

Diana Eunice Kawenda

Legal reception and regional economic integration in Southern Africa



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DEDICATION

To my one and only daughter Makunda and my nephew Lolo, both of whom passed away at the height of this research on the 25th of April 2015 in a car accident. I have used my loss as a stepping stone to greater things.

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ABSTRACT

The dire African economic situation has been a perennial problem for the past six decades. Many problems emanate from slow economic growth, such as poverty and unemployment. There is a need for a collective effort to ensure economic growth, which would be the most viable solution to these problems, and the key to such a collective effort is regional economic integration (REI). This study examines REI within the legal context. It tests the proposition that the law can be used as a means to achieving REI. At the heart of this proposition lies the legal challenge that comes with the different approaches to legal reception and how they impede the realisation of REI. An analysis is performed of the theories related to legal reception, which include the monist, the dualist and the hybrid theories. REI was embraced in Europe and has yielded fruitful results. There is no doubt that the collective efforts to realise economic growth in other continents stems from the inspiration of the European example. Europe is used in this study to illustrate how the obstacles that accompany the different approaches to legal reception may be superseded. The study examines how the law was used in Europe as a means to attain REI. An attempt is then made to understand REI from an African perspective by setting out the legal framework and its shortcomings. Attention is paid to Africa's sub-region of Southern Africa, and the study examines legal reception within Southern Africa and how the different approaches to legal reception within the two RECs, the SADC and COMESA, impact upon the realisation of REI. It seeks to evaluate the possibility that the African continent, particularly Southern Africa, may be able to use the law to attain REI. A further analysis is made by examining South Africa's approach to legal reception and how this impacts on the realisation of REI.

Key words: REI, legal integration, legal reception, monism, dualism, SADC, COMESA

OPSOMMING

Die nypende ekonomiese situasie in Afrika het vir die afgelope ses dekades reeds 'n ewigdurende probleem geword. Talle probleme soos armoede en werkloosheid ontstaan weens stadige ekonomiese groei. 'n Kollektiewe poging is noodsaaklik om ekonomiese groei, wat die lewensvatbaarste oplossing vir hierdie probleem sou wees, te verseker, en ook die sleutel tot so 'n kollektiewe poging is streekse ekonomiese integrasie (SEI) (regional economic integration – REI). Hierdie studie ondersoek SEI binne die regs konteks. Dit toets die proposisie dat die reg aangewend kan word as 'n wyse om SEI te bewerkstellig. Aan die kern van hierdie proposisie lê die regsuitdaging wat gepaard gaan met die verskillende benaderings tot regs aanvaarding en hoedat dit die bewerkstelling van SEI kniehalter. 'n Analise van die teorieë wat met regs aanvaarding verband hou, is uitgevoer, wat die monis-, die dualis- en die hibried-teorie insluit. SEI is in Europa aanvaar en het vrugbare resultate opgelewer. Daar bestaan geen twyfel daaroor dat die kollektiewe pogings om ekonomiese groei in ander kontinente uit die inspirasie van die Europese voorbeeld voortspruit nie. Europa is in hierdie studie as voorbeeld geneem om te illustreer hoedat die struikelblokke wat met die verskillende benaderings tot regs aanvaarding gepaard gaan, uit die weg geruim kan word. Die studie ondersoek hoedat die reg in Europa benut is as 'n metode om SEI te bewerkstellig. 'n Poging is toe aangewend om SEI vanuit 'n Afrika-perspektief te verstaan deur die regs raamwerk en die tekortkominge daarvan uiteen te sit. Aandag is geskenk aan Afrika se substreek, Suidelike Afrika, en die studie ondersoek regs aanvaarding binne Suidelike Afrika en hoe die verskillende benaderings tot regs aanvaarding binne die twee RECs, SADC en COMESA, 'n impak het op die totstandkoming van SEI. Dit poog om die moontlikheid te ondersoek dat die Afrika-kontinent, in besonder Suidelike Afrika, die reg kan benut om SEI te bewerkstellig. 'n Verdere analise is gedoen deur Suid-Afrika se benadering tot regs aanvaarding te ondersoek en hoedat dit 'n impak het op die totstandkoming van SEI.

Sleutelwoorde: SEI, regs integrasie, regs aanvaarding, monisme, dualisme, SADC, COMESA

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LIST OF ABBREVIATIONS

ACHR	African Charter on Human Rights
AFDB	African Development Bank
AI	African Insight
Am'J'Int 'L	American Journal of International Law
AU	African Union
BIT	Bilateral Investment Treaties
CEN-SAD	Community of Sahel–Saharan States
CILSA	Comparative International Law in Southern Africa
COMESA	Common Market for Eastern and Southern Africa
Duke J I L	Duke Journal of International Law
EAC	East African Community
ECA	Economic Commission on Africa
ECCAS	Economic Community of Central African States
ECJ	European Court of Justice
ECOSOC	Economic and Social Council of the United Nations
ECSC	European Coal and Steel Community
EEC	European Economic Community
EJEL	European Journal of Economic Law
EJIL	European Journal of International Law

EU	European Union
Fordham Int L J	Fordham International Law Journal
FTA	Free Trade Area
GATT	General Agreement on Tariffs and Trade
ICSS	International Commission on International State Sovereignty
IGAD	Intergovernmental Authority on Development
IO	International Organisation
J Comp .L	Journal on Comparative Law
JEPP	Journal of European Public Policy
J'Int L &Com	Journal of International Law and Commerce
LDD	Law Democracy and Development
Mizan L Rev	Mizan Law Review
MTSP	Medium Term Strategic Plan
NGHC	North Gauteng High Court
NPT	Treaty on the Non-Proliferation of Nuclear Weapons
PELJ	Potchefstroom Electronic Law Journal
PER	Potchefstroom Elektroniese Regsblad
POCCA	Proceeds of Criminal Civil Confiscation Act
REC	Regional Economic Community
RECs	Regional Economic Communities
REI	Regional Economic Integration