Chapter 8

Is SADC losing track?

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1. Introduction

The SADC Summit of 2010, held in the Namibian capital Windhoek, ended with two widely reported disappointments: the customs union – envisaged for 2010 – was neither established nor was an indication given for its eventual establishment. Moreover, the SADC Tribunal was in fact temporarily suspended until May 2012 after the Zimbabwean Government refused to comply with a controversial ruling by the SADC institution (allafrica.com 2011) and the SADC leaders felt unable to react to that violation of the operational terms of the Tribunal immediately. This raises questions about SADC's general ability to deal with integration obstacles and whether it still can achieve its set targets.

These developments point to three crucial issues of regional integration:

1. the adherence to self-set deadlines and timetables
2. the economic convergence
3. the political convergence.

In the following chapter these three issues will be analysed with regard to SADC to determine whether SADC is still on track to meet its integration targets or whether it is temporarily or totally off-track.

2. SADC timetables and deadlines

Legally, regional integration is usually based on agreements between states. Such agreements– as in the case of the SADC Treaty – often provide integration objectives and general provisions of how to achieve them. However, only if such agreements are legally binding – and not just voluntary in nature – and come attached with deadlines and timeframes do regional integration endeavours have a chance to succeed. Without agreements of an obligatory character and a timeframe such political agreements tend to be postponed, referred to working groups or are conveniently forgotten if they do not fit into the immediate national political landscapes. Africa's history of regional integration is full of failed attempts because regional agreements were not honoured at national level.

Looking at SADC's 30-year history, a maturing process with regard to the legal character of agreements can be observed. Initially, under the Southern African Development Coordination Conference (SADCC)[1], mere regional cooperation objectives were pursued whose sectoral agreements were neither legally binding nor equipped with timetables for the attainment of regional targets[2]. This began to change when the current SADC was formed in1992. The SADC Treaty allowed for sector protocols as the new main integration mechanism. Both the Treaty as well as the protocols had to be ratified by the national parliaments of at least two-thirds of those member states which had signed them in order to enter into force. Through the ratification process and the depositing of the legal instruments with the SADC Secretariat, protocols became national law and had to be implemented. However, few of the protocols have timetables attached to them; implementation has been left to the goodwill of the participating governments.

The SADC Treaty stipulated a range of objectives which were translated by various protocols into implementable policies. That was achieved – although mostly without setting timeframes – for several socioeconomic issues but only for few of the political objectives pronounced by the Treaty. The promotion of 'common political values and systems', 'democracy', 'rule of law' and 'human rights' are among the principles of the Treaty (SADC 1992: Art. 4) and were later reinforced by the Strategic Indicative Plan for the Organ (SIPO). In fact, SIPO went even further and stated as its first objective 'to protect the people and safeguard the development of the Region against instability arising from the breakdown of law and order, intra-state and inter-state conflicts and aggression' (SADC 2004: 17). It also calls for the evolution of 'common political values and institutions' and the promotion of 'democratic institutions and practices' (Ibid.: 18ff.).

[1] SADCC was formed in 1980 by nine states of southern Africa and in 1992 transformed into the current SADC.

[2] The only deadlines set under SADCC were those for the implementation of individual projects funded by donors, and even these targets were often not met. None of the project deadlines, however, can be regarded as having a direct cooperation or integration bearing.

It is therefore interesting to note that SADC leaders never made any attempt to concretise these objectives, translate them into legally binding policies or agree on implementation schedules for their achievement.

Regional integration not only needs legally binding agreements but also enforcement mechanisms. SADC established one such enforcement instrument with the adoption of the Protocol on Tribunal in 2001. It was probably owing to the need to be able to adjudicate anticipated disputes emanating from the implementation of the Trade Protocol that the Tribunal was eventually established in 2005. Its (temporary) suspension in August 2010 is a severe blow for the enforcement of SADC principle and policies.

2.1 Adherence to timetables with regard to trade-led integration in SADC

The Protocol on Trade was regarded from the very beginning as the centrepiece of the regional integration process in SADC. Aiming at the establishment of a Free Trade Area (FTA) it was signed in 1996 and ratified in January 2000[3] after long and intensive discussions (Peters 2010: 161ff). It was agreed that an 'offer' approach designed on the basis of asymmetry, which takes into account the level of development of member states, would govern the implementation of the protocol (SADC 2005: 33).

The SADC Trade Protocol (1996: Article 3.1(b)) set a first crucial deadline, which subsequently strongly influenced all further planning schedules for the trade-led regional integration in SADC: '… the elimination of barriers to trade shall be achieved within a time frame of eight (8) years from entry into force of this Protocol'. Although it is the protocol's main stated objective '… to phase out tariffs and Non-Tariff Barriers (NTBs) over eight years…' (Mudzonga 2008: 15), it lacked more detailed implementation schedules; also, the amended Trade Protocol of 2000 only partially addressed this shortcoming by stipulating in a new annex that 'each member state shall deposit an instrument of implementation, indicating the date upon which the member state intends to implement the Protocol and this Amended Protocol' (SADC 2000: Art. 9).

[3] All member states but the Seychelles and the Democratic Republic of Congo (DRC) have so far acceded the protocol and made it applicable to their tariff structures. Angola eventually signed the protocol and 'promised' to apply it.

