC).

⁶⁹² Section 1(d) of the Constitution.

⁶⁹³ *Doctors for Life International v Speaker of the National Assembly supra* par [111]; see also *Albutt v Centre for the Study of Violence and Reconciliation* 2010 (3) SA 293 (CC) par [90].

⁶⁹⁴ *Doctors for Life International v Speaker of the National Assembly supra* par [234].

⁶⁹⁵ *Doctors for Life International v Speaker of the National Assembly supra* par [235].

⁶⁹⁶ Fairtrade International https://files.fairtrade.net/standards/HL_EN.pdf 12 (accessed 2022-10-19) 21. As indicated under section 5.2.2 of this dissertation at page 100, the fact that they are development standards means that they do not have to be complied with immediately for Fairtrade certification (as is the case with core requirements). Rather, development standards must be continuously improved on and are audited against a scoring system set by the certification body.

⁶⁹⁷ Linton 2012 *Globalizations* 733.

The final of Fredman's four dimensions, is achieving structural change.⁶⁹⁸ Fairtrade, through its current standards, cannot fundamentally change the existing structures of production and international trade, which in South Africa and worldwide have typically been disadvantageous to small-scale farmers and farm workers.⁶⁹⁹ Rather, Fairtrade operates within the prevailing production and international trade structures, aiming to reposition small-scale farmers and farm workers within these systems.⁷⁰⁰ Whilst Fairtrade may foster more inclusion and social development of the excluded majority in trade and agriculture, most of its standards only require the meeting of minimum basic thresholds. Thus, it cannot be said that Fairtrade is able to "dismantle structural inequality", as it still operates within a highly unequal system.⁷⁰¹ In any case, it is not likely that any one policy could singlehandedly dismantle structural inequality and systemic disadvantage. Achieving structural change would require several policies geared towards this objective. That being said, the inclusion of Agri-BEE requirements into Fairtrade in South Africa does indicate an acknowledgement of group-based disadvantage, and an attempt to regulate redistribution based on such disadvantage.

Specific structures that require attention in order to achieve substantive equality are unjust socio-economic structures.⁷⁰² As discussed in chapter four, free-market capitalism in the context of South Africa constitutes an economic structure that perpetuates cycles of disadvantage.⁷⁰³ The adoption of free-market capitalism in South Africa may therefore have diminished the chances of substantive equality being achieved.⁷⁰⁴ Fairtrade aims to mitigate some of the detrimental effects of free-market capitalism, providing a "new playing field" where those typically marginalised are assisted in competing economically against those who dominate the international trade arena. In this way, Fairtrade is a useful tool towards achieving the kind of

⁶⁹⁸ Fredman 2016 *International Journal of Constitutional Law* 732.

⁶⁹⁹ Staricco "Transforming or Reproducing Conventional Socioeconomic Relations? Introducing a Regulationist Framework for the Assessment of Fairtrade" 2017 93 *World Development* 206 215.
⁷⁰⁰ *Ibid.*

⁷⁰¹ Liebenberg and Goldblatt 2007 *SAJHR* 342.

⁷⁰² Langa "Transformative Constitutionalism" 2006 3 *Stellenbosch Law Review* 351 351; Fredman 2016 *International Journal of Constitutional Law* 713.

⁷⁰³ Ngang 2019 *South African Journal on Human Rights* 36; the importance of understanding the social context in which a policy or structure operates has been highlighted; see Ngcwangu "Debating the Role of Fair Trade in the Context of Socio-Economic Transformation in South Africa" 2021 3 *Journal of Fair Trade* 21.

⁷⁰⁴ Ngang "Radical Transformation and a Reading of the Right to Development in the South African Constitutional Order" 2019 35 *South African Journal on Human Rights* 25 36.

transformation envisioned in the Constitution, but which has not been catered for by economic policy choices.

5.3.3 Fairtrade and the redistribution of socio-economic resources

Because of South Africa's discriminatory past, the fulfilment of socio-economic rights cannot be separate from the constitutional objective of substantive equality. The Bill of Rights includes socio-economic rights along with a firm and detailed substantive equality clause.⁷⁰⁵ Barriers to transformation include poverty and group-based disadvantage. The entrenchment of socio-economic rights along with a right to equality acknowledges the significance of these barriers, providing justiciable rights as a stepping-stone to overcoming them.⁷⁰⁶ The Constitutional Court has held that equality was the organising principle at the centre of the constitutional drafting process, and that in light of our country's history, equality is at the core of our constitution, underscoring all other principles and rights.⁷⁰⁷ The fact that transformation requires the achievement of substantive equality, and substantive equality in turn requires redistribution of resources, displays an unmistakable link between equality and socio-economic rights in the achievement of transformation and development.⁷⁰⁸

Discrimination can take place when disadvantaged groups are not provided access to the socio-economic support needed for them to live and participate in society.⁷⁰⁹ In *Social Justice Coalition v Minister of Police*,⁷¹⁰ the applicants successfully relied on the overlapping grounds of race and poverty as grounds of discrimination.⁷¹¹ The court held that discrimination on the grounds of poverty, as an unlisted ground, amounts to unfair discrimination.⁷¹² The worst forms of disadvantage are often found where group-based forms of discrimination overlap with socio-economic marginalisation.⁷¹³ This is

⁷⁰⁵ Sections 9, 26, 27, 28 and 29 of the Constitution. In addition to these rights, the Constitution in section 38 provides a wide ambit for who may approach a court for the enforcement of their rights. Section 38 allows for anyone acting in the interests of a class of persons and anyone acting in the public interest to approach a court. This means that the enforcement of socio-economic rights is often instituted by non-governmental institutions such as section 27 and the Socio-Economic Rights Institute South Africa (SERI), both of which are public interest law centres.

⁷⁰⁶ Liebenberg and Goldblatt 2007 *SAJHR* 338.

⁷⁰⁷ *President of the Republic of South Africa v Hugo* 1997 (4) SA 1 (CC) par [74].

⁷⁰⁸ Liebenberg and Goldblatt 2007 *SAJHR* 343.

⁷⁰⁹ *Ibid.*

⁷¹⁰ 2019 (4) SA 82 (WCC).

⁷¹¹ *Social Justice Coalition v Minister of Police supra* par [57]. The unfair discrimination found to exist in this case was due to the fact that poor, black areas are allocated the lowest police to population ratios.

⁷¹² *Social Justice Coalition v Minister of Police supra* par [65].

⁷¹³ Liebenberg and Goldblatt 2007 *SAJHR* 339.

why the redistribution of socio-economic resources is important for the realisation of the transformative constitutional goal.

In order for Fairtrade to better contribute to transformation in South Africa, it would have to cater for the presence of discrimination created by the intersection of group-based disadvantage and socio-economic status, in the context of the agricultural system. Farm workers and small-scale farmers in South Africa are often those who have historically suffered group-based disadvantage as black people under the apartheid system.⁷¹⁴ In addition, small-scale farmers and farm workers suffer from poverty and socio-economic marginalisation. Small-scale farmers are not able to compete with large industrialised white-owned farms, leading to them being marginalised from profitable markets.⁷¹⁵ Farm workers face socio-economic challenges, often exploited as seasonal or contract labourers and paid very low wages.⁷¹⁶ These factors, along with their lack of job security and lack of negotiating power means that farm workers face poverty and marginalisation.⁷¹⁷

The incorporation of AgriBEE into the Fairtrade standard caters for the intersection of group-based disadvantage and socio-economic disadvantage. Farm workers have suffered group-based disadvantage on the basis of race, and they are socio-economically disadvantaged as one of the poorest and most vulnerable groups in South Africa.⁷¹⁸ The Constitutional Court has recognised that conduct which does not appear to be discriminatory may in fact result in discrimination, and would therefore still be prohibited under the Constitution as indirect discrimination.⁷¹⁹ Thus, even where conduct or policies affecting farm workers and small-scale farmers may seem to be neutral, they may still constitute indirect discrimination, possibly on the ground

⁷¹⁴ Fairtrade South Africa 2010 *Fairtrade Foundation Impact Briefing Paper 4*.

⁷¹⁵ Fairtrade South Africa 2010 *Fairtrade Foundation Impact Briefing Paper 7*.

⁷¹⁶ Bundy "Post-Apartheid Inequality and the Long Shadow of History" in Soudien, Reddy and Woolard (eds) *The State of the Nation: Poverty and Inequality: Diagnosis, Prognosis and Responses* (2019) 86.

⁷¹⁷ Fairtrade South Africa 2010 *Fairtrade Foundation Impact Briefing Paper 6*.

⁷¹⁸ *Ibid*; farm workers are particularly vulnerable to experience disadvantage on the ground of poverty, which although not currently a listed ground of discrimination, is being pushed for inclusion as a listed ground in PEPUDA.

