



# **17<sup>TH</sup> SADC LAWYERS' ANNUAL CONFERENCE**

**DISCUSSION TOPIC: OPPORTUNITIES AND CHALLENGES IN  
ATTAINING A PEOPLE-CENTRED REGIONAL INTEGRATION IN  
SOUTHERN AFRICAN DEVELOPMENT COMMUNITY (SADC)**

**Elton Jangale, Cape Town, 19 August 2016**

# Key Issues for Discussion & Thesis

- 1) Whether SADC and its institutions are doing enough to propel a sustainable and equitable economic development of its region & ensure that the people of the region are taken along and not left behind?
  - 2) What are the opportunities & challenges in attaining a people-centred regional integration in SADC?
  - 3) Whether a people-centred regional integration is attainable under SADC's existing legal & institutional frameworks devoid of democratic principles?
- **Thesis: *Without embracing true democratic principles, a people-centred regional integration in SADC is not attainable, farfetched and illusionary.***

# Definitions of the Important Terms

- Rule of law, i.e. no person is above the law. This definition is adopted in its most basic form.
- Rule by law, i.e. *“one rules by law not because the law is higher than oneself, but because it is convenient to do so and inconvenient not to do so”*, Han Feizi. A ruler is the source of all law and stands above the law.
- Democracy is *“Government by the people, either directly, or through representatives”*, Black’s Law Dictionary, 8<sup>th</sup> Edition, p464.
- This definition of Democracy adopted in its basic form, i.e. a government in which the supreme power is vested in the people and exercised by them directly or indirectly through a system of representation.

# Is SADC a democratic institution?

- **Treaty Art 4 requires: SADC & its Member States to follow principles of: (a) sovereign equality; (b) solidarity, peace and security; human rights, *rule of law* and *democracy*; (d) equity, balance and mutual benefit; (e) peaceful disputes settlement**
- ***Is SADC adhering to democratic principles, such as: rule of law and not rule by law, transparency, accountability, separation of powers, etc?***
- **Challenges to uphold democratic values in SADC:**
  - **The SADC Treaty does not provide for a Legislature**
  - **Impact of SADC Protocol on the Tribunal, 2014**

# What is Regional Integration?

- No universal definition of regional integration
- Regional integration is a gradual virtually open-ended process of eliminating discriminatory policies & other obstacles to trade among partners which is provided through clearly defined objectives (Sapir, 2004)
- Regional integration is a worldwide phenomenon of territorial systems that increase the interactions between their components & create new forms of organizations, co-existing with traditional forms of state-led organization at the national level (Lombaerde & Langenhove, 2005)

# Model of Regional Integration in SADC

- Regional integration can take a policy-driven model where governments & institutions guide the process. For example, the European Union (EU)
- Regional integration can take a market-driven model. For instance, the Association of South East Asia Nations (ASEAN)
- Regional integration can take a development integration model (for example: SADC)
- Development integration model premised on equitable distribution of benefit amongst member states. Political cooperation at a high level is regarded as necessary right of an integration process primarily as a consequence of the drives to intervene in the distribution of the benefits (Østergaard, 1993)

# People-centred Regional Integration

- Literature is scanty on the concept of people-centred regional integration
- Further, the notion of what is people-centred regional integration is relative, i.e. comparatively viewed from the public sector and viewed from the private sector
- Toru Oga defines people-centred regional integration as a policy on integration as determined by the people, i.e. ‘people-led’ instead of ‘state-led’
- Oga interrogates the use in the ASEAN Charter of notions, such as democracy, rule of law, social justice, good governance and the empowerment of the civil society, and the participation of the civil society in ASEAN matters to arrive at his definition

# Regional Integration under AU Charter

- **Art 3(c) AU Charter:** AU to accelerate political & Socio-economic integration of the continent
- **Art 3(j):** to promote sustainable development at the economic, social & cultural levels as well as the integration of African economies
- **Art 1(a) of Abuja Treaty:** establishing the African Economic Community (AEC) [interim agreement] – to advance integration of African economies
- Regional economic communities (RECs), such as SADC, EAC etc to be the *'building blocks'* for AEC



