

# **THE HARMONISATION OF TRAFFIC LEGISLATION IN THE SOUTHERN AFRICAN DEVELOPMENT COMMUNITY (SADC)**

**S YESUFU**

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## **ABSTRACT**

The Southern African Development Community (SADC) in recent years has made some significant progress in regional transportation developments carried out in each member state. The progress made has not been without seething problems. The paper is divided into four parts. In the first part, the presenter takes a brief look at some of the SADC existing Protocols, paying more emphasis to the 'Protocol on Transport, Communication and Meteorology'. In the second part of the paper, the presenter looks at some of SADC strategic goals relevant to transportation and also reviewing some of SADC integrated transport policies. In the third part, the presenter identifies some of the existing barriers to legislative harmonization of traffic laws in SADC regions as follows: economic drawbacks by member states, lack of a single currency to stimulate economic growth, language barrier, diverse legal systems, lack of security and stability within the region, and the inability of SADC to market its vision, objectives and services both within SADC's region and internationally. The paper is based on an extensive literature review; and a review of existing Protocols and domestic laws of member states. The presenter draws the conclusion that SADC has some laudable objectives in relation to harmonization of traffic legislations but it has become problematic for these SADC desirable objectives to be realized without first finding ways to dismantling the barriers enumerated above.

## **1. BACKGROUND**

### **1.1 Objectives of paper**

The paper covers the following five aims:

- (1) To explain the history, objectives and composition of SADC.
- (2) To create an awareness of SADC's existing Protocol on Transport, Communication and Meteorology.
- (3) To provide insight into some of SADC's integrated transport policies and traffic enforcement processes.
- (4) To understand the rationale behind the SADC's traffic harmonisation policy.
- (5) To identify some problems associated with harmonising traffic legislation and crime prevention in the SADC Region.

## 1.2 Overview of the Southern African Development Community (SADC)

It is problematic to talk about the **Southern African Development Community's Traffic Harmonisation Policy** without first looking at the SADC Treaty and Protocol on Transport, Communication and Meteorology, 1996.

SADC was originally known as the Southern African Development Co-ordination Conference (SADCC); the organisation was formed on 1 April 1980 in Lusaka, Zambia following the adoption of the Lusaka Declaration. The Declaration and Treaty establishing the SADC, which has replaced the Co-ordination Conference, was signed and adopted at the Summit of Heads of State or Governments on 17 August 1992, with an enforcement date of 30 September 1993. The SADC Treaty was modified by the 2001 Agreement amending it. From time to time, protocols are issued to give effect to the founding and amending treaties. The Community comprises 15 member states as shown in Figure 1, with a combined population of more than 257 726 000 million and a total gross domestic product (GDP) of US\$ 471,118 ([www.SADC.org.net](http://www.SADC.org.net)).



**Figure 1: Member states of SADC, 2016**  
(Source: <http://www.sadc.int/member-states/>)

Three member states – Madagascar, Mauritius and Seychelles – are not in Africa, so the focus of this presentation is largely going to be on the 12 African member states. The SADC communicates officially in three languages – English, French and Portuguese – and various legal systems and traditions; it also encompasses multiple cultures and indigenous languages, and within its area of responsibility are six landlocked states, 14 transport corridors and 10 regional ports (SADC 2009).

Corridors are major regional transport routes along which a significant proportion of regional and international imports and exports are carried by various transport modes. The ports in the region are effectively the terminals of most of the corridors in southern Africa.

Each member has been allocated responsibilities and specific roles to play in order to promote the implementation of SADC policies in their respective countries. As at 2001, the following were some of their allocated responsibilities:

**Table 1: Areas of responsibility of certain SADC member states**

<b>Member state</b>	<b>Area of responsibility</b>
Angola	Energy commission
Botswana	Agricultural research and livestock production
Lesotho	Environment, land management and water
Malawi	Inland fisheries, forestry and wildlife
Mozambique	Transport and communication
Namibia	Marine fisheries and resources, and legal affairs
South Africa	Finance, investment and health
Tanzania	Industry and trade

*\*Footnote: The remaining member states are the Democratic Republic of the Congo; Madagascar; Mauritius; Seychelles; Swaziland; Zambia and Zimbabwe.*

Regional infrastructure development, including surface transport routes, creates a larger market and greater economic opportunities, and the development of infrastructure is critical for promoting and sustaining regional economic development, trade and investment, and will contribute to poverty eradication and improved social conditions.