While SADC was slowly moving towards more quantifiable approaches of regional integration in form of the protocols, the African Union (AU) set clear reference points for a continental economic integration in the form of the African Economic Community (AEC) by reconfirming the timetable as set out in the Abuja Treaty of 1992. This includes six stages of which the second stage – to be completed in 2007 – required the strengthening of integration within the eight officially acknowledged Regional Economic Communities (RECs); and stage three – to be completed by 2017 – requires the establishment of an FTA and a customs union in each of the RECs (EAC 2010:11; Peters (2010):82). The continental timetable acted for some of the existing RECs as an accelerator and also spurred SADC into action.

In 2003, SADC went a step further in making time-bound decisions with the adoption of the Regional Indicative Strategic Development Plan (RISDP) at the SADC Summit in Dar es Salaam. The RISDP contains a specific and detailed strategic plan (Fundira 2010) but unlike the SADC Treaty and Protocols, it is a voluntary (political) agreement with no legally binding obligations.

RISDP formulated a 15-year framework for intensified regional integration (2003 – 2018) which set the first (ambitious) clear time-bound targets for a trade-driven regional integration approach of SADC (2008: 5):

- the establishment of the SADC FTA until 2008, with the objective of liberating 85% of the regional trade in goods;
- the completion of negotiations for the establishment of the SADC Customs Union by 2010;
- the completion of negotiations for the establishment of the SADC Common Market by 2015;
- the establishment of the SADC Monetary Union and the SADC Central Bank by 2016; the launch of a regional currency and the establishment of an Economic Union by 2018.

The clear timetable of the RISDP has, since then, in the public image, been confused with a binding regional integration schedule for SADC. On the one hand that has intensified the political pressure on SADC to deliver but on the other hand it has also increased the potential for frustration as the timetable is very ambitious and failures had to be expected.

The RISDP reinforces the trade-driven approach to regional integration and apart from the general timetable also provides more detailed targets for the attainment of a first step, i.e. an FTA (Elago & Kalenga 2008; Peters 2010: 156ff). The Heads of State adopting the RISDP in 2003 agreed to a gradual approach towards establishing the FTA with the aim of eliminating 85% of tariffs of all intra regionally traded goods by January 2008. The tariffs for the remaining 15% of the (sensitive) goods were to be eliminated by all member states until 2012.

Having two documents with a different legal character has led to the rather paradoxical situation that the legally binding Trade Protocol does not include a detailed implementation schedule for the FTA whereas the legally non-binding RISDP proposes such a schedule not only for the detailed implementation of the FTA but also for the further steps of creating an Economic Union in the SADC region. In other words, the 11 member states which acceded the Trade Protocol agreed mainly on a non-binding basis to follow the implementation schedule prescribed by RISDP.

However, due to monitoring of the implementation process by the SADC Secretariat supported by regular reviews and audits[4], most of the member states which have acceded the protocol complied at least in general terms with the phasing-out of tariffs for goods of Categories A and B until 2008 (see Table 1).

[4] The SADC Secretariat commissioned a Midterm Review of the implementation process of the FTA in 2004 and has since 2007 conducted, with the assistance of USAID, annual audits of the phasing-down of tariffs by the member states.

Table 1: The tariff elimination phases according to the RISDP

Tariff elimination phase	Countries covered	Stipulations
Phase 1: January 2000	South Africa, Botswana, Lesotho, Swaziland and Namibia	Category A goods: tariffs were removed upon FTA establishment.
Phase 2: 2000 – 2008	SACU member states	Category B goods: gradual reduction of tariffs in equal instalments to zero between 1 and 8 years
Phase 3: 2004 – 2008	Mauritius, Zimbabwe	Category B goods: as above
Phase 4: 2006-2008	Malawi, Mozambique, Tanzania, Zambia	Category B goods: as above
Phase 5: 2008 – 2012	All countries	Category C goods: sensitive goods (less than 15% of overall traded goods)
Open	All countries	Category E goods: excluded goods

Source:Trade Hub (2007); Mudzonga (2008)

Explanation:

Category A tariffs: *immediate liberalisation*; applies to all SACU members

Category B tariffs: *gradual liberalisation;* tariffs on these goods will reduce gradually to zero until 2008 according to member state, as these goods constitute significant sources of customs revenue

Category C tariffs: *sensitive products;* tariffs on these goods are to be eliminated between 2008 and 2012. Category C is limited to a maximum of 15% of each member's intra-SADC merchandise trade.

Category E tariffs: *goods that can be exempted;* these goods are exempt and their tariffs will not be touched or reduced to zero.

The FTA was established according to the timetable of the RISDP and officially launched during the SADC Summit in August 2008 in Johannesburg but suffered from the very beginning from several shortcomings. For one, not all of the 11 member states which had ratified the Trade Protocol complied with the requirements of phasing down their intraregional tariffs and training their customs officials sufficiently as prescribed by the RISDP. A comprehensive audit on the implementation of the SADC Protocol on Trade in 2007 found[5]'…significant non-compliance in conjunction with serious compliance constraints …' and that '… four Member States – Malawi, Mozambique, Zimbabwe and Tanzania – are not up to date on the implementation of their tariff down schedules'[6]. The result was that while the SADC FTA officially existed, the realities on the ground were far from compatible with a free trade area.

In the latest audit (2010) of the implementation of the SADC Trade Protocol SADC 2010b), two countries perpetuated the delays in the envisaged tariff reductions for 2010. Malawi still had the same tariff levels as in the 2004 (Ibid.: 7ff)[7], while Zimbabwe requested a derogation for the scheduled reductions until 2012-14 due to economic difficulties (Ibid.: 17ff).