⁷¹⁹ *City Council of Pretoria v Walker* 1998 (2) SA 363 (CC) par [31].

of race.⁷²⁰ The general Fairtrade standard also attempts to combat another form of group-based disadvantage through the women empowerment requirements.⁷²¹

Fairtrade organisations, farm owners and small-scale producer organisations are private persons (juristic non-State actors). Whilst all people must respect the rights of others, the primary responsibility for the fulfilment of rights in the Bill of Rights lies with the government.⁷²² However, section 8(2) of the Constitution has been interpreted to imply that positive obligations for the fulfilment of socio-economic rights could be imposed on non-State actors (which includes juristic persons).⁷²³ Meyersfeld⁷²⁴ has outlined circumstances under which a juristic person may bear a positive obligation to fulfil socio-economic rights.⁷²⁵ These circumstances can be examined in the context of Fairtrade, to establish whether Fairtrade organisations, farm owners and small-scale producer organisations (the private persons involved in Fairtrade), might bear positive duties imposed by socio-economic rights.

Firstly, a special relationship exists between the juristic persons involved in Fairtrade and farm workers or small-scale farmers. The employment relationship between farm owners and farm workers, and the relationship of support created by Fairtrade certification are both evident of a special relationship. Secondly, where this special relationship exists, the juristic person should be capable of fulfilling the socio-economic rights of farmers or farm workers. Fairtrade, through its ability to secure higher wages, decent working conditions and the Fairtrade premium, creates some capability on the part of the juristic person for the fulfilment of socio-economic rights for Fairtrade beneficiaries. The rights of access to housing, health care, social security, food and water, and the rights to education and to work are socio-economic rights which might be claimable from Fairtrade organisations, farm owners and small-scale producer organisations.⁷²⁶ Thus, the context of Fairtrade is one where private juristic persons

⁷²⁰ Fairtrade South Africa 2010 *Fairtrade Foundation Impact Briefing Paper 4*.

⁷²¹ Fairtrade International https://files.fairtrade.net/standards/HL_EN.pdf (accessed 2022-10-19) 59; Fairtrade International https://files.fairtrade.net/standards/SPO_EN.pdf (accessed 2022-10-19) 20.

⁷²² Section 7(2) of the Constitution.

⁷²³ *Daniels v Scribante supra* par [43]. For a discussion on positive obligations of private entities, refer to section 4.3.2 at page 78.

⁷²⁴ Meyersfeld “The South African Constitution and the Human-Rights Obligations of Juristic Persons” 2020 136 *SALJ* 439 445.

⁷²⁵ See section 4.3.2 at page 78.

⁷²⁶ Sections 22, 26, 27, 29 of the Constitution.

may bear a positive obligation to fulfil the socio-economic rights of Fairtrade beneficiaries.

Certain other factors in the determination of positive duties on juristic persons to fulfil socio-economic rights also find application in the Fairtrade context.⁷²⁷ First and foremost, the right holders (farm workers and small-scale farmers) are vulnerable people. The majority of South Africans living in poverty are located in rural areas, and farm workers and poor people especially have been identified as being among the most vulnerable section of the population.⁷²⁸ Another factor to be considered is the extent to which the juristic entities have the power to decide on the allocation of how the right is fulfilled.⁷²⁹ In the Fairtrade context, it is democratic worker and farmer committees who have the power to decide how the socio-economic benefits of Fairtrade are allocated. This is evidenced through, for example, the rule for hired-labour farms that the allocation of the Fairtrade premium is decided by a Fairtrade Premium Committee in which workers make up the majority of committee members.⁷³⁰ The Fairtrade standard, therefore, takes decisions on how socio-economic resources are allocated out of the hands of the private bodies.

An interpretation of the Constitution that places positive obligations on private persons for the fulfilment of socio-economic rights under certain circumstances, is an interpretation that would further the transformative directive of the Constitution.⁷³¹ If such an interpretation is not adopted, and the autonomy of private persons overrides any consideration of private persons fulfilling human rights, the entrenched unjust socio-economic status quo is likely to remain.⁷³² The circumstances surrounding Fairtrade align with the circumstances under which a private entity might bear a positive obligation. Thus, if beneficiaries of Fairtrade were able to claim the fulfilment of their socio-economic rights from farm owners, Fairtrade organisations and small-

⁷²⁷ Meyersfeld 2020 SALJ 446-447.

⁷²⁸ Jari *The Impact of Fairtrade in South Africa* 80; Fairtrade South Africa 2010 *Fairtrade Foundation Impact Briefing Paper* 6; *Government of the Republic of South Africa v Grootboom supra* par [36].

⁷²⁹ *Black Sash Trust v Minister of Social Development* 2018 (12) BCLR 1472 (CC) par [8].

⁷³⁰ Fairtrade International https://files.fairtrade.net/standards/HL_EN.pdf 12 (accessed 2022-10-19) 18.

⁷³¹ Meyersfeld 2020 SALJ 473.

⁷³² Madlanga "The Human Rights Duties of Companies and Other Private Actors in South Africa" 2018 3 *Stellenbosch Human Rights Lecture* 359 368.

scale producer organisations, the transformative potential of Fairtrade would be greatly enhanced.

A Fairtrade Foundation briefing paper from 2010 explored Fairtrade's impact on South African certified farms by conducting studies in five Fairtrade certified producer organisations (four of these were hired-labour farms, and one was a small-producer organisation).⁷³³ Some positive socio-economic impacts were recorded. Workers on Fairtrade certified farms were paid higher wages and had more income stability.⁷³⁴ The Fairtrade premium had been used for social initiatives including education for students in the community, HIV/AIDS awareness, and the provision of clean water.⁷³⁵ In terms of Fairtrade facilitating the redistribution of socio-economic resources, the hired-labour farms that were part of the study had all shown their commitment to B-BBEE. All of the farms at minimum met the 25 percent worker shareholding requirement, with one of the farms even having 100 percent of their shares owned by workers.⁷³⁶

Fairtrade has been shown to have positive impacts on socio-economic redistribution through development projects on hired-labour farms. For example, projects on the Fairhills, Bosman and Brandvlei Fairtrade certified wine farms include the establishment of creches, the provision of transport and bursaries for secondary education, the extension of a primary school, and the creation of opportunities for adult education and university scholarships.⁷³⁷ The redistributive benefits of Fairtrade are, however, dependent on two factors that farm workers do not control. The one factor is that it is still the farm owner who decides whether to become Fairtrade certified or whether to remain Fairtrade certified. Secondly, Fairtrade as a market-based system relies on changing supply and demand and rapidly changing global commodity

⁷³³ Fairtrade South Africa 2010 *Fairtrade Foundation Impact Briefing Paper*.

⁷³⁴ Fairtrade South Africa 2010 *Fairtrade Foundation Impact Briefing Paper* 8.

⁷³⁵ Fairtrade South Africa 2010 *Fairtrade Foundation Impact Briefing Paper* 13.

⁷³⁶ Fairtrade South Africa 2010 *Fairtrade Foundation Impact Briefing Paper* 11.

⁷³⁷ Herman "Everyday Justice? Local Practices in Fairtrade's Global System" 2018 103 *Geography* 146 150; for more information on these wine farms and their Fairtrade projects, see Fairhills "Fairhills: Rooted in Goodness" (3 February 2014) <https://news.wine.co.za/news.aspx?NEWSID=24322> (accessed 2022-10-19); Bosman Family Vineyards "Social Responsibility" (undated) <https://bosmanwines.com/social-responsibility/> (accessed 2022-10-19); Young "Origin Wines Launches New Fairtrade Project" (20 November 2012) <https://www.thedrinksbusiness.com/2012/11/origin-wine-launches-new-fairtrade-project/> (accessed 2022-10-19).

prices.⁷³⁸ The socio-economic benefits that come with Fairtrade certification are therefore dependent on external factors not under the control of the beneficiaries.

5.3.4 Fairtrade and the right to development

The right to development contained in the African Charter places a duty on States Parties to ensure that all people can exercise their right to development, which includes economic and social development.⁷³⁹ Several elements of the right to development were outlined in chapter three and can be examined in the Fairtrade context. Firstly, it has been held that the right to development and equal enjoyment of the right to development does not require absolute equality in the distribution of resources.⁷⁴⁰ This aligns with the constitutional imperative of redistribution of socio-economic resources and also aligns with the Fairtrade context, where resources are directed to those most in need, being farm workers and small-scale farmers.

Secondly, the right to development requires procedural as well as substantive fulfilment.⁷⁴¹ The procedural element, requiring democratic participation in decision-making and prior informed consent by the community, is well-documented in the Fairtrade context and aligns with the participatory element of substantive equality, outlined above.⁷⁴² Substantively, development must empower the community and improve their well-being, which are two recurring themes of the whole Fairtrade project.

From the elements highlighted above, it is clear that the constitutional rights to substantive equality and the redistribution of socio-economic resources are intertwined in the right to development. Thus, where Fairtrade advances substantive equality and the fulfilment of socio-economic rights, it also encourages the fulfilment of the right to development in the African Charter.

⁷³⁸ Herman 2018 *Geography* 150.

⁷³⁹ Article 22 of the African Charter; see also section 3.3.3 at page 55.

