Chapter 5

The Southern African Development Community and Its 'New' Tribunal: Some Remarks

Elisa Tino

1. Introduction

On 18th August 2014, during the ordinary SADC Summit, the Heads of State and Government adopted the new Protocol on Tribunal (hereafter, new Protocol)[7]. This was the last step in the long history on the SADC Tribunal! The new Protocol, which is not yet in force, introduces relevant legal changes to the regional judicial system and raises questions about the SADC leaders' intention to move their regional cooperation towards a rules-based system.

For the purpose of some legal considerations about SADC judicial 'reform', this paper will analyse the new Protocol in a comparative perspective with the previous regulation expressed by the 2000 Protocol on SADC Tribunal (hereafter, 2000 Protocol)[8], which is formally still in force as it is inferable from Article 48 of the new Protocol.

2. Historical background

As known, the Tribunal was established in 1992 by Article 9 of the SADC Treaty as one of SADC institutions but the regulation of its composition, functioning and jurisdiction was deferred to the adoption of a specific Protocol

[7] See Protocol on the Tribunal in the Southern African Development Community, Victoria Falls, 18 August 2014 (hereafter, new Protocol).

[8] See Protocol on Tribunal and Rules of Procedure thereof, Windhoek, 7 August 2000 (hereafter, 2000 Protocol).

by the Summit (art. 16 SADC Treaty). This was signed in 2000 and the Tribunal became operational in 2005[9].

According to Article 16 of the SADC Treaty the Tribunal had '[…] to ensure the adherence to and the proper interpretation of the provisions of the Treaty and subsidiary instruments and to adjudicate upon such disputes as may be referred to it'. The 2000 Protocol clarified that it was entitled to hear disputes between States, between natural/legal persons and States, between natural/legal persons and the Organisation and between the latter and its staff[10]. Moreover the Tribunal had jurisdiction to give advisory opinions at the request of the Summit and the Council as well as preliminary rulings in proceedings of any kind before national courts or tribunals. Finally it had an appellate function in relation, for instance, to the trade panels established in terms of Article 31 (b) of the SADC Protocol on Trade (Article 20A of the 2000 Protocol).

Since its inception the Tribunal heard just about 20 cases: none of them was initiated by a member State or concerned a preliminary ruling[11]. On the

[9] Regarding the entry into force of the 2000 Protocol some clarifications are needed. Just thirteen SADC member States signed the 2000 Protocol and among them only five ratified it. Zimbabwe didn't! Article 38 of the 2000 Protocol provided that the latter entered into force after the deposit of the instruments of ratification by two-thirds of signing States. This meant that at least seven ratifications were needed. In 2001 member States amended the SADC Treaty (Agreement amending the Treaty of the Southern African Development Community, Blantyre, 14 August 2001). In particular, concerning Article 22 they regulated the adoption of Protocols in detail and repealed from its paragraph 2 the following provision 'each Protocol […] shall thereafter become an integral part of the Treaty'. This wording was then moved to Article 16 and integrated its paragraph 2 now providing that 'The composition, powers, functions, procedures and other related matters governing the Tribunal shall be prescribed in a Protocol **which shall, notwithstanding the provisions of Article 22 of this Treaty, form an integral part of this Treaty** (bold added)'. Finally, pursuant to its Article 32 the Agreement amending the Treaty entered into force on the 14th August 2001, that is to say on the date of its adoption by the Summit members. Consequently, on the same date even the incorporation of the 2000 Protocol into the Treaty became effective pursuant to the amended Article 16 and the 2000 Protocol entered into force binding all SADC States. The following Agreement amending the Protocol on Tribunal (Luanda, 3 October 2002) took note of this amendment and repealed Article 35 providing for ratification.

[10] It is worth bearing in mind that natural and legal persons might resort to the Tribunal against SADC institutions as well as against any member State; in the latter case they had first to exhaust any domestic legal remedy (Article 15 par.2 of the 2000 Protocol).

[11] On the one hand this was due to the common reluctance of States to sue each other - being strongly characterised by the will to preserve their own sovereignty - and on the other hand to the fact that probably the SADC law is not well-known within the region and national judges are not used to perceive themselves as judges of SADC law.

contrary, it heard primarily disputes between the Organisation and its staff[12] and sometimes it was resorted to by individuals lamenting violations of their human rights by a SADC member State[13]. The negative ending of the Tribunal's life may be ascribed even to these latter rulings. Indeed, the second case the Tribunal adjudicated dealt with the assessment of the validity of the Zimbabwean Government's land reform program. Precisely, the applicants – Mike Campbell and 77 others - contested the unlawful expropriation of private land without compensation[14]. The SADC Tribunal ruled that Zimbabwean legislation violated human rights, democracy and rule of law, so it was in breach of Article 4 (c) and Article 6 para. 2 of the SADC Treaty requiring member States to comply with these principles[15]. However, twice Zimbabwe refused to comply with the Tribunal's decisions alleging the invalidity of the 2000 Protocol and the 2001 Amendment Treaty. According to the Zimbabwean Government, they both lacked the two-third ratifications to enter into force[16].

---

12 See, for example, *Ernest Francis Mtingwi* v. *the SADC Secretariat*; *Bookie Monica Kethsegile and Juru* v. *The SADC Parliamentary Forum*; *Clement Kanyama* v. *SADC Secretariat*; *Angelo Mondlane* v. *The SADC Secretariat*.

13 It is worth noting that the SADC Tribunal was not expressly endowed with jurisdiction over disputes concerning human rights violations. However it inferred its competence on such cases from Article 4 (c) of the SADC Treaty which makes reference to human rights, democracy and rule of law as governing principles of interstate cooperation. All SADC member States are required to act in accordance with them (Phooko, 2015: 531-567).

14 See *Mike Campbell and Others* v. *The Republic of Zimbabwe* (interim order); *Mike Campbell and Others* v. *The Republic of Zimbabwe* (2007); *Mike Campbell and Others* v. *The Republic of Zimbabwe* (2009). On the same matter see also *Luke Munyandu Tembani* v. *The Republic of Zimbabwe*; *Barry Gondo and others* v. *the Republic of Zimbabwe*. Regarding these judgments in legal literature see Chigara, 2009: 530-533; Di Lieto, 2009: 432-436; Ashimizo, 2011: 203-205; Ndlovu, 2011: 63-78.