The SADC has in recent years made significant progress in regional infrastructure development, infrastructure that includes regional transport and communications systems, which are fundamental to co-operation in the SADC region.

## **2 SADC STRATEGIC GOALS RELEVANT TO TRANSPORTATION**

### **2.1 Introduction**

In line with its vision, mission and general objective, the SADC's strategic goals relevant to transport are:

- a) integration of regional transport, communications and meteorology networks to be facilitated by the implementation of compatible policies, legislation, rules, standards and procedures;
- b) elimination or reduction of hindrances and impediments to the movement of persons, goods, equipment and services;
- c) broad-based investment to develop, preserve and improve viable strategic transport, communications and meteorology infrastructure within an investor-friendly environment generating adequate returns;

- d) adequate own funding and appropriate supplementary funding, amongst others, through recovery of full costs for maintenance of infrastructure and service provision and progressive recovery of full future costs for infrastructure and service provision and use on an equitable basis;
- e) customer driven service provision characterized by adequate access to basic transport, communications and meteorology services and progressive improvement of service quality; and
- f) effective environmental management with due consideration of relevant international and regional conventions.

## **2.2 Objectives of the SADC's Amended Treaty of 2001**

In terms of Article 5 of the Amended Treaty, 2001, some of the key objectives of the SADC relating to crime prevention are to:

- a) promote common political values, systems and other shared values which are transmitted through institutions that are democratic, legitimate and effective;
- b) consolidate, defend and maintain democracy, peace, security and stability;
- c) promote self-sustaining development on the basis of collective self-reliance, and the interdependence of member states;
- d) achieve complementarity between national and regional strategies and programmes;
- e) harmonise political and socio-economic policies and plans of member states;
- f) encourage the peoples of the region and their institutions to take initiatives to develop economic, social and cultural ties across the region, and to participate fully in the implementation of programmes and operations of SADC;
- g) create appropriate institutions and mechanisms for the mobilisation of requisite resources for the implementation of programmes and operations of SADC and its institutions;
- h) develop policies aimed at the progressive elimination of obstacles to the free movement of capital and labour, goods and services, and of the peoples of the region generally, among member states; and
- i) promote the co-ordination and harmonisation of the international relations of member states.

More interestingly, the SADC Amended Treaty in Article 6.2 states that member states should not discriminate against any member state on the grounds of gender, religion, political views, race, ethnic origin, culture, ill-health or disability. It is sometimes difficult for member states actually to follow this article as there are no common immigration policies for SADC member states.

Each member state has its own immigration policies and border control. One of the founding principles of the SADC is to promote free trade facilitated by free movement of goods and services among all member states. However, the reality appears to contradict this principle, as most SADC countries have not been able to pass national laws in their respective legislatures to promote borderless boundaries and free trade within the SADC region. The exceptions are Mozambique and Zimbabwe, which have both signed a bilateral agreement to have borderless frontiers in order to facilitate trade and the movement of goods and persons.

## 2.3 Amendment Protocol on Transport, Communications and Meteorology, 1996

The aim of this 1996 Protocol is to establish transport, communications and meteorology systems in order to provide efficient, cost-effective and fully integrated infrastructure and operations that best meet the needs of customers. In addition, these systems should promote economic and social development while at the same time being environmentally and economically sustainable. Of particular interest in this chapter are the provisions dealing with the various modes of transport – road, water, rail and air.

### Article 3.1: Objectives

Article 3.1 of this Protocol sets out the objectives and is therefore useful for understanding part of the rationale behind the SADC's harmonising traffic legislation. It states that:

'Member States shall promote economically viable, **integrated transport** service provision in the region:

- (a) characterised by high performance standards and consistent levels of efficiency and reliability of all individual component parts of the transport chain;
- (b) on the basis of complementarity and co-operation between **modes**, modal choice optimisation, seaport hinterland optimisation and with due regard to modal advantages;
- (c) to support the development of major regional **corridors** and facilitate travel between their territories;
- (d) by encouraging the development of **multimodal** service provision.'

In essence, this article enjoins member states to work towards a viable integrated transport service in the region through making the different modes of transport – road, rail and maritime especially – more compatible and complementary to one another, ultimately to facilitate the transportation of goods and people between member states; promoting the economic development of the region.

