

Regional economic communities and human rights in East and southern Africa

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Introduction

The dawn of regional economic communities (RECs) in Africa can be traced back to the 1960s, when the United Nations Economic Commission for Africa (UNECA) encouraged African states to incorporate single economies into subregional systems with the ultimate objective of creating a single economic union on the African continent. In order to realise this aim, the Organisation of African Unity (OAU, predecessor of the African Union, AU) identified the need to enhance regional integration within the organisation, recognising that each country on its own would have little chance of, inter alia, attracting adequate financial transfers and the technology needed for increased economic development.¹

Africa has, since then, taken various steps towards enhancing the process of economic and political integration on the continent.² The road has been paved by several decisions and declarations relating to regional economic and political integration, especially –

- the 1977 Kinshasa Declaration, which provides for the successive establishment of the African Economic Community (AEC)
- the Monrovia Declaration, providing for guidelines relating to economic and social development
- the 1980 Lagos Plan of Action, and
- the Abuja Treaty, realising the establishment of the AEC, the African Union's economic and umbrella institution for RECs.

¹ For the process of regional integration within SADC, see Hansohm & Shilimela (2006:7).

² On various initiatives by African leaders to carry out the integration process in Africa, cf. Kouassi (2007).

The Abuja Treaty, which was adopted in June 1991, came into force in 1994. Since then, 52 out of the 53 AU member states have signed the Treaty,³ while 49 have ratified it.⁴

Meanwhile, several RECs have been established on the continent.⁵ At the seventh ordinary session of the AU's Assembly of Heads of State and Government in Banjul, The Gambia, in July 2006, the AU officially recognised eight such communities.⁶ Alphabetically listed, these are as follows:

- The Arab Maghreb Union (AMU)
- The Community of Sahel-Saharan States (CEN-SAD)
- The Common Market for Eastern and Southern Africa (COMESA)
- The East African Community (EAC)
- The Economic Community of Central African States (ECCAS)
- The Economic Community of West African States (ECOWAS)
- The Intergovernmental Authority on Development (IGAD), and
- The Southern African Development Community (SADC).

Except for the Sahrawi Arab Democratic Republic,⁷ all AU member states are

³ Eritrea has not yet signed the Abuja Treaty; cf. status list of countries regarding the Abuja Treaty, available at <http://www.africa-union.org/root/au/Documents/Treaties/List/Treaty%20Establishing%20the%20African%20Economic%20Community.pdf>.

⁴ The countries which have signed but not yet ratified the Abuja Treaty are Djibouti, Madagascar and Somalia; cf. status list of countries regarding the Abuja Treaty, available at <http://www.africa-union.org/root/au/Documents/Treaties/List/Treaty%20Establishing%20the%20African%20Economic%20Community.pdf>.

⁵ The number of RECs varies depending on the definition of *REC* and on whether specific subgroups or monetary unions such as the Central African Economic and Monetary Community or certain free trade areas such as the Euro-Mediterranean Free Trade Area (with Egypt, Morocco and Tunisia, and states around the Mediterranean) are counted or not. Viljoen (2007:488) states that at least 14 subregional integration groupings exist in Africa.

⁶ See the decision relating to the recognition of RECs, namely (Assembly/AU/Dec.112 (VII) Doc. EX.CL/278 (IX)); text in French available at http://www.africa-union.org/Official_documents/Assemblee%20fr/ASS06b.pdf; last accessed 22 December 2008.

⁷ Due to the controversies regarding the Sahrawi Arab Democratic Republic, Morocco withdrew from the OAU in protest in 1984 and, since South Africa's admittance in 1994, remains the only African nation not within what is now the African Union (AU). Although the Sahrawi Arab Democratic Republic was a full member of the OAU since 1984 and remains a member of the AU, the republic is not generally recognised as a sovereign state. While most African states have recognised the republic (e.g. Namibia and South Africa), several others have withdrawn their former recognition (e.g. Cape Verde, the Seychelles),

affiliated to one or more of these RECs, as indicated in Table 1 on the following page.

This paper will focus on RECs in East and southern Africa and how each such community incorporates human-rights-related issues into its respective legal setting. However, a few more general considerations regarding RECs and human rights first deserve attention. The relevance of human rights for topics such as regional integration and harmonisation, and the issues of overlapping memberships and concurrent jurisdiction, which usually occur in an economic context, form part of these introductory remarks as well.

RECs, regional integration and human rights

The first question that arises is this: What role do human rights play in RECs and the integration process in general?

In general terms, *regional integration* can be described as a path towards gradually liberalising the trade of developing countries and integrating them into the world economy. At first glance it appears that the promotion and protection of human rights is not within the RECs' focal range. However, as this article will show, human-rights-related matters play a vital role within the RECs' legal framework as well as in their daily practice, as many have implemented certain provisions in their mandate that have an impact on human rights and good governance.

All RECs analysed here have, to some extent, incorporated human rights into their treaties. In most cases, a general tribute to recognising and protecting human rights can be found in the basic legal concepts underpinning RECs. Some even cover specific human rights issues, such as HIV and AIDS, equality and gender issues, humanitarian assistance and refugees, and children's rights, to name but a few.

The reasons for integrating human rights into the structure of RECs are manifold. One reason certainly is that states have committed themselves to respecting human rights by acceding to specific human rights treaties, conventions or

and some have temporarily frozen diplomatic relations (e.g. Costa Rica, Ghana), pending the outcome of a respective UN referendum which would allow the people of Western Sahara to decide the territory's future status. The republic has no representation at the United Nations.

Table 1: State members of RECs officially recognised by the AU

AMU	CEN-SAD	COMESA	EAC	ECCAS	ECOWAS	IGAD	SADC			
Algeria	Benin	Burundi	Burundi	Angola	Benin	Djibouti	Angola			
Libya	Burkina Faso	Comoros	Kenya	Burundi	Burkina Faso	Ethiopia	Botswana			
Mauritania	Central African Republic	DRC	Rwanda	Cameroon	Cape Verde	Kenya	DRC			
Morocco	Chad	Djibouti	Tanzania	Central African Republic	Côte d'Ivoire	Somalia	Lesotho			
Tunisia	Comoros	Egypt	Uganda	Chad	The Gambia	Sudan	Madagascar			
	Côte d'Ivoire	Eritrea		Congo	Ghana	Uganda	Malawi			
	Djibouti	Ethiopia		DRC	Guinea		Mauritius			
	Egypt	Kenya		Gabon	Guinea-Bissau		Mozambique			
	Eritrea	Libya		Guinea	Liberia		Namibia			
	The Gambia	Madagascar		São Tomé and Príncipe	Mali		Seychelles			
	Ghana	Malawi			Niger		South Africa			
	Guinea-Bissau	Mauritius			Nigeria		Swaziland			
	Kenya	Rwanda			Senegal		Tanzania			
	Liberia	Seychelles			Sierra Leone		Zambia			
	Libya	Sudan			Togo		Zimbabwe			
	Mali	Swaziland								
	Mauritania	Uganda								
	Morocco	Zambia								
	Niger	Zimbabwe								
	Nigeria									
	São Tomé and Príncipe									
	Senegal									
	Sierra Leone									
	Somalia									
	Sudan									
Togo										
Tunisia										

declarations on the international, regional and subregional level, including the Universal Declaration of Human Rights; the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights; the Convention on the Elimination of Racial Discrimination; or the African Charter on Human and Peoples' Rights. The obligations and commitments resulting from such human-rights-related legal instruments are also reflected in the conceptualisation of RECs. One further aspect of incorporating human rights into the legal regimes of RECs is that human rights and good governance – the latter being “an effective democratic form of government relying on broad public engagement (participation), accountability (control of power) and transparency (rationality)” – play an essential role in economic development. The extent of good governance can be regarded as the degree to which the promise of civil, cultural, economic, political and social rights is realised.

For example, human rights and good governance have an impact on the investment climate, which contributes to growth, productivity and the creation of jobs, all essential for economic growth and sustainable reductions in poverty. The furtherance of economic development and the promotion of human rights should, thus, go hand in hand. Indeed, there is no need to choose between economic development and respecting human rights: an analysis of the legal structure of RECs with regard to human rights shows that a peaceful environment which recognises and promotes human rights is regarded as a fundamental prerequisite for economic development.

The interrelationship between human rights and economic development has become closer over the past few years due to increasing discussions in the world community on the issue.

This interconnection can be seen as a two-way relationship insofar as economic development is obliged to respect human rights in a democratic society. Conversely, human rights can be given more effect through economic growth, as one outcome of economic growth is the increasing availability of resources, resulting in the reduction of poverty and a higher standard of living.

Therefore, the promotion of human rights plays an important role in the process of regional integration, as envisaged by the Abuja Treaty as well as by REC constitutive legal instruments. However, the integration process faces many obstacles and challenges, which do also touch on human rights. The fear of losing State autonomy, the fear of losing identity, socio-economic disparity among members, historical disagreement, lack of vision, and unwillingness to

share resources are some of the obstacles that present themselves when it comes to regional integration. One specific challenge is the heterogeneity of AEC or REC member states. This heterogeneity is not only reflected by surface area, population figures, the size of domestic markets, per capita income, the natural resource endowment, and the social and political situation, but also by the variety of legal systems applied, and the extent to which human rights are respected by the different member states.⁸

Of increasing significance will be the harmonisation of the law. This can be achieved by the implementation and transformation of legally binding instruments aiming to reduce or eliminate the differences among national legal systems by inducing them to adopt common legal principles. This applies to human rights cases in particular. While a specific action might be classified as a violation of human rights in country A, this may not be the case in country B, although both countries are members of the same REC. This is especially true as regards labour standards, which are generally very sensitive in terms of human rights concepts. In this regard, amending laws to achieve interregional legal conformity is central to reducing normative barriers within RECs, as unified law promotes greater legal predictability as well as legal certainty – both essential for the investment climate and economic development in general.