15 In particular, the SADC Tribunal ruled that Zimbabwe should have paid the farmers fair compensation for their expropriated land and ordered the Government to take all necessary measures to protect the possession, occupation and ownership of the applicants' other land and to ensure that no action was taken to evict the farmers or to interfere with their peaceful residence of their properties.

16 In particular Zimbabwe claimed that: 1) the 2000 Protocol was not binding upon it because it had not been ratified by the requisite two-thirds of the States as provided for by its Article 38; and 2) the Agreement amending the SADC Treaty had not yet entered into force since it had not yet been ratified by two-thirds of the States. Moreover, Zimbabwe had not ratified either of them.

Clearly such reaction indicated the tendency of Zimbabwe to give primacy to municipal law and jurisdiction over the SADC law[17] and, more generally, its reluctance to surrender some aspects of its sovereignty to the Organisation. However, from legal point of view its objections were not well grounded. Indeed, pursuant to Article 36 of the SADC Treaty and Article 32 of the Agreement amending the Treaty the latter became effective after its adoption by three quarters of all members of the Summit, so it didn't need for ratification. Moreover, it was adopted and signed by all SADC member States at that time, so even by Zimbabwe. As already said, its entry into force made effective the incorporation of the 2000 Protocol into the SADC Treaty as provided for by the amended Article 16, so no further ratification was needed[18].

Because the respondent failed to comply with the Tribunal's decisions, the applicants approached again the regional judicial organ. In turn, it determined Zimbabwe's non-compliance and reported its finding to the Summit of Heads of State and Government for 'appropriate action' in term of Article 32 para. 5 of the 2000 Protocol. It is worth noting that the 2000 Protocol as well as the SADC Treaty don't explain what 'appropriate action' means, so the Summit had a great discretionary power in this determination. Maybe it might have adopted economic sanctions or suspension of the non-compliant State but, surprisingly, in 2010 it decided not to renew the terms of judges and not to appoint new ones thus suspending the activities of the Tribunal[19]. This meant that it was unable to hear new cases!

---

[17] This was expressly declared by Zimbabwean High Court in case *Richard Thomas Etheredge* v. *Minister of State for National Security Responsible for Lands.* Zimbabwean farmers filed an appeal to the High Court in order that the judgment of the SADC Tribunal was enforced and expropriation land order was annulled. However, the High Court rejected the complaint stating that the SADC Tribunal was not superior to national courts so it was not allowed to annul domestic legislation. This reasoning was then confirmed by the High Court in the following case *Gramara Ltd* v *The Republic of Zimbabwe.* It stated that the enforcement of SADC Tribunal's judgments was neither automatic nor unavoidable as it was subject to domestic law of civil procedure which provides that a foreign judgment cannot be recognised and enforced if it is contrary to the Constitution and public policy. According to the High Court this was the case of SADC Tribunal's judgments. Then, these arguments were contested by the South African Supreme Court of Appeal which registered and enforced the ruling of the SADC Tribunal (*Government of the Republic of Zimbabwe* v *Fick &others*). Regarding this ruling, see Erasmus, 2012: 1.

[18] Even the Zimbabwean High Court dismissed its Government's arguments as 'essentially erroneous and misconceived' (*Gramara Ltd* v *The Republic of Zimbabwe*, 9-13).

[19] See Communiqué 30th Summit, 2010; Communiqué Extraordinary Summit, 2011; Final Communiqué 32nd Summit, 2012. For critical considerations about the decision to 'close'

3. Reactions against and legal considerations about the suspension of the SADC Tribunal

The political decision of SADC Heads of State and Government to suspend the activities of the Tribunal did not invalidate the legal validity of the 2000 Protocol which is still formally in force. No provisions regulating its termination or member States' withdrawal are contained. So, formally it will cease to be effective only when a following protocol regulating the same matter – such as the new Protocol - will enter into force[20].

However, the lacking appointment of new judges and renewal of their terms prevent de facto the functioning of the Tribunal. The decision of SADC Heads of State and Government to suspend it pending its review creates the impression that member States are not really committed to regional integration; they are strongly anchored to their sovereignty and this doesn't let their interstate cooperation move from power-oriented form to a rule-based one. It has also raised critical reaction by public opinion and particularly by Zimbabwean farmers who had won cases against their Government before the SADC Tribunal. As its judgment in their favour was not complied with, they sought remedy from the African Commission on Human and Peoples' Rights (hereafter, the African Commission) hoping that the latter submitted the case to the African Court on Human and Peoples' Rights (hereafter, African Court). They claimed that the decision of the SADC Summit to suspend the Tribunal violated Articles 7 and 26 of the African Charter on Human and Peoples' Rights (hereafter, African Charter), as well as the SADC Treaty (Articles 4 and 6) and the 2000 Protocol in that it infringed the right of access to court terminating existing proceedings and interfered with the independence, competence and institutional integrity of the SADC Tribunal, trespassing on the doctrine of separation of powers. The African Commission considered the case during its October-November 2013 meeting. It stated that the complaint was admissible as it fulfilled procedural requirements (Communication n. 409/12, paras. 82-114). However it rejected the claim on the merit advancing well-founded legal reasoning which cannot be objected. First of all, it noted that the African Charter does not authorise it to supervise the application and

---

the SADC Tribunal, in literature, see Scholtz, 2011: 197-201; Fritz, 2012: 1; Cowell, 2013: 1-15; Nathan, 2013: 870-892; Meckler, 2016: 1007-1038.

[20] This is confirmed by Article 48 of the new Protocol stating that 'the 2000 Protocol on the Tribunal […] is repealed with effect from the date of entry into force of this Protocol'.

implementation of other international treaties, such as the SADC Treaty. So, it may only determine the responsibility of respondent States arising from the provisions of the African Charter that had been invoked by the complainant (para. 131). Then, more importantly, it acknowledged that Article 7 of the African Charter imposes an international legal obligation on States to ensure access to national courts and not to regional ones, namely the SADC Tribunal[21]. Similarly, it clarified that the States' duty to guarantee the independence of the Courts provided for by Article 26 of the African Charter does not refer to an international court but is akin and related to the national judicial organs mentioned in Article 7 (paras. 143-144). So it concluded that the decision of the Summit to suspend the Tribunal did not violate Articles 7 and 26 of the African Charter (para. 146). Moreover, the Commission decided not to submit the communication to the Court as originally requested by complainants maybe because it was aware of political implication underlying such case. Either way, even if it has been widely criticised by African public opinion, as already said, the legal reasoning of the African Commission is absolutely well grounded and fully shareable. Indeed, it is based on strict application of the aforementioned articles of the African Charter, whose wording is clear and does not leave space for a different interpretation.