When at the end of the Windhoek Summit in August 2010 the announcement was made that the establishment of the SADC Customs Union would have to be postponed, one reason given was the delay in phasing down the tariffs for the FTA. The delays in turn were to some extent caused by the tendencies of some SADC member states (Malawi, Mozambique and Zambia) to 'back-load' their tariff reductions by spreading the adjustment costs towards the end of the final phase (Mudzonga 2008: 17). Malawi, for example, had promised to reduce all their tariffs in 2007/8 but failed to do so as the immediate adaptation costs (loss of customs revenue) would have been too high for the already strained national budget.

Another reason for SADC's reluctance to progress to a customs union is the ongoing negotiation process between SADC and the Common Market for Eastern and Southern Africa (COMESA) and the East African Community (EAC) regarding the establishment of a 'tripartite' FTA[8]. This could be a first step to address the problem of SADC countries

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[5] The phase-down of 85% of intra-regional tariffs was supposed to have been effective by 1 January 2008.

[6] See the Audit on the Implementation of the SADC Protocol on Trade, SADC (2010b) 2010 Audit of the Implementation of the SADC
Protocol on Trade DRAFT FOR DISCUSSION (SADC/TNF/40/2010/3[A]) by the Trade Hub, Gaborone

[7] In the budget speech (28 May 2010) the Malawian Minister of Finance announced wide-ranging tariff reductions in line with the SADC requirements; however, at the time of writing it was still unclear to what extent the reductions had really been carried out and if they were sufficient to meet the SADC requirements.

[8] COMESA already established (at least on paper) a customs union in 2005, while the EAC established a customs union in 2009 and is now already on the way to a common market.

belonging to more than one customs union which under WTO rules (and practical considerations) is not possible[9]. This problem was highlighted by the 2007 audit of the Trade Protocol: some SADC member states belonging also to another customs union had applied tariffs on SADC imports without regard for commitments emanating from the SADC Trade Protocol. Tanzania, for example, made concessions to Uganda and Kenya under the 'common external tariff' (CET) of the EAC Customs Union (Mudzonga 2008).

Apart from the loss of revenue, overlapping membership and general implementation weakness a further reason for the delays in advancing from the FTA status to a customs union is the difficult process of harmonising the economic policies amongst SADC member states as required by a customs union. Agreeing on one external tariff regime amounts to giving up control of an important element of domestic industrial policy and thus national sovereignty (Kalenga 2008: 92). And it would require a clear decision by SADC Heads of State whether a SADC customs union would serve an inward-looking objective (to protect the regional market from external competition) or promote the integration of the region into the global market by applying low tariffs (Ibid.: 93).

Despite the work of a Ministerial Task Team to develop options for the process of establishing the SADC Customs Union the time for addressing all the above listed problems was insufficient to allow for the launch of the customs union in August 2010. The SADC Summit in Windhoek had to acknowledge this and thus postponed the establishment of the customs union. In order to develop a way out of this quagmire the SADC Heads of State appointed a high-level expert group to look at how the process of establishing the customs union can be sped up and to report back to SADC by December 2011.

In summary, with regard to the implementation of the Trade Protocol and the establishment of an FTA, SADC was more or less on course according to the prescribed time schedule. The FTA was launched as envisaged in August 2008 albeit with a number of deficiencies. As far as the legally binding Protocol on Trade is concerned, the12 SADC member states which eventually acceded the protocol fulfilled their legal obligations. The postponement of the customs union in 2010 was necessary because of critical unresolved issues.

[9] Tanzania belongs to the EAC customs union; Malawi, Mauritius, Mozambique, Zambia and Zimbabwe belong to the COMESA customs union as well as Swaziland which is also a member of the Southern African Customs Union (SACU).

However, unlike the establishment of the FTA, the launch of the customs union in 2010 was not a legally required necessity. The date, emanating from the RISDP, expressed merely a political intention. Nevertheless, the delay in launching the customs union sends a negative signal to international business interests and the international cooperating partners. Indirectly, it also points to the weak role the private sector in the SADC region has played so far in the negotiation process towards the formation of a customs union. Previously, in the four years before the ratification of the Trade Protocol, the private sector assumed a much more active and determining role in the context of the Trade Negotiation Forum (Peters 2010: 162ff).

SADC's failure to establish a customs union according to the RISDP timetable puts into focus also to some extent the still unclear relationship between protocols and the RISDP. While SADC Directorates have developed implementation plans for some protocols (SADC 2005: 79), they have not yet made them compatible to the planning format of the RISDP (one-year operational, five-year medium-term plan and fifteen-year long-term plan) and are therefore not sufficiently monitored under the RISDP monitoring framework.

2.2 Adherence to macroeconomic convergence in SADC

The problems pertaining to the harmonisation of economic policies required for the establishment of a customs union – agreement on the direction/objective of the customs union, willingness to relinquish certain areas of national sovereignty, preparedness to restructure government revenue – are only one range of economic issues which have to be addressed before regional integration can deepen further. Another set of issues refers to the macroeconomic convergence (MEC) of the member states of SADC.