# Regional Economic Communities

- Art 1(d) of Abuja Treaty of 1991: implies formation of five (5) RECs. However, eight (8) RECs formed to date:
  - Community of Sahel-Saharan States (CEN-SAD)
  - Common Market for Eastern & Southern Africa (COMESA)
  - East African Community (EAC)
  - Economic Community of Central African States (ECCAS)
  - Economic Community of West African States (ECOWAS)
  - Intergovernmental Authority on Development (IGAD)
  - Southern African Development Community (SADC)
  - Arab Maghreb Union (UMA)
- Member states have dual, **but sometimes conflicting**, responsibilities to both AEC and their respective REC

# How are the RECs being rated?

- The Africa Regional Integration Index (ARII) rates the 8 RECs on regional integration (UNECA, 2016)
- The ARII has 5 Dimensions: (1) Trade Integration; (2) Productive Integration; (3) Free Movement of People; (4) Financial Macroeconomic & Integration; and (5) Regional Infrastructure
- EAC has been rated as the highest amongst the eight RECs, **scoring higher than average across each of the five dimensions apart from Dimension 4**
- South Africa, as a country, is rated highly across all the five Dimensions; *though SADC, as one of the eight RECs, is not highly rated in majority of the Dimensions*

# Towards a single economic bloc “AEC”

- **Art 6 of Abuja Treaty:** AEC is to be established gradually within 34 years, **i.e. effective 1994**
- **Art 6:** AEC to be established in six (6) stages:
  1. within 5 yrs [1994-98]: before Free Trade Area (FTA)
  2. within 8 yrs [1999-2006]: FTA (*initial processes*)
  3. within 10 yrs [2007-16]: FTA to Customs Union (CU)
  4. within 2 yrs [2017-18]: FTA/CU (*harmonization*)
  5. within 4 yrs [2019-22]: African Common Market
  6. within 5 yrs [2023-27]: AEC (*final processes*)
- **The COMESA-EAC-SADC (CES) Tripartite FTA is a step towards the African Economic Africa (AEC)**

# SADC Integration Calendar

- The SADC Regional Indicative Strategic Development Plan (RISDP) and the Strategic Indicative Plan set out the SADC Regional Integration Strategy & Programme
- The RISDP expressly sets out the Integration Calendar in SADC as follows:
  - SADC to become a Free Trade Area (FTA) in 2008
  - SADC to become a Customs Union by 2010
  - SADC to become a Common Market by 2015
  - SADC to become a Monetary Union by 2016
  - SADC to become a Single Currency Union by 2018
- **By August 2016, SADC remained an FTA with little prospect of becoming a Customs Union any sooner**

# What is the Status of EAC Integration?

- The East African Community (EAC) was created as a Customs Union in 2005
- In 2010, the EAC became a Common Market
- In 2013, the EAC established a Monetary Union which is expected to become fully function by 2023 after 10years of operation
- **EAC Treaty Art 5(2)** provides that the EAC is to become a Political Federation (PF). To fast-track integration process to PF, there has been set up:
  - A committee, ‘Wako Committee’, was set up in 2004
  - The Office of Deputy SG for PF was set up in 2006

# Regional Integration under EAC Treaty

- **Art 5(2)**: to “establish ... a Customs Union, a Common Market, a Monetary Union and a Political Federation”
- **Art 5(3)(d)**: The EAC shall ensure the strengthening & consolidation of the long standing political, economic, social, cultural and traditional ties & associations between the peoples of the Partner States so as to promote a people-centred mutual development of these ties and associations
- **Art 7(1)(a)**: The principles that governs the practical achievement of the objectives of the EAC shall include a people-centred and market-driven cooperation
- **Art 9(1)(f)**: establishes the East African Legislative Assembly – *Key to promoting democracy in the EAC*

## Quote from the EAC website:

“Since 2004, the EAC has been putting in place initiatives to fast-track political integration. Summit directives were given, and national consultations with stakeholders between 2006 and 2008 as well as various studies were undertaken to examine, facilitate and fast-track the process. *In the consultations, it become clear that the East African citizens want to be adequately engaged and to have a say in the decisions and policies pursued by the East African Community.*”