⁷⁴⁰ *Kevin Mgwangwa Gunme v Cameroon supra* par [206].

⁷⁴¹ *Endorois case supra* par [277].

⁷⁴² See section 5.3.2 at page 106.

5.4 Fairtrade and the national development plan objectives

5.4.1 Gaining global market share

The NDP objectives that are relevant to Fairtrade have been set out in chapter four of this dissertation. It has also been shown that in most cases, no real progress has been made towards the achievement of these objectives.⁷⁴³ This section will examine whether Fairtrade has the potential to effect positive change in South Africa in the relevant development areas as outlined in the NDP.

One of the NDP objectives that can be linked to potential macro-economic impacts of Fairtrade, is the objective of gaining global market share.⁷⁴⁴ The Fairtrade minimum price and Fairtrade premium may have positive impacts on the direct income of small-scale farmers and farm workers. On the other hand, the more indirect effects of Fairtrade include creating long-term trade partnerships and ensuring stable and large-scale market access.⁷⁴⁵ These indirect, macro-economic effects show Fairtrade's potential for increasing the global market share held by South African farmers. It is important to note that the effects on global market share are still "potential effects" due to the fact that the market share held by Fairtrade is still very small.⁷⁴⁶ A 2015 study noted the market share value of Fairtrade products in several countries worldwide. Fairtrade in Switzerland made up only 1.7 percent of their total market, and this constituted the country with the highest Fairtrade market share.⁷⁴⁷ Whilst more recent studies of the same nature have not been published, similar studies have noted that the revenue generated by the sale of Fairtrade International products worldwide is growing.⁷⁴⁸

The small market share held by Fairtrade has led to it being described as a "niche" market. Despite its status as an alternative trade movement, the Fairtrade market is

⁷⁴³ See section 4.4.1.2 at page 86.

⁷⁴⁴ National Development Plan https://www.gov.za/sites/default/files/gcis_document/201409/devplan2.pdf (accessed 2022-10-19) 29.

⁷⁴⁵ Ruben, Fort and Zúñiga-Arias "Measuring the Impact of Fair Trade on Development" 2009 19 *Development in Practice* 777 786.

⁷⁴⁶ Bissinger and Leufkens "(Fairtrade) Certification: Consequences of Being a Niche Market" 2020 59 *Agrekon* 188 188.

⁷⁴⁷ Lernoud and Willer "The Organic and Fairtrade Market 2015" 2017 <http://orgprints.org/31493/1/The%20Organic%20and%20Fairtrade%20Market%202015-Lernoud%20and%20Willer-2017.pdf> (accessed 2022-09-15) 3.

⁷⁴⁸ Statista "Revenue of Fairtrade International Products Worldwide 2004-2018" (10 October 2022) <https://www.statista.com/statistics/271354/revenue-of-fair-trade-products-worldwide-since-2004/> (accessed 2022-10-19); Fairtrade sales in 2018 reached 9.8 billion euros.

still demand-driven.⁷⁴⁹ Fairtrade producers are in most cases not able to sell all of their produce in this niche market and have to look to conventional markets to sell surpluses.⁷⁵⁰ Bissinger and Leufkens propose two possible ways in which the problem of supply surplus of Fairtrade products can be dealt with, which would ultimately lead to economic growth.⁷⁵¹ The first way in which this could be achieved is for the Fairtrade market to expand so that it can no longer be described as a niche market. As the market grows, Fairtrade producers' revenue will exceed the costs of certification, fostering economic development. The second proposal is to decrease the minimum prices set for Fairtrade products. This might initially come across as counterproductive because the price premium exists to improve the living conditions of producers. However, lower prices would allow the Fairtrade market to grow, providing access to international trade for more producers. This in turn would stimulate economic development and poverty reduction in the Global South.⁷⁵² The impact on producers of lowering Fairtrade minimum prices might not be as drastic as one might imagine. This is because the direct, tangible effects of Fairtrade certification on producer's net income is limited.⁷⁵³ In contrast, the positive effects of Fairtrade on access to credit, investments, organisational strength, and on local prices and wages often prove to be more beneficial than any direct impact on net income.⁷⁵⁴ Lowering Fairtrade minimums would grow the Fairtrade market, allowing more producers to benefit from the positive impacts noted above.

Fairtrade has the potential to assist South Africa in gaining a larger global market share, by providing access to global markets for producers who might not otherwise be able to gain such access. In order to realise Fairtrade's potential in this regard, the Fairtrade market itself would have to grow substantially, capturing more of the global market share. In achieving this, Fairtrade in South Africa would increase participation in rural agriculture as well as encourage employment in agriculture.

⁷⁴⁹ Bissinger and Leufkens 2020 *Agrekon* 188 and 194.

⁷⁵⁰ Bissinger and Leufkens 2020 *Agrekon* 194.

⁷⁵¹ Bissinger and Leufkens 2020 *Agrekon* 198.

⁷⁵² *Ibid.*

⁷⁵³ Ruben, Fort and Zúñiga-Arias 2009 *Development in Practice* 786.

⁷⁵⁴ *Ibid.*

5.4.2 Building an inclusive rural economy

With agriculture lying at the heart of the rural economy, the support for rural agriculture provided by Fairtrade could present important opportunities for building an inclusive rural economy.⁷⁵⁵ The NDP acknowledges the importance of small-scale farming for job creation.⁷⁵⁶ However, with government spending on agriculture directed towards large-scale commercial farms, support for small-scale farmers is left up to private bodies.⁷⁵⁷ This is where Fairtrade as a private body, can provide the necessary support for small-scale farmers, creating channels for market access and strengthening the organisational functioning of cooperatives.⁷⁵⁸

An investigation into how Fairtrade certification impacts small-scale producers was conducted by collecting data from two Fairtrade certified rooibos tea cooperatives situated in the Eastern Cape and Western Cape provinces of South Africa.⁷⁵⁹ Prior to Fairtrade certification, the conditions faced by many of the small-scale farmer members of the cooperatives were conditions of poverty and high unemployment. In addition, the farmers did not have direct market access and relied on intermediaries who took a cut of the profits, thereby reducing farmer's incomes.⁷⁶⁰ Once Fairtrade certified, both cooperatives started exporting produce. Fairtrade generated new international and local market access channels for the cooperatives, and farmer incomes were no longer diminished by the involvement of intermediaries in the supply chain.⁷⁶¹ Fairtrade can therefore be instrumental in integrating the rural economy into local and global markets.

5.4.3 Fostering regional integration

It was noted in chapter three that whilst the AfCFTA promotes economic growth in Africa, increased trade within Africa increases competition for small producers and

⁷⁵⁵ National Development Plan https://www.gov.za/sites/default/files/gcis_document/201409/devplan2.pdf (accessed 2022-10-19) 197.

⁷⁵⁶ National Development Plan https://www.gov.za/sites/default/files/gcis_document/201409/devplan2.pdf (accessed 2022-10-19) 199.

⁷⁵⁷ National Development Plan https://www.gov.za/sites/default/files/gcis_document/201409/devplan2.pdf (accessed 2022-10-19) 205.

⁷⁵⁸ Jari, Snowball and Fraser 2013 *Agrekon* 76.

⁷⁵⁹ Jari, Snowball and Fraser 2013 *Agrekon* 71.

⁷⁶⁰ Jari, Snowball and Fraser 2013 *Agrekon* 76.

⁷⁶¹ *Ibid.*

might result in their further marginalisation from regional and international markets.⁷⁶² This unintended consequence of growing regional integration in Africa would not align with the other NDP objective of building an inclusive rural economy. The successful implementation of Fairtrade is one way in which regional integration might be achieved simultaneously with the establishment of an inclusive rural economy.

Fairtrade Africa has acknowledged the potential opportunities for Fairtrade to boost intra-African trade whilst at the same time creating market access opportunities for African producers.⁷⁶³ This can be done by establishing an intra-African Fairtrade market.⁷⁶⁴ The growing middle class in Southern African countries, coupled with their growing incomes means that there are more consumers in the South willing to make purchases based on social and ethical consumption.⁷⁶⁵ Kenya and South Africa are two African countries that sell Fairtrade products. Although most of the intra-African Fairtrade happens within national markets (i.e. South African shops selling South African produced Fairtrade products), some intra-regional African Fairtrade markets have been established.⁷⁶⁶ For example, Cadbury Dairy Milk chocolate is sold in Kenya, after being manufactured at the Cadbury factory in South Africa with Fairtrade cocoa grown in Ghana.⁷⁶⁷ Within South Africa, chain retail supermarkets such as Pick n Pay, Makro and Woolworths have begun to stock Fairtrade coffee, wine and other products as part of their Corporate Social Responsibility (CSR) strategies.⁷⁶⁸

Intra-African Fairtrade allows for a Fairtrade value chain in which all of the value extracted from the farm-to-finished product process is added to African economies instead of being repatriated to developed Northern hemisphere economies in the production process.⁷⁶⁹ With the rapid expansion of supermarket chains in East and

⁷⁶² See section 3.4.2 of this dissertation on page 61.