MEC describes the narrowing-down of economic differences between countries at the highest possible level[10]. MEC is a crucial requirement for integration beyond FTA status as it prepares the participating national economies for the increasing degree of external competition they are going to be faced with as a member of a customs union and later an economic union. It also lowers the danger of unequal distribution of costs and benefits within the regional economic community. MEC aims at achieving a certain degree of

[10] In fact, it is hardly perceivable that one country would lower its economic development level in order to let other countries catch up.

structural economic stabilisation. The Economic Commission for Africa (ECA 2008: 2) in its third assessment of regional integration in Africa states:

> The success of regional integration depends critically on member countries pursuing convergent macro-economic policies. Misalignments of tariffs, inflation rates, exchange rates, debt-to-GDP-ratios, rate of money growth and other vital macroeconomic variables between member countries would be disruptive to economic integration…It is therefore imperative that the process of strengthening regional integration should include guidelines for the convergence of the macro-economic and trade policies of the entire regional space so as to strengthen the overall regional integration agenda.

Even before the RISDP was agreed upon, SADC started to think about the issue of MEC. The first approach was made by the governors of the SADC central banks whose ideas were formalised in 2002 in a Memorandum of Understanding (MoU). Selection and quantitative targets for the MEC indicators were strongly influenced by the so-called 'Maastricht Criteria', which guided the European Union into a currency union. In a more generalised form the MEC indicators were incorporated in the SADC Protocol on Finance and Investment, which had been signed in 2007 by all member states but is still awaiting ratification. Once ratified the protocol provides SADC with a set of generally defined economic indicators (Ibid.: 39):

(a) the rate of inflation in a State Party;

(b) the ratio of the budget deficit to GDP in a State Party;

(c) the ratio of public and publicly guaranteed debt to GDP, taking account of the sustainability of such debt, in a State Party; and

(d) the balance and structure of the current account in a State Party.

The quantified and qualified (timeframe) primary MEC indicators had already been defined in the MoU of 2002. The RISDP of 2003 added a number of secondary MEC indicators. In November 2008, a SADC workshop to review the MEC indicators produced a combined set of MEC indicators which provide a realistic approach to measure MEC in SADC. This latest set of MEC indicators are as follows:

Table 2: Proposed architecture of indicators for Macroeconomic Convergence

Year/Indicator	2008	2012	2018
Primary Indicator			
Annual Inflation Rate	<10%	< 5%	< 3%
Secondary Indicators			
Primary Fiscal Balance/GDP *	Tba (see: Explanation below) (< 5%)	Tba (< 3%)	Tba (< 3%)
Public Debt/GDP	< 60%	< 50%	< 40%
Current Account Balance/GDP	< 9%	< 7%	< 5%

Source: SADC (2009:20)

*Explanation: In the MoU on MEC tight limits were set for acceptable fiscal deficit levels (shown in brackets); due to an ongoing discussion on appropriate fiscal deficit levels for developing countries this indicator has been left blank in the proposed architecture for MEC indicators for the time being until some agreement can be reached.

The first phase of MEC was supposed to have been reached in 2008. Despite widespread problems to gather correct economic data it is possible to check the degree of MEC attainment for 2008 for all SADC member states. If the indicator for the 'Primary Fiscal Balance' as originally set by the MOU on MEC is applied, the overall picture with regard to meeting the initial MEC indicators for 2008 is not satisfactory. None of the 14 member states (the Seychelles has not been included) has reached all the macroeconomic targets set for 2008; ten reached three out of the four targets, three reached two targets and Zimbabwe might have reached one of the targets (see Table 3).

The performance of the SADC member states was the least successful with respect to the target for the primary indicator, the annual inflation rate. Only Madagascar, Malawi and Mauritius managed to keep the inflation rate in single digits. However, apart from the DRC and Zimbabwe, the other SADC member states missed the inflation target by only a small margin (0.3% to 3.6%). The best performances were achieved with regard to the target for the 'Primary Fiscal Balance' and the target for the 'Debt to GDP Ratio' with 13 and 12 member states respectively fulfilling the indicator.

Table 3: Attainment of primary Macro Economic Convergence criteria in SADC 2008

Country	Inflation target (single digit)	Fiscal balance target (< -5% of GDP)	Debt target (< 60% of GGDP) that is generally known as an abbreviation	Current account target (<-9% of GDP)	Score in 2008
ANG	13.2	+8.9	33.0	+21.2	**3 of 4**
BOT	12.6	-0.8	6.0	+15.0	**3 of 4**
DRC	23.8	+0.7	n/a	-7.3	**2 of 4**
LES	10.8	-1.0	55.0	+12.6	**3 of 4**
MAD	9.4	-4.7	30.0	-22.8	**3 of 4**
MAL	8.8	-6.3	46.4	-6.3	**3 of 4**
MAU	9.7	-3.4	57.7	-10.5	**3 of 4**
MOZ	10.3	-2.8	40.0	-6.1	**3 of 4**
NAM	10.3	=4.7	18.7	+3.8	**3 of 4**
RSA	11.6	-0.7	32.0	-7.4	**3 of 4**
SWA	12.6	-1.3	17.8	-15.4	**2 of 4**
TAN	10.3	-3.8	38.0	-12.5	**2 of 4**
ZAM	13.6	+1.0	18.1	-4.2	**3 of 4**
ZIM	1,594,745	+29.9*	114.7	-16.6	**1 of 4**
TOTAL	**3 of 14**	**13 of 14**	***12 of 14***	**9 of 14**	

Source: SADC (2009c); own compilation

*Explanation: The high surplus in the case of Zimbabwe is not the product of prudent economic policies but the result of the collapse of the economy: revenue collected in local currency was impossible to be spent by government as a result of its loss of value (SADC 2009c:10). Under normal circumstances, Zimbabwe would have recorded a fiscal deficit.