The Abuja Treaty aims at the coordination, harmonisation and progressive integration of the activities of RECs, which in turn are regarded as the building blocks of the AEC. The integration process covers a prospective period of 34 years, with the possibility of being extended. Human rights protection is specifically laid down in the second chapter of the Treaty, which covers issues of the RECs' establishment, principles, objectives, general undertaking, and modalities. Article 3 provides that the contracting parties –

... in pursuit of the objectives stated in Article 4, [sic] of this Treaty solemnly affirm and declare their adherence to the following principles: ...

- (g) Recognition, promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human and Peoples' Rights; ...

Besides the promotion of economic, social and cultural development and the integration of African economies, one further objective of the AEC is to –

⁸ On the heterogeneity of SADC member states, see Ruppel & Bangamwabo (2009).

... promote co-operation in all fields of human endeavour 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; ...

Therefore, member states are expected to promote the coordination and harmonisation of the integration activities of those RECs to which they belong, within the gambit of their activities on the AEC.

Promoting human rights: A mandate for RECs?

Assuming that the responsibility for upholding human rights and fundamental freedoms rests primarily on the individual states themselves, the question may arise as to the role that RECs play when it comes to the protection of human rights, and whether or not – and if so, how – RECs can function as guardians of human rights. Although states might be primarily responsible for upholding human rights because they are answerable to their citizens, the international community, and the UN if they fail to respect human rights in their countries, the influence of RECs should not be underestimated. It has already been stated that, in some way or another, RECs have incorporated the respect for and/or promotion of human rights into their constitutive instruments. Therefore, RECs do indeed have the duty to translate human rights principles and ideals into practice. This can be realised by several means, all resulting in the enforcement of human rights. Two principal categories can be identified, namely the judicial and extrajudicial promotion and enforcement of human rights.

Enforcing and promoting human rights outside of courts is, in the first place, realised by merely administrative means. The legal instruments of RECs, be they their constitutive acts, protocols, declarations, guidelines, policies or memoranda of understanding, place the onus on member states and institutional organs to act in accordance with specific principles such as the rule of law, democracy or respect for human rights. Therefore, RECs' decision-making processes should always be guided by human rights principles laid down in such legal instruments, or that apply because they are general principles of customary law. Thus, it can be stated that specific principles of human rights are authoritative when it comes to decisions taken by RECs that relate to conflict resolution, peacekeeping, or the drafting of policies or other legal instruments relating to sectors such as trade liberalisation, freedom of movement, anti-corruption, health or any other issues under the REC's competency.

On the judicial side, the enforcement of human rights within RECs works through the activities of regional community courts or similar institutions. Most RECs have judicial bodies that deal with any controversies relating to the interpretation or application of community law. Depending on how human rights are incorporated into the legal frameworks of different RECs, subregional organisations have a number of options open to them in respect of enhancing the protection of human rights. Considering that human rights do, to some extent, form part of the community law of all RECs, their regional community courts can unquestionably contribute towards the promotion and protection of human rights, provided that decisions by regional judicial institutions are properly enforced at a national level. One important question with regard to the enforcement of human rights is whether private persons can approach regional courts in cases of alleged human rights violations. The rules of procedure of the various judicial bodies address this issue within provisions relating to jurisdiction.

The fact that human-rights-related issues are subject to judicial review at REC level is reflected by the jurisprudence of some regional community courts that deal with such issues. With regard to an envisaged process of harmonisation of law and jurisprudence, human-rights-relevant case law at regional level is required because harmonisation can only take place if the application of law by national courts in comparable cases leads to roughly the same results. In light of the above, regional community courts can be considered a motor of integration.⁹

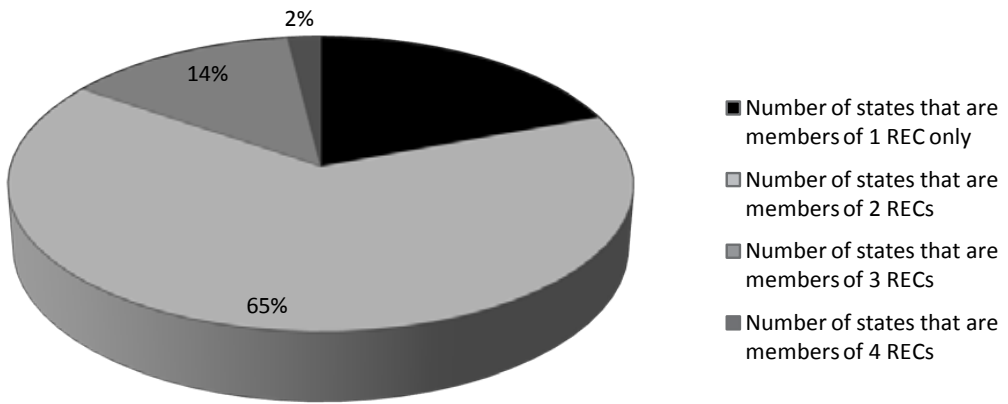
As an interim result, it can be stated that RECs have a clear mandate to promote and protect human rights. However, some critical issues with regard to RECs and the protection of these rights needs to be mentioned here. These issues refer to concurrent jurisdiction and overlapping memberships. It is commonly accepted that, from a long-term perspective and with a view to their merging into a single institution, RECs need to be strengthened and consolidated. However, the fact that many African states are members to various RECs can be regarded as a hurdle in respect of the integration process. Despite multiple costs for membership contributions and negotiation rounds, and technical problems such as the application of different external tariffs in respect of each member country and the eventual lack of identification with one specific REC,

⁹ This term was coined by Schwarze (1988:13ff) with regard to the European Court of Justice.

the question of the concurrent jurisdiction of different judicial organs has to be addressed.

Figure 1 graphically illustrates that the issue of overlapping memberships is highly relevant as most African countries which are parties to one of the RECs recognised by the AU are also members to at least one other REC.

Figure 1: Overlapping memberships among AU-recognised RECs



The issue of the conflicting jurisdiction of regional courts on the African continent will become a prominent one with specific importance in cases involving violations of human rights, as many regional judicial bodies have the jurisdiction over human rights cases. For the time being, the consequence of overlapping jurisdiction is that a claimant may in fact choose to which judicial body a case is submitted,¹⁰ since a competent court may not decline jurisdiction on the grounds that another court may be competent as well. In terms of regional integration, the absence of a judicially integrated Africa is, however, undeniably a problem because different judicial bodies may interpret one normative source differently.¹¹

¹⁰ Referred to as *forum-shopping*; see Viljoen (2007:502).

¹¹ (ibid.).

Regional economic communities in East and southern Africa

The Common Market for Eastern and Southern Africa – COMESA

Background

COMESA¹² was formally established in 1994 as a successor organisation to the Preferential Trade Area for Eastern and Southern Africa (PTA), which had been in existence since 1981. COMESA focuses on and aims at regional integration in all fields of development, with particular emphasis on trade, customs and monetary affairs, transport, communication and information, technology, industry and energy, gender, agriculture, the environment, and natural resources.

According to the UN Statistical Division,¹³ COMESA comprises more than 400 million inhabitants, embraces a land surface area of almost 13 million km², and a total gross domestic product (GDP) of over US\$360 billion. The official languages are English, French and Portuguese. COMESA's basic legal instrument is the COMESA Treaty which established the body. This Treaty provides, *inter alia*, for the organs of COMESA, namely the COMESA Authority, composed of the various Heads of State or Government, the COMESA Council of Ministers, the COMESA Court of Justice, the Committee of Governors of Central Banks, the Intergovernmental Committee, the Technical Committees, the Consultative Committee, and the Secretariat, which has its seat in Lusaka, Zambia.

COMESA currently counts 19 states as its members, namely Burundi, the Comoros, the DRC, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, the Seychelles, Sudan, Swaziland, Uganda, Zambia and Zimbabwe. Former member states are Lesotho, Mozambique, Namibia and Tanzania, which have presumably quit the REC to avoid overlapping memberships within organisations that follow largely the same objectives. Indeed, this is one of the major problems of COMESA: all its members are simultaneously members of at least one other REC. Taking COMESA and SADC as an example, seven countries are members of both RECs.¹⁴ This is not

¹² For detailed information on COMESA, see www.comesa.int.

¹³ <http://unstats.un.org/unsd/default.htm>.

¹⁴ Dual membership is held by the DRC, Madagascar, Malawi, Mauritius, the Seychelles, Zambia and Zimbabwe.

only problematic in terms of duplication of work and costs, but also because a subregional customs union is envisaged by both COMESA and SADC, and it is legally and technically impossible to be a member of more than one such union.¹⁵ Therefore, the Tripartite Summit held in October 2008 in Kampala, Uganda, with the Heads of State and Government of COMESA, the EAC and SADC, focused on the broader objectives of the AU – to accelerate economic integration of the continent with the aim of achieving economic growth, reducing poverty, and attaining sustainable economic development. It was resolved that the three RECs should –¹⁶

... immediately start working towards a merger into a single REC with the objective of fast[-]tracking the attainment of the African Economic Community.

In the area of trade, customs and economic integration, it was approved that a Free Trade Area (FTA) should be established encompassing EAC, COMESA and SADC member states, with the ultimate goal of establishing a single customs union.

Human rights protection within COMESA

Human rights protection is part of the COMESA Treaty, although it might not be at the core of COMESA's activities.¹⁷ The Treaty deals with human-rights-sensitive provisions at various stages, the most important of which will be outlined in the following discussion.

COMESA has several aims and objectives¹⁸ that relate partially to human rights. One of these aims and objectives is the adoption of policies and programmes to raise the standard of living of its peoples.¹⁹ Furthermore, COMESA aims at contributing towards the establishment, progress and realisation of objectives of the AEC, which include human rights – at least indirectly – by making the promotion of economic, social and cultural development and the raising of the standard of living of African peoples major COMESA objectives.²⁰

¹⁵ Jakobeit et al. (2005:X).

¹⁶ See COMESA–EAC–SADC (2008).

¹⁷ Viljoen (1999:206).

