

African Economic Community and the Promotion of Intra-African Trade

Published in the Africa Notes, May 1992

Muna Ndulo

Director, Institute for African Development and
Professor, Cornell Law School
Cornell University

African countries attained independence with high expectations. Most Africans believed that rapid progress would be made in raising incomes and improving their welfare. In the early years of independence, many African countries successfully expanded their basic infrastructure and social services. After an initial period of growth, however, most economies faltered, then went into decline. There are some exceptions but, in general, sub-Saharan Africa, as a whole, has now witnessed almost two decades of falling per capita incomes, increasing hunger and accelerating ecological degradation. The earlier progress made in social development is now being eroded. Overall, Africans are said to be as poor today as they were 30 years ago.

Background

Africa is poorer today in per capita terms than it was 30 years ago. Between 1979 and 2002 life expectancy declined in a number of Sub-Saharan African countries. Primary school enrollment declined in 12 countries. At current rates Africa's population will double in 20 to 25 years. Increasing population pressures have accelerated desertification, loss of woodland cover and environment pollution in rural areas and urban areas. As a result of its crisis Africa has been so relegated to the periphery in the world that the genuine fear is that the continent risks becoming permanently marginalized. It does little credit to Africa to note that according to nearly all the indices by which human progress is measured at the beginning of the twenty first century, Africa enjoys the dubious distinction of being at the rear. All these figures and facts are given here not out of any penchant to mock Africa, but rather to call painful attention to the dismal truth about the contemporary African condition. The severe economic crisis in Africa has inspired many African governments and institutions to review their strategies for development, with a view to taking measures to arrest the ever worsening crisis. One such measure is the effort to create the African Economic Community.

African Economic Community

African leaders have long recognized the need for closer regional ties as a way to overcome the fragmentation of the continent which is one of the major constraints to its economic development. The economic integration of Africa was the central theme of the 1980 Lagos Plan of Action, the special United Nations Session on Africa in 1986 and numerous other high level statements and reports on African policy and development strategy. More recently it has found expression in the creation of the Africa Union.

Economic integration is perceived by many African leaders and governments as a promising vehicle for enhancing economic and social development in their respective countries. This can come about through the reinforcement of the regional infrastructure, a more efficient system of payment, greater markets, greater access to credit, a more interrelated system, a greater mutual awareness among economic agents operating in the different countries and, above all, through a growing technical complimentary and a greater development and integration of the productive sectors of African countries.

There are currently several African integration schemes. These include the West African Economic Community (CEAO), Community for East and Southern African states (COMESA), the Economic Community of West African States (ECOWAS), the Southern African Development Community (SADC), the Central African Customs and Economic Union (EDEAC), the African and Malagasy Common Organization (OCAM), the Comite Permanent Consultatif du Maghreb (CPCM), the Economic Community of the Great Lakes Countries (CEPGL), and one may add the South African Customs Union. Most of these have achieved very little.

The traditional explanation of the failure of integration schemes in Africa is that there is a lack of political will in the member countries that is necessary to see integration succeed, expressed in the chronic non-observance of commitments undertaken within the respective agreements and in the insufficient use of the instruments set up by these agreements.

To seek the causes of the weakening of integration solely in the functioning of the regional or sub-regional institutions or in the legal instruments governing them would undoubtedly be to take an inadequate view of its complex and diverse nature. The differences in approach to the balance of payments by different counties are as responsible for the failure of these schemes as their incorrect design and the inadequacy of the traditional instruments, based on trade liberalization, in helping to solve the current problems of economic development in Africa.

In addition, most of these schemes have achieved very little partly because they lack a regulatory framework, and tariffs and non-tariff barriers to trade have not been reduced. The tempo and mode of integration basically depends on the development strategies and external linkages adopted by the countries participating in the process.

If the more ambitious goal of creating an African Economic Community is going to be achieved, bolder efforts than has hitherto been the case will be needed to create an enabling environment.

