



## Potsdam Spring Dialogues 2009

The Key to Success in  
Peace and Development?  
Regional Governance in Africa

27 - 28 March 2009

**Conference Report**



# Introduction

Spotlighting the Africa of today, the past and the future, prospects as well as challenges, the Potsdam Spring Dialogues 2009 made evident that in the last few years considerable progress has been made in the development of a continental regional organisation, namely the African Union and in the establishment of the Regional Economic Communities (RECs).

Bright prospects were nevertheless also offset by ongoing challenges. RECs continue to be hampered by overlapping memberships and the multiplicity of RECs as a whole. In addition the complexity of networks is growing through new bilateral arrangements with external actors, including the Economic Partnership Agreements (EPAs) with the European Union. Relations among the RECs and to the AU are still only vaguely defined.

Following on from the Potsdam Spring Dialogues 2008, which addressed issues of peacekeeping and security, the focus this year was turned to the institutionalisation of conflict prevention and early warning at a continental and sub-regional level, progress towards the development of a continental system for the protection of human rights, and thirdly the establishment of regional and sub-regional economic areas and advancements made towards economic integration and international trade. Discussions highlighted the interrelation of the global, regional and sub-regional level, evaluating whether African regionalisation provides a building block for global governance.

The conference was held on two days, opening with an overview and followed by three panel discussions on conflict prevention and early warning, human rights, economic development, and concluding with a political outlook on African regionalisation. The following report details the analyses that were presented and the discussions held, reflecting the views of many prominent African leaders, academics and policy makers.

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# Regional Governance in Africa

## Current Situation – Challenges – Future Prospects

Dr **Gerd Harms**, State Secretary and Commissioner of Land Brandenburg to the Federal Government and for European Matters, Potsdam, as well as Deputy Chairman of the Executive Committee of the Development and Peace Foundation (SEF), welcomed the participants of the Potsdam Spring Dialogues 2009 which this year, as in the last year, featured many prominent African leaders and representatives from the international community. "This should be seen as a reflection of the present relevance of the issues to be discussed this year." Harms stressed that in recent history, the importance of regional integration has never been so heightened as today, as the debilitating impacts of the global financial and economic crises continue to unfold.

Outlining the results of last years' conference, the progress made and challenges met in the establishment of a continental peace and security architecture in Africa, Dr **Michèle Roth**, Executive Director of the SEF, addressed a number of recent, promising developments. "The AU went from a policy of non-interference to a policy of non-indifference" as witnessed in the response to recent escalations in Madagascar. Advancements however, are also offset by difficulties in implementation", she noted. Focussing on the development of the African Union she pointed out that "the Panel of the Wise, the Continental Early Warning System, the African Standby Force, for example, largely remain advancements on paper." Calls for action in response to the ongoing escalations in Sudan and Zimbabwe remain unanswered.

Sub-regional bodies have taken on an increasingly prominent role in conflict reaction and intervention, however these need to move beyond conflict resolution to advance conflict prevention and early warning on the continent. Roth noted that in this respect, social and economic development as well as the establishment of stable judicial and political frameworks, to target the root causes of conflicts, should be the core objectives both regionally and sub-regionally.

Africa is still beset with conflicts and development challenges, but equally the last few years have witnessed progress in conflict resolution, transition to democratic governance as well as economic integration. African solutions for African problems took shape.

### Current state of peace and security in Africa

**Geoffrey Mugumya**, Director for Peace and Security, African Union Commission (AU), Addis Ababa, launched the introductory session by stating forthright: "I wish the conflicts in Africa were indeed African, then we could put in place African mechanisms." He provided an overview of latent crises as well as full-blown conflicts in recent years, noting in particular that the resurgence of coups d'état as well as self-appointed leaderships in the last ten months, e.g. in Mauritania, Guinea and Madagascar pose a major threat to efforts of establishing good governance and democratic order.



