



Assessing the Role of the Southern African Development Community (SADC) Tribunal in Environmental and Human Rights Protection in Southern Africa

Beauty Ubogun-Nze* and Joseph Nwazi 
Igbinedion University Okada, Edo State, Nigeria

*Corresponding Author

Email: ubogun-nze@iuokada.edu.ng

Article Information

<https://doi.org/10.69798/91574747>

Copyright ©: 2025 The Author(s).

This is an open-access article distributed under the terms of the Creative Commons Attribution 4.0 International (CC-BY-4.0) License, which permits the user to copy, distribute, and transmit the work provided that the original authors and source are credited.

Published by: Koozakar LLC.
Norcross GA 30071, United States.

Note: The views expressed in this article are exclusively those of the authors and do not necessarily reflect the positions of their affiliated organizations, the publisher, the editors, or the reviewers. Any products discussed or claims made by their manufacturers are not guaranteed or endorsed by the publisher.

Edited by:

Bamisaye Olutola PhD 

Abstract

The main objective of this study is to examine the role of the Southern African Development Community (SADC) Tribunal in the protection of environmental and other human rights in the region. The SADC Tribunal is one of the prominent sub-regional courts in the continent of Africa established under the SADC Treaty, which came into force in 1993. One of the mandates of the Tribunal is to ensure appropriate interpretation of the provisions of the Treaty and other subsidiary instruments and the resolution of disputes arising therefrom. The Tribunal's mandate extends to the settlement of environmental and other disputes involving the member states of the region or private individuals. Unfortunately, the Tribunal has not delivered a significant environmental judgment to date due to its early suspension, but it has delivered human rights judgments that are germane to environmental protection. Environmental right is a human right recognized under international human rights laws. The implication is that individuals or member states of SADC who are victims of environmental harm can approach the Tribunal for remedies. The paper adopted the doctrinal method of research, which encompasses both the primary and secondary sources. Primary sources include the legal framework and the relevant court judgments, while secondary sources include the books and articles written by scholars in this field of law. All the authorities consulted are well acknowledged. At the end, the paper portrayed in clear terms the challenges facing the Tribunal and canvassed for imperative, clear-cut solutions to enable the Tribunal to deliver on its mandate.

Keywords: SADC, Environment, Africa, Tribunal, Southern, Law, Protection

INTRODUCTION

The SADC as a regional economic community was established in 1992 to replace the Southern African Development Coordination Conference (SADCC) formed in 1980 by the countries in Southern Africa which are Angola, Botswana, the Democratic Republic of the Congo (DRC), Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe.¹

The SADC has different institutions, such as the Heads of state or government of the member states, in charge of the policy decisions and control of the SADC, whose decisions are binding and final. Others include “the Organ on politics, Defence and Security Co-operation, the Council of Ministers, the Sectoral and Cluster Ministerial Committees, the Standing Committee of Officials, the Secretariat, the Tribunal, and SADC National Committees,”² with their respective mandates geared towards the smooth implementation of the Treaty for the overall benefits of the region.

The primary objectives of the SADC are to promote and improve economic, environmental, political, and health policies, human resources, and international relations of the member states to reduce poverty to the barest minimum, enhance the standard and quality of life of the people, and ensure overall development of the region at a faster pace.³ This can be achieved by harmonizing regional policies to ensure uniformity of the policies and the implementations, and by eliminating all obstacles in the movement of persons, institutions, goods and services, capital, and labour within the region.⁴ In the words of Ruppel;

The 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, the promotion and defence of peace and security, and achieving the sustainable utilization of natural resources and effective protection of the environment.⁵

The SADC Tribunal is the judicial organ of the SADC established in accordance with Articles 9(1) and 16 of the Treaty to ensure strict compliance with the Treaty through proper interpretations of its provisions, including the subsidiary instruments, and the settlement of disputes arising therefrom.⁶ The Tribunal consists of several key organs, which include the President, the Judges, and the Registry.⁷ These organs work together to ensure the effective functioning of the Tribunal and the administration of justice within the region. The SADC Tribunal can settle disputes between the member states, private individuals, institutions, and organizations in respect of issues relating to the Treaty, especially on issues involving “human rights, democracy and the rule of law”.⁸

The case of *Cimexpan (Mauritius) Ltd. and others v United Republic of Tanzania*,⁹ for instance, it is not purely on environmental rights but demonstrates the roles of the SADC Tribunal in the protection and promotion of human rights in the region. Environmental right is also a human right. The case involved

¹ See the Preamble to the Consolidated Treaty of the Southern African Development Community, 1992. See also *Frederic Cowell, An Introduction to the Law of the Southern African Development Community* (2023) <<https://www.nyulawglobal.org/globalex/southern>> accessed 16 May 2025

² Art 9 of the SADC Treaty.

³ *Ibid.*, Art 5.

⁴ Art 21(2) of the Treaty. See also Tanja Borsel, ‘Theorizing Regionalism: Cooperation, Integration, and Governance’ (2016) *The Oxford Handbook of Comparative Regionalism, Oxford Handbooks* (Oxford, New York: Oxford University Press) 189.

⁵ Oliver C. Ruppel, *Environmental Law and Policy in Namibia*, Chap 7: *Environmental Law and Policy in the Southern African Development Community* (2022) 167.

⁶ Henok Birhanu Asmelash *Southern African Development Community (SADC) Tribunal* (2016) 2.

⁷ Art 16 of the SADC Treaty.

⁸ *Ibid.*, Art 4(c).

⁹ SADC (T) Case No. 01/2009.

allegations of torture and other violations of human rights against the Treaty provisions. The Tribunal exercised jurisdiction and held Tanzania liable for human rights violations. It ordered Tanzania to pay compensation to the applicants for the injury suffered due to the violations. Environmental right, being a human right, also falls within the scope of the jurisdiction of the SADC Tribunal. This is in addition to specific provisions of the Treaty conferring power on the Tribunal to handle issues of environmental concerns.

Article 21 of the Treaty, for instance, recognised natural resources and environment, food security, land and agriculture as among the major areas of focus of the Community. Therefore, the Tribunal is also conferred with the power to determine environmental disputes within the framework of the SADC, which encompasses the provisions of not only the SADC Treaty but also its Protocols and other legal instruments. Ruppel reiterated that “the Tribunals mandate includes adjudicating disputes that may arise from environmental issues, particularly if they relate to the SADC Treaty or its subsidiary instruments”.¹⁰ It is based on this mandate that the Tribunal has so far exercised jurisdiction over some environmental and human rights issues tabled before it.

It has held governments, individuals, and corporations accountable for environmental-related issues in violation of the Treaty, thereby promoting environmental justice in the region. This study has provided a formidable platform to examine the jurisdictions of the SADC Tribunal on environmental and human rights matters and the extent it has gone to promote justice in the region.