Objectives of the Community

The African Economic Treaty establishing the African Economic Community was adopted by the Organization of African Unity (OAU) heads of State Meeting in Abuja, Nigeria, on June 3, 1991. The adoption of the treaty must be seen as vital for Africa's economic survival, faced as the continent is by growing marginalization in the world.

The objectives of the Community, as set out in article 4 of the Treaty, are as follows:

- (a) to promote economic, social, and cultural development and the integration of African economies in order to increase economic self-reliance and an indigenous and self-sustained development;
- (b) to establish, on a continental scale, a framework for the development, mobilization and utilization of the human and material resources of Africa in order to achieve a self-reliant development;

(c) to promote cooperation in all fields of human endeavor in order to raise the standard of living of African peoples and maintain and enhance economic stability, foster close and peaceful relations among member States and contribute to the progress, development and the economic integration of the continent; and

(d) to coordinate and harmonize policies among existing economic communities in order to foster the gradual establishment of the Community.

The community, as can be seen from the goals it seeks to achieve, is not simply a trading arrangement or a mechanism for promoting cooperation in production based on the creation of a common market. In addition to integration of national markets and cooperation in production, the States joining the Community undertake to cooperate with each other in certain functional areas as well as in others, e.g. social, political, financial and monetary matters. Economic integration makes good economic sense. If successful it will lead to a bigger market for both primary and finished products. It will help the continent meet international competition more effectively, particularly now that there is a re-orientation of world trade and capital flows to the eastern European countries, leaving Africa in the cold. It could lead to faster development and more jobs. Integration would also allow Africa to focus on the promotion of a higher degree of economic cooperation at all levels with particular emphasis on joint development of primary commodities through rationalization of investments in commodity production and managing suppliers at the national and regional levels.

Six Stages over 34 Years

Article 6 of the Treaty sets out the modalities for the establishment of the Community spanning over a period of thirty-four years. There are six stages to pass through to achieve the ultimate goal of integration. The first stage will be devoted to the strengthening of existing regional economic communities like SADC and ECOWAS, and establishing similar economic communities in those regions where they do not exist. The second stage will stabilize tariff and non-tariff barriers, customs duties and internal taxes. The third stage is the establishment of a free trade area. During this period a common external tariff will be adopted and a customs union will be created. The fourth stage will aim at the furtherance of a customs union. The fifth stage is devoted to the establishment of the African Common Market. The sixth and final stage will be devoted to consolidation and strengthening of the African Common market. All these stages have been allocated specific time periods.

In Article 4 (2), the Treaty establishing the African Economic Community provides several ways through which the objectives of the Treaty are to be achieved. Among them are the liberalization of trade through the abolition, among member States, of non-tariff barriers in order to establish a free-trade area, the relaxation and eventual abolition of qualitative and administrative restrictions and the gradual evolution of a common trade policy and the gradual removal, among member States, of obstacles to the free movement of persons, goods, services and capital and the right of residence and establishment. Among non-tariff barriers to intra-African trade that the African Economic Community must confront must rank the existing significant diverse legal systems that exist in Africa. The membership of the Community represents at least four main legal systems, namely the Common Law, the Roman-Dutch law, the Islamic Law and the Civil Law. Each, in turn, comprises many different systems of Law, especially including traditional customary laws. Every country has its own legal traditions, its own system of legal thought, its own method of law-making and its own process of judicial

determination of disputes.

Creating Favorable Conditions

In Article 5 of the Treaty, member States undertake to create favorable conditions for the development of the Economic Community. Each member state is required to take all necessary measures to ensure the enactment and dissemination of such legislation as may be necessary for the implementation of the provisions of the Treaty. Several articles in the Treaty require member States to take measures to eliminate customs duties, other restrictions or prohibitions, administrative, as well as all other non-tariff barriers and the adoption by member States of a common external customs tariff. Among the problems that would probably require immediate attention in the free trade area are many related to the implementations of these provisions. The negotiations and regulations for the reduction of tariffs will inevitably be complex. The implementation of many of these decisions and measures will require the development of normative rules to give effect to the decisions. These rules would, in turn, have to be assimilated into the laws of the member States. This will require a great effort in the harmonization of all Community trade laws and not just those limited to, for instance, customs regulations.