¹⁸ Laid down in Article 3, COMESA Treaty.

¹⁹ Article 3b, COMESA Treaty.

²⁰ Article 4.1, Abuja Treaty Establishing the AEC.

The most relevant provision relating to human rights protection within the COMESA Treaty, establishing it as one of COMESA's fundamental principles, is Article 6(e), which describes the recognition, promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human and Peoples' Rights. The recognition and observance of the rule of law as well as the promotion and sustenance of a democratic system of governance, both undoubtedly intertwined with the status of human rights protection, are similarly laid down as fundamental principles of COMESA.²¹ The principles that disputes among member states are to be settled peacefully, and that the recognition of a peaceful environment is a prerequisite for economic development,²² are further factors which are ultimately beneficial for the status quo of human rights. The fact that trade might have a negative impact on human rights is taken into account in the sixth chapter of the COMESA Treaty, which deals with cooperation in trade liberalisation and development. In this context, provision is made to allow states to impose restrictions on trade affecting, inter alia, the protection of human, animal or plant health or life; the protection of public morality; or the maintenance of food security in the event of war and famine.²³ This is a clear indication that the protection of basic human needs and, therefore, the protection of fundamental human rights do indeed outweigh the interests of trade. However, such restrictions to trade are only permissible if the state imposing such restrictions or prohibitions has informed the Secretary-General about its intention prior to taking the respective action. Moreover, the measures taken may not last longer than necessary in respect of achieving security aims or eliminating other risks, and they are obliged to be applied on the basis of non-discrimination.²⁴ The COMESA Treaty also refers to environmental concerns, which, under the notion of *third-generation human rights*,²⁵ play an essential role in protecting human rights. In its sixteenth chapter, the COMESA Treaty deals extensively with cooperation in the development of natural resources, the environment and wildlife. In this regard, it is recognised that a clean and attractive environment is a prerequisite for long-term economic growth,²⁶ and provision is made for any action having an environmental impact to contain the objective to preserve, protect and improve the quality of the environment;

²¹ Articles 6(g) and (h), respectively, COMESA Treaty.

²² Article 6(j), COMESA Treaty.

²³ Article 50(1)(c) and (f), respectively, COMESA Treaty.

²⁴ Article 50(3), COMESA Treaty.

²⁵ With regard to the environment as a third-generation human right, see Ruppel (2008a).

²⁶ Article 122(2), COMESA Treaty.

to contribute towards protecting human health; and to ensure the prudent and rational utilisation of natural resources.²⁷ Furthermore, it is explicitly stated that environmental conservation is to be considered in all the fields of COMESA activity.

Gender issues also play a substantial role within the COMESA legal framework – to the extent that an entire additional chapter²⁸ within the COMESA Treaty deals with women in development and business, and special provisions can also be found at policy level. Recognising that sustainable economic and social development of the region requires the full and equal participation of women, men and youth, COMESA adopted a Gender Policy in 2005.

Within COMESA, a Federation of National Associations of Women in Business (FEMCOM) was established, which functions as a forum for exchanging ideas and experience among women entrepreneurs of the subregion, as well as an instrument for encouraging and facilitating the setting up or expansion of enterprises. Since 1993, FEMCOM has been working towards promoting programmes that integrate women into trade and development. Among these is a programme to create awareness among women of export markets in the COMESA FTA.²⁹ In particular, FEMCOM focuses on sectors such as agriculture, fishing, mining, energy, transport, and communication.

However, despite COMESA policies, its noble vision, and its objectives, gender inequality remains a major problem affecting regional integration efforts as women still tend to have limited access to regional and international markets.³⁰ Inadequate access to trade information and market research, unfamiliar and complicated procedures in export management, low levels of education among the majority of women in COMESA member states, and inadequate access to credit and finance have all been cited by FEMCOM as possible reasons for perpetuating gender inequality. In this sense too, the COMESA Gender Policy states the following:³¹

²⁷ Article 122(5), COMESA Treaty.

²⁸ Chapter 24, COMESA Treaty.

²⁹ The FTA includes Djibouti, Egypt, Kenya, Madagascar, Malawi, Mauritius, Sudan, Zambia and Zimbabwe.

³⁰ This was stated by Mary Malunga, FEMCOM Chairperson and Director of Malawi's National Association of Business Women (NABW); see Semu-Banda (2007).

³¹ See subsection 9, Preamble to the COMESA Gender Policy.

A critical analysis of the socio-economic reality of the region shows that gender gaps exist in terms of poverty, disease, education, employment, governance and many other issues. Many problems also exist with regard to COMESA's effort to integrate women in Trade, Industry, Agriculture, Information and Communications, Science and Technology.

Enforcement mechanisms

As one of its organs, COMESA established a Court of Justice in 1994 to ensure adherence to law in the interpretation and application of the COMESA Treaty. Prior to the establishment of the COMESA Court of Justice, the judicial organs of COMESA's predecessor, the PTA, dealt with disputes in its REC. The functions of these organs, namely the PTA Tribunal, the PTA Administrative Appeals Board, and the PTA Centre for Commercial Arbitration, were taken over by the COMESA Court of Justice. The COMESA Court of Justice has the jurisdiction to hear disputes to which member states, the Secretary-General, or residents of member states (individuals and legal persons) may be parties. The Court has the jurisdiction to adjudicate upon all matters which may be referred to it pursuant to the COMESA Treaty. The Seat of the Court was temporarily hosted within the COMESA Secretariat from 1998. In March 2003, the COMESA Authority decided that the Seat should be in Khartoum, Sudan.³²

References to the Court may be made by member states, the Secretary-General, and legal and natural persons, which is of specific importance with regard to human-rights-related matters. Residents in a member state may approach the Court to determine the legality of any act, regulation, directive, or decision of the Council or of a member state on the grounds that such act, regulation, directive or decision is unlawful or an infringement of the provisions of the COMESA Treaty.³³ However, a person who refers a matter to the Court is obliged to have exhausted local remedies in the national courts or tribunals of the member state concerned prior to referring a matter to the COMESA Court of Justice. Decisions of the Court on the interpretation of the provisions of the COMESA Treaty have precedence over decisions of national courts,³⁴ and national courts can ask the COMESA Court of Justice for a preliminary ruling concerning the application or

³² See http://www.comesa.int/institutions/court_of_justice/Multi-language_content.2003-08-21.2608/view; last accessed 28 July 2008.

³³ Article 26, COMESA Treaty.

³⁴ Article 29(2), COMESA Treaty.

interpretation of the COMESA Treaty if the court of the member state considers that a ruling on the question is necessary to enable it to give judgement.³⁵

Judgements of the COMESA Court of Justice are final and conclusive, and not open to appeal.³⁶ As to the enforcement of judgements delivered by this Court, the COMESA Treaty provides for member states or the Council to take the measures required to implement the judgement. The Court itself has the option to prescribe such sanctions as it considers necessary to be imposed against a party who does not fulfil its obligation to implement the Court's decision.³⁷

In sum, it can be stated that the COMESA Court of Justice has the potential to contribute to the protection and promotion of human rights, as individual actions are subject to the Court's jurisdiction and human rights are anchored within COMESA's legal framework.

Southern African Development Community – SADC

Background

SADC³⁸ was established in Windhoek in 1992 as the successor organisation to the Southern African Development Coordination Conference (SADCC), which was founded in 1980. SADC was established by signature of its constitutive legal instrument, the SADC Treaty. SADC envisages –³⁹

... a common future, a future in a regional community that will ensure economic well-being, improvement of the standards of living and quality of life, freedom and social justice and peace and security for the peoples of Southern Africa. This shared vision is anchored on the common values and principles and the historical and cultural affinities that exist between the peoples of Southern Africa.

To this end, SADC's objectives include the achievement of development and economic growth; the alleviation of poverty; the enhancement of the standard and quality of life; support of the socially disadvantaged through regional integration; the evolution of common political values, systems and institutions;

³⁵ Article 30, COMESA Treaty.

³⁶ Article 31(1), COMESA Treaty.

³⁷ Article 34(3) and (4), COMESA Treaty.

³⁸ For more details on SADC, see <http://www.sadc.int/>.

³⁹ See SADC's Vision, at <http://www.sadc.int/>.

the promotion and defence of peace and security; and achieving the sustainable utilisation of natural resources and effective protection of the environment.⁴⁰

According to the UN Statistical Division,⁴¹ SADC counts a total population of more than 245 million, who inhabit a surface area of almost 10 million km², and a total GDP of over US\$432 billion. SADC's headquarters are in Gaborone, Botswana, and the SADC working languages are English, French and Portuguese. The institutions of SADC, provided for in the SADC Treaty, are the Summit of Heads of State or Government; the Organ on Politics, Defence and Security Co-operation; the Council of Ministers; the Integrated Committee of Ministers; the Standing Committee of Officials; the Secretariat; the Tribunal; and SADC National Committees.

SADC currently counts 15 states among its members, namely Angola, Botswana, the DRC, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, the Seychelles,⁴² South Africa, Swaziland, Tanzania, Zambia, and Zimbabwe.

The Regional Indicative Strategic Development Plan (RISDP) approved by the SADC Summit in 2003, has defined the following targets for regional integration within SADC:

- An FTA by 2008
- Completion of negotiations of the SADC Customs Union by 2010
- Completion of negotiations of the SADC Common Market by 2015
- SADC Monetary Union and SADC Central Bank by 2016, and
- Launch of a regional currency by 2018.

As a first step towards deeper regional integration, SADC launched the FTA in August 2008 in order to create a larger market, releasing potential for trade, economic development and employment creation.⁴³

As many SADC member states are also parties to other RECs,⁴⁴ COMESA, the EAC and SADC have decided to accelerate economic integration of the

⁴⁰ These are some of the SADC objectives laid down in Article 5 of the SADC Treaty.

⁴¹ <http://unstats.un.org/unsd/default.htm>.

⁴² The Seychelles was a member of SADC from 1997 to 2004; it rejoined SADC in 2008.

