



THE SADC TRIBUNAL

KEYNOTE ADDRESS

**BY HIS EXCELLENCY JUSTICE ARIRANGA GOVINDASAMY
PILLAY PRESIDENT OF THE SADC TRIBUNAL ON THE
OCCASION OF THE BOOK LAUNCH ON “MONITORING
REGIONAL INTEGRATION IN SOUTHERN AFRICA YEAR BOOK
VOLUME 8, 2008**

20th April, 2009-

**KALAHARI SANDS
HOTEL, MORINGA
ROOM, WINDHOEK
NAMIBIA**

Director of Ceremonies

Dr Anton Bösl, Resident Representative Konrad Adenauer Foundation.

Mr Klaus Schade, Acting Director of the Namibian Economic Policy
Research Unit (NEPRU)

Honourable Ministers

Members of Parliament

Your Excellencies, Members of the SADC Tribunal.

Your Lordships, Justices of Appeal and Judges of the High Court

Your Excellencies, Members of the Diplomatic Corps

Members of the Legal Fraternity

Distinguished invited guests

Members of the Media

Ladies and Gentlemen.

It is an honour and great privilege for me on behalf of the SADC Tribunal to perform the official launch and to address you this evening on the occasion of the Book Launch on Monitoring Regional Integration in Southern Africa Yearbook Volume 8, 2008 and share my thoughts with this august gathering of distinguished invited guests.

Director of Ceremonies,

It is a verified truism that throughout human history it has been the practice for human beings to rely on co-operation in all forms for various reasons. Regional integration has become one of the key strategies in modern days for rapid economic development among the Member States, as no country stands the chance to achieve economic development on its own.

Integration has thus always been part of the human race. There are abundant examples of nations coming together for economic and military objectives. This trend can be seen in all major regions worldwide. Within the African continent such regional blocks which are popularly known as Regional Economic Communities (RECs) can be found in East, Central, Southern and West African regions. Former President of South Africa Thabo Mbeki in 1999 for instance observed:

“Each one of our Countries is constrained in its ability to achieve peace, stability, stability, sustainable development and a better life for the people, except in the context of accomplishment of these objectives in other sister African Countries.”

Director of Ceremonies:

The Southern African Development Community (SADC) arose from the Lusaka Declaration, Southern Africa: “Towards Economic Liberation” that was adopted in Lusaka on 1 April, 1980. At their meeting in Windhoek on 17th August, 1992, the Heads of State and Government therefore signed the new Treaty transforming the “SADC” from a coordinating conference into SADC, the community. This redefined the basis of cooperation amongst the Member States from a loose association into a legally binding arrangement. The purpose of transforming SADCC into SADC was to promote deeper economic cooperation and integration to help address many of the factors that make it difficult to sustain economic growth and socioeconomic development.

Thus the preamble to the Treaty of SADC partly provides:

“Mindful of the need to involve the people of the region centrally in the progress of development and integration, particularly through the guarantee of democratic rights, observance of human rights and the rule of law.”

Article 4 of the 1992 SADC Treaty sets down the principles upon which SADC is anchored, namely;

- a) Sovereign equality of all Member States;
- b) Solidarity, peace and security;
- c) Human rights, democracy and rule of law;
- d) Peaceful settlement of disputes.

The objectives of SADC are contained in Article 5 and they are such that all the competing interests outlined above are incorporated. This preamble does underline the fact that SADC Member States realize that in order for integration to be a reality, good governance is a necessity.

Director of Ceremonies,

Having laid down the background to integration, it is now somewhat imperative that I address you on this integration process.

The word “process” simply means a series of things that are done in order to achieve a particular result. The expression “integration process” or “process of integration” means therefore a number of activities to be undertaken to achieve integration. In the context of SADC, Integration can therefore be described as the finality or the goal of the community. The above description corroborates the postulate that integration is the ultimate goal of

SADC as well as what has been said on the objectives of the SADC. In order for the Community to achieve this, a number of settings must be put in place. In this regard, SADC has developed a legal and institutional framework within which it operates, as well as mechanisms of implementation ensuring that policies are translated into reality.

Director of Ceremonies

As mentioned earlier, SADC has defined its objectives whose attainment should lead to effective and full integration. A roadmap to integration has therefore been tailored.

In order to provide strategic guidance to the Member States and the SADC Secretariat/Institutions in achieving the SADC objectives, the Regional Indicative Strategic Development Plan (RISDP) and the Strategic Indicative Plan of the Organ (SIPO) were formulated.