It is also important to note that 2008 was a year when a booming global economy and high commodity prices started to impact on price levels. Just a year before 11out of the 14 SADC member states had inflation rates of below 10% and would have fulfilled the primary indicator. Thanks to the Heavily Indebted Poor Countries (HIPC) initiative, nearly all SADC countries received substantial debt relief. This together with better fiscal management made their external debt positions manageable once again. Tanzania was the last of the eligible SADC member states to reach the completion point under the HIPC initiative providing some debt relief in 2007 (Peters (2010): 244; AfDB 2010:3ff).

The economic data available for 2009 indicates that the world economic crisis hit the SADC region quite hard. Regional economic growth dropped from +6.3% in 2008 to -1.4% in 2009 but promised to bounce back to around +4% in 2010 (AfDB 2010:4). While average inflation rates for most SADC countries dropped to 8.4% in 2009 inter alia due to sharply decreasing oil prices they picked up slightly again in 2010 when the world economy started to get back into gear. The development for the other three MEC indicators was less favourable (Ibid.: Annex 3) but either still within the set target range or close to it:

- The fiscal balance dropped from +2.6% in 2008 to -5.1% in 2009 for the region.
- The current account position for the region deteriorated from -2.5% in 2008 to 9.2% in 2009.
- The regional debt position increased from 24.7% of GDP in 2008 to 27.2% in 2009.

Although the overall trend concerning MEC in the SADC region has been rather positive for the last decade (Ibid.: Annex 3), the volatility of macroeconomic fortunes over the last three years shows how vulnerable the national economies in southern Africa are with regard to global developments. Macroeconomic stability in the SADC region is therefore heavily dependent on external forces (high global demand and prices for regional commodities; special development initiatives such as HIPC; global financial speculation such as the current high inflow of funds into South African Government Bonds) and might thus be more accidental than sustainable.

In summary, it appears that SADC is on a good way towards increasing regional MEC until 2008 although it was thrown back first by the impact of the overheating of the world economy (which increased regional inflation) and then in 2009 by the global recession. For 2008, most countries met three of the four MEC indicator values but had difficulties meeting the primary inflation-related indicator.

The MEC targets have probably been rather ambitious in view of the strong dependency of the SADC economies on external factors. But from a mere economic point of view they are necessary in order to map out a path to MEC in the SADC region.

In terms of the adherence to timetables, SADC has been close to meet the targets for 2008 and might have a good chance to meet to a large extent the targets for 2012 – if the global economic recovery continues. The latter point underscores how open the realisation of the

MEC targets is to external influences and how limited the room for manoeuvre is for most SADC member states to influence economic performance through appropriate domestic policies.

2.3 Adherence to democratic convergence in SADC

Although less prominently discussed and written about, regional integration can only work if not only the economies converge but also the political systems become more democratic. Political democratic convergence (PDC) is defined as '… the collective process within a regional integration body towards the adoption and practice of higher degrees of democracy at national level' (Peters 2010: 266). It is a crucial requirement for deeper regional integration because PDC ensures similar political and economic conditions and thus predictability in all member states. Less democratic or autocratic states are less predictable in their application of the rule of law, regime stability and economic development orientation and thus a liability for regional integration – as the example of Zimbabwe aptly emphasises.

SADC has produced some protocols which deal with aspects of democratisation and governance:

- the SADC Treaty
- the Protocol on Politics, Defence and Security Cooperation
- the Protocol on Tribunal and the Rules of Procedure
- the Protocol against Corruption

None of these protocols or other SADC agreements referring to democracy such as the Mutual Defence Pact, which was signed by most SADC members in 2003 but still awaits ratification, or the SADC Charter of Fundamental Social Rights, which entered into force in 2003, contains any implementation schedules.

The SADC Treaty itself in the form of general objectives refers to the promotion of democracy and good governance but does not consider this a precondition for deeper regional integration. These principles were reinforced by the Protocol on Politics, Defence and Security[11] and the SIPO. However, 'politics' is still understood by most SADC leaders as

[11] It is interesting to note, however, that the term 'democracy' does not appear in the title of the protocol and rather a more neutral expression – 'politics' – is being used.

'stability and security' and not so much as 'democracy and good governance' as the Protocol on PDS shows (SADC 2001:Art. 2).

The Protocol on the Tribunal provides for the establishment of an important instrument not only for the settlement of SADC disputes but also for the enforcement of democratic standards of the rule of law. Being established in Windhoek, the Tribunal officially started functioning in 2007; according to its operational brief no time schedules or deadlines were set.

With the Protocol against Corruption (signed in 2001 and entering into force in 2005) SADC employed an instrument to tackle one of the big problems of the region. According to the protocol, the member states are supposed to report regularly on its implementation to an overseeing committee. However, until now the committee has not yet been established and the protocol in fact not been implemented (Noa 2010). All deadlines have been ignored by the SADC member states.

The SADC Treaty and instruments are not providing any measurable yardsticks for PDS. And unlike in macroeconomics there are also no specific and objective indicators which could express the degree of democratisation or good governance in a country. However, a number of indices exists which – when combined – can provide an approximation of the state of democratisation and governance in individual countries.

In this chapter, despite the missing formal link between regional integration and the attainment of democracy, we will treat the issue as a general necessary requirement for the success of regional integration in the SADC region. The following indices are used to analyse to what extent the SADC region is moving towards PDC:

- The Corruption Perception Index (CPI) of Transparency International, which attaches a value regarding the degree of transparency between 1.0 and 10 to most countries in the world.
- The Bertelsmann Transformation Index (BTI) of the Bertelsmann Foundation, which inter alia attaches values regarding the degree of transformation towards democracy and market economy for some 120 transformation countries on a scale from 1 to 10 (full transformation).