An Overview of Environmental-Related Problems in The SADC Region

Understanding Southern Africa’s environmental problems and its vulnerability is considered very imperative given its abundant resource extraction and the deteriorating livelihood opportunities, rising food insecurity, increasing migration and displacement, and ongoing conflicts and humanitarian crises, which necessitate the Treaty. The SADC region is one of the regions of the world that is ravaged with a series of environmental problems today, ranging from air pollution, climate change impacts, deforestation, desertification, droughts, floods, and wildfires, with dire consequences for human health, agriculture, and water resources.¹¹

This is because the climate in the region is predominantly tropical in nature, whereas its population is heavily dependent on climate-sensitive sectors, such as agriculture, forestry, and tourism, for sustenance. For instance, almost 95% of its population depends on agriculture for survival. Due to extensive drought resulting from the impact of climate change, the region experiences an unprecedented decline in water supply and food security.¹² The aftereffects include unprecedented famine, displacements, migration, competition over limited food, water, and land resources, which exacerbated tensions and conflicts in the region.¹³ In their own words, Seyuba and Garcia reaffirmed that;

Climate change then accentuates existing risks, particularly for vulnerable groups such as the rural and urban poor, small-scale farmers, and internally displaced persons. Women and girls are also disproportionately affected due to unequal access to productive assets, such as land and water, and to decision-making processes in the region.¹⁴

¹⁰ Oliver C. Ruppel, ‘SADC Environmental Law and the Promotion of Sustainable Development’ (2012) 2 *SADC Law Journal*, 255.

¹¹ Kin Sibanda, *et al*, *Energy consumption, technological innovation, and environmental degradation in SADC countries*, <<https://www.tandfonline.com/doi/full/10.1080>> accessed 16 May 2025

¹² Michael Bernard Kwesi Darkoh, ‘An Overview of Environmental Issues in Southern Africa’ (2009) 47/1 *African Journal of Ecology*, 93 – 98.

¹³ Katongo Seyuba and Tània Ferré Garcia, ‘Climate-related Security Risks in the SADC Region’ (2022) *Stockholm International Peace Research Institute* 137.

¹⁴ Ibid.

Some countries in Southern Africa have oil reserves with the concomitant exploration activities. For instance, Angola and Mozambique have significant natural gas reserves, which as the major source of revenue for the countries. It is a blessing in disguise and a curse, as it has become the major cause of environmental harm in those countries.¹⁵ In other regions of the world, oil has bolstered their economy and improved the lives of the citizenry, but not so in Africa. Just like the Niger Delta region of Nigeria, oil exploration in the SADC region constitutes a major source of environmental degradation due to oil spillage, which pollutes lands and water, and gas flaring resulting from oil refining activities.

Some oil pipelines lack regular inspection and maintenance, which leads to corrosion and blowouts of the pipelines. The pollution can also result from sabotage, such as oil bunkering or inability to effectively control oil wells, failure of machines, and inadequate care in loading and unloading of oil vessels. It also destroys the soil, farmland, crops, and economic trees and dislocates human settlements, which may be burnt. It not only pollutes rivers, lakes, and coastal areas but also contaminates the soil, air, and poisons fresh water, streams, and springs, making them unusable by humans and animals. As a result, it affects the health, emotions, aesthetic sensibilities, means of livelihood, and sometimes the homestead of the people, and thus the quality of their lives.¹⁶

The effect of this spill is not transient but can last for years, thereby depriving the citizens of the use of their resources for a very long period without any alternative arrangement or compensation. Adeola, *et al*, stated in clear terms that;

Most host communities of crude oil deposits suffer from a lack of infrastructure, arable soils, clean water, and their functioning capabilities are violated by crude oil exploratory activities, without adequate compensations and remedial actions taken by oil companies and the government.¹⁷

Other environmental challenges facing the region include rising temperatures, changing rainfall patterns, and increased frequency of extreme weather events such as droughts, floods, and tropical cyclones due to its vulnerability to climate change. Climate change, no doubt, affects the entire human race as a burden. Consequently, many courts and tribunals all over the world have shown their commitment to ensuring climate justice for both present and future generations through national, international, regional, and sub-regional adjudications. SADC Tribunal is not left behind in these efforts for climate justice.

In 2021 and 2022, the SADC region experienced several cyclones with devastating impacts on the member states of Madagascar, Malawi, Mozambique, and Zimbabwe, with over 2.5 million people as victims.¹⁸ The region's economy was mainly reliant on agriculture and natural resources, which provided employment opportunities for the diverse populations. These resources and the concomitant opportunities have been adversely affected by environmental degradation¹⁹ thereby leading to increased poverty and significant

¹⁵ K Reed, 'Crude Existence: Environment and the Politics of Oil in Northern Angola' (Berkeley, 2009), *University of California Press* 292.

¹⁶ Elizabeth Lusweti, *et al*, 'Effects of Oil Exploration on Surface Water Quality – A Review' (2022)17/10 *Water Practice and Technology* 2171–2185.

¹⁷ Adedapo O Adeola, *et al*, 'Crude Oil Exploration in Africa: Socio-Economic Implications, Environmental Impacts, and Mitigation Strategies' (2021)42 *Environment Systems and Decisions*, 37.

¹⁸ F Noorbakhsh, 'Standards of Living, Human Development Indices and Structural Adjustments in Developing Countries: An Empirical Investigation' (1999)11 *Journal of International Development*, 151-175. In January 2021, for instance, cyclone Eloise affected Mozambique, South Africa and Zimbabwe. In February the same year, cyclone guambe affected Southern Mozambique. In April, cyclone jobo affected Tanzania and resulted in 22 deaths. In January 2022, tropical storm dumako affected the East coast of Mozambique while in March 2022, cyclone gombe led to the deaths of 63 people in Mozambique and 7 in Malawi. See Godwell Nhamo & David Chikodzi, 'Cyclones in Southern Africa' (2021)1 *Interfacing the Catastrophic Impact of Cyclone Idai with SDGs in Zimbabwe*, 97. See also Southern Africa: Cyclone Season Flash Update No. 1 (2 February 2022), <<https://www.unocha.org/publications/report>> accessed 17 may 2022

¹⁹ Iva Peša, Corey Ross, 'Extractive industries and the Environment: Production, Pollution, and Protest in Global History' (2021)8/4 *The Extractive Industries and Society* 152.

threats to the economic development, peace, and security in the region. Noorbakhsh reaffirmed that Southern Africa's vulnerability to climate change was mainly attributable to its extreme weather conditions, low adaptability, and heavy reliance on natural resources.²⁰ This has led to soil erosion, loss of fertile land, decreased agricultural productivity, food shortages, and inflation.