⁷⁶³ Fairtrade Africa "African Markets" (undated) <https://fairtradeafrica.net/african-markets/> (accessed 2022-09-19).

⁷⁶⁴ *Ibid.*

⁷⁶⁵ Doherty, Smith and Parker "Fair Trade Market Creation and Marketing in the Global South" 2015 67 *Geoforum* 158-159.

⁷⁶⁶ Doherty *et al* 2015 *Geoforum* 166.

⁷⁶⁷ Doherty *et al* 2015 *Geoforum* 163.

⁷⁶⁸ Doherty *et al* 2015 *Geoforum* 163-164; Corporate Social Responsibility (CSR) is a form of business accountability and self-regulation whereby a company aims to increase their attractiveness to customers by showing their commitment to contributing to the development and well-being of communities and society. CSR strategies can incorporate environmental, social and labour measures; Reckman "What is Corporate Social Responsibility" (2022-06-29) *Business News Daily* <https://www.businessnewsdaily.com/4679-corporate-social-responsibility.html> (accessed 2022-09-19).

⁷⁶⁹ Doherty *et al* 2015 *Geoforum* 166.

South Africa, the marketing and sale of Fairtrade products in these supermarkets presents lucrative opportunities for the expansion of a regional Fairtrade market in Africa.⁷⁷⁰ This would enhance both regional integration as well as rural development.

5.4.4 Combatting the negative effects of COVID-19

Fairtrade organisations have taken steps to mitigate the negative effects of the COVID-19 pandemic and ensuing lockdowns on small-scale farmers and farm workers.⁷⁷¹ In May 2020, the Fairtrade COVID-19 Producer Relief and Resilience Fund was established, with funds from Fairtrade and external donors being directed to affected Fairtrade producers worldwide.⁷⁷² The pandemic decreased production and Fairtrade sales volumes, which resulted in loss of income for farmers and negatively impacted their livelihoods.⁷⁷³ Support provided by Fairtrade was largely financial support. This financial support helped farmers diversify their incomes, ensure food security and enhance productivity.⁷⁷⁴ In addition, the health impacts of COVID-19 were mitigated through Fairtrade financial support which enabled farmers and workers to purchase personal protective equipment, implement social distancing measures and handwashing stations, and in some cases even pay for health care fees of farmers and workers.⁷⁷⁵ Grants, loans and food provided by Fairtrade producer organisations during COVID-19 ensured that the immediate needs of farmers and workers could be met at a time when farmer and worker incomes were unreliable.⁷⁷⁶ The above examples point to the fact that Fairtrade organisations do take positive measures in the fulfilment of socio-economic rights.⁷⁷⁷ Such measures are especially important for groups such as farm workers and small-scale farmers who faced poverty and marginalisation even before the pandemic.

⁷⁷⁰ Doherty *et al* 2015 *Geoforum* 163.

⁷⁷¹ Fairtrade International “Supporting Fairtrade Farmers and Workers during the COVID-18 Pandemic: Results from Our 2021 COVID-19 Producer Organization Survey” (undated) <https://files.fairtrade.net/publications/2021-covid-19-po-survey-report1.pdf> (accessed 2022-09-20).

⁷⁷² Fairtrade International <https://files.fairtrade.net/publications/2021-covid-19-po-survey-report1.pdf> (accessed 2022-09-20) 3.

⁷⁷³ Fairtrade International <https://files.fairtrade.net/publications/2021-covid-19-po-survey-report1.pdf> (accessed 2022-09-20) 6 and 8.

⁷⁷⁴ Fairtrade International <https://files.fairtrade.net/publications/2021-covid-19-po-survey-report1.pdf> (accessed 2022-09-20) 13.

⁷⁷⁵ Fairtrade International <https://files.fairtrade.net/publications/2021-covid-19-po-survey-report1.pdf> (accessed 2022-09-20) 12.

⁷⁷⁶ Fairtrade International <https://files.fairtrade.net/publications/2021-covid-19-po-survey-report1.pdf> (accessed 2022-09-20) 14.

⁷⁷⁷ See the discussion on positive duties of private persons under section 5.3.3 on page 110.

Wine farmers and workers in South Africa were particularly affected by the pandemic as alcohol sale and export bans were implemented several times as part of the government's COVID-19 response.⁷⁷⁸ Job security and wages for farmers in the wine industry have been negatively affected, with up to 28 000 workers losing their jobs due to the ban on domestic wine sales.⁷⁷⁹ To combat the economic hardship to wine farmers and workers caused by the pandemic, Fairtrade allowed a more flexible use of the Fairtrade premium, permitting its use as cash to cover workers' wages and for the purchase of food parcels. For example, Bosman Adama, a Fairtrade certified wine farm in the Western Cape, used their R280 000 Fairtrade pandemic funding to protect the jobs of its workers, maintain their salaries and purchase food and sanitisation parcels for worker households.⁷⁸⁰ Fairtrade, as a community of organisations aimed at improving small-producer and farm worker's well-being and development, is a vital safety net that can offer support and mitigate the limitation of rights and consequent negative effects of unforeseen crises such as the COVID-19 pandemic.

5.5 Fairtrade and broad-based black economic empowerment

As shown by the Fairtrade certification standard outlined above, in order for a hired-labour farm to become Fairtrade certified, it must comply with B-BBEE standards.⁷⁸¹ Whether the inclusion of AgriBEE into the Fairtrade Standard for hired labour farms in South Africa contributes to the achievement of Fairtrade objectives is the pertinent question for this section.

Whilst an in-depth analysis of the AgriBEE points system goes beyond the scope of this dissertation, a brief summary is necessary to understand how AgriBEE has been incorporated into the Fairtrade Standard. The incorporation of AgriBEE obliges all Fairtrade certified hired labour farms to achieve a level four AgriBEE recognition level within three years of becoming certified.⁷⁸² This means that the farm must, within three years, have a score of between 80 and 90 points (out of a maximum of 100 points)

⁷⁷⁸ Fairtrade Foundation "A Fair Future for South African Wine" (16 April 2021) <https://www.fairtrade.org.uk/media-centre/blog/a-fair-future-for-south-african-wine/> (accessed 2022-09-20).

⁷⁷⁹ Wines of South Africa "How Fairtrade Works with Producer Organisations to Support Farmers through the Pandemic" (6 August 2021) <https://www.winesofsa.co.uk/news-features/how-fairtrade-works-with-producer-organisations-to-support-farmers-through-the-pandemic/> (accessed 2022-09-20).

⁷⁸⁰ *Ibid.*

⁷⁸¹ Fairtrade South Africa 2010 *Fairtrade Foundation Impact Briefing Paper 5*.

⁷⁸² Jari *The Impact of Fairtrade in South Africa* 94.

according to the AgriBEE scorecard.⁷⁸³ The AgriBEE scorecard provides weighted points according to five elements of empowerment, namely; ownership, management control, skills development, enterprise and supplier development, and socio-economic development. Each empowerment element in turn has its own specific scorecard setting out weighting points and compliance targets in terms of specific measurement criteria that constitute that element.⁷⁸⁴

The ownership element of AgriBEE is included in order to enable black farm workers to participate economically in the farm and the industry through the exercise of voting rights.⁷⁸⁵ The management control element aims to increase the participation of black people on all levels of control by having more black people in positions of senior management, mid-management, and professionally qualified positions as well as experienced specialist positions.⁷⁸⁶ Complying with skills development targets entails, for example, expenditure on learning programmes for black workers, and participation of black workers in learnerships, apprenticeships and internships.⁷⁸⁷ The enterprise and supplier development scorecard relates to a farm's interaction with suppliers and other enterprises that are also B-BBEE compliant.⁷⁸⁸ The final empowerment element, socio-economic development, is measured based on the annual value of the farm's contributions to income-generating socio-economic development initiatives in favour of black people.⁷⁸⁹ The inclusion of AgriBEE standards means that Fairtrade certified hired-labour farms are obliged to work towards, and sustain the empowerment of black farm workers. This is something that would otherwise not be necessary under the general Fairtrade standard. The inclusion of AgriBEE therefore gives Fairtrade more legitimacy in the South African context, where the constitutional imperative necessitates redress for past racial discrimination.⁷⁹⁰

B-BBEE objectives are in line with what Fairtrade aims to achieve, but the notable point of departure between the two is that B-BBEE enterprises need to be competitive in their pricing, whilst Fairtrade entities ensure an above-market price. Fairtrade

⁷⁸³ Section 4.3 of AgriBEE.

⁷⁸⁴ Section 7.1 of AgriBEE.

⁷⁸⁵ Section 7.2 of AgriBEE.

⁷⁸⁶ Section 7.3 of AgriBEE.

⁷⁸⁷ Section 7.4 of AgriBEE.

⁷⁸⁸ Section 7.5 of AgriBEE.

⁷⁸⁹ Section 7.6 of AgriBEE.