Geoffrey Mugumya

No significant progress has been made towards the resolution of conflicts in the Democratic Republic of Congo, Somalia, Darfur, between Djibouti and Eritrea, between Ethiopia and Eritrea, in Northern Uganda or Zimbabwe. However, relations between Sudan and Chad are in the process of being normalised, provided they are not affected by the International Criminal Court's (ICC) arrest warrant issued against Sudanese President Omar al-Bashir. Equally, conflicts have been resolved and peace building and reconstruction continue in Burundi, the Comoros, Liberia, the Central African Republic, South Sudan and Côte d'Ivoire.

Mugumya agreed that to date the full operationalisation of the Continental Early Warning System, the Panel of the Wise and the African Standby Force, created under the African Peace and Security Architecture (APSA), remains a

challenge. The RECs represent a key building block of the AU, equally however, the number of officially recognised RECs needs to remain limited. "Putting a lid' on the formation of new RECs will prevent rivalries amongst sub-regional organisations and with the AU, as well as harmonise relations of cooperation with the United Nations."

Ambassador **Abdul-Kadir Bin Rimdap** of Nigeria, delivering the second keynote speech, questioned whether regional integration really represents the ultimate solution for Africa's integration into the world economy, especially in the midst of the current economic downturn. He stated that indeed regional integration is vital for the inclusion of African countries in the world market, towards more inclusive participation in global governance, and from the perspective of poverty reduction regional integration forms an essential requirement for the attainment of the Millennium Development Goals (MDGs) in Africa. Nevertheless, "regional integration is only one of many factors required to propel the continent's economic growth and resurgence."

To date, the relatively poor record of regional integration is attributable to low intra-regional trade, severe macroeconomic disequilibria, over-valued currencies, unevenly distributed benefits among regional member states, the dominance of a few countries, the dependence on former colonial powers, a lack of basic infrastructure, weak private sector integration as



Abdul-Kadir Bin Rimdap

well as political opposition to sharing sovereignty. Nevertheless, in the past decade African leaders have shown renewed support to a new round of regional integration efforts, as evidenced in the progressive objectives of the AU, in relation to the OAU, the restructuring of trade relations between the African, Caribbean and Pacific (ACP) states and the Europe-

an Union (EU), as well as the establishment of the New Partnership for Africa's Development (NEPAD) in 2001.

These should make apparent that Africa supports the basic principles of regionalism. In

the face of the global economic crisis, Rimdap concluded that the present multi-billion dollar subsidies and bailout packages adopted by developed countries, constitute protectionist measures, distort world trade and threaten the economies of developing countries. To support the new regional institutions and enhance Africa's contribution to global governance and the attainment of the MDGs these should encompass the interests of African nations.

### Is the origin of African conflicts African?

Central in the ensuing panel discussion was a return to Mugumya's statement regarding the source of African conflicts as well as a focus on the political commitment of African nations to regional integration on the continent. In whose interest is regional economic and political integration? This question gave rise to a discussion on the role of the AU in advancing regional integration and its most fundamental challenges.

Ambassador **Kassahun Ayele Tesemma** of Ethiopia, argued that the externalisation for political accountability needs to be avoided: "These conflicts are African!" **Mugumya**, rectified his original statement, noting that many conflicts in Africa have endemic origins, however "even for those conflicts that are African we need to acknowledge the external factors." He added that presently "over 90% of peacekeeping activities in Africa are externally funded. Externalisation is how we get partners." Professor **Timothy Shaw** from the University of the West Indies, St. Augustine provided some concluding remarks, noting that the trans-national character of recent conflicts is well exemplified by the influx of small arms and light weapons: "the Karamajong in Sudan are no longer fighting with spears but with AK 47s." The proliferation of small arms has changed the nature of conflicts in Africa, weakening traditional resolution mechanisms and calling for more holistic and multidimensional responses.