- The Freedom House Index of Freedom House (US) measuring the degree of attainment of civil rights and civil liberties on a scale from 1 to 7 (totally unfree).
- The Ibrahim Index (II) of the Mo Ibrahim Foundation measuring to what degree African countries have achieved good governance and looking at '… the delivery of public goods and services to citizens by government and non-state actors'[12] on a scale from 1 to 100 (good governance) .

The picture concerning corruption in the SADC region is, on the whole, negative. The perceived level of corruption in the SADC member states in 2010 was higher than in 2000 although it marginally improved as compared to 2004 and 2006. In seven out of 15 member states, corruption levels rose while they fell in another seven and stayed the same in one country. South Africa is among those countries in which perceived corruption levels have worsened. As a region, SADC consists of one group (Botswana, Mauritius, Seychelles, South Africa and Namibia) with moderate levels of corruption, another group with serious corruption problems (Lesotho, Malawi, Swaziland and Zambia) and a third group of states where corruption is endemic – this group is the largest. On the whole, the majority of SADC member states can be perceived as being corrupt (ratings of below 4 on the CPI scale) and only two countries (Botswana and Mauritius) show a value of above 5 on the overall scale.

[12] See www.moibrahimfoundation.org/en/section/the-ibrahim-index.

Table 4: Transparency in the SADC region 2000 – 2010

	2000		2004		2006		2008		2009		2010		Trend
	Rank	Value	Rank	Value	Rank	Value	Rank	Value	Rank	Value	Rank	Value	
ANG	85	1.7	129	2.0	142	2.2	158	1.9	162	1.9	168	1.9	**+**
BOT	26	6.0	29	6.0	37	5.6	36	5.8	37	5.6	33	5.8	**-**
DRC	n/a	n/a	133	2.0	156	2.0	171	1.7	162	1.9	164	2.0	**0**
LES	n/a	n/a	n/a	n/a	79	3.2	92	3.2	89	3.3	78	3.5	**+**
MAD	n/a	n/a	82	3.1	84	3.1	85	3.4	99	3.0	123	2.6	**-**
MAL	43	4.1	90	2.8	105	2.7	115	2.8	89	3.3	85	3.4	**-**
MAU	37	4.7	54	4.1	42	5.1	41	5.5	42	5.4	39	5.4	**+**
MOZ	81	2.2	90	2.8	99	2.8	126	2.6	130	2.5	116	2.7	**+**
NAM	30	5.4	54	4.1	55	4.1	61	4.5	56	4.5	56	4.4	**-**
SA	34	5.0	44	4.6	51	4.6	54	4.9	55	4.7	54	4.5	**-**
SEY	n/a	n/a	48	4.4	63	3.6	55	4.8	54	4.8	49	4.8	**+**
SWA	n/a	n/a	n/a	n/a	121	2.5	72	3.6	79	3.6	91	3.2	**+**
TAN	76	2,5	90	2.8	93	2.9	102	3.0	126	2.6	116	2.7	**+**
ZAM	57	3.4	102	2.6	111	2.4	115	2.8	99	3.0	101	3.0	**-**
ZIM	65	3.0	114	2.3	130	2.4	166	1.8	146	2.2	134	2.4	**-**
Aver		**3.8**		**3.4**		**3.3**		**3.4**		**3.4**		**3.5**	**-**

Source: www.transparencyinternational.org; various years; own compilation

The BTI 2010[13], portrays a divergent picture of the political and economic transformation of the SADC region (13 of the 15 member states were covered by the BTI for 2007–2009). While four member states of SADC can be categorised as democracies (Botswana, Mauritius, Namibia and South Africa), six as democracies with deficiencies (Lesotho, Madagascar, Malawi, Mozambique, Tanzania, and Zambia), three are classified as outright autocracies (Angola, DRC and Zimbabwe). Only Angola, the DRC and Malawi improved their ratings between 2003–5 (BTI 2006) and 2007– 9 (BTI 2010); two other member states (Tanzania and Zambia) more or less maintained their values while the other seven countries covered by the BTI showed a deteriorating level of transformation. Reason for concern is that amongst the backsliders are all the SADC member states which are regarded as democracies. On the whole, the democratic (and economic transformation) in the SADC region shows a negative trend.

[13] Covering the period between February 2007 and January 2009.

Table 5: The BTI for SADC countries 2003 – 2009

	2003–5	2005–7	2007–9	Trend
ANG	3.41	3.82	4.56	**++**
BOT	7.98	7.94	7.81	**-**
DRC	2.62	3.16	3.53	**++**
LES	n/a	n/a	5.35	**0**
MAD	6.45	6.23	5.30	**--**
MAL	4.89	5.35	5.56	**+**
MAU	8.17	8.33	7.94	**-**
MOZ	6.01	5.56	5.71	**-**
NAM	7.15	7.32	6.99	**-**
SA	7.98	7.98	7.16	**-**
TAN	5.65	5.84	5.58	**0**
ZAM	6.07	5.97	5.99	**0**
ZIM	3.38	3.39	3.01	**-**
Average	**5.81**	**5.91**	**5.73**	**-**

Source: www.bertelsmann-stiftung.org, different years; own compilation

The Freedom House Index on 'freedom in the world' shows stagnation for the SADC region between 2000 and 2009. Six countries improved their ratings; four countries remained at the same level and in five member states 'freedom' became more restricted. The average value remained the same and puts the region as a whole at the 'partly free' level. Not surprisingly, one of countries whose rating slipped is Zimbabwe but another one is South Africa, the most important member state of SADC. Four of the 15 rated SADC countries are considered as 'free', amongst them also South Africa (the others are Botswana, Mauritius and Namibia), seven as 'partly free' and four as 'un-free' (Swaziland, Zimbabwe, Angola and DRC). The overall picture provided by the Freedom House ratings shows a region clearly divided into three groups with little if any movement towards regional democratic convergence. Predominantly, the countries of the SADC region have not yet reached the level of free and democratic states.

