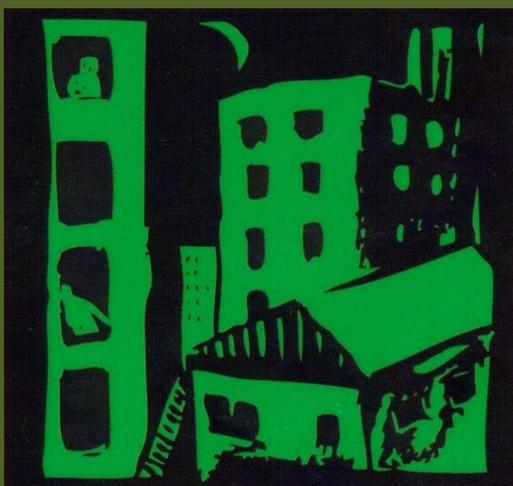


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## The SADC regional bloc: What challenges and prospects for regional integration?

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### 1 INTRODUCTION

Generally, regional integration is when a group of countries get together and develop a formal agreement (by way of treaties) regarding how they will conduct trade with each other. Ernst Haas, perhaps the most prominent integration scholar of the time, defined integration as follows:

[T]he process whereby political actors in several distinct national settings are persuaded to shift their loyalties, expectations and political activities toward a new centre, whose institutions possess or demand jurisdiction over pre-existing national states. The end result of a process of political integration is a new political community, superimposed over the pre-existing ones.<sup>1</sup>

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\* The authors wrote and finished this article when they were post-graduate students in the Faculty of Law at the University of the Western Cape, South Africa in 2012.

<sup>1</sup> Ernst H "International Integration: The European and the universal process," (1961) 15 *International Organization* 366.

Regional integration has manifested itself historically in Africa, America and Europe as a bureaucratic effort to facilitate political unification and expansion of capitalism.<sup>2</sup> The establishment of regional economic blocs not only strengthens member countries' positions on the global political landscape and bargaining power on international issues, but also enables countries to collectively grapple with the region's economic progress. Individual countries within any given economic bloc cannot deal with the economic challenges single-handedly; hence the mooted idea of regional economic integration. Regional integration has been seen in Africa as a means of encouraging trade and securing economies of scale.<sup>3</sup> Additionally, regional integration has become increasingly accepted as essential in facilitating economic and political development.<sup>4</sup> Regional integration has been credited with providing an important step towards a wider global involvement<sup>5</sup> and has exhibited the potential to promote economic growth and reduce poverty through increased exports of domestic goods.<sup>6</sup> It has been envisaged that integration has the potential to promote growth and reduce poverty through the increase of exports of domestic goods. Consequently, several regional groupings have mushroomed in the post-war era across the globe, notably the European Union (EU) and the Association of Southeast Asian Nations (ASEAN). In Africa several regional groups have emerged, namely, the Economic Community of West African States (ECOWAS), the East African Community (EAC), the Common Market for East and Southern Africa (COMESA), as well as the Southern African Development Community (SADC), which is the focus of this article. This article seeks to unpack some of the challenges that the SADC has encountered in its regional economic integration endeavours.

It can therefore be argued that the Southern African region is ideal for regional economic integration given the fact that it is characterised by many countries with small economies, an environment which is ideal for interstate trade and forging of economic links. This article seeks to present and discuss challenges that the SADC regional grouping has encountered in its effort to foster regional integration, by engaging in debate around the importance of regional integration and the reasons behind some of the challenges.

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<sup>2</sup> Chingono M & Nakana S "The challenges of regional integration in Southern Africa" (2008) 10(3) *African Journal of Political Science and International Relations* 396-408.

<sup>3</sup> Khandelwal P "COMESA and SADC: Prospects and challenges for regional trade integration" IMF Working Paper (2004). Available at <http://www.imf.org/external/pubs/ft/wp/2004/wp04227.pdf>. (accessed 7 September 2012).

<sup>4</sup> Chingono & Nakana (2008).

<sup>5</sup> Hartzenberg T 'The New SADC Agreement: Implications for Regional Integration in Southern Africa' *Monitoring Regional Integration in Southern Africa* (2011) 173.

<sup>6</sup> McLeod H "Regional integration and the role of donors" *Yearbook Monitoring Regional Integration in Southern Africa* (2011) 17.