### Who wants regional integration?

Dr **Raimund Krämer** addressed the panellists on who stands behind regional integration in Africa. He pointed out that in Europe regional integration was advanced by a few nations as

well as a prominent European elite, acting as the 'motors of integration'. "Are countries like South Africa and Nigeria taking on this role?" "Is African regionalism defined in Addis or in Brussels?" Professor **George W. Kanyeihamba**, Justice of the Supreme Court of Uganda, Kampala, responded that "the problem in trying to identify 'the motors' lies in the lack of a common African view or voice. There is no such thing as an African view at all – on anything!" and for this reason, "we will never see an effective AU government."

Dr **Henning Melber**, Executive Director of the Dag Hammarskjöld Foundation, Uppsala, too, drew into question a sense of 'Africanness', given the considerable disagreement among Africans on future developments: "Africans might sit in the same boat in a hostile sea, but the crew does not agree on a common course." **Rimdap** reaffirmed the lack of common regional objectives among African member states, however added that the question needs to be rephrased from 'who wants integration?' to 'what type of integration?' Nations are regionally more united on peace and security issues than on matters pertaining to economic integration, and depending on the strategic aim of individual nations, African member states can have a common voice.

**Rimdap** also added that the role of external actors such as the EU in defining regional integration should not be forgotten. The Economic Community of West African States (ECOWAS) has been serving as a channel for the mobilisation of European resources to ECOWAS member states. Furthermore, regional co-operation within West Africa continues to reflect colonial linguistic and political affinities, particularly

among the francophone states. ECOWAS has had limited success in formulating an overarching regional integration in opposition to lusophone, anglophone and francophone divisions in the region.

**Kanyeihamba** asserted that regional integration in Africa is indeed advanced by an 'elite', the Permanent Representative Committee (PRC) of the AU. The Committee however, fails to directly represent the interests of African heads of state. Conflicting interests by member states are often disregarded in sessions of the PRC. He noted that in committee meetings, there is a heavy agenda but very little time and attendees are often low or middle rank embassy employees. "This has the effect that resolutions and recommendations of the PRC are accepted with little or any scrutiny or amendment."

#### **African Union to spotlight enforcement**

In **Clifford Nii Kotey's** view, Chargé d'Affaires of the Ghanaian Embassy, Berlin, regional integration is not hindered by the AU architecture, or the PRC in particular, but rather by a lack of AU implementation power. PRC representatives consult with the heads of state prior to endorsing decisions, however "who is going to implement them, if we cannot sanction non-implementation?"

Responding to Kotey, **Mugumya** drew attention to the African Union's imposed sanctions on Mauritania following the military coup in August 2008. In February 2009, the AU called for travel restrictions, the freezing of assets and denial of visas for all civilian and military members of the junta. Mugumya noted that these



Geofrey Mugumya, Michèle Roth, Abdul-Kadir Bin Rimdap, Gerd Harms

sanctions were challenged by AU member states including the AU Chairman himself. He argued that such cases make evident the need for an AU sanction committee, to oversee the

implementation of sanctions by all 53 member states. The committee would provide increased authority to AU instruments, including membership suspension.

## Regional Approaches to Conflict Prevention and Early Warning

Following on from the overviews provided by the morning session on regional governance in Africa the first panel concentrated on regional approaches to early warning and conflict prevention.

### Regional early warning

Ambassador **Abdelrahim Ahmad Khalil**, Former Director of the Conflict Early Warning & Response Mechanism (CEWARN) of the



Abdelrahim Ahmad Khalil

Intergovernmental Authority on Development (IGAD), Addis Ababa. CEWARN was established by IGAD's seven member states in the Horn of Africa in response to rising numbers of cross-border pastoral conflicts in the region and the growing proliferation and access to small arms. It aims to provide early warning and early response to prevent or

mitigate conflicts in the region as well as promote the collaboration between member states on early warning and conflict prevention.

