

Speech By Minister in The Presidency for Planning, Monitoring and Evaluation, Chairperson of the National Planning Commission, Member of the ANC NEC, Head of the ANC Policy Unit and member of the SACP Central Committee, on the occasion of the 17th SADC Lawyers' Conference and General Meeting, 17th – 19th August 2016, Cape Town ICC

Allow me to thank you for the invite to participate at this very important SADC Lawyers' Conference and General Meeting. As I understand it, you chose the overarching theme of *“Promoting the harmonisation of trade and investment laws and legal practice standards for regional development and effective integration in SADC”*.

At no point in recent history have calls for Africa to harmonise been stronger than they have been lately and the importance of this conference and general meeting cannot be overstated. Across the continent, regional integration and industrialization is arguably the most talked about subject among

policymakers. So why has action on the ground and in relation to harmonizing trade, investment and legal practice been so tardy, cumbersome and fallen short to move the needle on this important development marker?

Allow me to immediately declare my deep interest in the outcomes of your discussions, conference and meeting. South Africa, as you will know, leads and chairs the Presidential Infrastructure Championing Initiative at the African Union heads of state level. The Presidential Infrastructure Championing Initiative also includes the North-South Corridor Road and Rail and related Corridor projects, which criss - crosses the countries in the SADC region, from Tanzania, spurring the copper fields of the Congo, to include also Malawi, Mozambique, Zimbabwe, Zambia, Botswana and South Africa.

In furtherance of this objective, President JG Zuma has appointed and tasked me as the Minister in the Presidency: Planning, Monitoring and Evaluation, to lead this initiative.

Through these efforts I have again come into close contact and proximity to the challenges we face in the SADC region. These are challenges in relation to building, and implementing transformative transboundary infrastructure projects in the region, and more overarchingly, in leading the continental charge for a better Africa, at the highest African Union level.

Ladies and gentlemen: the narrative of a 'rising' Africa is now widely recognised. It has replaced the discourse of 'the hopeless continent'. Africa's economic fortunes have become more hopeful as the global trade architecture has changed dramatically in the new millennium.

In thinking a bit deeper about this, one must ask: what are the main changes in the global trading and investment architecture over the past 15 years? What are the opportunities for the next 15 years? How have these changes impacted on Africa's economic development and the nature of

trading relations between Africa and its traditional developed country partners, the European Union, the UK and the USA, and its main developing country partner, China? What are the implications of 'Brexit' – the UK's departure from the European Union – for Africa's trade?

And how has the changing narrative of trade and trade integration impacted on Africa's own strategy to integrate its market? Then, crucially for us here tonight, where does this leave the legal profession and legal practise generally in the SADC region and beyond? Thus must present a massive opportunity for all in this room, I would submit?

This is of some significance to note because in the current depressed global environment African countries continue to make significant economic growth strides despite the attendant challenges. Africa registered an average GDP growth of about 3.6% in 2015, against 2% recorded by the developed countries during the same period! That is

remarkable, even if it is still short of the high growth rate that is necessary to ensure sustainable development.

Africa's resilience at a time when major economies struggle to advance is primarily due to substantial public investment, particularly in infrastructure, sustained domestic consumption, the growth in the services sector and progressive gradual economic diversification.

However, again, our continental growth rates are not immune to a number of risks, such as those related to continued declines in commodity prices, lack of adequate infrastructure, the problem of inclusive growth, the challenge of harmonisation of trade, investment and legal practise and the global dimension of contraction that are hampering growth and highlight the need for diversification.

Thus, as Africans we are again seized upon to fulfil the mission of accelerating the continent's development by continuing what we considered critical for the growth and development of the continent: igniting, energising, feeding, industrialising and integrating Africa in order to improve the quality of life of Africans. And so, the biggest opportunity for Africa is Africa! Let me repeat that: the biggest opportunity for us as Africans is what we do about our own destinies as Africans.

It goes without saying that harmonising trade, investment and legal practise laws are important for economic development not just across the world, but perhaps more importantly, for us in Africa, more generally, and in SADC more particularly. The same applies what lawyers often refer to as "*pari passu*" (side by side) to our regional integration efforts. These are primary and fundamentally instruments of economic development.

It is true that in an effort to maximise member state participation in the complex arena of international trade, we as SADC states have often entered into various bilateral and multilateral trading agreements with each other in the sub region as well as with the rest of the world. This, in turn, has resulted in a spaghetti bowl of regional free trade areas and customs unions arrangements and various related frameworks. These have all the overarching “noble” objectives of serving to promote the movement of goods, services, capital and people within the continent, and the SADC region.

There is a need to better harmonise the trade, investment and legal practise dispensation across the SADC region. This need must be positioned in such a way that it will take account of, and ensure, that we tackle impediments to more prodigious *inter* and *intra* Africa trade, which includes the stated problem of diversity of laws. We all know the numbers 12 % intra Africa trade is simply an intolerable statistic in this

day and age. This has been an area that continues to snipe at our heels in the SADC region. I am sure that as you wind up your deliberations here today, this has been at the forefront of your reflections.

We must recognise that our colonial legacy which introduced arbitrary borders and foreign legal traditions into our respective jurisdictions has made the issue of harmonisation of trade, investment laws an even greater imperative.

I am convinced too, that the flourishing and emergence of various harmonisation initiatives at sub regional level, be it at the EAC, COMESA, ECOWAS, IGAD, AMU or SADC level (all regional economic communities) is implicit evidence of the need for promoting a different kind of harmonisation within the SADC context.

It would be my sincerest wish that this conference did indeed reflect and contemplate on our regional objectives particularly on whether trade, investment and legal practise harmonisation is achievable under the current SADC Treaty framework. To be brutally frank-the question must be whether the current SADC Treaty is “fit for purpose” and allows for the creation of an adequate mechanism to harmonise our efforts at regional integration.

Now, I know legal practitioners would want me to offer some concrete recommendations. So let me be bold and offer the following to stimulate some further thinking. The key issues to address, in my view, where practicably feasible, and subject to your learned considerations are:

- **One:** an amendment to the SADC Treaty – this in order to make the harmonisation of laws one of the critical objectives;

- **Two:** Provide for the procedures and mechanisms to adopt harmonised community laws that are directly applicable in the SADC region;
- **Three:** consider a regional legislative body, which can enact laws that are directly applicable in the SADC region;
- **Four:** the SADC Tribunal could be adequately capacitated to ensure effective application and implementation of the harmonised law;

In this way, the legal profession would help unleash the full potentials of the sub region, to meet its growth needs in respect of skills development, employment creation and a better life for all the region's people.

It is important that governments, businesses and all the related stakeholders join hands and collaborate with that of

the legal profession, as we advance on our roadmap - Agenda 2063.

Developing economies in the SADC region may not have much control over the challenges that they face today, but that does not mean that they are powerless. Much can be done not just to sustain moderate growth, but also to secure a more prosperous and resilient future. Again this SADC Lawyers Conference and General Meeting will help advance the cause better regional development through enhanced trade and investment.

Please allow me to congratulate you on the successful convening of this conference and general meeting.

I thank you!