## 2 HISTORICAL DEVELOPMENT OF THE SADC

From its inception, the SADC has been guided by the desire to establish a regional integration bloc to link regional economies, strengthen the region's economic performance, and enhance the region's political stability. Initially established in 1980 as the Southern African Coordination Conference (SADCC),<sup>7</sup> the grouping wanted not only to reduce economic dependence on the then apartheid South Africa,<sup>8</sup> but to forge economic links for the creation of a genuine and equitable regional integration through the mobilisation of resources for the promotion of interstate and regional policies.<sup>9</sup>

After most of the Southern African states had attained political independence, the region decided to revise the mandate of the regional body by putting more focus on economic and political issues in the post-colonial period.<sup>10</sup> The establishment of the SADC in 1992 was therefore seen as a continuation of efforts to strengthen collective self-reliance within the Southern African region. However, there cannot be any economic development without political stability; hence the new revised regional body incorporated political issues within its principal mandate. Qobo argues that "political rather than economic considerations set in motion the process of regionalization in Southern Africa".<sup>11</sup> In addition, the regional body took cognisance of the fact that economic developments can only be realised through a concerted effort; hence the member states saw regional integration as the gateway to economic development within the region.

The major parts of this article include the vision and mission of the regional grouping, the diverse historical backgrounds of the SADC member states, the different levels of economic development within the member states, the impact of overlapping and concurrent membership on regional integration. However, the quest by the SADC regional bloc to achieve these objectives has resulted in overambitious programmes and projections being put in place.

## 3 VISION AND AGENDA

The major and overarching objective of the SADC has been to promote "economic and social development through co-operation and economic integration".<sup>12</sup> The SADC Treaty

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<sup>7</sup> Takirambudde PN "The Position of SADCC in the international division of labour and prospects for regional cooperation' (1999) 7 (1) *PULA: Botswana Journal of African Studies* 97-116.

<sup>8</sup> Hancock KJ "What role for the EU in the Southern African Customs Union (SACU): Advocate, cajoler, or bully?" A paper prepared for the Conference on the Diffusion of Regional Integration, Kellogg-Forschergruppe, Transformative Power of Europe, Berlin (10 – 11 December 2010) at 5.

<sup>9</sup> Ahmed, AK "An analysis of the regional integration in Southern Africa: A South African perspective" (2008) *Tralac* 12.

<sup>10</sup> Draper P & Kalaba M "South African international trade diplomacy: Implications for regional integration" (2006) at 37.

<sup>11</sup> Qobo M "Regional integration, trade and conflict in Southern Africa' (2007) *South African Institute for International Affairs* 15.

<sup>12</sup> Art 5 (1) (a) and(b), SADC Treaty.

presents economic integration as holding the key to the achievement of economic growth, self-sustaining development, and management and sustainable utilisation of natural resources.<sup>13</sup> The SADC Treaty has therefore put the focus of the SADC bloc as seeking to attain regional economic integration, freedom and social justice, all of which are anchored in the common values and principles that exist between the peoples of Southern Africa. As a result this focus has put the bloc's mission as promoting sustainable and equitable economic growth and socio-economic development; deeper co-operation and integration; as well as good governance and durable peace.<sup>14</sup> These commonalities inform the region's quest for collective stability and sustainable development, all of which can be realised through economic regional integration.<sup>15</sup>

The operations of the SADC towards regional integration have been characterised by the presentation of overambitious programmes, despite the evident fissures within the regional grouping as will be discussed below. The guiding principles of the SADC have been to reduce economic dependence initially on apartheid South Africa, but later on other economies outside of the SADC region. Additionally the member states have envisioned forging economic links as a way of creating genuine and equitable regional integration. In addition to establishing economic links, the SADC has been guided by the desire to mobilise resources to help promote the implementation of national, interstate and regional policies.<sup>16</sup> Over and above these visions, the SADC member states have committed themselves to collaboration in order to secure international co-operation. The above objectives have provided guiding principles by which the SADC has been operating since its inception in 1992 and which continue to inform policies within the regional grouping.

#### **4 CHALLENGES TO ECONOMIC REGIONAL INTEGRATION WITHIN THE SADC**

While it can be acknowledged that the establishment of regional blocs has been necessitated by the desire to provide a bulwark against poverty and powerful economies outside the region, the major reason has been to integrate the economies within the respective regions. From the inception of the SADC regional grouping in 1992, there have been numerous achievements. However, the achievements have been outweighed by challenges that the regional bloc has continued to encounter. This article discusses the most primary of these challenges which include over ambitious targets set by the SADC as a roadmap to economic regional integration; multiple and concurrent memberships of different regional economic communities (RECs); the heterogeneous nature of the SADC economies which has provided an uneven economic environment; duplication emanating from the activities of the SACU and the SADC; the intricacies of rules of origin; different levels of economic development within SADC member states; as

<sup>13</sup> Art 5 (1) (a),(b),(g) and (l), SADC Treaty.

<sup>14</sup> Art 5 (1) (a) and (b), SADC Treaty.

<sup>15</sup> Chauvin S & Gaulier G "Regional trade integration in Southern Africa. CEPII" (2002) 23.