Indicator-based information is collected and analysed by national research institutes (NRIs), independent non-governmental institutions contracted directly by CEWARN. Field missions by the NRIs are private operations. "The complete process is outside of the sphere of national governments", Khalil stressed. In response, recommendations are communicated to decision-makers at the national level through the National Early Warning and Response Units (CEWERUs). CEWARN has been mandated primarily with the monitoring of cross-border pastoral and related conflicts, however aiming to expand its focus to other forms of conflicts in the region. To date, the mechanism has been op-

erationalised in the Karamoja, Somali and Afar-Issa cluster regions.

Khalil noted retrospectively that CEWARN has successfully strengthened partnerships among civil society actors, government and regional organisations in the region as well as improving their institutional and functional capacities to become "one of the most developed regional early warning mechanisms on the continent." Civil society actors have been effectively integrated at the local, national and regional levels of operation. Khalil added however that their role needs to also be reviewed with caution. "In practice traditional leaders, who provide information to CEWARN field monitors, have been intrinsic in both resolving as well as in instigating conflicts."

The inaccessibility of areas is one of CEWARN's main challenges: "the infrastructure is poor and information collected by field monitors is often delayed." Additionally, the open sources of early warning information need to be diversified as conflicts are gradually growing more complex, the capacities of district administrations need to be improved and more sustainable forms of funding need to be secured. Khalil pointed out that "to date, 90% of the mechanism's funding comes from external donors and only 10% from member states." He called for an increase of member states' contribution to 30% by 2011.



Timnit Abraha

**Timnit Abraha**, Regional Coordinator of the Inter Africa Group (IAG), delivered the second address on one of the National Research Institutes (NRIs) operating within the wider IGAD regional network. IAG is an independent, non-profit, non-govern-

mental organisation mandated to provide civic education, advocacy and research on issues of peace, human rights, democracy and development in IGAD member states. Beyond the scope of CEWARN collaboration, IAG aims to provide a network and foster dialogue between governments, inter-governmental organisations and civil society organisations in the region.

Abraha's presentation restated that the role of civil society actors needs to be strengthened: "member states have the ability to develop conflict solutions if civil society organisations become more integrated and are given more precedence." She also joined Khalil in support of regional infrastructure developments and technological investments: "For early warning to improve we require timely information which, for example, calls for satellite technology in remote areas."



João Gomes Porto

### Continental early warning

Moving from the sub-regional to the continental, Dr **João Gomes Porto**, from the Africa Centre for Peace and Conflict Studies, University of Bradford, provided an overview of the AU's Continental Early Warning System (CEWS), one of the four pillars of the African Peace and Security Architecture outlined earlier. He argued that "underlying the continental system is the principle of subsidiarity. The lack of human and financial resources requires the integration of sub-regional and local efforts." Sub-regional early warning systems such as IGAD's CEWARN are integral building blocks of the wider continental architecture.

CEWS consists of an observation and monitoring centre, to be known as the 'Situation Room', responsible for data collection and analysis. This will collaborate with observation and monitoring units at the sub-regional level. The Situation Room is still under development, noted Porto. Once established, it will make use of an early

warning module based on clearly defined and accepted political, economic, social, military and humanitarian indicators to analyse developments within the continent, in order to then recommend best courses of action to the different organs of the AU.

CEWS depends on the use of easy-to-monitor and identifiable indicators. Porto argued that the analysis of these indicators should be made along structural, stakeholder and dynamic lines.

A 'structural' focus aiming to identify the root causes of conflict and the 'stakeholder' focus aiming to identify the main protagonists of the situation. Dynamic analysis combines the two, to allow for contextual scenario development and prognosis. Porto illustratively pointed out: "a protest

in Maputo is very different to one in Rwanda. For this reason researchers need to contextualise the protest as an event."