Table 6: Development of political freedom in SADC 2000–2007

	2000	2004	2005	2006	2007	2008	2009	Trend
ANG	6	5.5	5.5	5.5	5.5	5.5	5.5	+
BOT	2	2	2	2	2	2	2	0
DRC	6.5	6	6	5.5	5.5	6	6	+
LES	4	2.5	2.5	2.5	2.5	2.5	3	+
MAD	3	3	3	3	3.5	3.5	5	-
MAL	3	4	2	2	4	4	3.5	-
MAU	1.5	1	1	1.5	1.5	1.5	1.5	0
MOZ	3.5	3.5	3.5	3.5	3	3	3.5	0
NAM	2.5	2.5	2	2	2	2	2	+
SA	1.5	1.5	1.5	2	2	2	2	-
SEY	3	3	3	3	3	3	3	0
SWA	5.5	6	6	6	6	6	6	-
TAN	4	3.5	3.5	3.5	3.5	3.5	3.5	+
ZAM	4.5	4	4	3.5	3.5	3	3.5	+
ZIM	5.5	6.5	6.5	6.5	6.5	6.5	6	-
SADC	3.7	3.6	3.5	3.5	3.6	3.6	3.7	0

Source: www.Freedomhouse.org; different years; own compilation

The Ibrahim Index in general depicts a rather positive trend as far as good governance is concerned. The Index shows a steady improvement for most countries in the SADC region. Only three (Madagascar, Mozambique and Zimbabwe) of the 15 SADC member states had lower values in 2009 than in 2000. Some countries in the region, such as Angola, the DRC, Lesotho, Mauritius and Zambia showed considerable improvement. Of the ten top performers for Africa in 2009, six were from the SADC region[14]. With the exception of the DRC and Zimbabwe and the rapidly improving Angola, all the other SADC member states show results which are above the African average. Five top performers are to be noted: Mauritius, Botswana, the Seychelles, South Africa and Namibia.

[14]The country data and composite values of the Mo Ibrahim Index are usually two years old when published. The Ibrahim Index of 2009 will therefore depict data for2007.

Table 7: Governance in the SADC region

	2001	2003	2005	2007	2008	2009	Trend
ANG	23.4	27.4	30.7	32.1	37.0	39.3	**+++**
BOT	74.5	74.6	75.3	76.2	76.4	75.9	**+**
DRC	25.6	25.9	29.4	31.5	32.8	31.1	**++**
LES	54.8	57.1	57.9	59.5	59.4	60.1	**++**
MAD	55.7	54.3	54.8	56.6	55.0	48.7	**--**
MAL	49.8	49.3	49.0	50.4	51.7	51.7	**+**
MAU	77.9	77.7	79.3	79.5	82.2	83.0	**++**
MOZ	52.6	53.6	52.5	51.3	50.9	52.1	**-**
NAM	67.5	67.4	65.9	69.1	68.7	67.3	**0**
SA	72.3	72.0	70.9	72.8	70.9	71.5	**-**
SEY	73.6	74.4	75.5	78.0	77.0	78.5	**+**
SWA	45.9	45.8	46.3	50.0	51.1	50.8	**+**
TAN	53.0	52.3	51.9	54.8	55.5	55.0	**+**
ZAM	49.4	50.3	50.5	54.4	54.8	54.9	**++**
ZIM	35.9	35.8	33.5	32.3	31.6	32.7	**-**
Average	**54.1**	**54.5**	**54.9**	**56.6**	**57.0**	**56.8**	**+**

Source: www.moibrahimfoundation.org; different years; own compilation

In the Ibrahim Index the contrasting positive development trend as far as good governance is concerned[15]may be caused by a stronger incorporation of socioeconomic factors. However, in the context of this study it is more important that the index also identifies more or less the same groups of advanced and badly performing member states as the other three indices. The emerging image is that of a divergent region with three distinct groups of countries as far as democratic convergence is concerned:

- a 'democratic' group of countries with Botswana, Mauritius, Namibia, South Africa, and to some extent the Seychelles;
- an 'intermediate' group of countries with deficient democracies including Lesotho, Madagascar, Malawi, Mozambique, Tanzania and Zambia;
- an 'autocratic' group of countries including Angola, DRC, Swaziland and Zimbabwe.

[15] The Ibrahim Index is a composition of four indices: 'safety and the rule of law'; 'participation and human rights'; 'sustainable economic opportunity'; and 'human development'.

The dynamics in the 'democratic' group point to a gradual worsening of democratic features especially as far as South Africa is concerned. The development in the 'intermediate' group is towards more democracy and adherence to democratic procedures. The third group of autocratic states is rather static.