# Lessons drawn from the EAC

- The EAC Treaty is clear of the Theory of Regional Integration to be adopted, akin the Balassa Theory of Regional Integration (Etzioni 1965 and Haas, 1968)
- The EAC Treaty calls for a people-centred approach as one of its operative principles to regional integration [EAC Treaty, Article 7]
- The EAC has a legislature in place since its Treaty provides a legislative assembly [EAC Treaty, Article 9]
- The success of the EAC is due to having a Treaty and institutions that are based on democratic principles
- Due to democracy, the EAC has achieved an effective people-centred approach to regional integration



# Regional Integration under SADC Treaty

- **Art 5(1)(a)**: SADC shall achieve development and economic growth, alleviate poverty ... through regional integration
- **Art 21**: Member States to cooperate in all areas to foster regional development & integration on the basis of balance, equity and mutual benefit – *Development Integration Model (Østergaard)*
- **Art 23**: SADC shall seek to involve the peoples of the region and non-governmental organisations (NGOs) in the process of regional integration

# Findings of a High Level Dialogue

- SADC's regional economic integration approach was state-led, and not people-centred
- SADC's failure to pursue a people-centred approach by not encouraging effective public participation in policy formulation and decision making on SADC issues contributes to delay in regional integration
- Failure of SADC Member States to domesticate the Treaty and protocols coupled with lack of adequate resources, including finance & capacity, contributes to delays [*High level dialogue on regional integration by Southern Africa Trust held in South Africa in 2011*]

# Role of multilaterals on SADC R.I.

- Southern Africa Regional Integration Strategy Paper notes that the SADC regional integration agenda is linked to 2010/2015 AU-NEPAD African Action Plan
- Art 3 of AU Charter, Art 4 of Abuja Treaty & Art 5 of SADC have similar objectives to promote regional economic integration, **however, these instruments do not set out the theory and approach of regional integration to be followed within SADC**
- Unlike the AU Charter, Abuja Treaty or SADC Treaty, the EAC Treaty expressly sets out the theory & approach of regional economic integration to be adopted in the EAC; **hence, success in the EAC**
- **Basing on EAC/SADC analysis, the impact of AU is not clear**

# The Impact of NEPAD in SADC

- In 2001, New Partnership for Development (NEPAD) was established by the AU with the aim of fostering accountability and regional integration in Africa
- NEPAD launched African Peer Review Mechanism (APRM) as a monitoring tool for good governance & integration
- The APRM exercise is not mandatory but can be requested by any of the AU member states on voluntary basis
- APRM reports are shared with stakeholders, e.g. AU & MS
- **The findings of the APRM reports are non-binding and set no sanctions. MSs can ignore report's recommendations**
- Due to lack of sanction powers, NEPAD's role in promoting people-centred regional integration in SADC is so minimal

# Challenges of people-centred model

- People-centred R.I. approach means Member States surrendering more of their political powers to SADC
- People-centred concept is relative & can be elusive
- People-centred approach may render absurd results e.g. BREXIT is a case in point, where campaigners of the 'Exit Vote' become 'losers' with the real losers
- People-centred approach can prove to be expensive to implement, e.g. new institutions, like Parliament
- People-centred approach requires rapid reforms in Member States & this usually proves unattractive as failure to bring reforms may mean failure to govern

# Recommendations

- SADC should embrace fully democratic principles
- Need for a political will by SADC leaders to promote a people-centred approach to regional integration
- South Africa, being the strongest SADC economy & highly ranked in implementing regional integration, should champion the people-centred approach
- 2000 SADC Protocol on Tribunals be enhanced with more powers but not repealed by the 2014 Protocol
- Treaty be amended to provide for more governance and democratic institutions, such as the Legislature
- CSOs & SADC Lawyers should rely on Treaty, Art 23

# Conclusion

- Questions and Comments
- Concluding remarks

Thank you!

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