Although the African Commission decided not to resort to the African Court, the latter was directly requested by two associations of African lawyers to give an advisory opinion about the legality of the SADC Summit's decision to suspend the Tribunal. However, the African Court declined the request because it related to a matter pending before the African Commission (Request for advisory opinion n. 002/2012). Its legal reasoning is incontrovertible pursuant to Article 4 para. 1 of the Protocol establishing the African Court[22]. However, it can be objected that the Court could have waited for the final report of the African Commission before rendering its decision. Thus, it could have given its opinion on the matter. Probably its decision not to wait could depend once again on political reasons.

[21] It is worth noting that the interpretation of the African Commission coincides with the position of the European Court of Human Rights (ECtHR) whose jurisprudence can be of inspirational value in accordance with to the Articles 60 and 61 of the African Charter.

[22] See Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights, Ouagadougou, 9 June 1998. It entered into force on 25 January 2004.

Objections against the suspension of the Tribunal have not been crushed by the aforementioned decisions of the African Commission and Court. Indeed stakeholders and law societies have continued to mobilize their forces. Thus, in March 2015 the Law Society of South Africa (LSSA) launched an application in the South African High Court to declare the process of suspending the SADC Tribunal as well as all actions related thereto, including the voting for, signing and planning to ratify the new Protocol, to be unconstitutional because they all aim to deprive citizens to have access to regional justice '[…] as set out in the SADC Treaty, to which the Government of the Republic of South Africa is a party to and bound in law' (High Court of South Africa – Gauteng Division - case n. 20392/15). Currently the case is still pending but final decision of the High Court will be particularly relevant as it might be regarded as a precedent by other African courts before which similar actions are in process or are going to be launched. In sum, hopes for the SADC Tribunal to start functioning have not disappeared.

4. The reviewing process of the SADC Tribunal

As mentioned above, contextually to the suspension of the Tribunal's activities, the Summit decided the review of its role, functions and terms of reference. For this purpose the SADC Secretariat commissioned the World Trade Institute Advisors (WTIA)[23] who submitted their report in February 2011 stating that the SADC Tribunal was properly constituted under international law and therefore its decisions should be binding on Zimbabwe. Importantly, they also recommended that the SADC Tribunal should be allowed to function. This report was then considered by SADC Ministers of Justice who adopted a set of recommendations which were presented to the Summit in May 2011. In that occasion the latter mandated SADC Ministers of Justice to continue with their review of the Tribunal (Communiqué Extraordinary Summit, 2011: para. 7). The final report was then submitted to the Summit of Heads of State and Government in 2012, but it was not appreciated: the review of the Tribunal's

[23] The study was required to address: 1) the jurisdiction of the Tribunal; 2) the interface between Community law and national laws in the SADC; 3) the mandate of the existing appeals Chamber of the Tribunal; 4) the recognition, enforcement and execution of the Tribunal's decisions; 5) the qualifications and the process of nomination and appointment of judges; 6) the tendency of member States to give primacy to domestic law/jurisdiction over the SADC law; 7) the reluctance of member States to relinquish some aspects of their sovereignty to the SADC.

role wasn't as severe as the Summit wished for. Indeed SADC Ministers were conscious that it was no longer a legal issue but a political one and that they should have proposed some amendments to the 2000 Protocol which might have dissolved the antagonism felt for it by the Summit. However, in the meantime they wanted to save the efficiency of the SADC judicial system, so their report retained a provision affording the rights of individuals to have access to the SADC Tribunal but they recommended that its human rights jurisdiction was put on hold pending the adoption of a separate optional human rights protocol.

However, as said, in 2012 Maputo Summit the SADC Heads of State and Government disregarded completely the Ministers' report. They stated that a new Protocol on Tribunal would have to be negotiated among member States and that its jurisdiction would have been limited to resolving interstate disputes (Final Communiqué 32nd Summit, 2012: par. 24). This implied the removal of the right of natural and legal persons to approach the Tribunal.

As it is evident, this decision was completely in opposition to the recommendation of Ministers of Justice, but it can be justified by States' desire to prevent future political embarrassment to any member of the kind yielded by the Tribunal's rulings against Zimbabwe. Indeed there is poor human rights records in SADC member States which do not want to be held accountable for this by a Tribunal located outside their countries and far from their political influence. All this confirms the above mentioned SADC States' reluctance to cede the exercise of part of their sovereignty and the strong intergovernmental nature of their cooperation. In the light of such considerations it is interesting to note that in its preamble the new Protocol claims to be an outcome of a process including 'a review of the role, responsibility and terms of reference of the Southern African Development Community (SADC) Tribunal led to recommendations that require a new Protocol on Tribunal in the SADC'. Maybe the Heads of State and Government have introduced this 'false' assumption to give more legitimacy to their *questionable* decision to 'renew' the Tribunal.

As already said, its review process ended in 2014 with the adoption of the new Protocol. Even if all SADC member States were present at the 34th Summit and the text of the new Protocol was adopted by *consensus* – that is to say no SADC member State raised a formal objection to its adoption – only nine of

them signed it[24]. Maybe this reveals uncertainty among SADC member States about the convenience of this 'new' Tribunal. So, pursuant to the principle of variable geometry, which is widely used within the SADC (Tino, 2013/2014: 141-162), some member States have decided to 'delay' signature of the new Protocol not impeding its entry into force, which is subordinated to the deposit of the instruments of ratification by two-thirds of member States (Articles 52-53 of the new Protocol). Currently it is still pending as no one has ratified it. So, as already said, the 2000 Protocol continues to be in force and the SADC Tribunal continues to exist by virtue of the SADC Treaty, although it is not operational.

Finally, it is to be noted that in order to review the Tribunal's regulation, SADC member States did not comply with the procedure provided for in Article 37 of the 2000 Protocol concerning its amendment[25]. On the contrary, they opted for the replacement of the Protocol with a new one. Maybe this expresses their intent to introduce relevant changes whose adoption was largely agreed to, thus hoping to avoid further critics or rejection of the Tribunal's jurisdiction in the future. In fact, the procedure established by Article 37 of the 2000 Protocol requires the positive vote of three quarters of SADC member States for amendments to be adopted; on the contrary, the substitution of the 2000 Protocol with a new one required the member States *consensus*, namely none of them had to raise an objection.