### SADC's strategic goals relevant to transport

In line with its vision, mission and general objective, the SADC's strategic goals relevant to transport are:

- (a) integration of regional transport, communications and meteorology networks to be facilitated by the implementation of compatible policies, legislation, rules, standards and procedures;
- (b) elimination or reduction of hindrances and impediments to the movement of persons, goods, equipment and services;
- (c) broad-based investment to develop, preserve and improve viable strategic transport, communications and meteorology infrastructure within an investor-friendly environment generating adequate returns;
- (f) adequate own funding and appropriate supplementary funding, amongst others, through recovery of full costs for maintenance of infrastructure and service provision and progressive recovery of full future costs for infrastructure and service provision and use on an equitable basis;

- (k) customer driven service provision characterized by adequate access to basic transport, communications and meteorology services and progressive improvement of service quality;
- (o) effective environmental management with due consideration of relevant international and regional conventions.

### **3 EXISTING BARRIERS TO LEGISLATIVE HARMONIZATION OF TRAFFIC LAWS IN THE SADC REGION**

#### **3.1 Introduction**

While harmonisation makes a great deal of economic, legal and other sense, it has to be said that attempts to harmonise legislation within the SADC region have not been without stumbling blocks. The principal barriers to successful harmonisation have been:

- Unaffordability for some member states.
- The lack of a single currency for the region (such as the Euro for the Eurozone).
- Language barriers (apart from the three official languages, between the member states they can count hundreds of indigenous languages and dialects spoken at district and village level).
- Diverse legal systems (British, Dutch, French and Portuguese as well as traditional systems).
- Lack of security and stability within the region (DRC, Zimbabwe, Angola, for instance).
- Inability of the SADC to market its vision, objectives and services well. Each of these barriers to legislative harmonisation is discussed below.

#### **3.2 Economic drawbacks**

Crime prevention and strategies aimed at combating crime come at a cost. Some countries within the SADC region do not have the financial capital to invest and upgrade their security systems. For instance, by comparing the GDP's of the SADC member states, it can be argued that these countries are not all at the same level of economic development. South Africa, for example, is more financially buoyant than Malawi, having the highest GDP in the SADC Region, followed by Angola and then Botswana. It can also be argued that the general standard of living is higher in South Africa than in Malawi. Consequently, it can be inferred that Malawi will lag behind South Africa in its crime-prevention strategies due to a lack of capital. The annual GDP per capital (USD) of Malawi stands at 404, while that of South Africa stands at 8,027.

Given the inequalities such as that between South Africa and Malawi, or between Botswana and Mozambique, the SADC must ensure that no member state is left behind in the fight against economic prosperity. Among identified economic barriers, it is also important to discuss here the issue of the lack of a single currency. The SADC region contains a multiplicity of different currencies: in fact, a different one for each country. Then there is the currency of Zimbabwe, the Zim Dollar, which, having been subjected to hyperinflation within the past decade at least, has rendered the government unable to support the kind of capital expenditure required by harmonisation. These circumstances provide strong support for the introduction of a single currency for the region.

In addition, the facilitation of trade and customs would be less cumbersome if there were a single currency. One can also understand, however, that the modalities and logistics of having a single currency within the SADC region will be difficult to achieve.

### **3.3 Language barriers**

It would be misleading to ignore the issue of language barriers faced by SADC citizens. Historically, the 15 member states of the SADC have never spoken the same language; neither do they have in place one generally accepted language of communication, SADC officially has three. This sometimes becomes problematic. Moreover, the colonisation of Africa by the different world powers such as France, Great Britain, Germany, Belgium and Portugal also meant the introduction of European languages such as English, French, Portuguese and Spanish into African societies. In time, some of these became the language of learning, business and administration among the indigenes. In addition, the multiplicity of indigenous languages that exist from one SADC country to another complicates communication further. Although English, French and Portuguese have been adopted as the major official languages in the SADC region, communication is still a major problem when SADC policies and decisions have to be communicated to those that are affected by them.

It is therefore difficult for SADC to implement the harmonisation of traffic legislation successfully without first addressing the issue of the different regional languages. In order to overcome this barrier, the SADC must explore ways of finding a common and acceptable medium of communication among all of its members.

The issue of the lack of a common language was referred to specifically in the case of *Bach Transport and the DRC* (2010).

### **3.4 Lack of democratic processes in SADC's decision-making**

Another barrier to successful legislative harmonisation lies in a weakness in the SADC's structure and decision-making process that enables it to impose policies and decisions autocratically upon member states through the Summit.