⁴³ See Section 14, Final Communiqué of the 28th Summit of SADC Heads of State and Government held in Sandton, South Africa, from 16 to 17 August 2008.

⁴⁴ COMESA members that are simultaneously SADC members are the DRC, Madagascar, Malawi, Mauritius, the Seychelles, Zambia and Zimbabwe. Burundi, Kenya, Rwanda and Uganda are simultaneously members of EAC and COMESA, while Tanzania is a

continent, with the aim of achieving economic growth, reducing poverty and attaining sustainable economic development. To this end, it was resolved that the three RECs should –⁴⁵

... immediately start working towards a merger into a single REC with the objective of fast[-]tracking the attainment of the African Economic Community.

In the area of trade, customs and economic integration, it was approved that an FTA be established, encompassing the three RECs' member states with the ultimate goal of establishing a single customs union.

Human rights protection within SADC

It might appear that the promotion and protection of human rights are not SADC top priority as an organisation that furthers socio-economic cooperation and integration as well as political and security cooperation among its 15 southern African member states. However, the protection of human rights plays an essential role in economic development as it has an impact on the investment climate, which in turn contributes to growth, productivity and employment creation, all being essential for sustainable reductions in poverty.

A ministerial workshop in 1994 called for the adoption of a SADC Human Rights Commission as well as for a SADC Bill of Rights. In 1996, a SADC Human Rights Charter was drafted, albeit by NGOs of several SADC member states.

In the course of establishing the SADC Tribunal in 1997, a panel of legal experts⁴⁶ considered the possibility of separate human rights instruments such as a Protocol of Human Rights or a separate Southern African Convention on Human Rights. None of these proposals was realised, however.⁴⁷

member of the EAC as well as of SADC. See the respective explanations on overlapping memberships and in the section on the history and facts of COMESA. On the specific issue of overlapping memberships, see Jakobeit et al. (2005).

⁴⁵ See COMESA–EAC–SADC (2008).

⁴⁶ This panel consisted of the late Professor Kamba (founding Dean of the Faculty of Law at the University of Namibia) and Justice Jacobs (judge at the Court of Justice of the European Communities). Cf. Viljoen (1999:200).

⁴⁷ For more details on these historical developments, see Viljoen (ibid.:200f).

Nonetheless, many human-rights-related provisions can be found within SADC's legal framework. The SADC Treaty itself refers to regional integration and to human rights directly or indirectly at several stages. In its Preamble, the Treaty determines, *inter alia*, to ensure, through common action, the progress and well-being of the people of southern Africa, and recognises the need to involve the people of the SADC region centrally in the process of development and integration, particularly through guaranteeing democratic rights, and observing human rights and the rule of law. The Preamble's contents are given effect within the subsequent provisions of the SADC Treaty. Chapter 3, for example, which deals with principles, objectives, the common agenda and general undertakings, provides that SADC and its member states are to act in accordance with the principles of human rights, democracy and the rule of law.⁴⁸ Moreover, the objectives of SADC⁴⁹ relate to human rights issues in one way or another. For instance, the objective of alleviating and eventually eradicating poverty contributes towards ensuring, *inter alia*, a decent standard of living, adequate nutrition, health care and education – all these being human rights.⁵⁰ Other SADC objectives such as the maintenance of democracy, peace, security and stability refer to human rights, as do the sustainable utilisation of natural resources and effective protection of the environment – known as third-generation human rights.⁵¹

Besides the aforementioned provisions and objectives, the SADC legal system offers human rights protection in many legal instruments other than the SADC Treaty. One category of legal documents constitutes the SADC Protocols. The Protocols are instruments by means of which the SADC Treaty is implemented; they have the same legal force as the Treaty itself. A Protocol comes into force after two thirds of SADC member states have ratified it. A Protocol legally binds its signatories after ratification.

Table 2 outlines all SADC Protocols, as most SADC Protocols are either directly or indirectly relevant to human rights.

⁴⁸ Article 4(c), SADC Treaty.

⁴⁹ Article 5, SADC Treaty.

⁵⁰ UNDP (2000:8).

⁵¹ Ruppel (2008a).

Table 2: SADC Protocols

Protocol Against Corruption
Protocol on Culture, Information and Sports
Protocol on Combating Illicit Drugs
Protocol on Education and Training
Protocol on Energy
Protocol on Extradition
Protocol on Control of Firearms, Ammunition and Other Related Materials
Protocol on Fisheries
Protocol on Forestry
Protocol on Gender and Development
Protocol on Immunities and Privileges
Protocol on Legal Affairs
Protocol on Mutual Legal Assistance in Criminal Matters
Protocol on Mining
Protocol on the Facilitation of Movement of Persons
Protocol on Politics, Defence and Security Co-operation
Protocol on the Development of Tourism
Protocol on Trade
Amended Protocol on Trade
Protocol on Transport, Communications and Meteorology
Protocol on the Tribunal and the Rules of Procedure Thereof

Of specific relevance in terms of human rights are the gender-related instruments within the SADC legal framework.⁵² For example, the Protocol on Gender and Development was signed during the 28th SADC Summit in August 2008.⁵³ Recognising that the integration and mainstreaming of gender issues into the SADC legal framework is key to the sustainable development of the SADC region, and taking into account globalisation, human trafficking of women and children, the feminisation of poverty, and violence against women, amongst other things, the Protocol in its 25 Articles expressively address issues such as affirmative action, access to justice, marriage and family rights, gender-based

⁵² Visser & Ruppel-Schlichting (2008:157).

⁵³ See Section 16, Final Communiqué of the 28th Summit of SADC Heads of State and Government held in Sandton, South Africa, 16 to 17 August 2008.

violence, health, HIV and AIDS, and peace-building and conflict resolution. The Protocol provides that, by 2015, member states are obliged to enshrine gender equality in their respective constitutions, and that their constitutions state that the provisions enshrining gender equality take precedence over their customary, religious and other laws.⁵⁴

The implementation of the Protocol's provisions is the responsibility of the various SADC member states,⁵⁵ and specific provisions as to monitoring and evaluation are laid down in the Protocol.⁵⁶ The SADC Tribunal is the judicial body that has jurisdiction over disputes relating to this Protocol.⁵⁷

Apart from the SADC Treaty and the SADC Protocols, the REC has other instruments at different levels. The latter are not binding, and do not require ratification by SADC members. With respect to their human rights relevance, such instruments include the Principles and Guidelines Governing Democratic Elections; the Charter of Fundamental and Social Rights in SADC; the Declaration on Agriculture and Food Security; and the Declaration on HIV and AIDS.

The Principles and Guidelines Governing Democratic Elections⁵⁸ are of specific importance for first-generation human rights, which comprise civil and political rights. The Guidelines focus on citizens' participation in the decision-making processes and the consolidation of democratic practice and institutions. Besides the basic principles for conducting democratic elections, the Guidelines *inter alia* provide for SADC Electoral Observation Missions that member states can invite to observe their elections; guidelines on the observation of elections; a code of conduct for election observers; and the rights and duties of a member state holding elections.

The 2003 Charter of Fundamental and Social Rights in SADC – although not legally binding – is an important human rights document that specifies the objectives laid down in Article 5 of the SADC Treaty for the employment and labour sector. Rights such as the right to freedom of association; the right to equality; the right to a safe and healthy environment; the right to remuneration;

⁵⁴ Article 4, SADC Protocol on Gender and Development.

⁵⁵ Article 14, SADC Protocol.

⁵⁶ Article 17, SADC Protocol.

⁵⁷ Article 18, SADC Protocol.

⁵⁸ Referred to hereafter as *the Guidelines*.

and the right to the protection of specific groups in society, such as children, the youth, the elderly, and persons with disabilities, are enshrined in the Charter of Fundamental and Social Rights in SADC.

With the 2003 Declaration on Agriculture and Food Security, the Heads of State or Government have given substantial means to some specific objectives laid down in Article 5 of the SADC Treaty, namely the promotion of sustainable and equitable economic growth and socio-economic development to ensure poverty alleviation with the ultimate objective of its eradication; the achievement of sustainable utilisation of natural resources and effective protection of the environment; and mainstreaming of gender perspectives in the process of community and nation building. By this Declaration, SADC States have committed themselves to promote agriculture as a pillar in national and regional development strategies and programmes in order to attain our short, medium, and long-term objectives, on agriculture and food security. The Declaration of Agriculture and Food Security is of specific importance for the human right to food and covers a broad range of human rights relevant issues like the increase of production of crops, livestock and fisheries, the sustainable use and management of natural resources as well as the enhancement of gender equality and human health and the mitigation of chronic diseases such as AIDS.

The 2003 Declaration on HIV and AIDS similarly strives to realise the objectives set forth in the SADC Treaty to promote sustainable and equitable economic growth and socio-economic development that will ensure poverty alleviation; to combat HIV and AIDS and other deadly and communicable diseases; and to mainstream gender in the process of community and nation-building. The Declaration describes specific areas as urgent priorities in terms of attention and action. These areas include prevention and social mobilisation; improving care, access to counselling and testing services, treatment and support; accelerating development and mitigating the impact of HIV and AIDS; intensifying resource mobilisation; and strengthening institutional, monitoring and evaluation mechanisms.

Enforcement mechanisms

Having briefly introduced the most important instruments within the SADC legal environment, the next paragraphs will deal with the question of how human

rights contained in the aforementioned instruments can be enforced. Notably, each of these instruments give guidance to the various SADC institutions within the manifold decision-making processes. In the legal sense, however, only provisions of a binding nature can be enforced. Therefore, the SADC Treaty and its Protocols are pivotal to enforcing human rights within SADC.