Deforestation is another devastating issue in Southern Africa with significant consequences on the region and its populations. In fact, deforestation and land degradation affect the whole continent of Africa due to the reliance of a substantial percentage of its population on forest and agricultural resources for survival. Forest preservation is one of the recognized nature-based solutions to climate change because trees absorb carbon dioxide and release oxygen in the process of photosynthesis.²¹

Forest preservation faces a serious challenge in a region where about 90% of its local population depends on firewood for cooking. Again, the extraction of timber, palm oil, cocoa, and herbs contributes significantly to deforestation in Africa. This is compounded by the mining for solid mineral resources and oil exploration by the multinational companies without adequate care for the environment. According to Darkoh;

Deforestation in these Southern African countries, especially by the poor for firewood supply, is high. In Zambia, indiscriminate commercial fuelwood has led to over 20 km² of woodland being clear-felled each year around Lusaka and in Madagascar the proportion of forest lands has fallen from 80% to 18%.... In Tanzania, Zimbabwe and Mozambique, large areas of forest lands have been cleared for planting tobacco and even larger areas for fuels with which to cure the tobacco. In several countries of this region, deforestation has reduced the prevalence of wild plants used for food. Studies from Tanzania show that as villagers' access to forests and woodlands declines, they eat fewer wild plants.²²

An increase in population is another contributing factor.²³ According to Wentzel, "Southern Africa's rich biodiversity, encompassing a plethora of unique plant and animal species, makes it a prime target for exploitation".²⁴ An increase in population results in a corresponding increase in the demand for forest and land resources for sustenance. A significant percentage of the population is obsessed with how to exploit nature for their immediate survival without a second thought on the implications for the environment.²⁵

The consequence is depletion of forest resources, which exacerbates the problems of climate change, leads to gully erosion, water scarcity, floods, and destruction of habitats. Due to poverty and deprivation, environmental considerations are not a priority in the whole of Africa²⁶ because poor people do not feel a sense of responsibility to their environment. It is against this backdrop that Justice Oputa (as he then was) stated that poverty is an enemy of the environment in all ramifications, be it in conservation or in litigation, and has often been cited as one of the major issues affecting our environment in Africa.²⁷

²⁰ F Noorbakhsh, *supra* n 18.

²¹ S Nathalie, *et al*, *Nature Based Solutions in Nationally Determined Contributions, Synthesis and Recommendations for Enhancing Climate Ambition and Action by 2020*, <<https://portals.iucn.org/library/sites/library/files>> accessed 16 May 2025.

²² BK Michael Darkoh, 'An Overview of Environmental Issues in Southern Africa' (2009) *African Journal of Ecology* 95.

²³ Graham von Maltitz & Kevin Setzkorn, 'Potential Impacts of Biofuels on Deforestation in Southern Africa' (2012) *Journal of Sustainable Forestry* 92.

²⁴ Stephen Wentzel, *Tackling Southern Africa's Deforestation Challenge: A Call to Action*, 2024 <<https://carbongreeninvestments.com/tackling-southern>> accessed 17 May 2025.

²⁵ P Collins, *et al*, 'Climate Change and Africa' (2008) *Oxford Review of Economic Policy* 337.

²⁶ VO Aigbokhaevbo, 'Environmental Regulatory Standards: Problems of Enforcement in an Emerging Economy' (2005) *2/2 Ife Juris Review*, a Journal of Contemporary Legal and Allied Issues 10.

²⁷ Hon. Justice Chukwudifu Oputa, 'Human Rights in the Political and Legal Culture of Nigeria' (1989) *Nigerian Law Publications* 75

SADC Treaty and Environmental Protection

As the SADC strived to improve its regional integration to address a series of challenges facing the region, it has, by the letters of the Treaty, shown its commitment not only to economic integration and development but also to protecting the environment in the SADC region.²⁸ The Treaty, no doubt, gives priority to environmental protection through sustainable utilization of natural resources as a foundation for the economic growth of the region. This is with the apparent recognition that environmental challenges undermine the socio-economic development of any region.

The priority for environmental protection is reflected in the SADC's main objectives of achieving sustainable development, the eradication of poverty, and improving the quality of life of the region's population.²⁹ The Treaty also recognized food, agriculture, natural resources, and environment as part of the core areas of integration, with the responsibility of the strict monitoring and enforcement conferred on the Sectoral and Cluster Ministerial Committees.³⁰

Again, among the areas underscored by the Treaty as deserving co-operation of the member states to advance the course of the region are food security, land, agriculture, natural resources, and the environment.³¹ These are viewed as the key to achieving the overall economic objectives of the Community through regional integration.³² The SADC member states are also signatories to some regional and other international environmental agreements, such as the Kyoto Protocol of 1997, which provides the region a platform to address sensitive issues on international environmental laws affecting the region.

In Lusaka, Zambia, between 5th and 6th March 2008, the SADC member states developed a Regional Policy Dialogue on Air Pollution Control in the region. It has been in force since 2008 after its adoption by the Ministers the same year. The SADC environmental law encompasses a series of sources such as the SADC Treaty, the Protocols, among other legal instruments.³³ Precisely, the Protocols were legislated and adopted in accordance with Article 22(1) of the Treaty, which provides that;

Member States shall conclude such Protocols as may be necessary in each area of co-operation, which shall spell out the objectives and scope of, and institutional mechanisms for, co-operation and integration.

The SADC Protocol on Environmental Management for Sustainable Development came into force in 2014 after it was signed at the SADC Summit in Zimbabwe with the primary objective of ensuring the protection of the environment for the good health and well-being of the region's population. Before that, the member states had adopted a Protocol on Fisheries in 2001 to promote responsible and good management of fish resources in the region.

The SADC Protocol on Forestry was signed in 2002 to provide a uniform framework to enhance collaboration in forest management practices. The same with the Watercourses Protocol signed in Dar-es-Salaam, Tanzania, in 2004, with the primary purpose of encouraging collaboration among the member states in the management and utilization of shared water resources.³⁴ The Protocols on Mining were meant to promote uniformity and integration of mining policies to enhance the growth of the mining sector in the

²⁸ Art 12(2)(a)(iii) of the SADC Treaty.

²⁹ Art 5(1) of the Treaty.

³⁰ Ibid, Art 12(1).

³¹ Ibid, Art 21(3).

³² S Kayizzi-Mugerwa, *et al*, 'Regional Integration in Africa: An Introduction' (2014) 26/1 *African Development Review* 1-6

³³ Oliver C Ruppel, 'SADC Environmental Law and the Promotion of Sustainable Development' (2012) *SADC Law Journal* 254.

³⁴ Others relevant to environmental protection include the Protocols on Energy signed in 1998, Health -2004, Tourism – 2002, Transport, Communications and Meteorology – 1996, Wildlife Conservation and Law Enforcement – 2003. See Lizazi Eugene Libebe, *Climate Change Governance in the SADC Region: Towards Development of an Integrated and Comprehensive Framework Policy or Protocol on Adaptation*, LLM dissertations, University of Cape Town, South Africa 2014, 46.

region. These Protocols are germane to environmental protection as they serve as instruments through which the provisions of the Treaty are implemented. They possess the same legal force as the Treaty itself, and they bind the member states that are parties to the particular Protocols in question.³⁵

The region has adopted all the proffered means of safeguarding the environment as captured in the Protocol and other legal frameworks. While significant progress has been made by the SADC in protecting the environment in the region through various legal frameworks and Protocols, many environmental challenges persist to threaten and undermine the actualization of the environmental objectives. Today, environmental pollution, deforestation, land degradation, loss of biodiversity, poverty, food and water scarcity are in the increase.³⁶ Addressing these challenges to the letter requires stricter enforcement of these legal frameworks and Protocols,³⁷ hence the need to examine the role of the SADC Tribunal in the enforcement of these laws, policies, and Protocols.