These RISDP and SIPO act as a roadmap towards the fulfillment of the Regional Integration Agenda. The RISDP sets out specific targets for achieving the objectives. Priority areas for integration have been identified and prioritized and these are:

- i) Trade Industry Finance and Investment;
- ii) Infrastructure and Services;
- iii) Food Security;
- iv) Social and Human Development;
- v) Peace and Security;
- vi) Gender and Development;

- vii) HIV/AIDS;
- viii) Democracy, Human Rights and Good Governance

Some of these priority areas have even been given specific time frames.

These are:

- Free Trade Area (FTA) launched in August, 2008
- Customs Union – by 2010
- SADC UNIVISA – by 2010
- Common Market –by 2015
- SADC Central Bank –by 2016
- Monetary Union – by 2016
- Regional Currency –by 2018

Director of Ceremonies

The 1992 SADC Treaty has established several institutions to implement and monitor the integration process. One such institution is the SADC Tribunal. As most of you are aware, the SADC Tribunal was established under Article 9 (1) of the SADC Treaty. Article 16 (i) of the Treaty stipulates that the Tribunal shall be constituted to ensure adherence to the proper interpretation of the provisions of the Treaty and subsidiary instruments, and to adjudicate upon such disputes as may be referred to it. It, therefore, follows that the settlement of disputes by the Tribunal through the judicial process is a categorical imperative in the efforts of Member States to attain regional integration.

As you may be aware, SADC Member States have three different legal systems, namely, the Civil Law systems, the Roman Dutch Law and

the common Law. Despite this diversity, the Protocol on the Tribunal and the Rules of Procedure are crafted in such a way that in carrying out its functions and in the exercise of its powers, the SADC Tribunal is required to develop a common SADC jurisprudence, influenced and informed by applicable treaties which are binding on Member States and the general principles and rules of public international law.

Director of Ceremonies

Although the Tribunal was established in 1992, it only became operational in 2005 and received its first case in 2007.

The SADC Tribunal is playing a crucial role in interpreting the Treaty and other Community Laws and in ensuring respect for the founding principles of SADC.

In a context of a regional organization aimed at full integration of Member States as is the case with SADC, the judicial interpretation of the Community laws assists the policy makers to have a common understanding of these laws in order to take informed decisions consistent with their spirit during the implementation stage.

As mentioned earlier, SADC has adopted principles that govern the achievement of the objectives of the Community. The SADC Tribunal is playing the role of ensuring that these principles are followed by different stakeholders in the community.

The functionalist approach to integration departs from the assumption that violence and power become obsolete as a means by which to achieve ends and aspirations.

The establishment of the SADC Tribunal within this regional grouping follows from this approach to integration and therefore always responds to the need for a mechanism of peaceful settlement of disputes when they occur.

Arguably, in this regard the jurisdiction conferred upon the Tribunal is wide enough to enable the peoples' of SADC to access the justice mechanism process put in place by the SADC Treaty.

The regional cooperation put in place under the SADC Treaty is people – centred and market driven. If democracy means the rule of the people by the people, and is one of the principles of SADC, then the SADC working strategy must focus on participation of all social groups from the bottom to the top. For integration to be a valid concept, individuals must be affected by the policy decisions of the supranational institutions and they must have some input into the decision making process. The Tribunal therefore has to ensure that there is respect for the principle of democracy.

The Tribunal too has to ensure that there is respect of rule of law at community level. There can be no meaningful integration if there is no rule of law in the region. As regard the principle of promotion and protection of human rights, the Tribunal has to facilitate the integration process through the recognition of the rights of individuals.

Although explicitly human rights jurisdiction has not been conferred upon the Tribunal, the court has been courageous enough to ensure that basic rights of individuals are respected. At more than one occasion, the Tribunal has had to consider preliminary objections from defendants alleging lack of **locus standi** by individual and legal persons. The Tribunal upheld that individual and legal persons have access to the Tribunal under Article 4 of the Treaty, which is a basic right to the regional justice mechanism enabling the peoples to participate in protecting the integrity of the Treaty.

Director of Ceremonies

SADC has established a credible framework of regional integration that can be a model for the rest of the African continent. It has the potential to transform the lives of its citizenry. However, there are some hurdles that must be overcome in its quest for economic, political and social transformation of the region and the lives of the people of the region.

It is therefore comforting to note that monitoring mechanisms are there. There is however need for strengthening these monitoring mechanisms. I therefore invite all the stakeholders to join hands in ensuring that the regional integration process is efficient, effective and responsive.

Director of Ceremonies,

With these few remarks, I declare the book entitled “Monitoring Regional Integration in Southern Africa Yearbook Volume 8, 2008” officially launched.

I thank you so much for your undivided attention and I wish everyone an enjoyable evening

May God bless you.