The SADC Tribunal is the judicial institution within SADC. The establishment of the Tribunal is a major event in SADC's history as an organisation and in the development of its law and jurisprudence. The Tribunal was established in 1992 by Article 9 of the SADC Treaty as one of the institutions of SADC. The Summit of Heads of State or Government, which is the Supreme Policy Institution of SADC pursuant to Article 4(4) of the Protocol on the Tribunal, appointed the members of the Tribunal during its Summit in Gaborone, Botswana, on 18 August 2005. The inauguration of the Tribunal and the swearing in of its members took place on 18 November 2005 in Windhoek, Namibia, in which city Council also designated the Seat of the Tribunal to be. Article 22 of the Protocol on the Tribunal provides that for working languages of the Tribunal to be English, French and Portuguese.⁵⁹ The Tribunal began hearing cases in 2007, and has seen 17 cases filed with it to date.

The SADC Protocol on the Tribunal and the Rules of Procedure thereof circumscribe the Tribunal's jurisdiction. Article 16(1) of the SADC Treaty provides for the following primary mandate:

The Tribunal shall be constituted to ensure adherence to and the proper interpretation of the provisions of this Treaty and subsidiary instruments and to adjudicate upon such disputes as may be referred to it.

The SADC Tribunal was set up to protect the interests and rights of SADC member states and their citizens, and to develop community jurisprudence, also with regard to applicable treaties, general principles, and rules of public international law.⁶⁰ Subject to the principle that local remedies first be exhausted before the Tribunal is approached, the Tribunal has the mandate to adjudicate disputes between states, and between natural and legal persons in SADC.⁶¹ Further, the Protocol states that the Tribunal has jurisdiction over all matters provided for

⁵⁹ See <http://www.sadc.int/tribunal/>; last accessed 20 July 2008.

⁶⁰ Chidi (2003).

⁶¹ Article 15(2), Protocol on the Tribunal and Rules of Procedure thereof.

in any other agreements that member states may conclude among themselves or within the community, and that confer jurisdiction to the Tribunal.⁶² In this context, the SADC Tribunal also has jurisdiction over any dispute arising from the interpretation or application of the Protocol on Gender and Development that cannot be settled amicably.⁶³

The Tribunal was primarily set up to resolve disputes arising from closer economic and political union, rather than human rights.⁶⁴ However, a recent judgement by the Tribunal commonly known as the *Campbell* case,⁶⁵ impressively demonstrates that the Tribunal can also be called upon to consider human rights implications of economic policies and programmes.

On 11 October 2007, Mike Campbell (PVT) Limited, a Zimbabwean-registered company, instituted a case with the Tribunal to challenge the expropriation of agricultural land in Zimbabwe by that country's government. At the time, the matter was also pending in the Supreme Court of Zimbabwe.⁶⁶ As a result, an application was brought in terms of Article 28 of the SADC Protocol for an interim measure to interdict the Zimbabwean Government from evicting Mike Campbell (PVT) Limited and others from the land in question until the main case had been finalised.

The claimant argued that the Zimbabwean land acquisition process was racist and illegal by virtue of Article 6 of the SADC Treaty and the African Union Charter, which both outlaw arbitrary and racially motivated government action. Article 4 of the SADC Treaty stipulates that SADC and its member states are obliged, inter alia, to act in accordance with the principles of human rights, democracy and the rule of law, as well as in line with the principles of equity, balance and mutual benefit, and the peaceful settlement of disputes. According to Article 6(2) of the Treaty, –

⁶² Hugo (2007).

⁶³ Article 18, SADC Protocol on Gender and Development.

⁶⁴ Viljoen (2007:503).

⁶⁵ *Mike Campbell & Another (PVT) Limited v The Republic of Zimbabwe* SADC (T) 2/2007.

⁶⁶ See *Mike Campbell (PVT) Ltd et al. v The Minister of National Security responsible for Land, Land Reform and Resettlement and the Attorney-General*. Constitutional Application No. 124/06 (unreported case: Supreme Court of Zimbabwe).

SADC and member states shall not discriminate against any person on grounds of gender, religion, political views, race, ethnic origin, culture or disability.

It was put forward that the constitutional amendments behind the farm seizures were contrary to SADC statutes, and that the Supreme Court of Zimbabwe had failed to rule on an application by Campbell and 74 other Zimbabwean white commercial farmers to have the race-based acquisition declared unlawful.⁶⁷ The claimant alleged that he had suffered a series of invasions on his farm. The defendant state in turn argued that the land had to be given back to even out a colonial imbalance in land distribution, and that Campbell had not exhausted local remedies. The relationship between the legal regime of SADC on the one hand and Zimbabwe's national law on the other is at the core of this case.

Section 23 of the Constitution of the Republic of Zimbabwe states the following:

No law shall make any provision that is discriminatory either of itself or in its effect; and no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

In 2005, however, the Zimbabwean Constitution was amended. The Constitutional Amendment Act No. 17 of 2005 allows the Zimbabwean Government to seize or expropriate farmland without compensation, and bars courts from adjudicating over legal challenges filed by dispossessed and aggrieved white farmers. Section 2(2) of the Constitutional Amendment Act provides that –

... all agricultural land – [a description of such agricultural land identified by the Government is given here] ... is acquired by and vested in the State with full title therein ...; and ... no compensation shall be payable for land referred to in paragraph (a) except for any improvements effected on such land before it was acquired.

The practical implications of the Constitutional Amendment Act resulted in farm seizures, where most of the approximately 4,000 white farmers were forcibly ejected from their properties with no compensation being paid for the land, since, according to Harare, it was stolen in the first place. The Zimbabwe Government

⁶⁷ Grebe (2008a).

has compensated some farmers only for developments on the land such as dams, farm buildings and other so-called improvements.⁶⁸

After an interim order was issued by the Tribunal⁶⁹ that Campbell should remain on his expropriated farm until the dispute in the main case had been resolved by it, the Zimbabwean Supreme Court⁷⁰ (sitting as a Constitutional Court) dismissed the application by the white commercial farmers challenging the forcible seizure and expropriation of their lands without compensation. The Court ruled that –⁷¹

... by a fundamental law, the legislature has unquestionably said that such an acquisition shall not be challenged in any court of law. There cannot be any clearer language by which the jurisdiction of the courts is excluded.

The main hearing before the SADC Tribunal was scheduled for 28 May 2008, but was postponed until 16 July 2008. In the meantime, Campbell and members of his family were brutally beaten up on their farm in Zimbabwe and allegedly forced to sign a paper declaring that they would withdraw the case from the SADC Tribunal.⁷² Subsequently, the applicants and other interveners in the *Campbell* case made an urgent application for non-compliance to the Tribunal, seeking a declaration to the effect that the respondent state was in breach and contempt of the Tribunal's orders. After hearing the urgent application, the Tribunal found that the respondent state was indeed in contempt of its orders. Consequently, and in terms of Article 32(5) of the Protocol, the Tribunal decided to report the matter to the Summit for the latter to take appropriate action.⁷³

The hearing of the *Campbell* case was finalised on 28 November 2008. In its final decision, the SADC Tribunal ruled in favour of the applicants Mike and William Campbell and 77 other white commercial farmers.⁷⁴

⁶⁸ Incidentally, these land reform measures have plunged Zimbabwe into severe food shortages.

⁶⁹ On 13 December 2007.

⁷⁰ On 22 January 2008.

⁷¹ See http://www.thezimbabwean.co.uk/index.php?option=com_content&view=article&id=13001:campbell-case-heads-of-argument-summary&catid=31:top%20zimbabwe%20stories&Itemid=66; last accessed 18 June 2008.

⁷² Grebe (2008b).

⁷³ So far, no official measures have been taken by the SADC Summit in the *Campbell* case.

⁷⁴ *Mike Campbell (PVT) Limited & Another v The Republic of Zimbabwe* SADC (T) 2/2007.

In conclusion, the Tribunal held that the Republic of Zimbabwe was in breach of its obligations under Articles 4(c) and 6(2) of the SADC Treaty, and that –⁷⁵

- the applicants had been denied access to the courts in Zimbabwe
- the applicants had been discriminated against on the ground of race, and⁷⁶
- fair compensation was payable to the applicants for their lands compulsorily acquired by the Republic of Zimbabwe.

Furthermore, the Tribunal directed the Republic of Zimbabwe to take all necessary measures to protect the possession, occupation and ownership of the lands of applicants who had not yet been evicted from their lands, and to pay fair compensation to those three applicants who had already been evicted from their farms. The ruling is considered to be a landmark decision which will no doubt influence the legal landscape in the SADC region. Meanwhile, the Zimbabwean Government has announced that it will not accept the judgement, which raises the question of how the SADC Tribunal's judgements are to be enforced.

The Tribunal's decisions are final and binding.⁷⁷ Sanctions for non-compliance may be imposed by the Summit according to Article 33 of the SADC Treaty, and are determined on a case-by-case basis. However, no specific sanction is outlined for non-compliance with judgements issued by the SADC Tribunal.⁷⁸ The Tribunal itself can only refer cases of non-compliance to the SADC Summit for the latter to take appropriate steps. Therefore, the future will show to what extent the Tribunal's judgements are taken seriously by SADC member states and by SADC itself. Even if the Tribunal is unable to heal all domestic failures

⁷⁵ *Mike Campbell (PVT) Limited & Another v The Republic of Zimbabwe* SADC (T) 2/2007, at page 57f.

⁷⁶ The issue of racial discrimination was decided by a majority of four to one. Judge Tshosa, in his dissenting opinion, concluded that "Amendment 17 does not discriminate against the applicants on the basis of race and therefore does not violate the respondent's obligation under Article 6(2) of the Treaty". He argued that "the target of Amendment 17 is agricultural land and not people of a particular racial group" and that – although few in number – not only white Zimbabweans had been affected by the amendment. See *Mike Campbell (PVT) Limited & Another v The Republic of Zimbabwe* SADC (T) 2/2007, dissenting opinion of Hon. Justice Dr Onkemetse B Tshosa.

⁷⁷ Article 16 (5) of the SADC Treaty.