Porto noted that during the initial conception of CEWS, RECs remained suspicious, as a few were partly more progressive in the development of a sub-regional early warning system, with ECOWAS' Early Warning & Early Response (ECOWARN) and IGAD's CEWARN being well established. Willing to exchange experiences, RECs nevertheless feared being fully subsumed under CEWS. To date, RECs are located at various stages of operationalisation. He maintained that as the AU's peace and security architecture becomes operational, a "proto-epistemic community" needs to emerge.

The subsequent panel discussion, chaired by **Martin Janata** from the Renner Institute, Vienna, returned to the funding of CEWS and CEWARN. Professor **George W. Kanyeihamba** asked to what extent the funding of CEWARN by USAID and GTZ, which presently constitutes 90%, impacts the collection of information, analysis as well as formulation of response options. **Khalil** assured that their influence was limited;

“donors have no influence on our technical work, such as that collection of data and analysis. All in all donors have had a positive influence as they share the underlying CEWARN objective: peace.” **Porto** responded more critically: “external funds for early warning mechanisms, particularly from the EU, have been essential, however are unsustainable in the long run.”

### From early warning to early response

The discussion proceeded to critically question the indicator based methodology that has been adopted regionally as well as sub-regionally. **Angelika Spelten**, Representative of the Institute for Development and Peace (INEF), Duisburg, asked for an elaboration on how different scenarios are defined by CEWS. At what point will a combination of indicators cross a particular threshold to elicit response? **Geoffrey Mugumya** pointed out: “The recent, attempted coup d’état in Madagascar resulted in the death of over 130 people. The AU defined it as an ‘unconstitutional change of power’, is this enough to call for action?” **Porto** reaffirmed that CEWS was still under development but that in general any event, such as the attempted coup d’état in Madagascar, needs to be analysed in relation to other dynamics and underlying structural factors.

Panellists acknowledged, that at the sub-regional level difficulties continue to exist between early warning instruments and mechanisms which provide adequate information on the one hand, and early response on the other hand. **Mugumya** argued that all stakeholders, moving

beyond the AU, need to operationalise existing instruments: “together we need to develop a ‘radar’ whereby particular events will trigger a predetermined chain of response.” In turn, this will require an improved coordination between CEWS and the early warning systems developed by RECs.

### The AU’s ‘Responsibility to Protect’

**Sebastian Wadle**, representing MP Kerstin Müller, asked to what extent the principles of Responsibility to Protect (R2P) were rooted in CEWS and what role they should play. **Porto** replied that R2P together with ‘human security’ thinking is deeply rooted within the AU Constitutive Act and within CEWS in particular. Article 4 (h) of the AU’s Constitutive Act allows for “the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity.” **Porto** elaborated that “R2P remains an evolving norm however, and across the 53 African member states it is something that you very rarely see.” He added that the prerequisite of an AU Assembly decision is indeed very democratic, but “of course not the most efficient way.” “At the root of most conflicts in Africa are fundamental issues of governance.” He added that the AU is a supranational organisation and therefore remains constrained in its capacities. As embedded in the principle of subsidiarity, “the member states cannot be resolved of their responsibility to monitor and to respect these principles.”



Timnit Abraha, Martin Janata, Abdelrahim Ahmad Khalil, João Gomes Porto

## Regional Approaches to the Protection of Human Rights

**Florian Pfeil**, Research and Programme Coordinator of SEF, as chair of the second panel on 'Regional approaches for the Protection of Human Rights' welcomed the participants and stated that in the ensuing discussions the underlying tenet remains that "when it comes to human rights in Africa, there are no 'African norms', rather Africans abide to the same universal principles." The panel proceeded to outline and debate the challenges met and achievements made for the protection of human rights in Africa. Panellists addressed the operationalisation of the African Court on Human and Peoples' Rights, regional human rights courts, as well as the role of international law on human rights litigation in Africa more generally.