<sup>16</sup> Bhagwati J *Termites in the trading system: How preferential agreements undermine free trade* (2008) at 43.

well as the failure of the SADC Tribunal to provide recourse to justice and act as a unifying platform for member states. The domineering nature of Zimbabwe in the proceedings and verdict of the SADC Tribunal points to the fact that lack of sincerity, as well as egocentricity on the part of some boisterous SADC member states have shown that it is difficult for the bloc to achieve regional integration based on mutual trust. As long as some member states are more equal than others, achieving regional integration based on mutual trust and selflessness would be difficult.

#### **4.1 Overambitious targets**

It has been noted that many African governments have concluded a very large number of regional integration arrangements, several of which have significant membership overlap.<sup>17</sup> While characterised by ambitious targets, they have a dismally poor implementation record. Part of the problem may lie in the paradigm of linear market integration, marked by stepwise integration of goods, labour and capital markets, and eventually monetary and fiscal integration.<sup>18</sup> A number of targets that the SADC regional bloc has set to attain over a period of time have not been achieved. This is confirmed by Hancock who argues that the SADC has forged ahead with setting targets “but has barely made a dent into realising those goals”<sup>19</sup> with some targets having been missed. In the SADC Trade Protocol signed by 11 out of the 15 member states in 2000, the countries sought to liberalise 85% of intra-regional trade by 2008, liberalise 100% of trade by 2012, and form a customs union for the region by 2010. All these targets have since been missed. In addition, the region has set itself to establish a common market by 2012 and a monetary union by 2016, both of which have not been achieved, with frustration being evident among SADC leaders who have increasingly exhibited pessimism towards the attainment of some of the targets. Acknowledging failure to meet these targets, the SADC has postponed these targets “due to the need for further studies on the impact on integration of the economies of member states”.<sup>20</sup> It can be argued that failing to meet the set targets has been one of the most evident indicators of the mammoth task that is associated with regional economic integration. Failure to meet the targets has also set a bad precedent for the region’s endeavours, most of which would most likely end up a dismal failure.

#### **4.2 Overlapping and concurrent memberships**

Overlapping and multiple memberships is not a recent phenomenon in African regional blocs. The practice dates back to the colonial times and “was influenced by the first wave of regional integration based on the model of the European Economic

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<sup>17</sup> Hartzenberg T, “Regional integration in Africa” Trade Law Centre for Southern Africa, Staff working paper ERSD-2011-14.

<sup>18</sup> World Economic Forum, World Bank, and African Development Bank, *The Africa Competitiveness Report 2011* (2011).

<sup>19</sup> Hancock (2010) at 13.

<sup>20</sup> “Southern Africa: Leaders of SADC postpone launch of Customs Union” *All Africa.com*, 18 August 18 2010. Available at <http://allafrica.com/stories/201008180923.html> (accessed 6 September 2012).

Communities”.<sup>21</sup> Multiple and concurrent memberships of numerous RECs have presented the most daunting challenge to economic regional integration within the SADC. There are several intricacies and implications associated with multiple and concurrent memberships, notably that of overlapping. Overlapping membership of different RECs has not only created confusion, competition and duplication, but also constitutes a burden on the taxpayer.<sup>22</sup> South Africa, Botswana, Lesotho and Swaziland are members of both the SACU and the SADC, while Namibia and Swaziland both hold memberships of three regional integration agreement (including the COMESA) and are part of the Common Monetary Area (which include South Africa and Lesotho) and also participate in the Regional Integration Facilitation Forum (RIFF).<sup>23</sup> Additionally, a majority of the SADC member states are also members of the COMESA.<sup>24</sup> This causes problems in the event that each region decides to form a customs union, taking cognisance that no one country can simultaneously belong to two RECs at any one time.<sup>25</sup> It has also been noted that differences in approaches to integration add to the confusion, inconsistency and incoherence in policies.<sup>26</sup> An example in this regard is that of the COMESA which is informed by classical Vinerian thinking and stresses the benefits of integration derived from the removal of trade and non-tariff barriers.<sup>27</sup> In contrast, the SADC, whose history is rooted in the desire to promote economic independence and political security needs, favours a developmental approach to integration, which focuses on sectoral co-operation.<sup>28</sup> Consequently multiple memberships are not only costly but inefficient and are partly responsible for the limited capacity and success of the SADC and other RECs.

Closely associated with the failure of member states to comply with the requirements of the SADC Treaty to commit themselves to regional integration by “coordinating and harmonising their activities”, there has been evidence of overlapping and concurrent membership as different SADC states and SACU members have gone out of their catchment areas to explore other economic opportunities within other regional groupings. Ahmed notes that the “existence of multiple integration schemes and overlapping membership and the continuing negotiations with countries outside the

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<sup>21</sup> Jackobeit C “Overlapping membership in COMESA, EAC, SACU and SADC: Trade policy options for the region and the EPA negotiations’ (2008) at 3. Available at [http://www.acp-eu-trade.org/library/files/Jakobeit-Hartzenberg-Charalambides\\_05\\_Overlapping-membership.pdf](http://www.acp-eu-trade.org/library/files/Jakobeit-Hartzenberg-Charalambides_05_Overlapping-membership.pdf) (accessed 9 September 2012).