⁷⁸ Interestingly, a draft SADC Human Rights Charter drawn up by NGOs of SADC member states in 1996 contained a provision according to which any state "which does not comply with an order of the Court interpreting this Charter shall be suspended from SADC for the duration of its non-compliance with such order". This proposal, although it appears very effective, has, however, not been realised. See Viljoen (1999:201f).

in human rights matters, since such matters are not in the focus of the institution or its mandate for regional integration, it remains to be seen whether SADC is politically and legally mature enough to apply the necessary lessons.

Of significance is the fact that none of the cases heard by the Tribunal so far have dealt with disputes among member states, whereas 15 cases relate to disputes between natural/legal persons and member states, and 2 to disputes between SADC employees and SADC institutions. This interim balance shows that there is indeed a need for a supranational judicial body to decide on matters that relate to cases of imbalances between national law on the one hand and community law on the other. The Tribunal can, therefore, significantly contribute not only towards a deeper harmonisation of law and jurisprudence, but also towards a better protection of human rights at community level – provided that SADC and its institutions put the necessary emphasis on the enforcement of the Tribunal’s judgements.

The Eastern African Community – EAC

Background

The history of the EAC⁷⁹ goes back to 1967, the year in which it was originally founded. In 1977, after ten years of operation, the EAC was dissolved⁸⁰ and was defunct until 2000, when it was revived. Today, the EAC has been officially recognised by the AU as one of the pillars of the AEC.

According to the UN Statistical Division,⁸¹ the EAC covers a land surface area of almost 2 million km², which a total of almost 125 million inhabitants call home. The REC has a total GDP of over US\$149 billion. The official languages are English, French and Kiswahili. The basic legal instrument of the EAC is the Treaty Establishing the East African Community.⁸² The Treaty was signed in

⁷⁹ For more details on the EAC, see www.eac.int.

⁸⁰ Many reasons have been cited for the stranding of the EAC in 1977. Viljoen (2007:490f) states that “Businessmen in Kenya pressurized government to withdraw, because the Court’s appellate jurisdiction had affected their financial and commercial interests, even though Kenya benefited from an inequitable distribution of benefits. Differences in economic policies and political approaches also constituted important reasons for failure”.

⁸¹ <http://unstats.un.org/unsd/default.htm>.

⁸² In the following referred to as the *EAC Treaty*.

1999 and came into force in 2000, allowing the EAC to be officially launched in January 2001.

The EAC focuses on and aims at widening and deepening cooperation among its member states in political, economic, social and cultural fields; and in research and technology, defence, security, and legal and judicial affairs, for their mutual benefit.⁸³ Furthermore, the EAC Treaty provides for, inter alia, the organs of the EAC, namely the Summit, the Council of Ministers, the Co-ordination Committee, the Sectoral Committees, the East African Court of Justice, the East African Legislative Assembly, and the Secretariat, which has its seat in Arusha, Tanzania.

The EAC currently counts five states as its members, namely Burundi, Kenya, Rwanda, Tanzania, and Uganda. All EAC members are at the same time states parties to other organisations in the region.⁸⁴ The EAC has just recently concluded an agreement with SADC and COMESA to form an expanded FTA to include all their member states, with the ultimate goal of establishing a single customs union. The Tripartite Summit held with the Heads of State and Government of the three RECs in October 2008 in Kampala, Uganda, focused on the broader objectives of the AU to accelerate the economic integration of the continent, with the aim of achieving economic growth, reducing poverty and attaining sustainable economic development. It was resolved that the three RECs should –⁸⁵

... immediately start working towards a merger into a single REC with the objective of fast[-]tracking the attainment of the African Economic Community.

Human rights protection within the EAC

Although the EAC's focus has primarily been on economic integration, good governance and human rights issues are coming to the fore as the EAC moves deeper into regional integration.⁸⁶ Among the fundamental principles of the

⁸³ See Article 5, EAC Treaty.

⁸⁴ Tanzania, for example, is a member of the EAC and simultaneously of SADC. Members of the EAC that are simultaneously members of COMESA are Burundi, Kenya, Rwanda and Uganda.

⁸⁵ See COMESA–EAC–SADC (2008).

⁸⁶ As stated by the Secretary-General of the EAC, Juma V Mwapachu, on 3 September 2007, at a meeting held with a delegation of the Kituo Cha Katiba, a regional civil society

EAC are many which relate to the protection of human rights. The most relevant provision is Article 6(d), which reads as follows, and governs the achievement of EAC objectives by its member states:

... good governance including adherence to the principles of democracy, the rule of law, accountability, transparency, social justice, equal opportunities, gender equality, as well as the recognition, promotion and protection of human and peoples['] rights in accordance with the provisions of the African Charter on Human and Peoples' Rights; ...

The governing principles for the practical achievement of the objectives of the EAC – referred to as *operational principles* – also contain provisions relevant to human rights. Thus, Article 7(2) urges member states to –

... undertake to abide by the principles of good governance, including adherence to the principles of democracy, the rule of law, social justice and the maintenance of universally accepted standards of human rights.

Furthermore, the protection of human rights is a governing principle in respect of common foreign and security policies as the objectives of such policies are designed to develop and consolidate democracy and the rule of law as well as the respect for human rights and fundamental freedoms.

The aforementioned provisions cover human rights protection in general, whereas the EAC Treaty and other legal instruments and programmes focus on specific human-rights-related issues. The role of women and men in society is one such issue. To this end, the mainstreaming of gender in all its endeavours and the enhancement of the role of women in cultural, social, political, economic and technological development is laid down as one specific objective of the community.⁸⁷ The fact that gender equality is recognised as one of the fundamental principles of the EAC⁸⁸ is reflected in the provisions relating to the appointment of staff,⁸⁹ which provides that gender balance is to be taken into account within the appointment and composition of staff in EAC organs and institutions. Besides these more general provisions, in recognition of women making a

organisation with observer status in the EAC. The delegation had called on him in Arusha to discuss a draft East African Bill of Rights; cf. EAC (2008a).

⁸⁷ Article 5(3)(e), EAC Treaty.

⁸⁸ Article 6(d), EAC Treaty.

⁸⁹ Article 9(5), EAC Treaty.

significant contribution towards the process of socio-economic transformation and sustainable growth, the Treaty has dedicated an entire chapter, Chapter 22, to enhancing the role of women in socio-economic development. Chapter 22 comprises a broad range of progressive provisions aimed at improving the situation of women within EAC member states. Chapter 22 urges states to, amongst other things, take appropriate legislative and other measures to –⁹⁰

- abolish legislation and discourage customs that discriminate against women
- promote effective education awareness programmes aimed at changing negative attitudes towards women, and
- take measures to eliminate prejudices against women and promote gender equality in every respect.

The preservation of peace and security are other features contained in the EAC Treaty that are closely related to human rights protection, since a state of war substantially affects human rights. By signing the Treaty, member states acknowledge that peace and security are prerequisites to social and economic development within the EAC, and that they are vital to achieving EAC objectives. In this regard, the Treaty envisages fostering and maintaining an atmosphere conducive to peace and security by means of cooperation and consultation with a view to the prevention, resolution and management of disputes and conflicts between member states.⁹¹ Moreover, member states have agreed to establish common mechanisms for the management of refugees.⁹²

Further human-rights-related provisions have been included in the EAC Treaty with regard to the free movement of persons; labour services; the right of establishment and residence;⁹³ agriculture and food security;⁹⁴ health, cultural and social activities;⁹⁵ and management of the environment and natural resources.⁹⁶

On the sub-Treaty level, other EAC instruments that enhance the protection of human rights more specifically need to be mentioned as well. In 2008, the EAC

⁹⁰ Articles 121 and 122, EAC Treaty.

⁹¹ Article 124(1), EAC Treaty.

⁹² Article 124(5)(a), EAC Treaty.

⁹³ Chapter 17, EAC Treaty.

⁹⁴ Chapter 18, EAC Treaty.

⁹⁵ Chapter 21, EAC Treaty.

⁹⁶ Chapter 19, EAC Treaty.

Council of Ministers adopted the EAC Plan of Action on the Promotion and Protection of Human Rights in East Africa.⁹⁷ The Plan of Action envisages the following, inter alia, within a three-year period:

- The establishment of new and the strengthening of existing national human rights institutions
- The development of training manuals or guidelines for human rights actors and agencies, and
- The training of actors involved in the promotion and protection of human rights, including judges/judicial officers, Electoral Commissions, policymakers and implementers, legislators, and civil society.

The preservation of environmental goods and the prevention of environmental threats are essential for human life; in this sense, they are vital for maintaining a healthy standard of human rights. Thus, the EAC adopted a Protocol on Environment and Natural Resources, which was ratified by EAC member states in 2008.⁹⁸ The Protocol was adopted in recognition of the fact that a clean and healthy environment is a prerequisite for sustainable development, and beneficial to present and future generations.⁹⁹ To this end, the Protocol makes provision for cooperation in environmental and natural resource management, covering a broad variety of sectors such as biodiversity, forests, wildlife, water, genetic resources, mining and energy resources, drought, climate change and the ozone layer.¹⁰⁰ Provisions are also made for environmental impact assessments and audits, as well as for the establishment of a Sectoral Committee on Environment and Natural Resources. Disputes between states as regards the Protocol are referred to the East African Court of Justice (EACJ) where all other attempts to resolve the situation have failed.

Unquestionably, the EAC Treaty and other EAC instruments serving as guidelines for cooperation and decision-making processes provide for an in-depth protection of human rights. Considering that the EAC is still in its infancy, the question of whether and to what degree human-rights-related provisions are put into practice cannot be answered at this stage. What is clear, however, is that a treaty such as the EAC's formulates many provisions as visions and guidelines to be realised 'on the way'. One prerequisite for the realisation of such laudable

⁹⁷ (EAC/CM 15/Decision 36). See EAC (2008c:20).

⁹⁸ See EAC (2008c:15).

⁹⁹ Cf. Preamble to the EAC Protocol on Environment and Natural Resource Management.

¹⁰⁰ Cf. Chapter 3, EAC Protocol.

vision, however, is that proper mechanisms are put in place to give effect to the rights contained in the legal instruments concerned.