⁷⁹⁰ Section 9(2) of the Constitution; *Minister of Finance v Van Heerden supra* par [137].

certified entities are caught between these two divergent aims, and their ability to deliver on B-BBEE targets is limited.⁷⁹¹ It has been argued by some Fairtrade certified farmers that the inclusion of AgriBEE makes it difficult for them to compete on the international Fairtrade market, where certified producers in other countries do not have the added obligation of compliance with AgriBEE standards.⁷⁹²

The incorporation of AgriBEE into the Fairtrade project in South Africa has been met with mixed reactions. On the one hand, incorporating B-BBEE standards brings Fairtrade more in line with what would constitute “fairness” in the context of South Africa’s transformative goals.⁷⁹³ With B-BBEE being a policy aimed at addressing historical racial inequalities within the country, its incorporation into Fairtrade ostensibly brings an element of legitimacy to the Fairtrade agenda. If Fairtrade were to be implemented without recognition of the equity and empowerment imbalances embedded during apartheid, it would lack legitimacy as a programme that purports to promote ethical and fair production.⁷⁹⁴ On the other hand, the AgriBEE requirement that black hired labourers must have at least a 25 percent ownership share in the farm has been criticised as not enough to actually change the racially skewed power relationships in rural areas.⁷⁹⁵

The impact of AgriBEE on Fairtrade certified farms has also been limited. Raynolds and Ngcwangu note that whilst the Fairtrade standard, through the social premium, may ensure poverty alleviation of farm workers, AgriBEE policies result in little improvement of worker ownership and control on hired-labour farms.⁷⁹⁶ The empowerment objectives of Fairtrade are therefore not furthered by the inclusion of AgriBEE. Aside from not having much positive impact on Fairtrade, AgriBEE objectives may in some cases even conflict with other Fairtrade goals such as environmental sustainability and the development of small-scale farmers.⁷⁹⁷

⁷⁹¹ Jari *The Impact of Fairtrade in South Africa* 94.

⁷⁹² Jari *The Impact of Fairtrade in South Africa* 95.

⁷⁹³ Ngcwangu 2021 *Journal of Fair Trade* 22.

⁷⁹⁴ Ngcwangu 2021 *Journal of Fair Trade* 20.

⁷⁹⁵ Montgomery *Negotiating the Spaces of Fair Trade in South Africa’s Wine Industry* (doctoral thesis, University of Florida) 2014 103.

⁷⁹⁶ Raynolds and Ngcwangu “Fair Trade Rooibos Tea: Connecting South African Producers and American Consumer Markets” 2010 41 *Geoforum* 74 82.

⁷⁹⁷ Jari *The Impact of Fairtrade in South Africa* 95.

The reasons for including AgriBEE policy into the Fairtrade Standard for hired-labour farms are understandable and legitimate. However, an examination of the substantive impact of such inclusion reveals that it results in limited real positive change in farm worker's lives. On the face of it, AgriBEE objectives and Fairtrade objectives are complementary, but their success depends on different market structures. The growth and security of AgriBEE depends on competitive pricing. On the other hand, Fairtrade's minimum price and social premium requirements mean that it cannot be competitively priced on the mainstream market. This difference perhaps explains why two policies with seemingly corresponding objectives do not result in mutual furtherance of their objectives when implemented together.

5.6 Fairtrade and land reform

5.6.1 The links between Fairtrade and land reform

Land reform objectives are not expressly included into the Fairtrade standard for South Africa in the same way that AgriBEE is. However, there are several links that can be drawn between Fairtrade and land reform. The main connection between Fairtrade in South Africa and land reform is found in the incorporation of AgriBEE standards for hired-labour farms. The ownership element of AgriBEE requires that 25 percent ownership on commercial farms be transferred to the workers.⁷⁹⁸ Incorporating this AgriBEE requirement into Fairtrade essentially integrates land reform objectives into the Fairtrade project for South Africa. The second link to be drawn relates to the intended beneficiaries of both land reform and Fairtrade, both of which are aimed at benefitting the rural poor. With the specific mention of farm workers, small-scale farmers, women and youth, the intended beneficiaries for land reform line up with those groups that Fairtrade aims to benefit.⁷⁹⁹

Thirdly, the potential benefits of land reform and Fairtrade overlap. The potential wider benefits of land reform have been listed as facilitating rural development, creating large-scale employment opportunities, increasing rural incomes and raising productivity.⁸⁰⁰ Fairtrade provides guaranteed minimum prices, a Fairtrade social premium and support and training for small-scale farmers and farm workers. The provision of these is ultimately aimed at increased rural incomes and fostering better

⁷⁹⁸ Jari *The Impact of Fairtrade in South Africa* 90.

⁷⁹⁹ Department of Land Affairs "White Paper" 1997.

⁸⁰⁰ See section 4.4.4.2 of this dissertation on page 92.

productivity on farms, which in turn would contribute to rural development. As noted in chapter four, equality in landholding has been correlated to the revitalisation of rural economies and increased economic growth.⁸⁰¹ Fairtrade, by providing assistance to small-scale farmers to gain market access, is another means by which the rural economy could be strengthened.

A more inconspicuous link between land reform and Fairtrade, is that they are both premised on a voluntary undertaking. Land reform currently operates on a willing buyer, willing seller model.⁸⁰² In the same vein, Fairtrade requires a voluntary undertaking by farm owners and small-scale farmers to commit to abiding by the Fairtrade standard in order to gain the benefits of Fairtrade certification.

5.6.2 Can Fairtrade address the failures of land reform?

Having identified the parallels between Fairtrade and land reform, the question turns to whether the implementation of land reform in conjunction with Fairtrade can result in socio-economic benefits? Framed differently, does Fairtrade present opportunities to contribute to effective land reform? This question will be answered with reference to the failures of land reform as identified in chapter four.⁸⁰³

One of the most frequently mentioned failures of land reform is the lack of post-settlement support provided to land reform beneficiaries.⁸⁰⁴ The provision of post-settlement support impacts the ability of land transfers to generate sustainable livelihoods for beneficiaries. Fairtrade might be a valuable tool to provide post-settlement support for small-scale farmer beneficiaries of land reform. In order for a small-scale farm to be Fairtrade certified, it needs to be a member of a farmer cooperative.⁸⁰⁵ If new land reform beneficiaries were to be Fairtrade certified, they would have access to the support that comes with being cooperative members.

A 2021 study assessing how rural development resulting from Fairtrade impacts on poverty reduction, noted several ways in which small-scale farmers are supported by being members of a Fairtrade certified cooperative.⁸⁰⁶ As a member of a Fairtrade

⁸⁰¹ Binswanger-Mkhize *et al Agricultural Land Redistribution* 9.

⁸⁰² Akinola 2020 *Politikon* 219.

⁸⁰³ See section 4.4.4.3 of this dissertation on page 94.

⁸⁰⁴ Binswanger-Mkhize *et al Agricultural Land Redistribution* 185.

⁸⁰⁵ Jari, Snowball and Fraser 2013 *Agrekon* 69.

⁸⁰⁶ Mauthofer and Santos "Assessing the Impact of Fairtrade on Poverty Reduction and Economic Resilience through Rural Development" (March 2022) Final Report: 2nd Follow Up

certified cooperative, farmers have the benefit of a 'safety net' in the form of the Fairtrade premium. This is valuable in an industry where seasonal volatility can drastically affect farmer incomes. The reliability of belonging to a cooperative has also been shown to provide easier credit opportunities.⁸⁰⁷ Fairtrade cooperatives, especially well-established ones, support their farmers with production materials, technical assistance and loans. In addition, member farmers would also be afforded access to the Fairtrade market, and the stability of established long-term buyer contracts.⁸⁰⁸ Some Fairtrade cooperatives also offer support projects, including assisting members diversify their incomes as well as improve their saving habits and money management.⁸⁰⁹ The above findings show that belonging to a Fairtrade cooperative could potentially combat some of the constraints faced by land reform beneficiaries, identified in chapter four as being access to credit, training, transport and produce markets.

The potential hurdle that new land reform beneficiaries would need to overcome in order to benefit from the post-settlement support provided by Fairtrade, would of course be that they first need to be Fairtrade certified. The high costs of certification, and the annual auditing, monitoring and administrative costs related to Fairtrade pose a hurdle for many small producers.⁸¹⁰ In addition, producers have to pay an annual fee to Fairtrade based on the volume of produce they sell under the Fairtrade label.⁸¹¹ Fairtrade certification might therefore not be a viable option for new land reform beneficiaries, and the high costs associated with it are likely to disincentivise producers from pursuing Fairtrade certification.

Aside from providing post-settlement support, can Fairtrade speed up the process of land redistribution, which thus far has been very slow? The requirement for Fairtrade certified commercial farms in South Africa that they transfer a minimum of 25 percent

<https://www.fairtrade.net/library/assessing-the-impact-of-fairtrade-on-poverty-reduction-and-economic-resilience-through-rural-development> (accessed 2022-10-05).