5. The 'new' SADC Tribunal: What does it change?

As said above, the new Protocol on Tribunal adopted in August 2014 introduces important changes in the SADC judicial system and has serious implications for the development of the regional integration process. The following paragraphs will be devoted to the legal analysis of the new Protocol in comparison with the 2000 Protocol in order to put in evidence its possible strong, as well as weak, points. In particular the investigation will be limited to

[24] Angola, Botswana, Madagascar, Mauritius, Seychelles and Swaziland have not signed the new Protocol yet. No public explanation has been reported for this, however their concern may have centred on the need for the SADC to finalize consequential amendments to the SADC Treaty itself, before allowing the new Protocol to come into force. In sum, maybe they want merely to be sure that undue haste at this stage does not lead to legal mistakes.

[25] It is worth noting that the review procedure has been accused to be neither inclusive nor transparent (Erasmus, 2015: 2-5).

provisions of the new Protocol – regulating the composition and the functioning of the Tribunal, its competences and jurisdiction, the applicable law and the enforcement of its judgments – and not even to Rules of procedure which have not yet been adopted. In fact Article 29 of the new Protocol states that the Tribunal shall adopt its own rules by a two-thirds majority. This means that the existing rules of procedure, which are annexed to the 2000 Protocol and form an integral part thereof (Article 23), will be also repealed when the new Protocol will come into force. However the adoption of new rules will only happen after the appointment of new judges, so this will determine a further delay of the 'new' SADC Tribunal's functioning.

5.1. Composition and functioning of the 'new' Tribunal

From the analysis of the new Protocol, first of all it comes to light that its provisions regulating composition and functioning are literally borrowed from those contained in the 2000 Protocol. Sometimes the new Protocol regulates more in detail some technical aspects than the 2000 Protocol; in these cases its provisions are borrowed from the rules of procedure annexed to the 2000 Protocol.

Consistently with previous discipline, the 'new' SADC Tribunal 'shall consist of not less than 10 judges appointed (…) from nationals of member States'[26]. Five of them will be designated by the Council as regular judges, while the others shall constitute a pool from which the President may choose a judge to join the Tribunal whenever a regular one is temporally absent or unable to carry out his/her functions. Regarding judges' designation, they continue to be selected by the Council of Ministers from the list of candidates nominated by member States and appointed by the Summit. They will have to carry out their duties independently, impartially and conscientiously (Article 6) during their mandate which will last five years and will be renewable once (Article 7). It is worth remembering that SADC judges are not appointed on a full-time basis so the Tribunal shall sit when required to consider a matter submitted to it (Article 9); its seat will remain in Windhoek.

[26] Concerning the requirement to be appointed as judge, Article 3 para. 1 of the new Protocol provides that the candidate has to possess the qualifications required for appointment to the highest judicial offices in their respective member States or to be jurist of recognised competence or – in addition to previous requirements provided for by Article 3 para. 1 of the 2000 Protocol – to have expertise in international law.

Even provisions regulating judges' resignation, expiration of terms and recusal (Articles 10 and 12) are the same as those contained in the 2000 Protocol (Articles 8-9) but, differently from the latter, the new Protocol also regulates the hypothesis of judges' removal from office (Article 11). In particular it establishes that judges may be removed if they become permanently incapacitated or have committed a serious breach of their duties or a serious act of misconduct; in such cases, an independent ad hoc tribunal will decide the question of removal. Moreover, regarding disqualification or refusal, differently from the 2000 Protocol, the new Protocol states that when there is a conflict of interest as defined in Article 12 para. 4 the affected judge has to recuse himself or herself in the matter concerned. So, in this regard the legal discipline established by the new Protocol seems to be a little more complete than that provided for by the 2000 Protocol.

Then, similarly to the previous Tribunal as well as to every (national and international) court, the 'new' Tribunal shall have its own President, whose duties are regulated by Article 15, and a registry consisting of the registrar and his/her staff (Articles 16-27 of the new Protocol).

As mentioned above, no change affects even the functioning of the Tribunal. Thus, according to the new Protocol, the sittings of the Tribunal continue to be held in public – unless otherwise decided – and all deliberations shall be conducted in closed sessions and shall remain confidential (Articles 36-37)[27]. Furthermore, similarly to previous regulation (Article 27 of the 2000 Protocol), parties to the dispute shall be represented before the Tribunal by an adviser, agent or representative of their choice (Article 32 of the new Protocol) and even those States which are not parties to the dispute may be granted to intervene before the Tribunal. In this regard it is worth noting that Article 42 of the new Protocol is more synthetic than its 'counterpart' in the 2000 Protocol. Indeed it provides for no conditions to be accomplished in order to be authorized to intervene in a dispute before the Tribunal and, unlike Article 30 of the 2000 Protocol, the third party applying for intervention does not have to prove the existence of his own legal interest that may be affected by the subject matter of the dispute.

[27] It is worth noting that only judges who are present at oral proceedings of a case may take part in the deliberations giving his/her motivated opinion (Article 37 paras. 2-3 of the new Protocol).

Finally, the new Protocol provides expressly for the possibility to consolidate proceedings involving substantially the same disputes and the same parties (Article 43).

5.2. Jurisdiction and competences of the 'new' Tribunal

The above analysis reveals that the new Protocol does not modify structural and technical aspects of the SADC Tribunal, which are still the same. In reality, changes in the SADC judicial system are contained just in one synthetic provision concerning the jurisdiction of the Tribunal.

As already said, the 2000 Protocol provided for the exclusivity of the Tribunal's jurisdiction over all disputes between member States and the Organisation, between natural/legal persons and the Organisation, and between the Organisation and its staff. This meant that parties were not allowed to solve these kinds of litigations through any other means different from the Tribunal.

