

SADC stakeholders form coalition to lobby for restoration of a SADC Tribunal

Stakeholders have urged heads of state and government of Southern African Development Community (SADC) member states to reconsider their decision to suspend the SADC Tribunal. They have also urged them to reconsider their decision to adopt a new protocol.

This came during a roundtable discussion of stakeholders at the Centre for Human Rights at the University of Pretoria. The discussion took place on 28 and 29 August 2014 where stakeholders called for the restoration of the SADC Tribunal. The objective of the round table was to discuss the implications of the adoption of a new protocol by the SADC Summit.

The discussion was attended by different stakeholders including former judges and officials of the SADC Tribunal; the East African Court of Justice, the Economic Community of Western African States (ECOWAS) Court of Justice; lawyers from private and academic practice and officials from the Department of Justice; the SADC Lawyers Association; the Law Society of South Africa; researchers; and members of civil society.

Background

According to a statement by the round-table participants SADC was established in 1992 with economic growth and development at the top of its agenda. Under articles 4 and 6 of the SADC Treaty, the SADC objectives are to be achieved by adhering to equality, democracy, good governance, rule of law and – notably – human rights. In pursuit of these objectives, SADC member states adopted a protocol that established the SADC Tribunal which was inaugurated in November 2005.

The Tribunal had jurisdiction over disputes between states as well as between natural or legal persons and states, subject to the requirement of the exhaustion of local remedies and with the decisions of the Tribunal being binding on member states.

Cases by the Tribunal

The statement notes that between 2007 and 2010 the Tribunal ruled on 19 cases that included disputes between citizens and their governments, as well as cases between companies and governments. Of the 19 cases, 11 were against Zimbabwe. Eight of these cases were concerning the expropriation of agricultural land in Zimbabwe.

The most prominent case was *Mike Campbell (Pvt) LTD and Others v Republic of Zimbabwe SADC (T)* (unreported case no 2/2007, 28-11-2008) in which Mr Campbell and others successfully challenged Zimbabwe's land policy and laws before the SADC Tribunal after meeting the exceptions to the exhaustion of local remedies rule. A majority of the Zimbabwe's white farmers were deprived of their right to compensation and access to justice after the expropriation of their agricultural land. The SADC Tribunal found such acts by the Zimbabwean government to be discriminatory and

contrary to the SADC Treaty,' the statement said.

According to the statement, the judgments against Zimbabwe resulted in efforts to cast suspicion over and do away with the Tribunal. These efforts culminated in a decision by the SADC Summit to remove the right of individual access to the Tribunal and in August 2010, the SADC Summit adopted a resolution to suspend the Tribunal pending a review of its role, functions and terms of reference by an independent consultant.

The independent consultant reviewed the Tribunal and concluded it had been properly constituted and its decisions were binding on member states. In May 2011 the SADC Heads of State and Government unanimously agreed to extend the suspension of the Tribunal for one more year, pending yet another report of the Attorneys General of the SADC member states.

'Further, the SADC Summit determined that the Tribunal will not hear any more cases, whether new or existing and judges whose terms were due to expire were not reappointed. On 18 August 2012 the Summit of Heads of State and Government, the SADC's supreme policy-making organ, suspended the work of the Tribunal indefinitely and resolved that a new protocol on the Tribunal should be negotiated and that its mandate should be confined to inter-state disputes,' the stakeholders stated.

According to the statement, the SADC Summit adopted the new protocol on 18 August 2014. However, the protocol was not yet in force as only eight of the 15 member states had signed it. The new protocol will only enter into force after two-thirds of member states (ten states) have ratified it. The SADC Summit also mandated the SADC Ministries of Justice to propose a mechanism for the resolution of pending cases and to report on this issue to the SADC Summit by August 2015.

The stakeholders concluded that the suspension of the Tribunal lacks legality, *inter alia*, because the SADC Treaty does not allow for suspension. 'Moreover, the SADC Summit did not act in accordance with the Treaty's own amendment procedures. Therefore, the legality of the purported suspension of the Tribunal can be challenged,' they said.

Resolutions

The round-table stakeholders –

- urged SADC citizens to reject and protest against the decisions of the Summit adopted from August 2010 to August 2014 regarding the Tribunal;
- called on the SADC Heads of State and Government and all institutions of SADC immediately to embark on the revision of the SADC Treaty to strengthen and democratise SADC institutions, including the SADC Secretariat; establish a regional parliament with law-making powers; and create a sub-regional court with adequate jurisdiction accessible to individuals;
- called on the relevant SADC organs and institutions to ensure that the process of establishing a mechanism for cases that had been pending before the Tribunal is transparent and participatory; and

- called for the restoration of individual access so that an authentic sub-regional court – the SADC Tribunal – would be able to dispense justice to the people of the region.

The stakeholders resolved to collaborate and support the establishment of a coalition for the restoration of the Tribunal, comprising stakeholders in all SADC countries, to campaign against the ratification of the new protocol and to explore and coordinate alternative strategies to restore individual access to the Tribunal and to strengthen democracy and improve the rule of law within SADC.

- See also page 14.

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