

**Deeper Regional
Integration :
Legal/Institutional
Challenges and EPAs**

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Overview



1. The bigger Scheme and Objectives
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6. Dealing with the Law
7. Other Agreements - China, India?
8. Services and trade related Issues
9. Concluding Observations

Bigger Scheme and Objectives



1. “The southern African regional integration agenda is in deep trouble”
2. African approach to regional institutions
3. Why have it?
4. Domestic steps and technical capacity
5. Fragmentation versus common policies and standards
6. Facilitating trade ++ development and global integration
7. Integrated system provides more certainty and predictability and can deal with enforcement, monitoring and violations when sufficiently equipped
8. Integration not the same as mere (discretionary) cooperation
9. It needs a vision and the necessary political will – How?



Present Facts



1. Configuration of SADC EPA
2. Mozambique
3. SADC split up
4. Common Negotiating mechanism?
5. Interim implementation
6. Art 67 SADC IEPA
7. Many concerns about SADC IEPA

Structure of Negotiations



1. Decision making through consensus
2. The Secretariat
3. Article 31 and Common Negotiating Mechanism
4. The TDCA and other 3rd party agreements
5. How to amend/change it?



SADC EPA: Implications for SACU/ SADC



1. Uninterrupted access after waiver
2. Will it undermine regional integr? Which regional integr?
3. Integrity of CET, Rules of Origin, the TDCA
4. What will happen to the technical concerns?
5. Political breakthrough?
6. Fragmented approach to Services and Investment in EPA
7. There is no SADC EPA – Many new configurations
8. SADC protocols on ditto matters
9. Importing EU Standards?
10. Cariforum concerns



Deeper regional Integration via SACU?



1. Why not SADC CU? What is the appropriate vehicle?
2. SACU's highest decision-making body is Council/ no Summit
3. Is it a "closed book" ? Revenue sharing too dominant ?
4. Silent on domestic enforcement/compliance
5. No services and investment
6. Still no Tribunal – second thoughts? Who will bring disputes?
7. The special problems of the Tariff Board
8. Inherent inconsistencies - Art 25; unilateral discretions
9. Exceptions and legal remedies are *ex lege*
10. Article 42 and national constitutions
11. Remember Mozambique and Angola

Dealing with the Law



1. The tension between Sovereignty and a rules based dispensation
2. What does sovereignty mean and cover? A legal concept
3. It is an act of sovereignty to conclude int. agreements
4. Example of the WTO
5. A basic issue – can we trust the judges?
6. What is the judicial function?
7. Can it work in this uneven landscape?
8. Are all disputes justiciable?
9. Will we comply? How?
10. The right to legal remedies under national constitutions



Other agreements – China, India?



1. A different philosophy – commodities
2. A different legal basis (enabling clause?)
3. Effect of regional MFN in EPA?
4. South/south solidarity?
5. Infrastructural bonus? EPZs?
6. India
7. Will comply with domestic regulations provided they exist



Services and trade related Issues



1. Part 8: a limited list with different requirements
2. Industrial Development Policy
3. Agricultural Policy
4. Competition Policy
5. Unfair trade practices
6. But also infant industry protection
7. Article 42
8. Can the Tariff Board function without a common tariff/industrial policy?
9. Is it possible to have these common policies ?

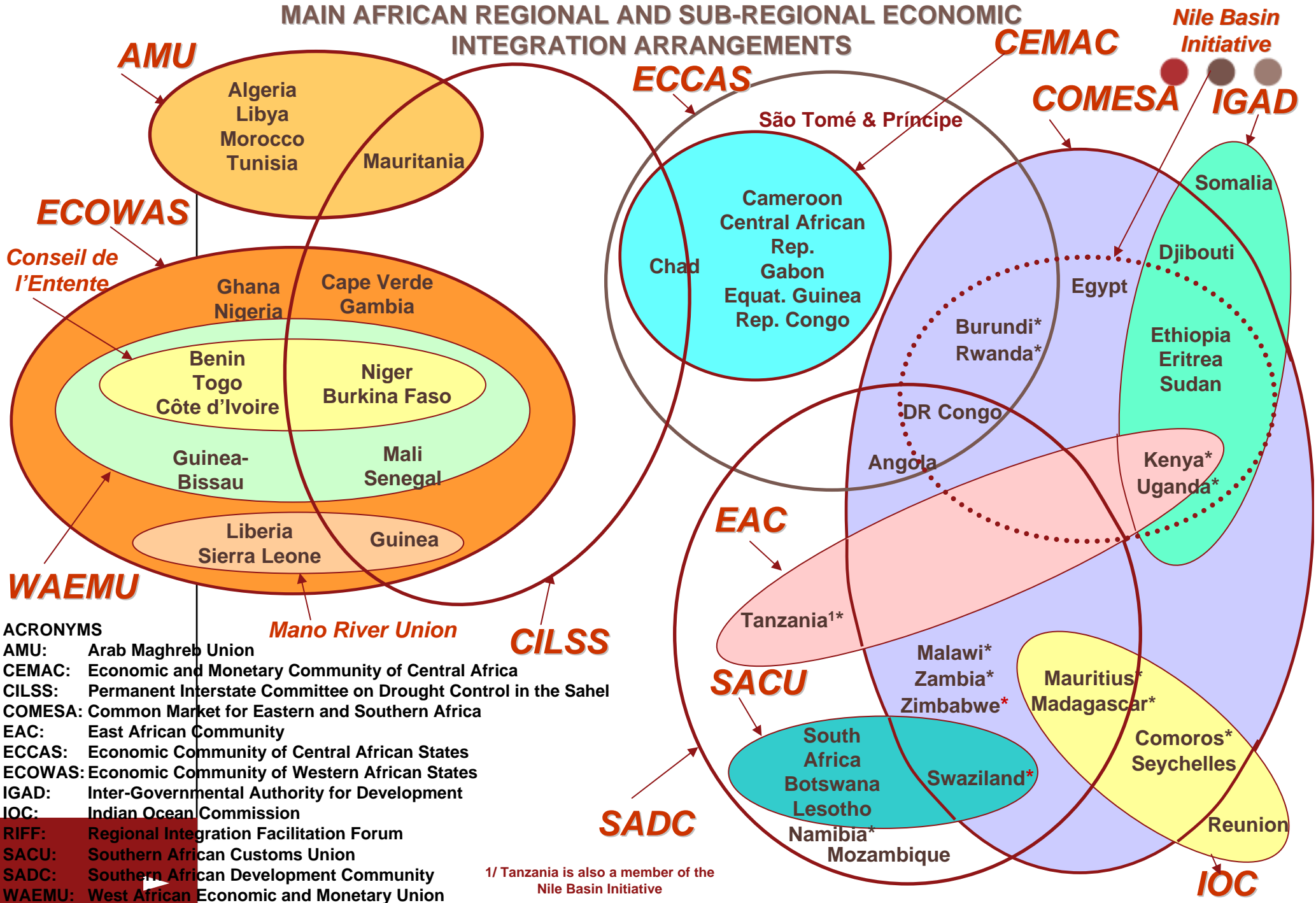
Concluding Observations



1. Council and Commission represent national interests
2. The Tariff Board and National Bodies
3. The Tribunal
4. Monitoring implementation
5. And if there is a violation? Compliance with rulings/decisions
6. Domestic implementation
7. The Common Negotiating Mechanism
8. Article 42 and the new Annexes
9. Who speaks on behalf of collective? Role of the Secretariat
10. Political leadership and common policies – how?



MAIN AFRICAN REGIONAL AND SUB-REGIONAL ECONOMIC INTEGRATION ARRANGEMENTS





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