



SADC Lawyers' Association and International Commission of Jurists Workshop on the SADC Tribunal Review Process

Birchwood Hotel and OR Tambo Conference Centre- Johannesburg: South Africa

27 January 2011

Workshop Programme

Session 1: Chair: Mrs Kondwa Sakala-Chibiya: SADCLA Executive Committee Member

1. Registration: 8:00- 8:15 AM
2. Self Introductions: 8:15-8:30
3. Welcome Remarks: 8:30-8:50
 - i. Mrs Thoba- Poyo-Dlwati: President: SADC Lawyers Association
 - ii. ICJ
4. Court Procedures and the challenges of litigating at the SADC Tribunal: Advocate J.J. Gauntlett: 8: 50- 9:30
Discussant: Justice C. Mkandawire: Registrar: SADC Tribunal 9:30- 9:40
Discussion: 9:40- 10:30

The SADC Tribunal has played a critical role in the integration process of the SADC region and the protection of human rights within its borders. Exploring the significance of this role and its impact on the protection of human rights in Africa, this panel discussion will analyse the difficulties that exist with respect to litigation before this sub-regional judicial body. These include, and are not limited to, procedural delays, complications of the requirement to exhaust local remedies, accessibility of the tribunal by legal and physical persons from all corners of the SADC region as well as organic and financial obstacles to a smooth functioning of the SADC Tribunal. The panel will also analyse the functions of the SADC Tribunal and discuss whether they are clearly spelled out in the SADC legal instruments? It will then identify the main practical challenges facing the SADC Tribunal and formulate a number of recommendations to improve its functioning and justice delivery mandate.

TEA BREAK: 10:30-11:00

Session 2: Chair: Mrs Beatrice Mtetwa: Vice President: SADC Lawyers Association

1. Jurisdiction of the Tribunal and the Interface between community law and national laws in SADC: 11:00 - 11:50

The relationship between international law and domestic law presents well-known and complex issues. Despite the fact that it is well established is that, under international and SADC law, this issue seems to present more difficulty at the domestic level, particularly before domestic courts with jurisdiction to apply domestic law. This panel discussion will focus on the question whether the international and SADC law forms part of the domestic legal order of SADC member states. Exploring the diversity of domestic legal systems and traditions within SADC the question of supremacy and direct effect of international and SADC law shall be analysed. A particular emphasis will be put on the effect of Tribunal decisions on domestic law, the power of the Tribunal to review decisions of domestic courts, and the role of the Tribunal in guiding domestic courts on the application of Community law.

Panellists: Professor Michelo Hansungule- ICJ Commissioner and Professor of Human Rights Law, UP
Dr Lovemore Madhuku- Chairperson: National Constitutional Assembly, Zimbabwe and Lecturer; University of Zimbabwe Faculty of Law

2. The recognition, enforcement and execution of the Tribunal's Decisions: 11:50 - 12:40
Advocate Tom Bahame Nyanduga: Advocate and former Commissioner of the African Commission on Human and People's Rights: Tanzania
Discussant: Dr Teodosio Uate: Head: SADC Legal Unit

The SADC Tribunal Protocol provides that SADC Tribunal decisions are to be enforced as foreign judgments under the relevant domestic legislation governing the registration and enforcement of foreign judgments. This legislation may from Member State to Member State; it is also almost certain that any given Member State can have a different legislation according to the nature and origin of foreign judgments. This may therefore impact on the effectiveness of SADC Tribunal decisions and render their treatment of in domestic legal orders rather problematic. This panel discussion will explore this issue, based on existing practice, where it exists, especially in light of the question whether SADC Tribunal decisions should properly be considered to be foreign judgments in the first place. If the mechanism of enforcement of SADC Tribunal decisions is novel, it will also discuss the advantages of this mechanism. It will also address the question of the matters, which may be enforced under this legislation, and the admissibility of exceptions for reasons of public policy.

Discussion: 12:40-13:00

LUNCH BREAK: 13:00-14:00
Session 3: Chair: Arnold Tsunga, ICJ

1. Topic: Lacunae and Ambiguities in the SADC Treaty and Protocol on the SADC Tribunal: Panel Discussion: 14:00 – 14:50

There are certain matters on which the primary SADC instruments may be unclear or even controversial. Some of these matters include, but are not limited to, the enforcement of SADC Tribunal decision; the nature and effectiveness of sanctions against SADC states for failure to comply with decisions of the SADC Tribunal; whether principles of SADC create obligations which individuals can enforce against Member States; the circumstances justifying joinder of cases, and the mechanism of decisions by consensus, especially where there is no consensus. This panel is expected to try and identify other relevant issues and discuss the extent to which the gaps and lack of clarity negatively impact on the effective administration of justice by the SADC Tribunal. Recommendations de

Panelists: Dr Solomon Ebobrah, Law Lecturer, Centre for Human Rights,
Professor Mbata Mangu, Professor of International and Comparative
Law, UNISA and Member of the National Assembly, RD Congo (tbc)
Mr Ashimizo Afadameh-Adeyemi, Lecturer, Cap Town University

2. The Status and Selection Process of Judges of the SADC Tribunal: Issues, Challenges and Opportunities - 14:50 – 15.40

The status and selection of SADC Tribunal judges has been sensitive issues, as it is for any international court, and especially courts with an appellate function. These sensitivities apply also to the appointment of judges to an appellate chamber, such as already exists for trade cases, and will become even more prominent should the jurisdiction of such the SADC Tribunal be expanded to trade matters. This discussion panel is expected to discuss and make recommendations on the existing practice of selecting judges for the SADC Tribunal, in light of best practice from other regions or international organisations and taking into account principles of judicial independence.

Panellists: Justice Bethuel Dingake
Advocate Dumisa Ntsebeza
Justice Moses Chinhengo
Mr Lloyd Kuveya, SALC

TEA BREAK: 15:40:16:00

3. Discussion and Adoption of Recommendations: 16:00-17:30