Moreover the Tribunal had jurisdiction over disputes between member States and between legal/natural persons and member State, but it was not exclusive. Indeed some protocols adopted within the SADC establish other dispute settlement mechanisms to solve interstate litigations arising from their application[28], so the resort to the Tribunal is just one of the means at States' disposal to settle their disputes. Regarding controversies between individuals and member States, the applicant had to exhaust all available remedies under the domestic jurisdiction before referring the matter to the Tribunal, so the latter's competence over such disputes was only residual. Finally, the SADC

[28] In particular, the SADC Protocol on Trade provides for an arbitral mechanism and the resort to the Tribunal is possible just to appeal the panel report. In contrast, other protocols provide that any dispute regarding their interpretation or application which cannot be settled amicably shall be referred to the Tribunal; so, in these cases, the resort to the judicial body is just potential and residual, not compulsory. In this sense we can see, for example, the Protocol on extradition (2002), the Protocol against corruption (2001), the Protocol on the control of firearms, ammunition and other related materials (2001), the Protocol on culture, information and sport (2001), the Protocol on health (1999) and Protocol on combating illegal drugs (1996). Differently, some other protocols provide that, failing the amicable settlement of disputes through negotiation, the matter shall be referred to the intergovernmental organs of the Organisation (the Council or the Summit) for determination. Failing that solution, the dispute shall be referred to the Tribunal. In this sense we can consider, for instance, the Protocol on the facilitation on movement of persons (2005) and Protocol on education and training (1996).

Tribunal had jurisdiction to give preliminary rulings to national courts and advisory opinions at the request of the SADC Summit and Council.

In contrast with such wide competences, the new Protocol endows the Tribunal with the power to solve only interstate litigations concerning the interpretation of the SADC Treaty and Protocols. So, in comparison with the 2000 Protocol it limits the jurisdiction of the Tribunal *ratione materiae* as well as *ratione personae* and saves only its competence to give advisory opinions on such matters as the Summit or Council may refer to it (Article 34 of the new Protocol).

a. *Ratione materiae* limitations of the Tribunal's jurisdiction

Synthetically Article 33 of the new Protocol states that 'the Tribunal shall have jurisdiction on the interpretation of the SADC Treaty and Protocols relating to disputes between member States'. This means that the new Tribunal shall exercise only an interpretative function and, consequently, it may not assess the validity or the correct application of SADC law anymore. Moreover, according to Article 33 the Tribunal's interpretative power shall concern only the SADC Treaty and Protocols; this means that all other normative acts adopted by SADC institutions in order to reach the goals of the Organisation shall be excluded from its jurisdiction[29]. Furthermore, unlike the 2000 Protocol (Article 14 c), the new Protocol does not provide for the possibility for the Tribunal to settle disputes referred to it in the light of an arbitration agreement included in international treaties concluded by some member States.

Then, the new Protocol does not confer to the Tribunal the power to settle disputes between the Organisation and its staff. In this sense it differs not only from the regulation provided for by the 2000 Protocol but also from the practice of other regional organisations (i.e. EU, COMESA, CEMAC, EAC, ECOWAS, etc.) whose courts have jurisdiction over disputes concerning the

[29] Unlikely Article 14 (b) of the 2000 Protocol provided that 'the Tribunal shall have jurisdiction over all disputes […] which relate to: […] the interpretation, application or validity of the Protocols, all subsidiary instruments adopted within the framework of the Community, and acts of the institutions of the Community'.

Organisation and its employees[30]. Luckily, last August the SADC Summit decided to establish the SADC Administrative Tribunal (SADCAT) whose sole function is to settle disputes between the Organisation and its employees (Communiqué 35th Summit, 2015). It is worth noting that this body is entirely distinct from the SADC Tribunal, whose establishment is still pending. From a legal point of view the SADCAT has been established by resolution, namely an organic act of the Summit, and not by Protocol; this makes it a lesser body or, more properly, a subsidiary organ of the Summit[31]. Anyway its establishment is appropriate as it has filled a normative gap thus putting an end to a *dangerous* practice. Indeed since the suspension of the SADC Tribunal, disputes between the Organisation and its employees have been heard by national courts which have settled them in terms of their municipal law thus determining the possibility of different judicial solutions for analogous disputes[32].

Last consideration about the *ratione materiae* limitation of the 'new' Tribunal's jurisdiction concerns Article 50. It provides that any member State – which is party to the new Protocol – may withdraw from it upon the expiration of twelve months from the date of giving written notice to that effect to the Executive Secretary. This provision, which was not present in the 2000 Protocol[33], seems to be in contrast with the wording of the new Protocol as well as of the SADC Treaty. In fact the first one confirms that the '[…] Tribunal is hereby constituted in terms of Article 16 of the Treaty and shall function in accordance with the provisions of the Treaty, this Protocol and the Rules' (Article 2). Then, Article 16 of the SADC Treaty states that the Protocol on the Tribunal forms an integral part of the Treaty, so member States may not opt out of it as long as they remain members of the SADC. By introducing Article 50 in the new Protocol SADC member States have ignored such an important

30 It is worth noting that until now some regional courts (such as the COMESA CJ and the *Cour de Justice* CEMAC) have settled mainly disputes between the Organisation and its staff.

31 In reality the practice to establish administrative Tribunals by organic acts within international organisations is not new. Among others, we can see the experience of the United Nations Administrative Tribunal (UNAT) which was established by the General Assembly in its resolution 351 A(IV) of 24 November 1949.

32 Thus, in 2011 the High Court of Botswana ruled that it had jurisdiction over a dispute between an official of the SADC Secretariat and the Organisation (Erasmus, 2015: 8-9).

33 According to the 2000 Protocol the jurisdiction of the SADC Tribunal was compulsory for member States which had expressly accepted it. Indeed the adoption and ratification of the 2000 Protocol implied *ipso facto* the member States' acceptance of its jurisdiction, without requiring any further consent case by case.

benchmark provided for by the SADC Treaty, which is the primary source of law of the Organisation (Erasmus, 2015: 11-12). Any provision in contrast with it is void, so, if SADC member States really want to maintain Article 50 of the new Protocol, they should amend Article 16 of the Treaty. However the decision to introduce this provision is understandable; the possibility for a member State – expressly regulated – to get away from the jurisdiction of the Tribunal without the need to motivate its decision represents a legal means to prevent further breakdown of the SADC judicial system in the future.

b. *Ratione personae* limitations of the Tribunal's jurisdiction

Stating that the Tribunal shall have jurisdiction over the interpretation of the SADC Treaty and Protocols relating to interstate disputes, Article 33 of the new Protocol allows only SADC member States to resort to the Tribunal. So, institutions as well as natural and legal persons are granted *locus standi* no more. This *ratione personae* limitation of jurisdiction should not be surprising as it is consistent with and confirms the strongly intergovernmental legal nature of the SADC. Indeed, regarding institutions, generally their standing before the regional court is strictly related to the role they play within the Organisation. So, the more member States want to create powerful institutions playing an important role in enhancing the integration process, the more their right to access to the court is wide and vice versa. As known, SADC institutions do not exercise autonomous powers from member States; indeed only intergovernmental organs take part in the decision-making process adopting primarily protocols to reach statutory goals. These acts are addressed to member States and need their signature and then their ratification to produce legal effects within national territories, so the intergovernmental organs' power consists simply in elaborating and 'sponsoring' the adoption of legal instruments which are not formally imputable to them but to member States[34]. On the other hand, non-governmental organs (such as Parliamentary Forum, Secretariat, etc.) do not take part in the decision-making procedure and have a marginal role within the SADC. Thus, SADC institutions' lack of relevant autonomous powers from member States explains and justifies somehow their 'disqualification' before the Tribunal.