⁸⁰⁷ Mauthofer *et al* "Assessing the Impact of Fairtrade" <https://www.fairtrade.net/library/assessing-the-impact-of-fairtrade-on-poverty-reduction-and-economic-resilience-through-rural-development> (accessed 2022-10-05) 34.

⁸⁰⁸ Mauthofer *et al* "Assessing the impact of Fairtrade" <https://www.fairtrade.net/library/assessing-the-impact-of-fairtrade-on-poverty-reduction-and-economic-resilience-through-rural-development> (accessed 2022-10-05) 35.

⁸⁰⁹ Mauthofer *et al* "Assessing the impact of Fairtrade" <https://www.fairtrade.net/library/assessing-the-impact-of-fairtrade-on-poverty-reduction-and-economic-resilience-through-rural-development> (accessed 2022-10-05) 29 and 41.

⁸¹⁰ Jari *The Impact of Fairtrade in South Africa* 182.

⁸¹¹ *Ibid.*

ownership in their farm to their workers, technically facilitates the transfer of land to previously disadvantaged individuals. However, in order to benefit from their ownership share in the farm, the workers need to remain employees, and workers are not freed from being dependant on their employers.⁸¹² The 25 percent ownership requirement therefore only corresponds to land reform when land reform is viewed as the simple de-racialisation of commercial agriculture. Even where workers do hold a 25 percent share in the ownership of a farm, it will not result in any substantial reform of the entrenched landholding patterns in South Africa.

It was noted in chapter four that another possible downfall of land reform was the change in land reform beneficiaries from those who would farm on a small scale, to groups who would establish more commercial forms of production.⁸¹³ If the focus of land redistribution were redirected back to small-scale producers, and Fairtrade supplemented redistribution by providing post-settlement support and market access for these small producers, it is possible that the land reform project could generate a real shift in landholding patterns that would also provide sustainable and secure livelihoods for land reform beneficiaries. It must be noted, however, that this outcome would also require Fairtrade to be adopted on a wider scale in South Africa.

5.7 Conclusion

This chapter has provided an analysis of Fairtrade according to socio-economic development goals and policies in place in South Africa. First, a brief summary of the Fairtrade standard as applied to South African farmers was outlined as a basis for understanding how the requirements for certification might affect socio-economic development. Following on from this, Fairtrade was examined in relation to relevant constitutional principles, the goals of the NDP, B-BBEE, and land reform. The aim of this exercise was to assess the extent to which Fairtrade aligns to South Africa's socio-economic development goals, and consequently whether Fairtrade can contribute to socio-economic development in South Africa.

If Fairtrade aligns sufficiently with the constitutional goals, it can be a policy that contributes to the achievement of the constitutional promise. The first constitutional goal that was discussed in this chapter was promoting substantive equality. Fairtrade

⁸¹² Fusenig *The Impact of Fairtrade on the Quality of Life of Workers on Wine Estates in the Western Cape Province, South Africa* (masters dissertation, University of the Western Cape) 2016 37.

⁸¹³ See chapter 4, section 4.4.4.3 of this dissertation on page 94.

does provide redress for disadvantage, promote the dignity of farmers and farm workers, and encourage participation. Thus, it aligns with three out of four of Fredman's elements of substantive equality. Fairtrade's contribution to the fourth element, structural change, is more contested. Whilst Fairtrade still operates within the structure of the international trade system, it does provide an alternative to the prevailing free trade structure that is not conducive to the development of small-scale farmers. The second constitutional goal that was discussed in this chapter was the redistribution of socio-economic resources. It was found that Fairtrade organisations, farm owners and small-producer organisations, despite being private entities, might in fact bear a positive duty for the fulfilment of socio-economic rights of Fairtrade beneficiaries. The Fairtrade standard for South Africa does cater for various forms of disadvantage, and some positive impacts have been recorded where Fairtrade development projects have made strides towards socio-economic redistribution. However, as long as Fairtrade remains a voluntary and niche market, its potential to lead to large-scale socio-economic change remains slim.

Next, the focus turned towards the NDP. As a policy setting out South Africa's main development goals, it is relevant in determining whether Fairtrade has the potential to contribute to the development envisioned in the NDP. It was noted that Fairtrade in its current form does not allow for any major improvements in terms of gaining global market share, by virtue of it being a niche market. On the other hand, Fairtrade does present opportunities for more regional trade integration, and it also builds a more inclusive rural economy. The COVID-19 pandemic led to regress in many of the NDP objectives. It was shown that Fairtrade acted as a 'safety-net' for many small farmers and farm workers who were negatively affected by the pandemic.

B-BBEE is the only South African development policy to which Fairtrade is explicitly linked. The incorporation of AgriBEE standards into Fairtrade for hired-labour farms aims to promote the empowerment of black farm workers, an important and laudable objective. However, it was found that in terms of visible and practical impacts, Fairtrade objectives were not advanced by the incorporation of AgriBEE standards. This is possibly due to the differing market structures of Fairtrade and AgriBEE, and the fact that B-BBEE compliance acts as a "stamp of approval" without substantively changing racially skewed power relationships.

The final development goal that Fairtrade was measured against in this chapter, is land reform. There are clear connections between Fairtrade and the objectives of land reform. It cannot be said that the Fairtrade standard, by requiring certified farm owners to transfer a minimum 25 percent ownership to farm workers, expedites land redistribution. However, by providing support and market access to small-scale farmers, Fairtrade could act as a valuable resource for new land reform beneficiaries. The implementation of Fairtrade in conjunction with land redistribution could result in a more sustainable land reform programme that yields positive results for land reform beneficiaries and the country as a whole.

In conclusion, there are clear connections between Fairtrade and constitutional objectives, the NDP, B-BBEE and land reform. Fairtrade in its current form has yielded positive results in the socio-economic development of farmers and farm workers in South Africa. There are, however, certain aspects of the Fairtrade standard as outlined in this chapter that would need to be reconsidered in order for it to further advance the country's socio-economic development goals.

CHAPTER 6

CONCLUSION

6.1 Introduction and overall finding

This research set out to investigate whether better legal connections can be drawn between Fairtrade's goals and South Africa's socio-economic development goals. The aim of drawing these connections was to evaluate the extent to which Fairtrade could be used as a tool to contribute towards socio-economic development in South Africa.

The overall finding of this research is that Fairtrade can contribute to socio-economic development in South Africa because of the connections between Fairtrade objectives and socio-economic development objectives for South Africa. In reaching this conclusion, the main research goal and the sub-questions linked thereto, as presented in chapter one, had to be answered. Answering the sub-questions entailed defining the specific ways in which Fairtrade fits into the international trade context, the role of Fairtrade in Africa, the socio-economic development goals for South Africa, and the connections between Fairtrade and South Africa's socio-economic development goals. These key findings are summarised in this chapter. In addition, the contributions of the research will be demonstrated, and recommendations for future research will be proposed.

6.2 Discussion of key findings

6.2.1 Fairtrade in the context of the international trade law system

Fairtrade is positioned as a programme that seeks to assist individual farmers to compete within the international trade system, and a programme that aims to foster sustainable development through trade. The issue of development is not a foreign one in the international trade regime, with measures being introduced to increase trade opportunities for developing countries, and the Doha Round of trade negotiations dubbed the "Doha Development Agenda".⁸¹⁴ Measures designed to assist developing countries to compete in international trade have been introduced in efforts to combat the negative effects of past international trade policies which hampered developing countries.⁸¹⁵ Notwithstanding any positive outcomes that might result from international trade assistance for developing countries, small-scale producers within

⁸¹⁴ See section 2.2.3 of this dissertation on page 25.

⁸¹⁵ *Ibid.*

these developing countries have not benefitted from such assistance as they still struggle for access to the international market when pitted against large, commercialised producers.⁸¹⁶ The need for Fairtrade internationally is therefore informed by two factors, namely; the negative effects that the liberalised international trade regime has had on developing countries, and the lack of market access for small-scale producers within developing countries.⁸¹⁷ The WTO's acknowledgement of programmes like Fairtrade shows recognition by the WTO of the detrimental outcomes that liberalised international trade structures have had on small-scale producers and farm workers in developing countries.

The inability of the WTO Member States to reach a consensus during the Doha Round points to the incompatible nature of the interests of developed and developing countries in trade. This is where a private organisation such as Fairtrade can make a difference as Fairtrade's implementation does not depend on consensus between parties with competing interests. Instead, those who trade under Fairtrade automatically consent to its trade terms and standards. Fairtrade is not merely a programme for economic development. Whilst economic development is one objective of Fairtrade, its social and environmental development objectives are equally as important.⁸¹⁸ These development objectives are catered for by the Fairtrade standards, which still operate within the international trade system, but prescribe certain minimum prices that producers must be paid. One of the main ways that Fairtrade caters for social development is through ensuring that producers are paid a social premium over and above the Fairtrade minimum price. Environmental standards are also prescribed as part of the Fairtrade standards.