<sup>22</sup> Chingono & Nakana (2008) at 404.

<sup>23</sup> Mutai, H “Memberships in multiple regional trading agreements: Legal implications for the conduct of trade negotiations” (2003) *Tralac*. Available at [www.tralac.org/scripts/contnent.php?=1914](http://www.tralac.org/scripts/contnent.php?=1914) (accessed 19 August 2012).

<sup>24</sup> Countries with overlapping COMESA-SADC membership are Madagascar, Malawi, Mauritius, Seychelles, Swaziland, Zambia and Zimbabwe.

<sup>25</sup> Chingono & Nakana (2008) at 404.

<sup>26</sup> Chingono & Nakana (2008) at 404.

<sup>27</sup> Viner J ‘International Trade Theory and its Present Day Relevance’ *Economics and Public Policy* (1955).

<sup>28</sup> Chingono & Nakana (2008) at 405.

SADC region could significantly alter the nature of integration in Southern Africa”.<sup>29</sup> McLeod has also concurred that overlapping agreements can have costs as countries have to negotiate in a number of forums and agree to implement a range of policies which may be conflicting or irrelevant.<sup>30</sup> Overlapping membership also has the propensity to implicitly pull other member states into an agreement even against their will. An example is that of the SACU where South Africa is a member alongside Botswana, Namibia, Lesotho and Swaziland. Given that South Africa has already negotiated the Trade and Development Cooperation Agreement with the EU, and also with the SACU, any agreement that South Africa concludes includes other SACU members.<sup>31</sup> Overlapping membership has also diluted regional integration efforts among different SADC member states. Hancock argues that when integration is shallow, a state can sign numerous bilateral or even multilateral agreements but when integration deepens to the level of a monetary union or customs union, states must choose one integration agreement.<sup>32</sup> Implicitly holding overlapping and/or concurrent membership weakens regional integration. This practice is contrary to what has occurred among SADC member states which have found themselves signing numerous agreements with different regional trading blocs, thereby presenting a challenge to deeper regional integration.

Holding multiple and overlapping memberships has also created trade inconsistencies among regional blocs. An example is where countries hold membership of both the COMESA and the SADC. Of the 15 SADC member states, nine countries also belong to the COMESA whose total membership is 20. While the agenda vision for the SADC has indicated that it would be a free trade area (FTA) by 2012, the COMESA on the other hand, had long planned that it would have attained customs union status by 2004.<sup>33</sup> A practical example of a country which was caught up in this quagmire is Zambia which has been a member of both the SADC and the COMESA. Under the SADC Trade Protocol Zambia had agreed to dismantle tariffs for SADC members to zero.<sup>34</sup> Consequently, since South Africa is a member of SADC, Zambia had agreed to remove tariffs to South Africa to zero. On the other hand, Zambia being a member of the COMESA Customs Union, had agreed to a common external tariff regime for countries that are not members of the COMESA. Since South Africa is not a member of the COMESA, this did not apply to South Africa.<sup>35</sup> This would translate into the fact that Zambia had agreed to reduce tariffs for South Africa (under the SADC conditions) but to

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<sup>29</sup> Ahmed (2008) at 13.

<sup>30</sup> McLeod (2011) at 7.

<sup>31</sup> Vickers B ‘Between a Rock and a hard place: Small states in the EU-SADC EPA negotiations’ (2011) 187 *The Round Table: The Commonwealth Journal of International Affairs* 189.

<sup>32</sup> Hancock (2010) at 14.

<sup>33</sup> Bhagwati (2008) at 45.

<sup>34</sup> Braude W “SADC, COMESA and the EAC: Conflicting regional and trade agendas’ Institute for global Dialogue Occasional Paper No 57 (2008). Available at [http://www.acp-eu-trade.org/library/files/Jakobeit-Hartzenberg-Charalambides\\_05\\_Overlapping-membership.pdf](http://www.acp-eu-trade.org/library/files/Jakobeit-Hartzenberg-Charalambides_05_Overlapping-membership.pdf) (accessed 10 May 2012).

<sup>35</sup> Ahmed (2008) 15.

maintain tariffs for South Africa (under the COMESA provisions). This scenario leaves Zambia in a quagmire. Similarly, other regional groups, such as, the SACU, which already have agreements with the EU, would have to seek ways to negotiate with non-SACU countries that are members of both the SADC and the COMESA and to identify with which group they will have to negotiate.<sup>36</sup> Overlapping and concurrent membership has shown varied economic interests among SADC and SACU member states. However, on a positive note, it should be acknowledged that the establishment of the tripartite FTA arrangement between the SADC, the COMESA and the EAC has a potential of addressing the challenges emanating from multiple membership.