[34] In the legal theory on international organisations such protocols are generally qualified as *improper derivative law*.

Then, more importantly, the new Protocol has been widely criticised as it deprives legal and natural persons of their right to refer a dispute against a State or a SADC institution to the Tribunal; they are not granted direct access to regional justice anymore. As known, the establishment of a court within a regional organisation reveals the members' intention to subject their interstate cooperation to the rule of law, thus moving from a power-oriented organisation to a rule-oriented one, and in this sense the direct access of natural and legal persons to justice is very important. Indeed it provides a means for overcoming the traditional reluctance of States to sue each other; it performs the constitutional function of limiting the power of Government to decide which disputes are worth litigating and it enhances the legitimacy of the Organisation's legal order. In this perspective the new Protocol provision granting the standing only to member States renders an effective judicial remedy nugatory in the Organisation and represents a giant step backwards for the development of interstate integration within the SADC.

However, I think that if we consider SADC legal feature, individuals' deprivation of *locus standi* before the Tribunal is less serious than it appears and, rather, the real weak point of the 'new' SADC judicial system consists in the elimination of preliminary ruling procedure. Indeed, as mentioned above, SADC normative production to pursue statutory goals consists mainly in protocols. These are international treaties addressed to member States (not to their natural and legal persons) binding only those which have signed and ratified them. In dualistic systems they need to be incorporated within the domestic legal order to produce legal effects; this means that their provisions are instilled in national norms, so that natural and legal persons are entitled to challenge them before national courts or tribunals to protect their rights[35]. In the same way, the compatibility of national acts or State actions with the SADC Treaty may and must be determined by national judges. This is confirmed by the 2000 Protocol provisions conferring to the Tribunal just a residual competence on disputes between natural/legal persons and States (Article 15 para. 2). In sum, in this perspective, from strictly legal point of view individuals are not deprived of judicial remedies completely as their rights or interests may be protected by national justice.

[35] In support of this thesis, it is to be reminded that in the past years the SADC Tribunal never heard cases between natural or legal persons and the Organisation pursuant to Article 18 of the 2000 Protocol.

In the light of this reasoning what is serious is that according to the new Protocol the Tribunal has the jurisdiction to give preliminary rulings in proceedings before domestic courts or tribunals no more. Indeed, limiting its jurisdiction to interstate disputes the new Protocol excludes de facto that the SADC Tribunal can be requested by a national court to give a preliminary ruling on a question concerning interpretation, application or validity of SADC provisions, whenever such court considers it necessary to give judgment. This gap in the judicial system will be particularly damaging for the Organisation because, as the European Union experience has shown (Carruba, Murrah, 2005: 399-418; Galetta, 2012: 431), the interaction between the regional court and national judges through references for preliminary rulings is crucial in making effective the law of the organisation and in developing a homogeneous jurisprudence in the region. Being deprived of such competence the Tribunal will not be able to ensure the uniform interpretation and correct application of SADC law in each member State. Inevitably, this will go to the detriment of the Organisation because, when applying SADC norms, national judges could give diverging interpretations and application thus jeopardizing the unity and coherence of SADC law and impeding its further development[36].

Finally the new Protocol has been widely criticised because, limiting access to States only, it doesn't allow the Tribunal to hear cases concerning human rights violations. However this does not mean that individuals from SADC member States are deprived of their human rights protection *tout court.* Indeed it is to be taken into account that all SADC member States are also parties to the African Charter of Human and Peoples' Rights so, pursuant to its Articles 55-58 read together with rules 93-113 of the African Commission Rules of procedure, their individuals may submit a communication to the African Commission claiming a violation of their human rights. Moreover, as six out of fifteen SADC member States (namely, Lesotho, Malawi, Mauritius, Mozambique, South Africa and Tanzania) have also ratified the protocol establishing the African Court, communications against them submitted before the African Commission may be referred by the latter to the African Court pursuant to Article 5 para. 1 of its Protocol of establishment and Articles 84 and 118 of the African Commission's Rules of procedure. Thus, the African Commission

[36] It is worth noting that much as the preliminary ruling mechanism is crucial to the application of the law of the Organisation at national level, it has never been tested within the SADC. Probably this indicates that the SADC law is not well-known within the territory of its member States, even by the judicial community.

would act as a filter between individuals' claims and the African Court. Furthermore, it is worth noting that two out of six SADC member States ratifying the Protocol establishing African Court (Malawi and Tanzania) have also accepted the competence of the Court to receive cases filed by Non-Governmental Organisations (NGOs) with observer *status* before the African Commission and individuals. So natural and legal persons from these States may resort to the African Court directly.

Surely, as seen, the system of human rights protection is not homogeneous within the SADC region at the current stage, because individuals from most SADC member States may not resort directly to the African Court while their complaint before the African Commission concludes simply with a non-binding report. Once again the main problem is that, even if the regional judicial or quasi-judicial function is not an end in itself and is not limited to mere cognisance, it is not supported by an effective mechanism of enforcement.

5.3. Applicable law and enforcement of Tribunal's judgments

The 2000 Protocol (Article 21) as well as the new one (Article 35) expressly provide for which law the Tribunal has to apply in order to settle disputes. However, the new regulation seems to be partially different from the previous one. Indeed Article 35 of the new Protocol simply provides that 'The Tribunal shall apply the SADC Treaty and the applicable SADC Protocols'. This synthetic wording does not instil any doubt; it does not provide for the possibility to apply either subsidiary instruments or any other organic act adopted by SADC institutions, or any principle and rule of international law or principles of the law of States. So the applicable law consists in SADC law but coinciding exclusively with binding conventional acts adopted within the Organisation. Hopefully such restrictive provision will be integrated by the Tribunal's jurisprudence thus establishing the applicability of SADC law in its entirety (conventional as well as organic acts) and the public international law at least in a residual way as provided for in any international judicial system.