The slow regressive development concerning democratic convergence in SADC found its political expression in the non-operational Protocol against Corruption and the temporary suspension of its only organ of policy enforcement: the SADC Tribunal in 2010. Established in 2001, the latter became eventually operational in late 2005 with certain briefs to deal with, inter alia the interpretation of the treaty and the protocols, and disputes between member states and natural or legal persons and the state[16]. Apart from a minor case the Tribunal was for the first time severely tasked when in October 2007 a group of white Zimbabwean farmers challenged the expropriation of their farms by the Zimbabwean Government as being motivated by racism and as such contradicting Article 6 of the SADC Treaty.

In a first ruling, the Tribunal in December 2007 ordered the Zimbabwean Government to stop any further actions and allow the farmers to remain on their farms until the Tribunal would pass a final ruling – a decision which the Zimbabwean Government duly ignored. The SADC Tribunal in July 2008 ruled the Zimbabwean Government to be in contempt of the court and indicated that it would report the matter to 2009 SADC Summit for further action. In November 2008, the Tribunal made his final ruling on the farm expropriations in Zimbabwe:

- Prohibiting legal appeals against farm eviction orders was illegal;
- Article 6 of the SADC Treaty was violated (racism);
- All ongoing farm evictions had to be stopped;
- Those who were already evicted from their farms had to be appropriately compensated (Peters 2010:188ff).

The Zimbabwean Government – predictably – refused to accept the rulings and questioned their legality: it argued that Zimbabwe did not ratify the Protocol on Tribunal. However, this argumentation does not hold much legal water as the Protocol on Tribunal was deliberately

[16] See www.SADC.int/tribunal/.

approved by a Heads of State Summit in a way to avoid the need for ratification at national level; Zimbabwe had gone along with this procedure[17]. The Zimbabwean refusal to accept the Tribunal rulings exposed the Tribunal for what is really is: a good-weather mechanism which stalls when the sea is getting stormy. In fact, the absence of effective sanction and enforcement mechanisms for the Tribunal makes it dependent on the 'good will' and compliance of the member states – something the Zimbabwean Government was not prepared to provide.

In order to avoid an outright embarrassment, the 2010 Summit decided to commission a review of the role, functions and terms of reference of the Tribunal which produced a report by the end of February 2011[18]. The extraordinary Summit in Windhoek on 20th of May 20111 ignored to a large extent the findings of the report, upheld the suspension of the Tribunal and commissioned the SADC Ministers of Justice to initiate a process to amend the legal instruments of SADC (Konrad Adenauer Foundation, Nairobi 27.5.2011). SADC conveyed a negative message with this factual suspension of the Tribunal: good governance is not high up on the agenda.

Assessing the developments in the region over the last decade shows a clear non-favourable trend when it comes to PDC:

- Three distinct groups exist with regard to adherence to good governance and democracy which are not converging on each other.
- The level of democracy and good governance has suffered on the whole over the last decade. SADC's lead country South Africa dropped in most categories measuring aspects of good governance.
- The SADC Tribunal as the only independent mechanism to facilitate good governance in the region was at least temporarily shut down and its reputation seriously damaged.

[17] See: Zimbabwe Human Rights NGO Forum. 20.08.2009 (mimeo)
[18] See: SADC Communiqué of the 30th Jubilee Summit of SADC Heads of State and Government

3. Conclusion

Overall, SADC is still on track but deviates somewhat from the straight road towards deeper regional integration. In terms of economic integration, SADC is more or less on course but political integration appears to lag seriously behind regional integration requirements.

Contrary to media speculation, SADC had not legally committed itself to establish a customs union in 2010; the timetable of the legally binding Trade Protocol foresaw the establishment of a Free Trade Area for 2008 – which SADC achieved – but did not go any further. The RISDP, which set the start of a customs union for SADC at 2010, is not a legally binding document but a mere declaration of intentions. Its targets with regard to trade-led regional integration had been overambitious even at the date of drafting and they were probably strongly influenced by the pan-African integration targets of the AU under the Abuja Treaty.

The SADC region experienced a development towards macroeconomic convergence over the last decade which constitutes a necessary condition for deeper trade-led regional integration. The qualitative targets set for 2008 were nearly achieved; however, the impact of the world economic crisis in 2009 cancelled out some of the macroeconomic accomplishments and slowed down convergence to some extent. This macroeconomic backsliding highlighted once more the high sensitivity of the SADC economies towards external factors which are outside their sphere of direct political influence. Macroeconomic convergence in SADC will always remain partially dependent on favourable global economic factors.

Democratic convergence towards stable, legitimised and participatory regimes practising good governance in the SADC region seems to be moving ahead at a snail's pace – if at all. Three distinct groups of member states (one group of countries which are more or less democratic, one hybrid group of democracies with deficiencies, and one group of autocratic states) exist within SADC. They are not converging much towards the first group and whose democratic champions – such as South Africa and Botswana – are starting to backslide. The prevailing regional political culture of authoritarian rather than participatory rule, the dominance of personal rulers, and the absence of a universal application of the rule of law in the region do not bode well for a deepening of regional integration in SADC. The temporary suspension of the Tribunal underscores the problems SADC leaders have with good governance concepts.

In summary, SADC has not (yet) lost track but risks to lose the necessary momentum to carry regional integration further. Currently, there is a mismatch between the political fundamentals of regional integration and economic ambitions resulting in a reduced commitment for deeper regional integration, especially when questions of national sovereignty are at stake. Without an increasing political convergence towards greater democracy and a stronger commitment for the rule of law the political leaders are not sufficiently legitimised to agree on the upcoming required decisions regarding the introduction of a customs union (level of external tariffs, distribution of customs revenue, and harmonisation of economic and financial policies).

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