SADC Tribunal and Environmental Protection

As indicated earlier, the SADC Tribunal is the judicial organ of SADC established in 1992 to oversee the interpretation and enforcement of the SADC Treaty and subsidiary instruments.³⁸ The Tribunal started hearing cases in 2005 following the appointment of its judges and the inauguration the same year. Article 32 of the Treaty provides that “Any dispute arising from the interpretation or application of this Treaty, the interpretation, application or validity of Protocols or other subsidiary instruments made under this Treaty, which cannot be settled amicably, shall be referred to the Tribunal”.³⁹

The Treaty, the Protocols, and the Rules of Procedure for the Tribunal provide for the functions and jurisdictions of the Tribunal, which include the determination of cases involving human rights violations.⁴⁰ In fact, a greater percentage of the issues referred to the Tribunal so far involve human rights violations. As earlier indicated, outside specific provisions conferring jurisdiction on the Tribunal to determine environmental matters, environmental right is globally recognized as human rights, being a right conferred on humans by nature.⁴¹ According to Zarma;

Environmental concerns are similar to the protection and promotion of human rights Environmental concerns have, at least to some extent, found their way into the legal framework of most RECs. In founding SADC, environmental protection was explicitly included. The Declaration and Treaty of SADC lays down in Article 5(g) as one of SADC’s objectives to “achieve sustainable utilization of natural resources and effective protection of the environment”.⁴²

For this reason alone, the Tribunal has the mandate to handle cases involving environmental protection and natural resource management, which are preconditions for the enjoyment of human rights. Scholtz and

³⁵ Art 22(9) of the SADC Treaty. See J Glazewski & OC Ruppel, ‘International Environmental Law’ in J Glazewski & L du Toit (eds) *Environmental Law in South Africa*, 2013, 103.

³⁶ Food, Agriculture & Natural Resources, Environment & Climate Change <<https://www.sadc.int/pillars/environment-climate-change>> accessed 18 May 2025.

³⁷ Alex O Acheampong & Eric Osei Opoku, ‘Energy justice, democracy and deforestation’ (2023)341/1 *Journal of Environmental Management*, 207.

³⁸ Idorenyin Eyo & Akebong Essien, ‘The Southern African Development Cooperation (SADC): Its Relevance in the African Continent’ (2021)10/1 *International Journal of Innovative Research & Development* 159.

³⁹ See also Wale Are Olaitan, ‘Towards a Functional African State: Bridging the Gap between the State and the People’ (2006) *African Journal of international Affairs* 73.

⁴⁰ See Gerhard Erasmus, *Is the SADC Trade Regime a Rules-Based System?* (2011)24 *SADC Law Journal* 31.

⁴¹ Olong Mathew Adefi, ‘Human Rights, the Environment and Sustainable Development in Nigeria’ (2008)1/1 *Lead City University Law Journal* 84.

⁴² Rahina Zarma, *Regional Economic Community Courts and the Advancement of Environmental Protection and Socio-economic Justice in Africa: Three Case Studies*, A Dissertation submitted to the Faculty of Graduate Studies for the Degree of Doctor of Philosophy, Osgoode Hall Law School, York University, Toronto Ontario, January, 2021, 102.

Ferreira reiterated that the Tribunal strengthens human rights in the SADC region by ensuring strict enforcement of the provisions of the Treaty and the Protocols, including other relevant legal instruments.⁴³

Effective remedies, such as compensation, damages, and injunctions, available to litigants also form an integral part of access to justice. The case of *Barry LT Gondo, et al v The Republic of Zimbabwe*⁴⁴ is not exclusively on environmental matters, but related to the award and enforcement of damages which are germane to environmental justice. The decision of the SADC Tribunal in this case showed its commitment to the protection of human rights and upholding the rule of law in the region.

The applicants in the above case were victims of violence inflicted by the state through the national Police and the Army of Zimbabwe. They instituted action in the national courts of Zimbabwe for the award of damages for the violence. The Court granted their request. They could not enforce the judgment because section 5(2) of the Zimbabwe's State Liability Act prohibits the attachment of state property to satisfy a court judgment.

As they were unable to enforce the judgment of the national court, they resorted to the SADC Tribunal, having the belief that domestic remedies were not available to them in Zimbabwe. The Tribunal not only granted them the damages sought but also gave an order for the revalorization of the damages to reflect the real value of their loss at the time of the payment, considering the changes in the value of the Zimbabwean currency due to inflation.

The revalorisation of damages should be an eye-opener to the Nigerian courts, considering the impacts of inflation on the worth of damages granted litigants, especially on environmental matters. For instance, the case of *Shell Petroleum Development Company v Ambah*⁴⁵ lasted 19 years in the courts, and yet it was the same N27,000.00 damages claimed by the victims of pollution at the commencement of the suit in 1976 that was awarded after 19 years of litigation, despite the request that the award be increased, considering the delay and devaluation of the naira.⁴⁶ It was like a frivolous litigation, as the damages granted after 19 years could not even cover the transport of the litigants and their lawyers back home.

The SADC Tribunal in *Barry LT Gondo's case* above further held that Zimbabwe's State Liability Act was inconsistent with the SADC Treaty, especially on issues involving human rights protections and the concomitant compensations in case of breach. Consequently, Zimbabwe was in breach of the SADC Treaty obligations by its failure to comply with the judgment of the national court. This invariably indicated that, as a member state of the SADC, Zimbabwe failed to provide its citizens with domestic remedies in case of violations of their human rights as required by the Treaty. The Tribunal described section 5(2) of the State Liability Act as discriminatory by shielding the state officials and depriving the citizens of the right to enforce their judgments against such officials, thereby opening wide doors for disobedience of court orders. The SADC Tribunal also displayed its unwavering commitment to the protection of the environment in its decision in the case of *Mikila v Republic of Malawi*⁴⁷ where the Tribunal stated unequivocally that the government of Malawi, a member state of the SADC, has failed in its responsibility to protect the rights of a local community in Malawi affected by mining activities. The activities were linked to a series of environmental degradation, such as contamination of water, land, and other properties, damage to the

⁴³ Werner Scholtz & Gerrit Ferreira (2011) *Much Ado about Nothing? The SADC Tribunal's Quest for the Rule of Law Pursuant to Regional Integration* 333

⁴⁴ SADC Tribunal Case No. 05/2008, (2010) AHRLR 152.

⁴⁵ (1999)3 NWLR part 593 1 SC

⁴⁶ Kaniye Ebeku, 'Compensation for Damage Arising from Oil Operations: *Shell Petroleum Development Co Nig v Ambah* Revisited' (2002)6/1 *Nigerian Law and Practice Journal* 9 & 20. He added that belligerency is currently a widespread posture among the deprived peoples of the various oil-bearing communities of the Niger Delta, and their militancy is likely to escalate by unfavourable court decisions in a genuine case (such as the case being considered here). Sources suggest that their present posture is informed by a feeling that "we have suffered for too long".