### African Court 'stillborn'

As a former Judge of the African Court on Human and Peoples' Rights as well as present Justice of the Supreme Court of Uganda, Professor **George W. Kanyeihamba**, opened earnestly that the "African Court on Human and Peoples' Rights was 'stillborn'." "When we were appointed

as judges, we thought we were going as judges. Yet we found that the Court in Addis didn't have a building, no legal officers, no technical equipment. It had nothing! And to date, no cases have been heard by the Court."

Kanyeihamba argued that "the court, from its conception, was doomed to fail." The protocol of the court did not ensure that judges should be elected based alone

on their competency. Francophone and anglophone judges continue to be unequally represented among the present members of the court. In addition Article 15 of the protocol on the tenure of the judges, remains unclear to the effect "that a few pioneer judges of the Court serve a mere two or four years while the rest serve up to twelve years!" He added that to date a few of the court's judges are utilising the court merely "as a place of secure employment, as opposed to operationalising it."



George W. Kanyeihamba

To the role of the court, Kanyeihamba pointed out that the Constitutive Act, transforming the OAU into the AU, clearly spelt out the establishment of an independent, impartial judicial system within the AU. The court should be placed at the same level as the African Union Assembly and the parliament, establishing a separation of powers as well as an attendant system of checks and balances. Kanyeihamba noted that the status and role of the AU organs, as called for by the Constitutive Act, remained unrealised and instead the African Court on Human and Peoples' Rights was established as a subservient organ to other institutions of the AU.

**Tawanda Hondora**, Deputy Director of the Africa Programme at Amnesty International, London, responded to Kanyeihamba's address on a more optimistic note: "The court

was not 'stillborn' - it was a very first attempt. Mistakes were made and lessons were learnt." Contrary to popular opinion, the problem with African courts, regionally and sub-regionally, is not the ratification of international human rights protocols, treaties or conventions, but their implementation and enforcement.

Hondora viewed the International Criminal Tribunal for Rwanda (ICTR), the Special Court for Sierra Leone as well as the International Criminal Court (ICC) in The Hague as important representations of international human rights law in Africa. "The ICTR and the Special Court for Sierra Leone have their critics, nevertheless they have delivered unprecedented judgments." The ICC has equally received critical acclaim, having launched investigations in the Democratic Republic of Congo, Sudan, Somalia, Uganda and the Central African Republic, with no final ruling in any of these cases. Hondora remained optimistic however, that once these cases take shape the ICC will usher in a new period of international accountability and deterrence.



Tawanda Hondora

The panel's third speaker, **Lloyd Kuveya**, Project Lawyer at the Southern Africa Litigation Centre (SALC), Johannesburg, and Member of the Executive Committee of the Coalition for an Effective African Court on Human and Peoples' Rights (CEAC) joined Hondora in an optimistic appraisal of regional developments. CEAC was formed in 2003 by individuals, national human rights institutions and non-governmental organisations (NGOs) working in and on Africa. Its objectives include the full ratification of the protocol establishing the African Court on Humans and Peoples' Rights (25 out of 53 member states have ratified it to date), to enhance transparency in the nomination and election of judges, to provide a platform for sustainable civil society participation in the creation of the African Court, to provide technical support to the AU and the African Court and to push for an amendment of the access provision to enable NGOs and individuals direct access to the court. Kuveya highlighted the important inroads that have been made in the establishment of the court.



Lloyd Kuveya

Turning to his capacity as a project lawyer for SALC, Kuveya concentrated on the Southern African Development Community (SADC) Tribunal, operationalised in 2005, which recently passed its first judgement in the land dispute between the government of Zimbabwe and former white Zimbabwean farmers. The tribunal held that the seizure of land by the Government of Zimbabwe was arbitrary, racially motivated and contrary to the rule of law. The Government of Zimbabwe has since defied the ruling of the Southern African tribunal, claiming that the SADC Tribunal does not stand superior to the courts of its individual member states, and expressed its intention to continue the land reforms. Kuveya noted that President Mugabe "has ignored the judgement, despite having ratified the SADC tribunal. Once you ratify, you are bound to its decision."