Unlikely, the new Protocol introduces no change regarding legal aspects of the Tribunal's judgments and their enforcement. Indeed Article 38, literally borrowed from the corresponding one in 2000 Protocol, provides that decisions are taken by majority and delivered at public sitting; they are final and binds

parties to the dispute[37]. As already said, even regarding the enforcement of the judgments nothing changes[38]; according to Article 44 of the new Protocol as well as Article 32 of the 2000 Protocol member States and SADC institutions are under obligation to take all necessary measures to ensure the execution of the Tribunal's decisions which are enforceable within the territories of the State concerned. If the 'loser party' to a dispute fails to comply with the judgment, the last decision still remains to the Summit. Indeed, according to the 'new' Protocol the Tribunal continues to be just entitled to ascertain a member State's non-compliance with its judgment. Then, it has to report its findings to the Summit for the latter to take appropriate action. As Article 32 para. 5 of the 2000 Protocol, the Article 44 para. 4 of the new Protocol does not explain what 'appropriate action' means, thus saving the wide discretionary power of the Summit in this regard. Once again this enforcement mechanism reflects and confirms the intergovernmental nature of interstate cooperation within the SADC but, as past events revealed, it is not effective and hampers the efficiency of the regional judicial system which remains at the mercy of the political will[39]. In this regard, it is worth bearing in mind that even the application of such mechanism has led to the ongoing review of the SADC judicial system!

6. Concluding Remarks

The experience of other regional organisations – primarily that of the European Union – has shown that regional courts or tribunals are cardinal institutions in accelerating regional integration, protecting human rights, promoting rule of law, fostering regional trade and economic development[40].

---

37 Even Articles 39 and 40 of the new Protocol, regulating respectively default decisions and the possibility to apply for review of a decision, are literally borrowed from corresponding provisions of the 2000 Protocol (Articles 25 and 26).

38 Article 32 of 2000 Protocol also provided that the execution of regional rulings was governed by rules of civil procedures for registration and enforcement of foreign judgments in the territory of the member State in which the judgment is to be enforced. Thus, the rulings of the Tribunal were assimilated to judgments delivered by foreign courts, as if the SADC law system was 'alien' to domestic law systems of member States.

39 For a general description and critical considerations about this enforcement mechanism, see Thomashausen, 2002: 26-37; Mkandawire, 2010: 567-573; Oppong, 2010: 115-135.

40 About the role of the Court of Justice within the European integration process, see among others, Court of Justice of the European Union, 2013.

Given the determination to 'ensure through common action, progress and well-being of the peoples in Southern Africa' expressed in the Preamble of the SADC Treaty, the establishment of the Tribunal is aptly consistent with the principles of solidarity, peace and security; peaceful settlement of disputes; equality, balance and mutual benefit; and particularly respect of human rights, democracy and rule of law (even outlined in Article 4 of the SADC Treaty), which should govern regional interstate cooperation. And, in reality, since 2005 the SADC Tribunal had started establishing itself as a well-respected international tribunal which was gradually evolving human rights remedies and jurisprudence appropriate to the need of SADC integration process and its nationals. However, as said, the adoption of the new Protocol in 2014 has introduced few but really relevant amendments to previous regulation, which have changed the SADC judicial system radically. As discussed above, it is not completely proper stating that, as a consequence of the new Protocol, natural and legal persons will remain without any judicial protection *tout court* as, in the light of SADC legal features, they may appeal domestic justice and redress. For this purpose it is desirable that national judges really reconsider their role and start working as 'decentralised' judges of SADC law applying it to cases brought before them. However, if this happened, the abolition of the Tribunal's competence to give preliminary rulings would be really serious as in settling disputes which require the application of SADC law the domestic judges of each member State could give diverging interpretation of same regional rules. This would determine the fragmentation of the law of the Organisation! So, it would be desirable to introduce a mechanism for judicial dialogue between the SADC Tribunal, on the one hand, and national judges, on the other hand, in order to safeguard the coherence and uniformity of SADC law. Consistently with the strong intergovernmental nature of the Organisation such judicial dialogue may be introduced in the form of advisory opinion delivered by the Tribunal at the request of national courts. For this purpose, for instance, SADC could draw from the experience of Mercosur (Carvalho de Vasconcelos, Tavares, 2014: 117-134). Pending this integration in the SADC judicial system, it would be suitable that national judges take into account the jurisprudence of courts from other SADC member States as an authoritative source of inspiration when interpreting and applying SADC law, thus developing a profitable judicial dialogue. This practice might contribute to the uniformity of SADC law.

Undoubtedly, the limitation of jurisdiction to interstate dispute makes the SADC Tribunal lose its importance. Indeed, if we take into account the traditional reluctance of States to sue each other in order to preserve their own sovereignty (thus, in past years no litigation between member States were brought before the SADC Tribunal and, as already said, since its inception it heard only cases concerning human rights violations or SADC contracts of employment), hence it is presumable that it will be inactive in the future.

In sum, the adoption of the new Protocol on Tribunal represents a giant step backwards in the quest for democracy within the region and shows the member States' failure in the very first test of accountability under the rule of law and basic principle of human rights. This indicates that the SADC integration process is still at the mercy of the political will of member States; it still remains a power-oriented system which is not able – or, more probably, which does not want – to move towards a rule-based cooperation system. More in general, the aforementioned decisions of SADC member States represent a litmus paper proving that the international law structure is still anchored to a Westphalian-based model founded on the classical principle of state sovereignty (Pascale, 2015: 853-880). So, illustrating the central position still occupied by States in the international legal system, events occurred within SADC contradict recent theories on the constitutionalism of international law which consider individuals as main subjects of international law (Klabbers, 2009).

References

Ashimizo A. 2011. Barry Gondo & 8 others v. the Republic of Zimbabwe, SADC (T) 05/2008. *SADC Law Journal*, 203-205.

Carrubba C., Murrah L. 2005. Legal integration and use of the preliminary ruling process in the European Union. *International Organization*, 59: 399-418.