⁴⁷ SADC Tribunal Case No. 07/(2010).

ecosystems, and adverse health effects on the vulnerable populations. These resulted in the violation of the rights of the affected communities to a healthy environment, property, economic, and social development.

The Tribunal ordered the government of Malawi not only to strengthen and ensure adequate enforcement of its legal framework on mining for the protection of the citizens and the environment, but also to involve the people in the decision-making processes, especially in respect of mining.

This is similar to an Argentine case of *Menores Comunidad Paynemill*⁴⁸ where the court held that the state had failed in its responsibility to prevent water pollution by the multinational oil company against its citizens and ordered the government to provide a minimum of 250 litres of drinking water daily for every inhabitant of that community whose source of water supply was polluted.⁴⁹ That is what Nigerian courts should take a cue from. The courts and tribunals should discharge their sacred duties as the last hope of the common man, rather than the unpalatable judgments, especially in cases involving the revenue of the government. They should ensure that justice is served by holding the governments accountable and ensuring that the rights of the disadvantaged groups are respected.

Cases Decided by the SADC Tribunal

Before the suspension of the SDC Tribunal, it had decided some notable cases which highlighted the roles of the Tribunal in promoting human rights and the rule of law within the region.

*MIKE CAMPBELL AND OTHERS V THE REPUBLIC OF ZIMBABWE*⁵⁰

This is one of the remarkable cases in Southern Africa decided by the SADC Tribunal. It is not exclusively on environmental matters but touches on the land reform program, with possible negative consequences on the environment if the new farms are not properly managed. The case was filed in 2007 by the first and second applicants, who were white farmers, challenging the acquisition of their lands by the government of Zimbabwe (respondent) for agricultural purposes under its land reform policy referred to as “Fast Track Land Reform”. The primary purpose of the reform was to acquire large-scale underutilized commercial farms, especially from foreigners, for redistribution to landless indigenous black commercial farmers in Zimbabwe.

The white farmers who were deprived of their lands under the scheme sought an order to restrain the government from removing them from their farm lands. Section 16A of the amended Constitution of Zimbabwe 2005 conferred power on the government to acquire agricultural lands for resettlement under the land reform policy. It further provides that the owners of the acquired property are not entitled to compensation save for any improvements on the property at the time of acquisition, and the courts in Zimbabwe should not entertain any action challenging the acquisition.

The applicants first instituted their actions in Zimbabwe but, on discovering that the domestic courts lacked jurisdiction to entertain issues on land reforms, approached the SADC Tribunal.⁵¹ The government of Zimbabwe, in its defence, insisted that the Tribunal has no jurisdiction under the SADC to entertain the application, especially considering that the land acquired was mainly from white farmers who owned large-scale lands which should be redistributed in conformity with the land reform policy.⁵²

⁴⁸ Expte No. 311-CA-1997, 19 May 1997.

⁴⁹ See Inga Winkler, ‘Judicial Enforcement of the Human Right to Water – Case Law from South Africa, Argentina and India’ (2008)1 *Law, Social Justice and Development*, <<https://www.nawasis.org/portal/digilib/read/judicial>> accessed 27 May 2025.

⁵⁰ SADC (T) Case No. 2/2007.

⁵¹ Werner Scholtz & Gerrit Ferreira, *Much Ado about Nothing: SADC Tribunal’s Quest for the Rule of Law Pursuant to Regional Integration* (2011) 334.

⁵² It was believed that the large-scale farms were unjustifiably acquired by the whites during the colonial era without due processes thereby necessitating the new reforms to balance the imbalance in the land distribution.

The Tribunal delivered its judgment in favour of the applicants against Zimbabwe, condemning the land reform policy as discriminatory based on race and so in violation of the SADC Treaty.⁵³ The Tribunal stated unequivocally that the applicants were victims of racial discrimination and condemned further the provisions denying people the rights of compensation and access to the domestic courts to seek justice. The Tribunal further stressed that denying people access to courts is a violation not only of the SADC Treaty but also of human rights laws.

Though the Tribunal's decision in this case was primarily focused on human rights issues such as racial discrimination, access to justice, and the right to fair compensation, the land reform program in this case has a serious correlation with environmental protection in Zimbabwe. The intersection of environmental rights and land rights highlights the need for sustainable development that balances economic, social, and environmental considerations. In this context, the Zimbabwean land reform program, with the *Campbell's case*, correlates with serious environmental pollution due to a lack of proper planning, changes in land use practices, the absence of sustainable agricultural practices, and decreased investment in sustainable farming, especially in the Midlands Province of Zimbabwe.

The land reform program is also linked to enhanced human-wildlife conflict and a decrease in wildlife production because the lands earlier designated for conservation became subject to competitive land use practices⁵⁴ while new farmers often lack the resources and knowledge for sustainable land management. For Elliot *et al*, it is not possible to predict the outcome of any resettlement scheme as it can lead to the transfer of degradation from the communal to the resettled areas.⁵⁵ Fox *et al* highlighted the controversy surrounding the impact of the Fast Track Land Reform Program in Zimbabwe on land degradation and concluded that "sustainable land use and land degradation are two of the possible outcomes resulting from land reform initiatives".⁵⁶

Article 16(5) of the SADC Treaty provides that the decisions of the Tribunal shall be final and binding on the member states, while Article 32(2) of the Protocol on the SADC Tribunal requires the member states to adopt all possible measures to ensure that the decisions of the Tribunal are adequately enforced. Article 32(3) of the same Protocol provides that the decision of the Tribunal is not only binding on the parties to any dispute but also enforceable within the territories of the states concerned.

One of the primary objectives of the SADC is for the member states to respect the principles of human rights, democracy and the rule of law, equity, and peaceful settlement of disputes.⁵⁷ Under Article 6(1) of the Treaty, the member states also undertook to "refrain from taking any measure likely to jeopardize the sustenance of its principles, the achievement of its objectives and the implementation of the provisions of this Treaty" and to accord the Treaty the force of national law.⁵⁸

Unfortunately, after the judgment of the Tribunal in Campbell's case, it was rejected by the Zimbabwean government and supported by the SADC heads of state and governments, resulting in the suspension of the Tribunal. Zimbabwe withdrew from the Tribunal after challenging its jurisdiction to determine issues involving land disputes in Zimbabwe. There was no sanction against Zimbabwe for its failure to comply

⁵³ Art 6(2) of the SADC Treaty provides that the "SADC and member states shall not discriminate against any person on grounds of gender, religion, political views, race, ethnic origin, culture, ill health, disability, or such other ground as may be determined by the Summit".

⁵⁴ Forced expropriation of land without compensation also discourages investments in sustainable farming practices and results in the reduction of agricultural productions. See Chaumba, J, *et al*, 'From Jambanja to Planning: The Reassertion of Technocracy in Land Reform in South-Eastern Zimbabwe?' (2003)41/4 *Journal of Modern African Studies* 539.