Enforcement mechanisms

The East African Court of Justice (EACJ) is the judicial body of the East African Community. It is temporarily seated in Arusha, Tanzania, until the Summit determines the Court's permanent Seat. The Court was established in 1999 under Article 9 of the EAC Treaty, and became operational in 2001.¹⁰¹ Although a successor to the East African Court of Appeal, which was the judicial organ of the EAC until it became defunct in 1977, the EACJ is different in composition and jurisdiction.¹⁰² Procedural provisions relevant to the EACJ are the Rules of the Court and the EACJ Arbitration Rules.

The Court has jurisdiction over the interpretation and application of the EAC Treaty. Therefore, it plays an important role in embodying the fundamental principles of the EAC, such as adherence to the rule of law and good governance.¹⁰³ Reference to the Court may be by legal and natural persons, member states, and the EAC Secretary-General. The decisions of the EACJ are binding on the parties to the dispute.¹⁰⁴ Recently, the structure of the EACJ was extended from a single instance court to a first instance division and an appellate division.¹⁰⁵

Although the EAC Treaty provides for broad protection with regard to human rights, notably the East African Court of Justice has to date had no jurisdiction in human rights cases. This is because Article 27(2) of the EAC Treaty provides that jurisdiction on human-rights-related matters is subject to a respective Protocol, which has not yet been concluded. This is an indication that the Court may not rule on issues relating to human rights. However, the Court itself has stated that

¹⁰¹ For some recent decisions of the Court, see Mutai (2007:177–203).

¹⁰² The defunct East African Court of Appeal was designed as an appeal court for national court decisions on civil and criminal matters, but with the exception of constitutional matters and the offence of treason in Tanzania. See <http://www.eac.int/index.php/organs/eacj.html?start=1>.

¹⁰³ As stated by the EAC's Secretary-General, Juma V Mwapachu, at the Induction Workshop for EACJ Judges held in Arusha on 30 July 2008; cf. EAC (2008b:14).

¹⁰⁴ Article 35, EAC Treaty.

¹⁰⁵ See EAC (2008b:14).

it does not abdicate from exercising its jurisdiction of interpretation of the Treaty –¹⁰⁶

... merely because the Reference includes allegation of human rights violation.

It is hoped that a Protocol enabling the court to exercise jurisdiction in cases dealing with human rights is currently under debate. The so-called Zero Draft (Draft Protocol on extending the jurisdiction of the EACJ)¹⁰⁷ was drafted by the EAC's Secretariat in 2005, but has not yet been approved by the Meeting of the EAC Council of Ministers.¹⁰⁸ The fact that the 2005 version of the Draft Protocol was criticised in the past¹⁰⁹ is one of the reasons why the Court does not yet have explicit jurisdiction for human rights cases. The criticism is based on, inter alia, the envisaged combined jurisdiction of the EACJ as a Court of Justice and a Human Rights Court, and on the lack of clarity on the issue of applicable law.¹¹⁰

It is hoped that the EACJ will soon have at hand a legal instrument providing explicit jurisdiction in human rights cases. For the time being, cases involving human rights violations can either be brought before other subregional courts¹¹¹ or be referred to the respective judicial institution at regional level.¹¹² The only other option for the EACJ is to still accept human-rights-related cases on the basis of implicit jurisdiction, as it has done in the past.¹¹³

¹⁰⁶ Cf. *Katabazi & 21 Others v Secretary General of the East African Community & Another* (Ref. No. 1 of 2007) [2007] EACJ 3 (1 November 2007).

¹⁰⁷ Text available at http://ealawsociety.org/Joomla/UserFiles/File/draft_protocol_eacj.pdf.

¹⁰⁸ As stated by the Secretary-General of the EAC, Juma V Mwapachu, on 3 September 2007 at a meeting held with a delegation of the Kituo Cha Katiba, a regional civil society organisation with observer status in the EAC. The latter delegation called on the Secretary-General in Arusha to discuss a draft East African Bill of Rights; cf. EAC (2008a:21f).

¹⁰⁹ Bossa (2006); see also Bossa (2005).

¹¹⁰ Bossa (2006:12,15).

¹¹¹ Parties could opt to bring a case before the COMESA Court of Justice.

¹¹² This would be the African Commission for Human Rights, considering that the African Court on Human and Peoples' Rights is not yet operational, although judges were elected in 2006.

¹¹³ Cf. *Katabazi & 21 Others v Secretary General of the East African Community & Another* (Ref. No. 1 of 2007) [2007] EACJ 3 (1 November 2007).

Economic Community of Central African States – ECCAS

Background

ECCAS¹¹⁴ was formally established in 1983 by Cameroon, the Central African Republic, Chad, the DRC, Equatorial Guinea and Gabon, all members of the *Union Douanière e Économique de l’Afrique Centrale*¹¹⁵ (UDEAC, Customs and Economic Union of Central Africa, members of the *Communauté Économique des Pays des Grands Lacs*¹¹⁶ (CEPGL, Economic Community of the Great Lakes States, namely Burundi, Rwanda and the then Zaire), and by São Tomé and Príncipe. Due to financial¹¹⁷ and political¹¹⁸ difficulties, ECCAS ceased to exist in 1992, but was revived in 1998.

According to the UN Statistical Division,¹¹⁹ ECCAS counts a total population of 121 million inhabitants. The Community spans a surface area of 6.5 million km², and its members produce a combined GDP of over US\$175 billion. The working languages are English, French, Portuguese and Spanish. The primary objective of ECCAS is to pave a way for deeper regional integration, with the ultimate goal of establishing a central African common market. The basic legal instrument of ECCAS is the Treaty Establishing the Economic Community of Central African States. This Treaty provides, inter alia, for the institutions of ECCAS, namely the Conference of Heads of State and Government; the Council of Ministers; the Court of Justice; the Consultative Commission; specialised technical committees or organs as set up or provided for by the ECCAS Treaty; and the General Secretariat, which has its seat in Libreville, Gabon.

ECCAS currently counts ten states as members, namely Angola, Burundi, Cameroon, the Central African Republic, Chad, the Republic of Congo, the DRC, Gabon, Guinea, and São Tomé and Príncipe.¹²⁰

¹¹⁴ For detailed information on ECCAS, see <http://www.ceeac-eccas.org/>.

¹¹⁵ The UDEAC was established by the Brazzaville Treaty in 1966.

¹¹⁶ The CEPGL was established in 1976.

¹¹⁷ Financial difficulties arose due to non-payment of member fees.

¹¹⁸ The war in the DRC was a central problematic issue.

¹¹⁹ <http://unstats.un.org/unsd/default.htm>.

¹²⁰ Rwanda withdrew its membership from ECCAS in June 2007 in order to reduce its integration engagements to fewer regional blocs. The country remains a member of the CEPGL (Economic Community of the Great Lakes States), COMESA and the

Human rights protection within ECCAS

The ECCAS Treaty does not explicitly refer to human rights protection as an objective or principle of the Community. Although the Treaty clearly indicates that aspects of economic development stand at the core of ECCAS, individual statements indicate that, at least implicitly, human rights do play a role within the ECCAS system. The envisaged cooperation between member states in the fields of economic and social activity such as agriculture, natural resources, trade, education, culture, and the movement of persons, aim at raising the standard of living of its peoples, increasing and maintaining economic stability, fostering close and peaceful relations between member states, and contributing to the progress and development of the African continent.¹²¹ The observance of international law is mentioned in the Treaty as one of its founding principles. Therefore, international human rights standards in the sense of international human rights conventions or of customary law principles of international law can be regarded as forming part of the ECCAS legal regime, as the list to which Article 3 of the Treaty refers contains examples only, and includes general principles that are relevant to human rights, such as respect for the rule of law.¹²²

Chapter 8 of the ECCAS Treaty probably contains the most relevant provisions within the Treaty framework as regards human rights, since it covers the group of second-generation human rights, which are founded on the status of the individual as a member of society. Chapter 8 refers specifically to culture and education. The peculiarities of these social, economic and cultural rights have found a more profound regulation within one of the Annexes to the Treaty, namely the Protocol on Cooperation in the Development of Human Resources, Education, Training and Culture Between Member States of the ECCAS.¹²³

EAC. See http://www.iss.co.za/static/templates/tmpl_html.php?node_id=1435&slink_id=3067&slink_type=12&link_id=3893.

¹²¹ Article 4, ECCAS Treaty.

¹²² Article 3 of the ECCAS Treaty reads as follows: “By this Treaty, the HIGH CONTRACTIVE PARTIES undertake to observe the principles of international law governing relations between States, in particular the principles of sovereignty, equality and independence of all States, good neighbourliness, non-interference in their internal affairs, non-use of force to settle disputes and the respect of the rule of law in their mutual relations”.

¹²³ Several Protocols form part of the ECCAS legal framework, which are annexed to the Treaty. These are as follows: Protocol on the Rules of Origin, which deals with products to be traded between ECCAS member states; Protocol on Non-Tariff Trade Barriers; Protocol

At sub-Treaty level, further activities can be regarded as contributing towards enhancing human rights – at least indirectly. Some of the core activities of ECCAS relate to peace and security, which is of specific importance as the political situation in the ECCAS region is still very unstable and issues that have an impact on the humanitarian situation in that region need special attention. To this end, in 1999 member states decided to create the Council for Peace and Security in Central Africa (COPAX), for the promotion, maintenance and consolidation of peace and security. The respective Protocol¹²⁴ which establishes the technical organs of COPAX¹²⁵ has meanwhile entered into force.