Carvalho de Vasconcelos R., Tavares S. M. 2014. La competencia consultiva del Tribunal Permanente de Revisión del MERCOSUR: legitimación y objeto. *Revistas del Tribual Permanente de Revisión*, 4:117-134.

Chigara B. 2009. Introductory note to Southern African Development Community (SADC) Tribunal – Mike Campbell (PVT) Limited and Others v. Republic of Zimbabwe. *International Legal Materials*, 3: 530-533.

Communiqué of the 30th Jubilee Summit of the SADC Heads of States and Government, Windhoek, 19 August 2010.

Communiqué of the Extraordinary Summit of the SADC Heads of States and Government, Windhoek, 20 May 2011.

Communiqué of the 35th Summit of SADC Heads of State and Government, Gaborone, 17-18 August 2015.

Court of Justice of the European Union 2013. *The Court of Justice and the Construction of Europe: Analyses and Perspectives on Sixty Years of Case-law.* The Hague: Springer.

Cowell F. 2013. The death of the Southern African Development Community Tribunal's human rights jurisdiction. *Human Rights Law Review*, 1: 1-15.

Di Lieto A. 2009. La discriminazione razziale contro i bianchi in Zimbabwe nella giurisprudenza del Tribunale della Comunità dello Sviluppo dell'Africa Australe. *Diritti umani e diritto internazionale*, 2: 432-436.

Erasmus G. 2012. Another chapter in the SADC Tribunal saga: South African Court confirms the Tribunals costs order. *Tralac Working Paper* n° S12WP09/2012: 1.

Erasmus G. 2015. The New Protocol for the SADC Tribunal: Jurisdictional Changes and Implication for SADC Community Law. *TRALAC Working Paper No. US15WP01/2015*: 2-5.

Final Communiqué of the 32nd Summit of SADC Heads of State and Government, Maputo, 18 August 2012.

Final Communiqué of the 34th Summit of the SADC Heads of State and Government, Victoria Falls, 17-18 August 2014.

Fritz N. 2012. Up in smoke: the SADC Tribunal and the rule of law in the region. *SAFPI Policy Brief*, 11: 1-8.

Galetta D.U. 2012. Rinvio pregiudiziale alla Corte di Giustizia UE ed obbligo di interpretazione conforme del diritto nazionale: una rilettura nell'ottica del rapporto di cooperazione (leale) fra giudici. *Rivista Italiana di Diritto Pubblico Comunitario*, 2: 431.

Klabbers J. et al. (eds.) 2009. *The Constitutionalization of International Law*. Oxford: Oxford University Press.

Meckler S. 2016. A Human Rights "Monster" that devoured no one: the far-reaching impact of dismantling the SADC Tribunal. *New York University Journal of International Law and Politics*, 48: 1007-1038.

Mkandawire C. 2010. The SADC Tribunal perspective on enforcement of judgments. *Commonwealth Law Bulletin*, 3: 567-573.

Nathan L. 2013. The Disbanding of the SADC Tribunal: a Cautionary Tale. *Human Rights Quarterly*, 34: 870-892.

Ndlovu P. N. 2011. Campbell vs. Republic of Zimbabwe: a moment of truth for the SADC Tribunal. *SADC Law Journal*, 1: 63-78.

Oppong F. R. 2010. Enforcing judgments of the SADC Tribunal in the domestic courts of member states. In A. Bösl et al. (eds.), *Monitoring regional integration in Southern Africa Yearbook*. Stellenbosch: Tralac, 115-135.

Pascale G. 2015. Sulla posizione dell'individuo nel diritto internazionale: il caso Campbell e le vicende successive nell'Africa australe. *Rivista di Diritto Internazionale*, 3: 853-880.

Phooko M. 2015. No longer in suspense: clarifying the human rights jurisdiction of the SADC Tribunal. *Potchefstroom Electronic Law Journal*, 3: 531-567.

Scholtz W. 2011. Review of the role, functions and terms of reference of the SADC Tribunal. *SADC Law Journal*, 1: 197-201.

Tino E. 2013/2014. The Variable Geometry in the Experience of Regional Organisations in Developing Countries. *Spanish Yearbook of International Law*, 18: 141-162.

Thomashausen A. 2002. The enforcement and recognition of judgments and other forms of legal cooperation in the SADC. *Comparative and International Law Journal of South Africa*, 1: 26-37.

Cases cited

African Commission on Human and Peoples Rights Communication n. 409/12 – Luke Munyandu Tembani and Benjamin John Freeth (represented by Norman Tjombe) v Angola and Thirteen Others, Banjul, 5 November 2013.

Angelo Mondlane v. The SADC Secretariat SADC (T) Case No. 07/2009, 5 February 2010.

Barry Gondo and others v. the Republic of Zimbabwe SADC (T) Case No. 05/2008, 9 December 2010.

Bookie Monica Kethsegile and Juru v. The SADC Parliamentary Forum SADC (T) Case No. 02/2009, 5 February 2010.

Clement Kanyama v. SADC Secretariat SADC (T) Case No. 05/2009, 29 January 2010.

Ernest Francis Mtingwi v. the SADC Secretariat SADC (T) Case No. 01/2007, 27 May 2008.

Richard Thomas Etheredge v. Minister of State for National Security Responsible for Lands, HC 3295/08 [2009] ZWHHC 16, 4 February 2009.

Government of the Republic of Zimbabwe v Fick & others, 657/11 [2012] ZASCA 122, 20 September 2012.

Gramara Ltd v The Republic of Zimbabwe, HC 33/09 [2010] ZWHHC 1, 26 January 2010.

High Court of South Africa – Gauteng Division – case n. 20392/15, the Law Society of South Africa v. the President of the Republic of South Africa, the Minister of Justice of the Republic of South Africa, the Minister of international relations and cooperation of the Republic of South Africa, Founding Affidavit, Pretoria, 19 March 2015.

Luke Munyandu Tembani v. The Republic of Zimbabwe SADC (T) Case No. 07/2008, 14 August 2009.

Mike Campbell and Others v. The Republic of Zimbabwe SADC (T) 1 Case No. 02/2007 (interim order), 13 December 2007.

Mike Campbell and Others v. The Republic of Zimbabwe SADC (T) 2 Case No. 02/2007, 28 November 2008.

Mike Campbell and Others v. The Republic of Zimbabwe SADC (T) 1 Case No. 03/2009, 5 June 2009.

Request for Advisory Opinion n. 002/2012 by Pan African Lawyers' Union and Southern African Litigation Cent.