⁵⁵ Elliott, J.A *et al*, 'The Nature and Extent of Landscape Change under Land Resettlement Programmes in Zimbabwe' (2006)17/5 *Land Degradation and Development* 503.

⁵⁶ Fox RC, *et al*, 'On the Fast Track to Land Degradation? A Case Study of the Impact of the Fast Track Land Reform Programme in Kadoma District, Zimbabwe' (2007)92/3 *Geography* 3.

⁵⁷ Art 4(c-e) of the SADC Treaty.

⁵⁸ Ibid, Art 6(5).

with the judgment. When the Tribunal consulted the SADC Summit of Heads of States in respect of the disobedience of its decision, the Summit rather called for the review of the Tribunal's powers and placed a moratorium on the Tribunal, preventing it from receiving new cases or concluding the ones pending.⁵⁹

Responding to the suspension of the Tribunal, some scholars are of the view that international laws, courts, and Tribunals are most often weakened by internal and regional politics, as no country can exist or operate in isolation. Certain problems, such as climate change, face the entire human race as a burden and so require the influence of international laws to tackle. The international legal system has a fundamental role to play in assisting states in dealing with the internal problems that may affect the entire human race.

According to the 2004 Report of the Secretary-General's High-Level Panel on Threats, Challenges and Change problems, some problems such as poverty, diseases, environmental degradation, genocide and other monumental atrocities, nuclear, radiological, chemical and biological weapons, terrorism, and transboundary organized crimes most often originate internally from nations, especially from domestic politics.⁶⁰

Some state governments are bereft of the capacity and the wherewithal to tackle the problems from within, hence the need for international collaboration. In this instant case, the SADC Tribunal has made a frantic effort to influence domestic policies by ordering the government of Zimbabwe to revisit its land reforms and pay compensation to the victims, but the country refused. Therefore, international law has failed to influence Zimbabwe's domestic affairs under the guise of sovereignty.⁶¹ It is wrong for Zimbabwe to rely on its national law, its Constitution, and local policies to undermine its international law obligations. Mude reiterated that where national governments are incapable of addressing certain local problems that may expand to threaten international peace and security, "international law may step in to help build their capacity or stiffen their will".⁶² In his own words;

The responsibility to protect has it that where a population is suffering serious harm, as a result of interwar, insurgency, repression, or state failures, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect.⁶³

Failures and Challenges of the SADC Tribunal

The SADC Tribunal has not only been commended for its significant role in the promotion of human rights, upholding the rule of law, and for its apparent boldness in holding the member states of the region accountable for human rights violations, but also received an avalanche of praise in academic literature.

⁶⁴ A scholar stated unequivocally that the decision of the Tribunal in Campbell's case has brought the hopes high that the Tribunal was a messiah committed to sanitising the Southern African region.⁶⁵

The Tribunal was not only a first attempt at seeking to collectively deal with cases of human rights violations at the regional level, but also allowed individuals within the SADC member states recourse to

⁵⁹ F Cowell, 'The Death of the Southern African Development Community Tribunal's Human Rights Jurisdiction' (2013)13 *Human Rights Law Review* 54.

⁶⁰ Torque Mude, 'International Law in Domestic Politics: The Case of Zimbabwe and the SADC Tribunal' (2014)2/1 *Journal of Power, Politics and Governance* 86.

⁶¹ The government of Zimbabwe claimed sovereignty as its reason to disobey the ruling of SADC Tribunal in the *Campbell's case*. Torque Mude (ibid 96) restated that to reject the ruling of the Tribunal was defiant of the shared sovereignty which Zimbabwe accepted when it became a state party to the SADC Treaty.

⁶² Torque Mude (ibid).

⁶³ Ibid 104.

⁶⁴ Janelle Mangwanda, 'One Step Forward, Two Steps Back: The Rise and Fall of the SADC Tribunal' (2021)22 *ESR Review* 17.

⁶⁵ L Nathan, 'Solidarity Triumphs over Democracy: The Dissolution of the SADC Tribunal' (2011) *United Nations and Regional Challenges: Development Dialogues, Papers and Comments* 124.

justice against their respective states, thereby increasing the hope of the people to put an end to the impunity with which the states had trampled on civil liberties.⁶⁶

Notwithstanding the efforts and the impacts of the Tribunal, including the commendations, it is bedeviled by numerous challenges, which include political interference in its affairs, refusal to enforce its judgment, restriction of its jurisdiction, refusal to renew the appointment of its judges, and suspension.

One of the greatest among these challenges is the Tribunal's suspension in the year 2010 following its decision in favour of white farmers and against the government of Zimbabwe.⁶⁷ The Tribunal stated in this case that its jurisdiction extends to the protection of the human rights of individuals and the interests of the SADC citizens. Zimbabwe not only refused to comply with the judgment but also withdrew from the Tribunal, arguing that it was interfering in the domestic affairs of the member states.

The Former President of Zimbabwe, Robert Mugabe, referred to the Tribunal as a monster that has emerged to devour the member states of the SADC.⁶⁸ Karen Alter, *et al*, said that Mugabe mocked the Tribunal and referred to its judgment against Zimbabwe as “absolute nonsense” bereft of compliance. In Mugabe's words, “no one will follow that ...We have courts here in this country that can determine the rights of people...our land issues are not subject to the SADC Tribunal”.⁶⁹

That led to the review of the Tribunal's mandate and the subsequent curtailment of its jurisdiction only to inter-state disputes rather than complaints from individuals, thereby raising serious questions about the original intents and purposes of the regional block in the first place, whether it actually meant the business of safeguarding and promoting the human rights of its people. Other member states of the SADC, instead of reining in Zimbabwe to comply with the Tribunal's judgment through sanctions, other member states joined hands with Zimbabwe to ban the Tribunal, and so it became a conquered judiciary. The suspension dashed the hopes of the citizens of the region who are incapacitated to challenge their own countries in the national courts.

The revised mandate of the Tribunal, as contained in the 2014 Protocol, has been severely criticized by human rights organizations, activists, and legal communities as an attempt to undermine the rule of law and human rights protections in the region. For instance, the Tanganyika Law Society challenged the adoption of the 2014 Protocol in the High Court of Tanzania in the case of *Tanganyika Law Society v Ministry of Foreign Affairs and International Cooperation of the Republic of Tanzania*.⁷⁰

In 2019, the High Court ruled in favour of the Tanganyika Law Society and declared that the suspension of the SADC Tribunal and refusal to renew the appointment of the judges violated the SADC Treaty and was so inimical to the human rights protections, the rule of law, and the SADC Treaty. The Court specifically condemned the Tanzanian President's decision to lend support to the suspension of the Tribunal in violation of the human rights laws⁷¹ and an indication that the SADC member states were unanimous in undermining the efficacy of the Tribunal when they were supposed to mount pressure. The court stated that;

The suspension of the operations of the SADC Tribunal, and failure or refusal to appoint Judges contrary to the clear Treaty provisions, was inimical to the Rule of law as a foundational principle inherent to the legitimacy of the Community, and as expressly

⁶⁶ Ibid.