The structural weakness lies in the fact that, although many protocols have been signed by member states, there is no officially constituted elected parliament where laws governing the SADC are deliberated and passed. This political vacuum is filled

by the Summit, which is answerable only to itself and not to member states' citizens or their national legislatures. This type of arrangement cannot be said to be democratic, although SADC does have in place a Regional Indicative Strategic Development Plan (RISDP) that is intended to harness democratic initiatives within the SADC region for a period of 15 years.

### **3.5 Legal shortcomings**

All 15 member states of SADC have different national laws and separate legal jurisdictions. Considering the fact that some countries have their roots in British, Portuguese and Roman-Dutch law, these fundamental legal – jurisprudential differences have sometimes proved problematic when it comes to the interpretation of international law.

For instance, the SADC's legal jurisdiction was challenged in August 2009 when the government of Zimbabwe issued a legal defence not only challenging the legality of the SADC but also disputing its power to enforce decisions. As a result of this case, the Tribunal Protocol was ratified by at least two-thirds of the SADC member states. There have been a few instances where member states have refused to obey the laws of the SADC. A case in point is *Gramara (Private) Limited & Colin Ballie Cloete v Government of the Republic of Zimbabwe & Attorney-General of Zimbabwe & Norman Kalanga*, HH-169 of 2009.

On 11 June 2010 another case was heard by the SADC Tribunal in Windhoek, Namibia. The case involved Bach's Transport (Pty) Ltd (Applicant) and the Democratic Republic of Congo (Respondent). The case went about the seizure of a truck and trailer by members of the DRC's transport enforcement authority.

Although the SADC has provisions for sanctioning its members, there is evidence to suggest that it is not very good at doing so effectively. On this point, Dupuy (1998: 138) argues that 'an international organisation, be it qualified as a regional economic community, is a creation of the States. The Treaty on the basis of which it is instituted is of a bivalent nature.'

### **3.6 Instability and insecurity in SADC**

Africa has often been associated with destabilisation as a result of civil war. The SADC region is no exception in terms of ongoing civil wars. The current political instability in the DRC and Zimbabwe does not promote an atmosphere conducive to development, and it is practically impossible to harmonise traffic legislation in countries fighting civil wars.

### **3.7 Inability of SADC to successfully market its objectives and desired benefits successfully**

The inability of SADC to market its objectives and desired benefits for all SADC member states and their respective citizenries, is a worrying development. There have been a number of roadshows in member states but, surprisingly, 'SADC' is not a very popular word in South Africa. Some citizens are neither aware of its existence or *raison d'être* nor are they convinced that there are benefits to be derived from



their country's being a member of the SADC. Even those who are aware are not sure what specific benefits might be derived from being a member of the Community. The rebranding of the organisation should become imperative, for two reasons. Firstly, it will help in the process of ratification of the SADC's Treaties and Protocols: the more citizens are made aware of the SADC's objectives, the more popular those objectives are likely to become. Secondly, it will also minimise undue delays and reduce the amount of time taken to implement SADC policies.

#### **4 CONCLUSION**

In this paper, SADC's history, vision, mission, composition and objectives were considered. The presenter also looked extensively at the SADC treaties, protocols and bilateral agreements between member states that pertain to traffic, transport and relevant legislation.

The presenter put more emphasis on the Protocol on Transport, Communication and Meteorology, 1996. In the second part of the paper, the presenter looked at some SADC's strategic goals relevant to transportation. In the third part of the paper, the presenter identified some of the existing barriers to legislative harmonization of traffic laws in SADC region. They are as follows: economic drawbacks by member states, lack of a single currency to stimulate economic growth, language barriers, diverse legal systems, lack of security and stability within SADC region and finally SADC's inability to market its vision, objectives and services within SADC and internationally.

The presenter argued that harmonisation of traffic legislation is a sound objective to work towards. In the same vein, the harmonisation of trade, immigration, and political and legal systems is a laudable goal to help bring about a united SADC for the benefit of its member states. The presenter draws the conclusion that in order for the harmonisation of traffic legislation in the SADC region to be implemented successfully, the barriers described in the paper must be addressed adequately. There are certainly distinct benefits to be gained from harmonising traffic legislation. The presenter is of the opinion that if the transport legislation of member states is harmonised, it will be much easier for organised crime to be prevented.

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