Article 7 of the Treaty sets up various organs to implement Community objectives. These are the Assembly of heads of State and Government Council of ministers, a Pan African Parliament, the Economic and Social Secretariat, Court of Justice, the general secretariat and the specialized technical committees. This leads us to the question whether the Community Treaty has created an institutional framework with which there would exist a body with a clear mandate and capacity to undertake the complex task of harmonizing Community trade laws. This could spearhead the creation of a physical, technical and legal infrastructure that would support regional exchanges in goods, services, labour and capital.

Legal Framework

The Community Treaty does not expressly set up, as one of its objectives, the unification of trade laws in the Community. It also does not set up, among its specialized committees, one to deal with legal issues and, in particular, the harmonization of trade laws and commercial practices in the Community.

Article 25 which deals with the establishment of specialized technical committees establishes a total of seven committees. The committees are: the committee on rural economy and agriculture matters; the committee on monetary and financial affairs; the committee on industry, science and technology, energy, natural resource and environment; the committee on transport, communications and tourism; the committee on health, labor and social affairs and the committee on education, culture, and human resources.

The special technical committees will play an important role in the implementation of the objectives of the Community, as they are charged with among other things, the preparation of projects and programs of the Community, the supervision, follow-up and evaluation of the implementation of the decisions taken by the organs of the Community, ensuring the coordination and harmonization of projects and programs and submitting reports and recommendations on the implementation of the provisions of the Treaty. As has been stated, none of the committees is a legal committee.

The fact that there is no legal committee among the technical committees, provided for in Article 25, means that there is no organ especially charged with furthering cooperation in the

development of the Community trade laws and commercial practices and providing for their progressive unification. This means that work of harmonization of the laws and commercial practices will be carried out in a piece-meal manner by anyone of the several committees that may wish to unify a particular area of the law.

This is unsatisfactory and should be immediately remedied. The implementation of community decisions will to a large extent depend on the working out of satisfactory legal instruments to implement Community programs.

Obstacles to Integration

Africa is faced with a multitude of problems that make economic integration much more difficult. Several factors may be mentioned: the economic nationalism that was strong at independence has left its mark. Many countries seem to go into economic integration agreements without any intention of parting with some measure of national sovereignty.

Membership has been sought in the past in these groupings as being a sign of being a good African and as a way to obtain external development assistance. African countries have to accept that membership of an economic community has serious long term implications for the countries involved. It entails very close cooperation with one's neighbors and very often, traditional rivalry and differences do impede the integration process. Differences in linguistic, political systems, legal and administrative systems have to be overcome. There is the problem of low priority accorded to the implementation of integration programs vis-à-vis national ones which are very often supported and financed by influential international institutions such as the IMF and the World Bank. For example under the structural adjustment programs in place in most African countries, domestic considerations take precedence over sub-regional integration preoccupations.

There is the inadequacy of the economic infrastructure to support economic integration. For instance, one of the major constraints on the growth and development of inter-African trade has been the inadequacy of payment and financial systems in place in Africa. Increased African trade will need finance and financial instruments such as banking networks providing letters of credit, export credits, and other financial services. There are the diversified currency exchange regimes and payment restrictions that prevail in Africa. Integration will require the adoption of collective policy measures to facilitate the liberalization of payment and exchange restriction and to enhance the convertibility of national currencies. The existence of border conflicts, numerous conflicts, civil wars, and linguistic rivalries especially English and French, compounded by racial suspicion of the continent especially between black Africans and Arab Africans can hamper economic integration. The hostile world economic environment has meant that many of the regions' countries are preoccupied with short-term recovery.

There is also the lack of an acclaimed integration leader in the region with impeccable credentials such as a domestic economic track record of monetary and financial stability, diligent implementation of Community programs, a willingness to assume requisite responsibilities and a dominant position in regional trade and finance.