Moreover, ECCAS member states have adopted a Strategic Framework for the Fight against HIV/AIDS in Central Africa, and a Declaration on the Fight against AIDS/HIV in 2004.¹²⁶ Of further specific importance with regard to ECCAS and human rights is the fact that the 11th Ordinary Session of Heads of State and

on the Re-export of Goods within ECCAS; Protocol on Transit and Transit Facilities; Protocol on Customs Cooperation within ECCAS; Protocol on the Fund for Compensation for Loss of Revenue; Protocol on Freedom of Movement and Rights of Establishment of Nationals of Member States within ECCAS; Protocol on the Clearing House for ECCAS; Protocol on Cooperation in Agricultural Development Between Member States of ECCAS; Protocol on Cooperation in Industrial Development Between Member States of ECCAS; Protocol on Cooperation in Transport and Communications Between Member States of ECCAS; Protocol on Cooperation in Science and Technology Between Member States of ECCAS; Protocol on Energy Cooperation Between Member States of ECCAS; Protocol on Cooperation in Natural Resources Between Member States of ECCAS; Protocol on Cooperation in the Development of Human Resources, Education, Training and Culture Between Member States of ECCAS; Protocol on Cooperation in Tourism Between Member States of ECCAS; Protocol on the Simplification and Harmonization of Trade Documents and Procedures within ECCAS; and the Protocol on the Situation of Landlocked, Semi-Landlocked, Island, Part-Island and/or Least Advanced Countries.

¹²⁴ Protocol Relating to the Establishment of a Mutual Security Pact in Central Africa.

¹²⁵ The technical organs of COPEX include the Central African Early Warning System (MARAC, *Mécanisme d'Alerte Rapide de l'Afrique Centrale*), which is responsible for the collection and analysis of data for the early detection and prevention of crises; the Defence and Security Commission (CDS, *Commission de Défense et de Sécurité*), being a meeting of chiefs of staff of national armies and commanders-in-chief of police and gendarmerie forces from the various member states, and which is responsible for planning, organising and providing advice to the decision-making bodies of COPAX in order to initiate military operations if needed; and the Multinational Force of Central Africa (FOMAC, *Force multinationale de l'Afrique Centrale*), a non-permanent force consisting of military contingents from member states, which is responsible for accomplishing missions of peace, security and humanitarian relief.

¹²⁶ See UNDP (2008:116ff).

Government in Brazzaville in 2004 adopted a declaration on gender equality as well as an Action Plan for the Implementation of the ECCAS Gender Policy.

Enforcement mechanisms

The ECCAS Treaty generally provides that disputes on the implementation of the provisions of the Treaty are primarily to be settled amicably by direct agreement between the parties concerned. However, in its Article 16, the Treaty provides for the establishment of a Court of Justice, which has the function of ensuring that the law is observed in the interpretation and application of the Treaty, and that the Court also decides in cases where an amicable solution cannot be reached for the dispute.¹²⁷ The decisions of the Court of Justice are binding on ECCAS member states and its institutions.¹²⁸ However, the judicial body of ECCAS exists solely on paper, as it is not yet operational.¹²⁹ Furthermore, the ECCAS Treaty does not address the question of who will have the power to question the legality of ECCAS laws; nor does the Treaty refer to the sources of applicable law. It is expected that, once the procedures for operationalisation of the Court begin, a special Protocol will be drafted on the Court's rules of procedure.

At this stage though, the potential for claiming human rights violations on the sub-regional level of ECCAS is very low. This relates to both components of enforcing human rights, namely statutory and enforcement. On the statutory level, only a few provisions indirectly grant human rights protection; on the level of enforcement, no judicial institution has yet been empowered to deal with human rights cases.

Intergovernmental Authority on Development – IGAD

Background

IGAD¹³⁰ was formally established in 1996 to succeed the Intergovernmental Authority on Drought and Development (IGADD), which had existed since 1986.

¹²⁷ For more detail on the various techniques of alternative dispute resolution, see Ruppel (2007:3ff).

¹²⁸ Article 17, ECCAS Treaty.

¹²⁹ See <http://www.ceeac-eccas.org/index.php?rubrique=presentation&id=2>.

¹³⁰ For more details on IGAD, see <http://www.igad.org/>.

According to the UN Statistical Division,¹³¹ IGAD has jurisdiction over some 188 million inhabitants, a surface area of more than 5 million square kilometres, and a total GDP of over US\$225 billion. IGAD currently counts six states as members, namely Djibouti, Ethiopia, Kenya, Somalia, Sudan, and Uganda.¹³² By way of increased cooperation, IGAD strives to assist and complement its member states' efforts to achieve food security and environmental protection; promote humanitarian affairs and maintain peace and security; and enable economic cooperation and integration.¹³³

IGAD's basic legal instrument is the Agreement Establishing IGAD.¹³⁴ The Agreement provides for, inter alia, the organs of IGAD, namely the Assembly of Heads of State and Government; the Council of Ministers; the Committee of Ambassadors; and the Secretariat, which has its seat in Djibouti City, Djibouti.

Human rights protection within IGAD

IGAD pursues several principles and objectives, some of which relate to human rights. IGAD has incorporated into its principles the recognition, promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human and Peoples' Rights;¹³⁵ the promotion of regional food security and the free movement of goods, services, and people within the region; the combating of drought; the initiation and promotion of programmes and projects for the sustainable development of natural resources and environmental protection; and the promotion of peace and stability in the subregion.¹³⁶

Humanitarian aspects also play an essential role within the IGAD legal regime. One of the functions of the Council of Ministers, for example, is to monitor and enhance humanitarian activities;¹³⁷ the Secretariat assists policy organs in their work relating to political and humanitarian affairs;¹³⁸ and member states are urged to develop and enhance cooperation in respect of the fundamental and basic rights of

¹³¹ <http://unstats.un.org/unsd/default.htm>.

¹³² Eritrea unilaterally declared its suspension in 2007.

¹³³ This is IGAD's vision; cf. http://www.igad.org/index.php?option=com_content&task=view&id=43&Itemid=53&limit=1&limitstart=1.

¹³⁴ Referred to as the *IGAD Agreement*.

¹³⁵ Article 6A, IGAD Agreement.

¹³⁶ Article 7, IGAD Agreement.

¹³⁷ Article 10.2.j, IGAD Agreement.

¹³⁸ Article 12.2.f, IGAD Agreement.

the peoples of the subregion, so that they can benefit from emergency and other forms of humanitarian assistance.¹³⁹ Furthermore, the IGAD Agreement states that, at the national level and in their relations with one another, member states should be guided by the objectives of saving lives, of delivering timely assistance to people in distress, and of alleviating human suffering.¹⁴⁰ Specific provision is made to facilitate the repatriation and reintegration of refugees, returnees and displaced persons, and demobilised soldiers.¹⁴¹ All these provisions reflect that, due to the current political situation, there is an obligation at supranational level to offer guidance and to cope with the humanitarian disasters that arise from armed conflicts in the subregion.¹⁴²

According to the IGAD Executive Secretary, gender issues are high on the IGAD agenda, and gender-related programmes are among the organisation's top priorities.¹⁴³ In 2006, IGAD drafted the IGAD Sexual and Reproductive Health and Rights Plan of Action 2007–2010. The Plan focuses on the principal components of sexual and reproductive health, such as family planning, and maternal and newborn health. The Plan also addresses the issues of HIV and AIDS, harmful traditional practices such as female genital mutilation, and gender-based violence.

In 2007, the IGAD Ministers of Health adopted a Declaration on HIV and AIDS to, inter alia, support the realisation of the IGAD Regional HIV and AIDS Partnership Programme (IRHAPP) objectives, and to improve access to basic HIV and AIDS prevention, treatment, care and support, as well as to other health-related services to those most at risk.¹⁴⁴

Enforcement mechanisms

The IGAD Agreement does not make provision for a judicial body within the IGAD regime. Recognising that security and stability are prerequisites for

¹³⁹ Article 13A.q, IGAD Agreement.

¹⁴⁰ Article 13A.r, IGAD Agreement.

¹⁴¹ Article 13A.s, IGAD Agreement.

¹⁴² This is specifically relevant in respect of the situation in Somalia.

¹⁴³ Statement by IGAD Executive Secretary, Mabhouh Maalim, during a working visit to the Djibouti Minister for the Advancement of Women, Family Welfare and Social Affairs, Nimo Boulhan Hussein. See http://www.igad.org/index.php?option=com_content&task=view&id=203&Itemid=92.

¹⁴⁴ See UNDP (2008:104f).

economic development and social progress, Article 18A of the Agreement, dealing with the resolution of conflicts, urges member states to act collectively to preserve peace, security and stability. To this end, member states are to take effective collective measures to eliminate threats to regional cooperation, and establish an effective mechanism of consultation and cooperation for the pacific settlement of differences and disputes. By signing the IGAD Agreement, member states commit themselves to dealing with disputes among themselves before they are referred to other regional or international organisations.¹⁴⁵

Individual human rights violations cannot be enforced at IGAD level. However, given that all state members except Somalia are also parties to COMESA, human rights violations could theoretically be brought to the COMESA judicial body, provided that national remedies have first been exhausted. The enforcement of human rights at AU level would be another option.

Concluding remarks

RECs have taken into account that human rights are important on the way to realise their main objectives, commonly defined to consist in deeper regional integration aimed at enhancing economic development. The harmonisation of laws and jurisprudence is considered to be one step towards deeper regional integration. To this end, one objective must be to develop a uniform human rights standard, applicable for all member States of the single REC.

At this stage, it can be concluded, that altogether, human rights protection does indeed play a vital role at sub-regional level in East and Southern Africa. While ECCAS and IGAD have a less developed system of human rights protection, COMESA, SADC and the EAC have integrated human rights to a more elaborated extent into their respective legal frameworks. Only two judicial bodies are currently able to accept human-rights-related matters, namely the COMESA Court of Justice and the SADC Tribunal. States or individuals who do not have access to sub-regional courts can still opt to bring a case to the African Commission of Human Rights, as long as the judicial organ of the African Union, the African Court of Justice or the African Court of Human and Peoples' Rights is not yet operational. The relationship between the African Court of Human and Peoples' Rights and the sub-regional judicial bodies in respect to human rights

¹⁴⁵ Article 18.c, IGAD Agreement.

cases that have undergone the national legal process will be one of the issues that need to be clarified in the near future.

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