⁶⁷ Idorenyin Eyo & Akebono Essien, ‘The Southern African Development Cooperation (SADC): Its Relevance in the African Continent’ (2021)10/1 *International Journal of Innovative Research & Development* 161.

⁶⁸ L Nathan, ‘The Disbanding of the SADC Tribunal: A Cautionary Tale’ (2013)35/4 *Human Rights Quarterly* 35.

⁶⁹ Karen J Alter, *et al*, ‘Backlash against International Courts in West, East and Southern Africa: Causes and Consequences: Table 1’ (2016)27/2 *European Journal of International Law* 309.

⁷⁰ 09/11-11/11.

⁷¹ AK Ahmed, ‘An Analysis of the Regional Integration in Southern Africa: A South African Perspective’ (2018) *Tralac* 20.

entrenched in the Treaty. Respondents are enjoined pursuant to the respective Treaty obligations to give effect to the Treaty.

The same condemnation followed in other member states of the SADC. In *Luke Munyandu Tembani & Benjamin John Freeth (represented by Norman Tjombe) v Angola & Thirteen Others*,⁷² the African Commission on Human and Peoples' Rights also condemned the President of Angola for taking part in the suspension of the Tribunal.

The Commission declared the suspension unlawful and irrational and ordered the President to withdraw his own approval of the 2014 SADC Protocol. The same applies to the President of South Africa, who was condemned in the case of *Law Society of South Africa & Others v President of the Republic of South Africa & Others*⁷³ for his involvement in stripping the Tribunal of the power to hear individual claims.⁷⁴ Mangwanda stated that the suspension has denied over 277 million people in the region access to justice, as they cannot approach the court any longer on issues involving human rights violations.⁷⁵ Perhaps, if not for the suspension, the Tribunal would have heard numerous environmental cases in the region, whether from individuals or organizations, but it has been inactive to date. According to Zarma;

The adoption of the existing protocol, which removed the access of private individuals to the Tribunal, provides a significant challenge to the pursuit of environmental protection and socio-economic justice in the region via regional courts.⁷⁶

Zarma argued further that out of the member states of the SADC region, only private citizens and Non-Governmental Organizations (NGOs) in Malawi and Tanzania have access to a regional court, the reason being that Malawi made a declaration recognizing the competence of the African Court while Tanzania, on its own part, is a member of both the EAC and the SADC, and so its citizens have the EACJ as an alternative.

Consequently, private individuals and NGOs in other member states have no access to an international court as the Tribunal has been deprived of the jurisdiction to entertain private litigations.⁷⁷ Some scholars are of the view that citizens from the SADC states can bring their cases to the African Commission on Human and Peoples' Rights as an alternative to the SADC Tribunal.⁷⁸ What of the accessibility for the victims of environmental pollution in the remote rural areas? Can the SADC member states accept the decision of the Commission as binding if it is not in their favour? This is another challenge.

Geographical Inaccessibility

One of the greatest challenges facing the SADC Tribunal is its distance from the diverse populations. Justice is impaired where the courts are located far from the homes of those who need them. For instance, physical accessibility of the SADC Tribunal by the diverse populations in the region is hindered by its location in Windhoek, Namibia, from where it serves all the states in the region. Access to the court is difficult for those who live outside Namibia. This is compounded by the poor economic conditions of the diverse populations in the region, especially the poor victims of environmental degradation in the remote rural

⁷² Communication 409/12, 2013.

⁷³ (2018) ZACC 51; 2019. See Dire Tladi, 'The Constitutional Court's Judgment in the SADC Tribunal Case: International Law Continues to Befuddle' (2020)10 *Constitutional Court Review* 132.

⁷⁴ See also the case of the *Government of the Republic of Zimbabwe v Louis Karel Fick & Others* Case CCT 101/12 [2013] (10) BCLR 1103 (CC).

⁷⁵ Janelle Mangwanda, *supra* n 64.

⁷⁶ Rahina Zarma, *Regional Economic Community Courts and the Advancement of Environmental Protection and Socio-economic Justice in Africa: Three Case Studies*, A Dissertation submitted for PhD degree at the Osgoode Hall Law School, York University, Toronto Ontario, January, 2021, 189.

⁷⁷ Ibid.

⁷⁸ Sègnonna Horace Adjolohoun, 'A Crisis of Design and Judicial Practice? Curbing State Disengagement from the African Court on Human and Peoples' Rights' (2020) *African Human Rights Law Journal* 40.

areas, who can access the Tribunal only if they travel to Namibia. That is why Zarma stated that “proximate access is a hindrance to environmental protection and socio-economic justice”.⁷⁹

Access to justice in the region is also very cumbersome due to the high cost of legal services, compounded by poverty and rampant lack of opportunities.⁸⁰ Access is very fundamental in the legitimacy of any international court or Tribunal. That is why some regional courts or Tribunals have devised means of curbing this accessibility challenge by sitting at different locations closer to the people who may wish to utilize their services.

An ECOWAS Court, for instance, has moved its seat to different locations outside Abuja to make its services available and closer to the affected population.⁸¹ Other regional courts have done the same. Okafor and Effoduh gave some instances worthy of emulation by the SADC Tribunal, assuming it will regain its power to entertain cases from private individuals and NGOs. One instance is the case of *Hadijatou Mani Koraou v Niger*⁸² where the ECOWAS Court sat in Niamey, Niger Republic, instead of Abuja, thereby bringing justice closer to the people. In their own words;

In the *SERAP v Nigeria* case,⁸³ the court sat in Ibadan, which was much closer to Lagos, where the plaintiff's office was located. In *Madame Ameganvi Manavi v Togo*,⁸⁴ the court sat in Porto Novo, Benin, and in *Mousa Leo Kaita v Mali*,⁸⁵ the court sat in Bamako, Mali, in order to be closer to both the plaintiffs and the defendants. In most of these cases, the move to sit in other cities or countries served the interests of the usually much more disadvantaged and vulnerable poor.⁸⁶

The same distance from the litigants and their lawyers is one of the major challenges facing the Court of Justice for Common Market for Eastern and Southern Africa (COMESA), which is a regional court based in Khartoum, Sudan, but the court has devised its own means of overcoming the challenge. The court has introduced technology, which includes internet-based systems, to enhance virtual hearings and proceedings, including the filing of documents.⁸⁷ This has assisted, in no small measure, the litigants from remote locations seeking the court's services without the need to travel to Sudan. The innovation is worthy of emulation by the SADC Tribunal as the best means of breaking the distance barrier in seeking justice.

The Court Of Justice for Common Market for Eastern and Southern Africa (COMESA)

Just like the SDC Tribunal, the COMESA was established in 1994 with the primary purpose of promoting regional economic integration and the development of human and natural resources within the region. The Court is the judicial organ of COMESA with its permanent seat at Khartoum, Sudan. The jurisdiction of the COMESA Court of Justice extends to environmental matters that intersect with the focus of COMESA as captured in its treaty provisions.⁸⁸

⁷⁹ Rahina Zarma, *supra* n 76, 186.