### 4.3 The heterogeneity of SADC economies

Discussion of regionalism and regional integration in Southern African cannot be fully justified without underscoring the fact that the SADC region is characterised by acute economic imbalances and inequalities.<sup>37</sup> The most important of these imbalances has been in terms of the different nature and levels of economic status. The heterogeneity of SADC economies has been viewed as a challenge to regional integration because such economies cannot be integrated, especially given that stronger economies, like South Africa, end up dictating the terms of reference and operation to poorer and weaker members of the regional grouping. For instance in the SACU South Africa plays a dominant role and its voice dominates the proceedings, resulting in it having to play a domineering role and occupy a decisive position in decision making processes within the group. Similarly, within the SADC South Africa has always presented a dominant voice.<sup>38</sup> Additionally, seeing that South Africa has been the dominant economic hub of the regional body, the country has not shown much commitment to regional integration, given that its economy has been able to attract trading partners outside of the SADC more than other SADC member states. Consequently, it would appear that for South Africa, a disintegrated regional body would benefit it more than if the SADC were economically integrated with all member states accruing mutual benefit from the proceedings of the regional bloc. Hancock concurs with this argument by asserting that given that South Africa has reaped significant long-term economic benefits that often came at the expense of both SACU and SADC member states, its attention to regional integration has been distracted.<sup>39</sup> Gibb further argues that the existence of different economies in the SADC and the SACU has led to growing inequalities among member states, confirming the customs union theory which predicts that in such a scenario the more advanced economies gain more of the investments and thus grow significantly faster than the others, exacerbating inequality.<sup>40</sup> Both Hancock and Gibb have valid points on the impact of the heterogeneity of SADC economies on regional economic

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<sup>36</sup> McLeod (2011) at 98.

<sup>37</sup> Nyirabu M "Appraising regional integration in Southern Africa' (2004) 13(1) *African Security Review* 21..

<sup>38</sup> Vickers (2011) at 189.

<sup>39</sup> Hancock (2010) at 4.

<sup>40</sup> Gibb R "The new Southern African Customs Union Agreement: Dependence with democracy' (2006) 32(3) *Journal of Southern African Studies* 24.

integration since regional integration would be difficult to achieve in such a state of inequality among member states. From the argument above it can be inferred that the heterogeneity of SADC economies not only exacerbates inequalities among members of the same regional grouping, but enables larger economies to thrive at the expense of their smaller counterparts. Additionally, trade imbalances will persist and this would lead to wider economic gaps among member states and larger economies like South Africa will continue to dictate the pace of economic growth and the level of intra- and extra-regional trade.

However, it should be noted that heterogeneity has its own positive side notably that the heterogeneity of Southern African states is a challenge to integration, and has to be seen from other perspectives that might suggest that it is precisely the differences in the economies of the region that provide scope for developing different types of comparative advantage. In addition, it has been argued that African Regional Trade Agreements (RTAs) are flexible legal regimes and as such provide a forum for co-operation on a whole range of objectives, including trade liberalisation.<sup>41</sup> They nestle within these regimes an entire range of other objectives including those relating to security and the sharing of common river ways.<sup>42</sup> In addition, the functional specificity of the RTAs is that they provide forums for integrated development of common resources, the equitable distribution of gains from trade, and the principle of variable geometry.<sup>43</sup>

#### **4.4 The co-existence of SACU and the SADC**

The existence of the SADC and the SACU alongside one another and seeking to achieve similar objectives has created challenges for the SADC regional integration project as states within the Southern African catchment geographical area find themselves divided between the two institutions. Despite the fact that SACU members are prohibited from entering into new preferential trade agreements with third parties, this regulation has been flouted on numerous occasions.<sup>44</sup> In addition, powerful economic blocs, such as, the EU have sought to divide the SADC and SACU by negotiating with them separately despite the fact that the SACU membership is encapsulated in the SADC. The fact that SACU members have taken the initiative to negotiate Economic Partnership Agreements (EPAs) with the EU without having to utilise the SADC as a larger economic bloc has tended to equally divide the SADC region by creating fissures within the SADC membership. However, Hancock accuses the EU of being behind this development of seeking to divide the SACU and the SADC.<sup>45</sup> This has further been confirmed by Vickers who argues that due to the vast power asymmetries between the EU and the African, Caribbean and Pacific (ACP) countries, smaller states have found themselves with very

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<sup>41</sup> Gathii, JT "African regional trade agreements as flexible legal regimes" (2010) 35 *North Carolina Journal of International Law and Commercial Regulation* 571.