Fairtrade aligns with the international sustainable development agenda, as a programme that aims to make investments, foster institutional change and technological advancement and use resources in order to encourage development that will strengthen both the current and future potential to meet human needs.⁸¹⁹ Fairtrade is also geared towards the achievement of certain SDGs.⁸²⁰ Fairtrade can

⁸¹⁶ See section 2.3.1 of this dissertation on page 28.

⁸¹⁷ See section 2.3.2 of this dissertation on page 30.

⁸¹⁸ See section 2.3.3 of this dissertation on page 31.

⁸¹⁹ See section 2.4.1 of this dissertation on page 34.

⁸²⁰ The SDGs that Fairtrade can help achieve include; goal 1 (ending poverty), goal 2 (ending hunger and achieving food security), goal 5 (achieving gender equality and empowering women and girls); goal 8 (promoting sustained, inclusive and sustainable economic growth and productive

be seen as a way to practically integrate the human rights framework and sustainable development agenda.⁸²¹ This is especially true for Fairtrade in South Africa, where the right to equality has been explicitly integrated into the sustainable development agenda of Fairtrade through the incorporation of AgriBEE standards. Moreover, the integration of human rights and development accords with the Draft Convention on the Right to Development,⁸²² revised in May 2022, as well as with the right to development already in place in terms of the African Charter.⁸²³

6.2.2 The role of Fairtrade in Africa and its relation to Africa's development needs

The research contextualised Fairtrade in South Africa by an analysis of trade, socio-economic development policies and Fairtrade in Africa. Local specificities affect the impact that Fairtrade may have in a particular country.⁸²⁴ However, it is also important to understand how the international trade policies applied generally to African countries have contributed to its underdevelopment and to acknowledge those international trade and development policies adopted in efforts to boost development on the continent. Certain policies have been introduced by the WTO and outside actors to assist African countries.⁸²⁵ The focus in this research, however, is on those uniquely African development objectives, found in policies such as Agenda 2063, the AfCFTA and the right to development in the African Charter, which all aim to bring a sense of agency to African people in advancing their own development.⁸²⁶ Similarly, Fairtrade aims to give farmers and farm workers the tools and support necessary for them to advance their own development.⁸²⁷ Although the operation of Fairtrade undoubtedly requires the buy-in from consumers and companies in the Global North, it does not

employment and work for all); goal 10 (reducing inequality within and among nations), goal 12 (ensuring sustainable consumption and production patterns), goal 13 (combatting climate change and its impacts), and goal 17 (strengthening the means of implementation and revitalising the Global Partnership for Sustainable Development); see section 2.4.2 of this dissertation on page 37.

⁸²¹ See section 2.4.1 of this dissertation on page 34.

⁸²² UN General Assembly "Draft Convention on the Right to Development" (6 April 2022) <https://documentsdds-ny.un.org/doc/UNDOC/GEN/G22/302/62/PDF/G2230262.pdf?OpenElement> (accessed 2022-11-08).

⁸²³ Article 22 of the African Charter.

⁸²⁴ See section 3.4.4 of this dissertation on page 65.

⁸²⁵ See section 3.2.2 of this dissertation on page 49.

⁸²⁶ See section 3.3 of this dissertation on page 52.

⁸²⁷ See section 3.4.2 of this dissertation on page 61.

take the responsibility away from farmers on the local country in meeting the standards required to benefit from Fairtrade certification.

Fairtrade aims to equip farmers with access to the international market as opposed to simple monetary aid. Much like socio-economic development policies for South Africa, African policies seek to foster not only development, but inclusive development.⁸²⁸ Inclusive development requires that the objectives of overcoming poverty and inequality need to be central to any development project. Fairtrade aspires to combat poverty amongst rural farmers and farm workers. It also aims to reduce several forms of inequality, namely: a) between large commercial farms which dominate the market and marginalised small-scale producers; b) between the developed Global North and the underdeveloped Global South and c) inequality caused by power imbalances between small-scale producers and buyers. Whilst challenges to Fairtrade's success in Africa exist, it is fair to conclude that the overall tenor of Fairtrade aligns with that of African development policies.⁸²⁹

6.2.3 South Africa's socio-economic development goals

An analysis of South African development objectives was necessary to determine whether Fairtrade can contribute to the achievement of these objectives. Development objectives for South Africa are unique in that they need to take into account the country's history of past injustices. Any development that is envisaged needs to cater for redress. Consequently, Fairtrade, as a development policy, must cater for redress when applied in South Africa.

The Constitution is the starting point when examining any development policy in South Africa, as it prescribes what development in the South African context should strive to achieve.⁸³⁰ Central to what the Constitution envisions is the idea of transformative constitutionalism, which informs the need for substantive equality, an equitable distribution of socio-economic resources and the elimination of structural disadvantage. This type of transformation strives to create a society in which all people have the opportunities to realise their full human potential.⁸³¹ Whilst transformative constitutionalism is a nuanced concept, and there are constraints on its achievement

⁸²⁸ See section 3.1 of this dissertation on page 43.

⁸²⁹ See section 3.4.3 of this dissertation on page 63.

⁸³⁰ See section 4.1 of this dissertation on page 70.

⁸³¹ See section 4.3.1 of this dissertation on page 74.

in South Africa as identified in chapter four, it is a useful foundation for understanding the constitutional rights and considering development policies.⁸³²

Whilst the interdependence of constitutional rights is acknowledged, the specific constitutional rights relevant for Fairtrade are the socio-economic rights and the right to substantive equality.⁸³³ The right to equality, when read with the socio-economic rights entrenched as justiciable rights in the Constitution, directs that the distribution of socio-economic rights needs to be equitable, taking into account past discrimination. It has been proposed that constitutional provisions could be better interpreted in order to further the Constitution's potential to lead to transformation and development.⁸³⁴ Of importance for this research, is the proposed interpretation of section 8(2) of the Constitution that imposes positive obligations on private persons for the fulfilment of socio-economic rights under the circumstances mentioned in section 8(2) itself.⁸³⁵ An adoption of this interpretation imposes a positive constitutional obligation on Fairtrade, a private non-State actor, for the fulfilment of socio-economic rights, and is supported as it would enhance the potential of Fairtrade to lead to socio-economic development in South Africa.

Also, within the constitutional framework of transformation and development are individual development policies aimed at specific development objectives. The NDP, B-BBEE (which in the agricultural context is implemented as AgriBEE) and land reform are development policies in place in South Africa, and which aim to give practical implementation to the constitutional ideals. The objectives that these policies aim to achieve are useful as practical measures of the ways in which Fairtrade can contribute to their achievement, and thereby to the achievement of socio-economic development in South Africa. Drawing from these policies, the socio-economic development objectives for South Africa that are relevant for Fairtrade include gaining global market share, developing the rural economy, fostering regional integration, creating a more equitable distribution of income, and achieving a more equitable distribution of land ownership.

⁸³² See section 4.3.1 of this dissertation on page 74.

⁸³³ See section 4.3.3 of this dissertation on page 81.

⁸³⁴ See section 4.3.2 of this dissertation on page 78, referring to Davis 2010 *SAJHR* 94 - 97.

⁸³⁵ *Ibid.*

6.2.4 Connections between Fairtrade objectives and South Africa's socio-economic development goals in the legal context

The ways in which Fairtrade aligns with South Africa's development policies were analysed in chapter five. This analysis included identifying the legal connections and addressing the question of how these connections could be strengthened. In order to contextualise the discussion of Fairtrade and its contribution to socio-economic development, the Fairtrade standards for both small-scale farmers and hired labour farms in South Africa were summarised.⁸³⁶ These standards are the mechanisms through which Fairtrade advances development.

It was shown that Fairtrade is suited to contribute to the valuable constitutional goals of transformation, substantive equality and socio-economic redistribution. However, the ability of Fairtrade to result in wide-spread advancement of these goals in practice is constrained by the fact that it is a niche market that still has to operate within the prevailing international trade structure. The existing international trade system, which is based on free trade and liberalised markets is not suited to addressing the marginalisation of small farmers and farm workers in developing countries.⁸³⁷

Because transformation and development are at the heart of the constitutional project, promoting the right to substantive equality and socio-economic rights will advance transformation and development.⁸³⁸ An examination of the ways in which Fairtrade contributes to substantive equality and socio-economic redistribution was conducted in chapter five. Fredman's four elements of substantive equality are useful as a standard against which to measure the ability of Fairtrade to contribute to substantive equality.⁸³⁹ Whilst the aim of this dissertation is not to prescribe to Fairtrade and this was not part of the research goals, it was found that Fairtrade could be further used to achieve substantive equality if it was geared more towards changing the structure of the prevailing international trade system. Furthermore, the connections between Fairtrade and the constitutional imperative could be made stronger by interpreting socio-economic rights as placing positive duties on private non-State actors under certain circumstances. These circumstances were shown to exist in the context of

⁸³⁶ See section 5.1 of this dissertation on page 98.

⁸³⁷ See section 5.3.2 of this dissertation on page 106.