⁸⁰ Janelle Mangwanda, *supra* n 64.

⁸¹ Obiora Okafor and Okechukwu Effoduh, 'The ECOWAS Court as a (Promising) Resource for Pro-Poor Activist Forces: Sovereign Hurdles, Brainy relays and 'Flipped Strategic Social Constructivist' James Thuo Gathii ed (2020) *The Performance of Africa's International Courts: Using International Litigation for Political, Legal, and Social Change* 133.

⁸² Case No. ECW/CCJ/APP/08/07.

⁸³ ECW/CCJ/JUD/18/12. This case concerns environmental degradation in the Niger Delta region of Nigeria due to oil spillage by the multinational companies which violated people's right to a healthy environment.

⁸⁴ ECW/CCJ/JUD/09/11.

⁸⁵ Case No. ECWICCIAPP/05/06, Judgment, para. 34 (22 March 2007).

⁸⁶ Obiora Okafor and Okechukwu Effoduh, *supra* n 81.

⁸⁷ See *COMESA Court of Justice to Improve its Visibility*, May 30, 2010 <<https://www.comesa.int/lang-en/component/content>> accessed 9 May 2025.

⁸⁸ See Kenneth K. Mwenda, 'The Common Market for Eastern and Southern Africa (COMESA) and the COMESA Court: Immunity of an International Organization from Legal Action' (2009)6/1 *Miskolc Journal of International Law* 79.

Article 124 of the Treaty, for instance, guarantees the member states the power to cooperate and develop a common environmental legal framework, policy and management strategies that will help combat environmental pollution within the region and preserve water resources, bio-diversity, protect ozone layer, reduce greenhouse gas emissions, land degradation, hazardous toxic substances, and reduce the use of chemical substances that are not environmentally friendly.⁸⁹

The court, for instance, has interpreted environmental matters that affect human rights, economic integration and natural resources. Unlike the SADC Tribunal, the COMESA Court has decided purely environmental cases instituted against the member states, institutions or individuals in conformity with the Treaty provisions. One instance is the case of *Uganda v Kenya (Lake Victoria Environmental Dispute)*,⁹⁰ which involved a dispute between Uganda and Kenya in respect of environmental degradation at Lake Victoria, which is shared by three African countries – Uganda, Kenya, and Tanzania. The COMESA Court of Justice granted an order stopping Kenya from constructing the paper mills due to the environmental harm to both the Lake and the local communities. This landmark decision demonstrates the importance of international treaties, laws, and agreements and the roles of the regional courts in the preservation of the environment and promotion of environmental justice.⁹¹ The COMESA Court has not been suspended to date, unlike its counterpart, the SADC Tribunal. The COMESA Court rather enjoys the overwhelming support of the member states of the region.

One of the challenges of the COMESA Court of Justice is the exhaustion of local remedies rule under Article 26 of the Treaty, which requires that parties to any dispute under the Treaty must first exhaust all the available domestic remedies in the member state(s) involved before approaching the COMESA Court of Justice. In other words, the member states must be accorded the opportunity to have their local courts determine the availability of local remedies before resorting to the regional court. The Court enjoys its independence to date.

CONCLUSION

It has been shown in this paper the roles of the SADC Tribunal in the administration of environmental justice in the SADC region. The series of challenges incapacitating the Tribunal from effective discharge of its functions as enumerated in the SADC Treaty has been well ascertained. The SADC is one of the regions on earth being ravaged by environmental degradation.

The challenges, particularly the suspension, have frustrated the Tribunal from playing its role in the promotion of human rights and environmental justice in the region. Where the Tribunal is deprived of the power to adjudicate issues involving private individuals and the government, it means it has become a toothless bulldog and so incapable of holding the member states of the SADC accountable, even in environmental cases, including other human rights violations. The implication is that the SADC Treaty has just become a mere paper tiger while the governments of the member states pay only lip service to its diverse population. That is why, notwithstanding that the African continent currently has more international courts than any other continent in the World, there is no genuine commitment to the actualization of the intended objectives. Gathii listed the courts as;

⁸⁹Art 124(1) & (2).

⁹⁰ See Masoud Mwinyi, *et al*, 'The Nature of Lake Victoria Transboundary Disputes and Economic Security Management between Kenya and Uganda' (2022)12/4 *Journal of Political Science* 72. It has also delivered another landmark case between *Agiliss Ltd. v The Republic of Mauritius* (Reference No. 1 of 2019, Judgment, 4 February 2025) which involved a dispute over safeguard measures imposed by the government of Mauritius on edible oils imported from Egypt, also a member state of COMESA.

⁹¹ PW Wekesa, 'Old Issues and New Challenges: The Lake Victoria Controversy and the Kenya-Uganda Borderland' (2010)4 *Journal of Eastern African Studies* 338.

The African Court of Human and Peoples' Rights, the East African Court of Justice, the Economic Community of West African States Court of Justice, the Southern Africa Development Community Tribunal Court of Justice, The Common Market for Eastern and Southern Africa Court of Justice, the Common Market for Central Africa, the Court of Justice of the West African Economic and Monetary Union, and the Organization pour l'Harmonisation en Afrique du Droit des Affaires en Afrique.⁹²

The judiciary is the lifeblood of any society, especially when it is independent of the government's interference. In fact, the stability and progress of any democratic institution is determined not only by the importance attached to the judiciary but also by its ability to operate without undue influence of other branches of government or other influential private individuals.⁹³

It ensures that the government and institutions act within the stipulations of the laws by holding them accountable for their actions. With this, the citizens' rights and freedoms are safeguarded. If there must be a substantial protection of the people's rights in Africa, including the SADC region in particular, there must be a conscious effort to subdue the challenges as enumerated above, starting from the reversal of the 2014 Protocol that deprived the SADC Tribunal of the jurisdiction to entertain private litigations against the governments of the member states.

If the SADC Tribunal should be result-oriented, its independence is a prerequisite. The appointment, promotion, discipline, remuneration, and dismissal should be carried out by a neutral body other than the Heads of State of the Member States, being the supreme policy-making Institution of the SADC.⁹⁴ The Tribunal also requires adequate funding and should be encouraged to hold its hearings from state to state, very close to the people, rather than in Windhoek, Namibia, alone. As already noted, Article 16(5) of the SADC Treaty provides that the decisions of the Tribunal "shall be final and binding". This provision should be implemented to the letter, not merely on paper. The laws, Treaties, courts, or tribunals should not be at the whims and caprices of any particular nation or individual, notwithstanding the level of influence.

⁹² James Thuo Gathii, 'Saving the Serengeti: Africa's New International Judicial Environmentalism' (2016)16/2 *Chicago Journal of International Law* 388.

⁹³ U David Enweremadu, 'The Judiciary and the Survival of Democracy in Nigeria: An Analysis of 2003 and 2007 Elections' (2011)1/1 *Journal of African Elections* 16.

⁹⁴ Article 10(1) of the SDC Treaty.