<sup>42</sup> Gathii (2010) at 571.

<sup>43</sup> Gathii (2010) at 571.

<sup>44</sup> Art 31 (3) SACU Agreement (2004).

<sup>45</sup> Hancock (2010) at 14.

little bargaining power to shape the negotiating process and the outcome of the negotiations, which in the end has “split the SADC into four sets of separate trade regimes with the EU”<sup>46</sup>. The overall impact of this development has been the undermining of the SADC regional integration agenda. Given the division among SACU members, different SACU members currently have different external tariffs, thus undermining any prospects of deeper regional integration that can emanate from creating a common market, a monetary union or a stronger customs union. Additionally there has been argument about whether the SADC or the SACU should be mandated to handle regional economic integration issues. Van de Merwe has pointed out that SACU leaders have presented suggestions to SADC leaders that the SACU should become the economic nucleus for the wider SADC body.<sup>47</sup> As a result this tug-of-war for supremacy between the SACU and the SADC has further derailed efforts for regional integration, especially given that the countries cannot concur on matters of policy, such as, which of the two should handle economic matters or spearhead regional integration.

#### 4.5 Different levels of economic development

The difference in political backgrounds as well as the nature of resources found in different countries has culminated in differences in levels of economic development. It is undisputed that South Africa is the largest economy in the SADC region accounting for over 60% of all intra-SADC trade and about 70% of the SADC GDP.<sup>48</sup> Given these vast economic power asymmetries between South Africa and other members of the SADC and the SACU, the country cannot be treated as an equal partner.<sup>49</sup> This has resulted in South Africa being a dominant figure and being able to flout regulations without much protest from other member states. Additionally, South Africa has been able to take its time in negotiating EPAs with the EU, unlike smaller states where South Africa can negotiate on their behalf by virtue of the fact that they are members of the SACU.

In addition, the regional body’s major economic challenge has been to create an environment suitable for the attainment of high and sustainable rates of equitable economic growth which, if achieved, would promote economic regional integration. With most SADC member states still experiencing low and decreasing levels of per capita Gross National Product, low growth rates of GDP, relatively high deficient and interest rates, and relatively low savings and investments rates, the economic developments of the region has become increasingly uneven,<sup>50</sup> a situation which tends to retard economic development as well as regional economic integration.

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<sup>46</sup> Vickers (2011) at 185.

<sup>47</sup> Van der Merwe C “Zuma urges SACU to tackle EPA negotiations as united front” *Engineering News Online* 23 April 2010. Available at <http://www.engineeringnews.co.za/article/zuma-urges-sacu-to-tackle-epa-negotiations-as-united-front-2010-04-22>.

<sup>48</sup> Vickers (2011) at 183.

<sup>49</sup> Vickers (2011) at 183.

<sup>50</sup> SADC: Major achievements and challenges – 25<sup>th</sup> Anniversary 1980 – 2005 (2006) at 74. Available online at <http://www.sadc.int/cms/uploads/SADC%20Major%20Achievements%20Handbook%20-%20English%281%29.pdf> (accessed 17 July 2012).

#### 4.6 Failure of a Collective Justice System: Case of the SADC Tribunal

While the idea behind the establishment of the SADC Tribunal (the Tribunal) was a positive development and a big stride towards regional co-operation and integration, disagreements over its composition and functions have tended to present fissures within the regional grouping. The Zimbabwean commercial farmers' case at the SADC Tribunal in Windhoek held high expectations for the SADC Tribunal as a unifying regional institution within the SADC. Given that the Tribunal was a first attempt at seeking to collectively deal with cases of human rights violation at the regional level, and allowing individuals within SADC member states recourse to justice against their respective states, aggrieved individuals held high hopes for putting to an end to the impunity with which the state had trampled on civil liberties. However, the refusal by Zimbabwe to comply with the human rights violations judgment and the subsequent withdrawal of the country from the Tribunal presented a test case for SADC regional integration.<sup>51</sup> The fact that the regional bloc failed to rein in a renegade member state which had blatantly refused to comply with a judgment to compensate the commercial farmers indicates that the SADC cannot enforce some of the provisions of its institutions, in this case the judgment handed down by the SADC Tribunal. Zimbabwe which had been found guilty of the violation of human and property rights by the SADC Tribunal, got away with it and even caused a review of the mandate of the Tribunal. The review culminated in further curtailment of access to justice by SADC citizens by an approach to the Tribunal. The review of the provisions of the Tribunal that was initiated by Zimbabwe culminated in the dilution and reduction of the powers of the Tribunal by confining the Tribunal to dealing with inter-state disputes and not disputes and/or complaints from individuals. One can view this new mandate of the Tribunal as seeking to further refuse SADC citizens recourse to justice, especially given that aggrieved citizens cannot successfully challenge their own countries in local courts of law and succeed! The failure of the Tribunal to rally SADC member states against a renegade member state (Zimbabwe) has shown that some strong member states can flout standing regulations and judgments with impunity and without reprimand. The case of Zimbabwe's refusal to comply with the Tribunal's judgment has also brought to the fore the view that some member states are untouchable and this violates the provision of equality within the regional bloc. As a result it can be argued that regional integration is at the mercy of, and is dictated by powerful member states and political events and preferences. As highlighted in the SADC Treaty, the SADC does not only encourage peaceful settlement of disputes, but encourages economic integration which can best be realised in a stable political environment.<sup>52</sup> In view of the evident human rights violations perpetrated by the Zimbabwean government towards white commercial farmers, the Tribunal ruled in favour of the victims, only for Zimbabwe to refuse to uphold the judgment, arguing that the Tribunal did not have the jurisdiction to render a judgment in the case. The refusal by Zimbabwe to comply with the Tribunal judgment