⁸³⁸ *Ibid.*

⁸³⁹ *Ibid.*

Fairtrade.⁸⁴⁰ The implication of such an interpretation is that Fairtrade organisations would bear a firm legal duty to advance the socio-economic rights of Fairtrade beneficiaries, being small-scale farmers and farm workers.

Statistics in South Africa from the past two years, when measured against the objectives set in the NDP, paint a dim picture for development and growth in South Africa.⁸⁴¹ Fairtrade was found to offer valuable opportunities for advancing certain NDP objectives such as including the rural economy into the local and global markets, advancing regional integration that caters for small-scale farmers and providing assistance in times of unforeseen economic hardship.⁸⁴² Whilst positive results in these areas have been recorded, there is an opportunity for Fairtrade to make a greater impact on these NDP objectives if it were to grow out of its niche market status. The overall NDP goals of eliminating poverty and reducing inequality are at the forefront of socio-economic development in South Africa. Where Fairtrade contributes to the specific NDP objectives mentioned in this paragraph, it inevitably promotes the two overall goals of eliminating poverty and reducing inequality, thereby fostering socio-economic development.⁸⁴³

The inclusion of AgriBEE requirements into the Fairtrade standard for South Africa is aimed at benefitting farm workers and does not apply in the case of small-scale farmers. The value of including AgriBEE into Fairtrade in South Africa was found to lie in the legitimacy that it brings to Fairtrade in light of what can be considered 'fair' in the South African context.⁸⁴⁴ It was established that AgriBEE, when incorporated into Fairtrade, does not cultivate added socio-economic benefits for farm workers over-and-above those benefits already yielded through Fairtrade certification. The research has demonstrated that the inclusion of AgriBEE into the Fairtrade standard for South Africa does not yield positive results in either the advancement of Fairtrade objectives, or the advancement of AgriBEE goals.⁸⁴⁵ Despite the lack of tangible socio-economic benefits, the legitimacy that AgriBEE standards bring to Fairtrade in the context of South Africa's discriminatory past is significant.

⁸⁴⁰ See section 5.3.3 of this dissertation on page 110.

⁸⁴¹ See section 4.4.1.2 of this dissertation on page 86.

⁸⁴² See section 5.4 of this dissertation on page 116.

⁸⁴³ The specific NDP objectives are all ultimately aimed at eliminating poverty and reducing inequality; see section 4.4.1.1 of this dissertation on page 83.

⁸⁴⁴ See section 5.5 of this dissertation on page 121.

⁸⁴⁵ *Ibid.*

In contrast to the findings regarding AgriBEE, it was found that land reform could be strengthened, and its objectives advanced by Fairtrade. However, Fairtrade's contribution to land reform is not in the form of the requirement that hired-labour Fairtrade farms transfer at least 25 percent ownership to farm workers. This requirement does not lead to actual secure land ownership by those persons who were historically dispossessed.⁸⁴⁶ Instead, Fairtrade can contribute to the land reform effort by providing post-settlement support and market access for new land reform beneficiaries.⁸⁴⁷ In this way, Fairtrade safeguards the sustainability of the land reform project and its potential to lead to actual socio-economic growth. Successful land reform, resulting in more equitable landholding patterns, is correlated to increased economic growth.⁸⁴⁸ Fairtrade can therefore support the land reform project, and in this way contribute to socio-economic development in South Africa.

There are thus sufficient connections between what Fairtrade aims to achieve and the relevant development objectives extracted from socio-economic development laws and policies in place in South Africa. Although not linked in every aspect, the legal connections between Fairtrade and the Constitution, the NDP objectives, B-BBEE and land reform are close enough to show that there is potential for Fairtrade to advance the aims of these policies. In so doing, Fairtrade can contribute to socio-economic development in South Africa and it is accordingly recommended that Fairtrade can be better implemented by taking into account the socio-legal connections to South Africa's development objectives.

6.3 Contributions of the research

This research adds to the body of knowledge on Fairtrade in South Africa by highlighting the connections between the Fairtrade standards and transformative constitutionalism, substantive equality and the redistribution of socio-economic resources. It also connects Fairtrade to the socio-economic development policies of the NDP, B-BBEE and land reform.

Fairtrade, a private organisation, was examined in terms of its ability to contribute to the achievement of public laws and policies, namely, the NDP, B-BBEE and land reform. Successful development in South Africa will be much more attainable where

⁸⁴⁶ See section 5.6.2 of this dissertation on page 125.

⁸⁴⁷ *Ibid.*

⁸⁴⁸ See section 4.4.4.2 of this dissertation on page 92.

public and private entities work towards a common goal and where private persons are held accountable to ensure the fulfilment of rights contained in the Bill of Rights. To this end, the research has drawn connections between public and private development policies and is a useful example of examining whether the objectives of public and private development policies align. The research has also shown that Fairtrade and farm owners who subscribe to Fairtrade, as private entities, could bear a positive obligation for the fulfilment of the socio-economic rights of Fairtrade beneficiaries. This finding is an important example of an interpretation of a constitutional provision in the context of a private entity that enhances the potential of the Constitution to promote transformation and development.

An analysis of Fairtrade as a tool for socio-economic development in South Africa adds significant value to the transformative agenda of the country. The current transformative agenda is founded on constitutional values and the fulfilment of people's rights, specifically the right to substantive equality and socio-economic rights. Because the Constitution is seen as an enabling document, the fulfilment of rights needs to be facilitated by practical policies. This research has shown that Fairtrade could be a practical step, along with the NDP, B-BBEE and land reform, towards the socio-economic development of a vulnerable group in the South African society, because it is aligned with the transformative agenda for South Africa and can contribute to the socio-economic development that is necessary in order for transformation to take place.

6.4 Recommendations for future research

Socio-economic development is a broad term encompassing a range of factors. This research therefore considered various policies, laws and international instruments that are relevant to both socio-economic development and Fairtrade. Whilst an in-depth analysis of any one of these policies and laws was not within the scope of this research, future research can conduct more detailed analyses of the individual policies discussed in this dissertation in their relation to Fairtrade and socio-economic development. For example, a qualitative study on how Fairtrade contributes to the development objectives of the NDP would add value to the body of research.

In examining the possibility that the Constitution might place a positive obligation on Fairtrade for the fulfilment of socio-economic rights, this research touched on another

avenue that warrants further research. The legal implications of imposing a positive obligation on Fairtrade could be further investigated. The implications of placing positive obligations on private entities in relation to socio-economic rights as already addressed in case law could be compared and contrasted with the position of Fairtrade.

The question of whether Fairtrade certification of commercial farms is justified has been the topic of past studies. The objective of this research, namely to discover whether Fairtrade certification as a whole contributes to socio-economic development in South Africa, does not warrant an examination of the merits of commercial farm certification as opposed to small-scale farmer certification. However, a comparison of this nature could add a valuable contribution when assessed in terms of which form of certification has the most potential as a tool for socio-economic development. This type of study would need to be country-specific, as the context of agriculture in different countries would have a major effect on Fairtrade's impact in that country. A qualitative study of the impact of Fairtrade on farm workers in South Africa compared to Fairtrade's impact on small-scale farmers in South Africa would be beneficial to the question of Fairtrade and socio-economic development.

This research touched on the right to development in the African Charter as well as the Draft Convention on the Right to Development. However, the focus on socio-economic development in South Africa did not call for a comprehensive analysis of Fairtrade and the right to development. Thus, another avenue for future research would be to conduct an extensive study of Fairtrade in relation to the right to development.

6.6 Conclusion

Fairtrade contributes to socio-economic development in South Africa. It has the potential to make a more substantial contribution in this regard if it is implemented with a deeper understanding of how it fits into the South African development agenda from a socio-legal perspective. It is evident that there are connections between Fairtrade and the overall tenor of development in the Constitution, and between Fairtrade and specific South African socio-economic development policies. Whilst the research has shown that these connections do exist, it has also indicated where there is potential for stronger connections to be drawn. With the drawing of stronger connections,

Fairtrade can achieve its full potential as an instrument for generating socio-economic development in South Africa.

In conclusion, and as a final illustration of Fairtrade's practical impact, it is fitting to make reference to the beneficiaries of Fairtrade. A worker on Fairtrade certified Vuki farm in the Western Cape Province illustrates the practical impact that Fairtrade has had on her life:

"If not for Fairtrade money we wouldn't have a clinic, aftercare...pool table in the community hall, we wouldn't have better houses, and can even make loans from the farm to purchase furniture and the repayments are set [at] an affordable rate...the Fairtrade premium is crucial because it takes a lot of pressure off workers such as me, especially with kids where parents can't afford good education. We do appreciate it."⁸⁴⁹

This grassroots example brings home the impact that Fairtrade can have on the lives of Fairtrade beneficiaries. Additionally, how Fairtrade, as development policy, contributes to and has further potential to advance socio-economic development in South Africa.

⁸⁴⁹ Quoted from a worker on Vuki wine farm in January 2010; Fairtrade South Africa 2010 *Fairtrade Foundation Impact Briefing Paper* 12.

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