Favorable Political Environment

However, no matter how good the arguments and intentions to integrate may look on paper, the political environment for their implementation and preservation must be right for the effort to succeed. Economic cooperation and integration flourish better in an environment

that is politically peaceful and stable. The examples of successful economic integration drawn from history clearly illustrate that they are predicated primary upon a common outlook on political affairs. The *locus classicus* for such peace and stability is the freedom for the individual. It is a happy development that the wind of democratization and political reforms now blowing across several regions of the world has not excluded Africa. Democracy is the ultimate guarantee of freedom of movement, goods, and capital. We are now witnessing a period of transition from authoritarian regimes to popular democracies in several States on the continent. Mutual respect and trust are expected to be fully restored between these newly emerging democratic leaderships and this will no doubt contribute to the advancement of regional cooperation and eventual economic integration.

Political Implications of the Treaty and the New World Order

In conclusion it might be useful to look at the political implications of the proposed Economic Community for Africa and its wider implications for the new world order. If Africa fails to integrate, African economies will continue to deteriorate and the continent will continue to become even more irrelevant to the global scheme of things. The unipolar world of today and consequently the relative flexibility afforded African States by that system of international relations is gone. The collapse and irrelevance of communism as an ideology and system of government: the liberation of Eastern Europe, the disintegration of the former Soviet Union; and the success of economic integration in Europe have all made the idea of an African Economic Community both irresistible and irreversible. Similarly, the current global trend in favor of the creation of regional economic groupings – which was referred earlier – has rendered Africa's efforts in that direction look rather late incoming. Another political implication of the African Economic Treaty is the need for regular and intensified consultation and cooperation between African governments and inter-governmental institutions and agencies. The entire edifice of the Community is predicated on such interaction, to be realized successfully.

The Treaty further implies the subordination or at least abridgement of aspects of national sovereignty. This is a precondition for the success of the Community. Many provisions in the Treaty relate to matters in which national authorities exercised virtually exclusive prerogative. An insistence on, and a commitment to, such a tradition by competent authorities in member States of the Community would seem to be incompatible with the realization of the objectives of the Community. The Treaty assumes that all over Africa, democracy will replace non-democratic regimes which have characterized the African political scene in recent memory. The Treaty provides for democratic institutions. The Pan African Parliament is to be elected by continental suffrage. It would be unusual for a government that itself is not itself a product of the democratic process to allow democratic elections of members of the Community parliament.

Without any doubt, the establishment of the African Economic Community in itself constitutes yet another case of the institutional building on the continent. The uniqueness of the experiment derives from the fact that for the first time the continent seems to have combined the search for its true political economic, social, scientific and cultural destiny in one gigantic effort.

The political implications of the Community also relate to the wider international environment. Late as this African initiative would seem, the continent has served notice of its readiness to adjust to changing times. The Treaty enjoins Community members to present a

common front in all international fora. If this injunction is adhered to, it is likely to result in better deals for African countries which have, so far failed to exhibit much needed cohesion in global negotiations. Other regions of the world that have tended to divide and rule Africa in their economic and social interactions with the continent are consequently likely to re-think their strategies. All these have implications for the evolving new world order. Obviously, an Africa that is attempting to put its economic, social and political house in order is bound to play a more credible role. An Africa that is erecting and strengthening relevant institutions in order to correct the mistakes and neglects of the past is better suited to play a role. An Africa that has recognized and embraced the relevance and efficacy of democracy, human and peoples' rights and popular participation in government is one which the rest of the world can hardly take for granted.

An Africa that has decided to relegate ideological wrangles and conflicts to the background, in favor of cooperation, coordination and collaboration is bound to attract greater credibility and respect globally. It is for these reasons that the decision to establish an African Economic Community is a decision with far reaching political, economic, social, cultural and scientific implications not only for Africa but indeed for the new world order if the objectives are achieved.

Let us hope the Community becomes a reality, for the continued fragmentation of Africa can only spell disaster for the continent and its people.