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<sup>51</sup> Nathan L "Solidarity triumphs over democracy – the dissolution of the SADC Tribunal" United Nations and regional challenges: Development dialogues, papers and comments (December 2011) at 124.

<sup>52</sup> Art 4 (e), SADC Treaty Principles.

not only showed the weakness within the SADC region to speak against human rights violations, but also showed an element of disunity and the propensity to bend rules in order to suit specific situations. This is confirmed by the fact that the SADC heads of states not only promised to review the mandate of the Tribunal but amended the mandate of the Tribunal so that it would deal only with inter-state disputes, which are a rare occurrence. It would therefore be difficult for regional integration to take place if SADC member states fail to agree on matters of policy, such as, in respect of the case of the Zimbabwean white commercial farmers.

#### 4.7 Rules of origin

The application of rules of origin in the SADC economic bloc has encountered inconsistencies. The SADC has been touted as the most prominent regional body in the Southern African region and the only regional body of which all states within the region are members.<sup>53</sup> This portrays a picture of unity of purpose among the SADC member states, at least theoretically. However, the situation on the ground has shown that there is divergence in the operation of the regional grouping as each SADC member state has shown the propensity to promote its own economic and political interests, contrary to the vision of the regional grouping encapsulated in the grouping's ramification of Protocols in which each member state has committed itself to "operate, coordinate, harmonise and integrate policies and strategies in one or more sectors". The ratification of Protocols by nine out of 20 SADC member states has further confirmed that regional integration is in jeopardy since not all member states have shown the same amount of commitment to regional integration.<sup>54</sup> In addition, multiple and concurrent memberships have influenced the implementation of economic policies. For example, the SADC rules of origin on a number of products are more restrictive than those of the COMESA. This means that companies trading in countries which are members of both Regional Integration Agreements (RIAs) may put such companies in a precarious position since the transaction costs of negotiating and attending meetings of the SADC, the COMESA, the SACU and World Trade Organisation (WTO) for small countries such as Namibia, are very high.<sup>55</sup> It has also been noted that **such agreements may reduce countries flexibility countries** forming effective collaborative engagement with those within the same bloc. In addition the rules of origin have been blamed for the lack of trade response to tariff reductions in SACU countries.<sup>56</sup> In some cases the rules of origin are opposed by some member states as insufficient to confer origin. Draper and Kalaba have also concurred that restrictive rules of origin are not only a barrier to international competitiveness and regional integration but are also costly in terms of ensuring conformity.<sup>57</sup> It can therefore be concluded that the rules of origin in the SADC present

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<sup>53</sup> Ahmed (2008) at 12.

<sup>54</sup> Naidu S & Roberts B "Confronting the region: A profile of Southern Africa" Integrated rural and regional development research programme, Occasional Paper 8 (2004) at 44.

<sup>55</sup> McLoed (2011) at 97.

<sup>56</sup> Ahmed (2008) at 15.

<sup>57</sup> Draper and Kalaba (2006) at 37.

a challenge to regional integration because they are considered not only to be relatively complex but prohibitive as well.

## 5 ACHIEVEMENTS

While it can be acknowledged that the SADC has, since its inception in 1992, achieved numerous positive developments, the achievements and benefits have been outweighed by the challenges bedevilling the regional bloc. The regional grouping has been able to demonstrate that regional integration and co-operation are possible and desirable.<sup>58</sup> Additionally, the SADC has been able to inculcate a sense of regional belonging as well as a tradition of consultation among the peoples and governments of Southern Africa.<sup>59</sup> The regional grouping has also been able to put in place a regional programme of action, namely, the SADC Programme of Action, which encourages co-operation in various economic sectors.<sup>60</sup> Under the auspices of the SADC a number of infrastructural projects have been undertaken to rehabilitate roads, rail and harbours as a way of improving communication, transportation and carriageways across the region. These achievements, though much still has been achieved, have at least provided a foundation on which the SADC region can make progress towards its regional integration endeavours. However, despite these achievements, the SADC continues to be bedevilled by various challenges which have impacted negatively on its regional integration efforts as indicated above. Of note has been the domineering position of some member states which have been able to flout regulations and disregard judgments, as in the case of Zimbabwe and the SADC Tribunal judgment. It has also been noted that the SADC has maintained positive growth trends, recording a growth rate of over 4.1% by 2004.<sup>61</sup> Being aware that regional political stability can divert attention away from economic integration initiatives, the SADC has made considerable strides towards preserving political stability in the region.

