

The SADC Tribunal – exclusive access?

STAGNATION OF REGIONAL INTEGRATION

On 3rd of October 2012, the Konrad-Adenauer-Foundation organized a public lecture at the NamPower Convention Centre in Windhoek. The topic of the evening were the current problematic issues surrounding the Tribunal of the Southern African Development Community (SADC) and the specific question "The SADC Tribunal – exclusive access?".

For this purpose, the Foundation invited the two prominent guest speakers **Mr. John Makumbe**, professor of political science at the University of Zimbabwe in Harare, as well as the lawyer specializing in human rights and former executive director of the Legal Assistance Centre in Namibia, **Mr. Norman Tjombe**.

After the moderator of the evening, Mr. Dennis Zaire had welcomed the speakers and guests, Mr. Holger Haibach, head of the Foundation's office in Namibia, gave a brief introduction to the SADC-Tribunal and its questionable suspension in August 2010.

The court was created in 1992 by the 15 Member States of SADC as an independent legal organ tasked with solving disputes within the Community. After starting its juridical activity with the first case – a labor dispute between Mr. Ernest Francis Mtingwi, a national of Malawi and the SADC Secretariat – in 2007, the Tribunal pronounced 19 further judgments, predominantly dealing with complains raised by natural or legal persons against respective Member States for having violated human rights. In August 2010, the Tribunal was forced to cease its work after the heads of the SADC Member States had decided for its suspension. The main reason for the dissolution can be

found in the lobbying of the Zimbabwean government as the state was involved in 11 of the mentioned 20 disputes as defendant, whereby the Tribunal took the final decisions against Zimbabwe.

In August 2012, at the 32nd Summit of SADC Heads of States and Government in Maputo, Mozambique, the Member States once more took the decision of keeping the Tribunal suspended and, moreover, resolved the limitation of its jurisdiction. According to this proposal, exclusively SADC Member States are entitled to make use of the Tribunal and that jurisdiction will only apply to disputes arising between them.

Now it must be critically examined what kind of impact the demand will have on the Tribunal's jurisprudence, if the court will be exclusively accessible by Member States and, more importantly, what the Summit's decision means in regard to the rights of the citizens of the region.

In keeping with these critical questions, **Mr. Norman Tjombe** made it clear that the persistent suspension of the Tribunal is a step in the wrong direction and definitely does not help to strengthen the so deeply needed Regional Integration of the Southern African states.

In his view the initiator of the Tribunal's suspension can be found in the Zimbabwean government after the state had lost eleven cases against private and legal persons through the jurisdiction of the Tribunal. From then on, Zimbabwe twice refused to accept these judgments while arguing that the Tribunal Protocol had never been ratified by the Member State and, consequent-

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ly, the Tribunal's decisions were invalid in view of this missing acceptance. Mr. Tjombe contradicted this argumentation and explained that despite the missing ratification of the Protocol, the Tribunal was still enforced to exert jurisdiction through its incorporation and confirmation in the SADC Treaty. Besides this grievance the decision effects on the people of the region were even more devastating, Mr. Tjombe warned.

By keeping the Tribunal suspended and deciding for an exclusive access for the Member States, SADC people will lose their right to seek justice before the SADC Tribunal once they have exhausted all national remedies – a right guaranteed in Article 18 of the Tribunal Protocol. This automatically implies that natural and legal persons are no longer enforced to act against human rights violation by the states. Hence, these amendments can be considered as a breach of the SADC principles which, amongst others, guarantee the respect for human rights and the people's right of access to court and a fair hearing.

Finally, Mr. Tjombe elaborated that all these extraordinary issues surrounding the SADC Tribunal gave him the impression that most of the SADC Heads of States are scared of dictatorships and leaders such as Robert Mugabe, and do not have the courage to stand up and react against such tyranny.

The last speaker of the evening was **Professor John Makumbe**. The political scientist, widely known for his hard political analysis and sharp criticism of Mugabe and his dictatorial way of governing in Zimbabwe, totally agreed with Tjombe's statement. At the same time he questioned how it actually could have happen that one single person such as Mugabe can have so much influence to oppose through a codified treaty constituted statutes of a whole community of states. With the decision for exclusive access for Member States, the general population would only keep on being victims of rights violation by the states without having the chance to defend themselves through a complaint brought up to the Tribunal. Individuals would still have the opportunity to fight for their rights before

the African Court of Justice, but as the costs of financing this procedure are way too high this step is barely realizable.

In case of an ongoing suspension, Makumbe sees the risk that the Tribunal is up to lose its effectiveness as only cases between individuals and states had been brought to justice until now and Member States would never bring disputes between each other to the Tribunal. The professor also warned that through the Tribunal's suspension and the withdrawal of individuals' right to seek justice, the SADC Member States could experience a stagnation of economic growth at the international level. In times of corruption and workers' exploitation, foreign investors prefer to invest in regions where human rights are protected.

Lastly, Mr. Makumbe demanded the audience to raise their voice and react to the made decisions in disfavor of the general population and their rights to resist to injustice. There are quite a lot of ways to participate in the further development of the SADC Tribunal.

Once the professor had finished his speech, the audience was called upon to address their questions to the speakers. The first request already implied a reaction to the final demand of Mr. Makumbe, namely what kind of measures the general public could take to act against the further suspension of the SADC Tribunal. Although Mr. Makumbe is aware of Mugabe's power within the Community, people should not be scared, join together, demonstrate and fight against the defects. Other questions dealt, for instance, with the costs of bringing a case to the Tribunal.

After all questioners could be satisfied with detailed answers given by the speakers, Dennis Zaire closed the evening with a gratitude to all the participants. In his opinion, the lecture was a complete success. Now he is eagerly following the next developments surrounding the SADC Tribunal and hopes for positive progresses including the interests and needs of the regional population.

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For further information on SADC and SADC-Tribunal see:

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<http://www.sadc.int/>

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