## 6 PROSPECTS FOR REGIONAL INTEGRATION IN THE SADC

If the recent findings of the high propensity of former liberation struggle leaders being unable to provide for good democratic dispensation are anything to go by, then the SADC, comprising of a number of liberation movements, has a insurmountable task for the bloc to realise the ideals of regional integration. Given the influential positions and liberation credentials of Zimbabwe, Mozambique, Namibia and South Africa in the SADC region, the findings of Mo Ibrahim's Afro Barometer (2012) further presents a bleak

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<sup>58</sup> SADC: Major Achievements and Challenges (2006) Ch 1.

<sup>59</sup> African Union "Regional Economic Communities (RECs): Southern African Development Community (SADC): Facts and Figures" (2011). Available at [https://www.google.co.zw/?gws\\_rd=cr&ei=3Qm3Ur6SG8jAtAbwsoAY#q=Regional+Economic+Communities+\(RECs\):+Southern+African+Development+Community+\(SADC\)%E2%80%9D+\(2011\)+](https://www.google.co.zw/?gws_rd=cr&ei=3Qm3Ur6SG8jAtAbwsoAY#q=Regional+Economic+Communities+(RECs):+Southern+African+Development+Community+(SADC)%E2%80%9D+(2011)+)

<sup>60</sup> African Union (2011).

<sup>61</sup> SADC: Major Achievements and Challenges (2006) at 13.

picture of the prospects for regional integration in the bloc.<sup>62</sup> It is indisputable that democratic politics facilitate economic development which forms the most determinant stage towards regional integration. This means that for effective regional integration to be achieved in the SADC bloc, there should be a consensus on the form of democracy that should prevail in the region. This argument is further hindered by the existence of a traditional form of democracy which prevails in Swaziland, namely, a monarchical democracy. The monarchical form of democracy appears to go against the current wave of participatory democracy that has come to be the acceptable norm, as dictated by the global wave of political reform. In other words, the monarchical form of democracy defies tenets of democracy as presented by different international and regional instruments, all of which call for the existence of political parties and political contestation. This is absent in Swaziland, thereby putting the country on a collision course with other SADC members. Given this visibly unacceptable form of democracy, such a dispensation affects intra-regional trade and, subsequently, regional integration. It also becomes difficult for the 14 member bloc to reconcile their different political and economic practices for a collective effort towards regional integration.

## 7 CONCLUSION

If the different challenges to regional integration are anything to go by, it can be asserted, therefore, that regional integration is becoming increasingly elusive. This is so because of the increasingly economic developments as well as political challenges in different SADC member states. In addition, given that each country is unique and has unique economic requirements, overlapping membership has presented an opportunity for different countries to address their different needs. Overlapping and concurrent membership by SADC member states has tended to show that they are not pulling together towards the goal of regional integration, as each member state has concentrated on identifying its own economic opportunities without regard for other members' economic interests. Additionally, concurrent membership has also resulted in inconsistencies in the application of economic policies. Powerful economic blocs, such as the EU, have played a divisive role by seeking to influence the SACU in the EPA negotiations and taking cognizance of the fact that all SACU members are also SADC member states. Additionally, the over-dominating role of South Africa in both the SADC and the SACU has tended to overshadow the voice of other smaller economies within both institutions, contrary to the SADC founding spirit of co-ordination, co-operation and unity of purpose. The SADC's overambitious projections of liberalisation of intra-regional trade as well as establishing a customs union and a common regional currency have not only proved to be insurmountable, but require thorough planning and a concerted effort on the part of the SADC members. The heterogeneity of SADC economies has also presented challenges of inequality and trade preferences contrary

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<sup>62</sup>Mo Ibrahim in the media article entitled '*Zimbabwe should be African powerhouse*' argues: "The past generation, most African leaders came from freedom-fighting, liberation movements. A good fighter is not necessarily a good governor. It takes different skills to run a country". Available at <http://mg.co.za/article/2012-10-16-mo-ibrahim-zimbabwe-should-be-african-powerhouse> (accessed 16 October 2012).

to the fact that the SADC Treaty envisages equality and unity of purpose among member states. The heterogeneity the of SADC economies has been the result of different political and colonial backgrounds.