Following President Mugabe's reaction to the SADC ruling, the High Court of Zimbabwe ruled that the SADC Tribunal's decision does

not apply and cannot be enforced in Zimbabwe. Kuveya argued that the case highlights the limits of enforcements mentioned by Hondora. International legal arrangements, such as the SADC tribunal, will not be effective if states, party to these international agreements, can draw upon rulings of domestic courts in their favour. Kuveya noted that it was unfortunate, that the tribunal's first case appears to be non-enforceable, however it should be taken as a poignant reflection of the courts progressiveness.

### Assessing the African Court on Human and Peoples' Rights

**Thilo Marauhn**, Professor for Public Law, International Law and European Law at the University of Giessen, returned to Kanyeihamba's address and emphasised that when evaluating the African Court on Human and Peoples' Rights, one has to set a benchmark. "Should the European Court of Human Rights, the Inter-American Court or the ICC present an adequate benchmark for the court?" On Kanyeihamba's critique on the representation of judges, Marauhn pointed out that similar to the African court, the judges of the European Court of Human Rights in Strasbourg used to be appointed by states as opposed to being elected by the Parliamentary Assembly of the Council of Europe, as is the case now. Equally, individuals did not enjoy direct access to the court: that was only made possible through a reform process in 1994. He concluded that "one has to be careful when evaluating the African court, particularly in comparison to 'what other regional court' one evaluates. The different regional institutions are not comparable."



Thilo Marauhn

Returning to Hondora, Marauhn agreed that the purpose of regional courts should not be to address all human rights violations, but only the most severe cases that cannot be adequately addressed by domestic judiciaries. It should be a judicial role model for national courts, and thirdly, should effectively integrate the heterogeneity of judicial traditions in the region- including anglophone common law vs. francophone civil law.

## Human rights advancements begin at the grassroots

To improve the operationability of the court, Marauhn welcomed CEAC's aim to enable individuals as well as NGOs direct access to the court without prior declaration by the state party concerned. In comparison he argued that the direct access of individuals and NGOs to African sub-regional courts has been established. "Only through direct access to a court do you achieve human rights advancements on the ground." Secondly, the African Court on Human and Peoples' Rights needs to clearly define its relationship to sub-regional courts. National courts represent the corner stone of effective implementation; "a regional court, like the African Court, can support human rights advancements at a national level, but cannot replace them. If there are no adequate measures to implement its rulings at a national level, the court will inevitably fail."

In the subsequent plenary discussion, focus returned to the SADC Tribunal. **Helmut Asche**, Professor for Economics and Politics in Africa at the University of Leipzig, questioned SADC's choice for such a sensitive issue as its first case. **Kuveya** responded that "we realise it is a politically sensitive case, but through its ruling, the court addressed issues of political freedom and other human rights in southern Africa. Let the judges make decisions and let them be recorded!" **Hondora** added that indeed the decision by the High Court of Zimbabwe to defy the ruling of the tribunal was not unexpected. "Judicially the High Court was correct." The High Court of Zimbabwe had ruled that the SADC Tribunal is not recognised as a superior court to national courts. Zimbabwe had signed the SADC Treaty, however not amended its domestic law in accordance with the treaty. Without SADC member states passing enabling legislation, the rulings of the tribunal will remain un-enforceable.

## Moving beyond 'stillborn'

What needs to change to reverse these trends and avoid these pitfalls? questioned Ambassador Professor **Maria Nzomo** from the Institute of Diplomacy and International Studies, University of Nairobi. Marauhn and Kuveya returned to

the importance of domesticating international and regional human rights instruments. "Constitutional reforms represent the turning point", argued **Marauhn**. Most countries in Africa have ratified international and regional instruments, however advancements remain modest in terms of domestication. **Kuveya** illustrated that "the majority of African countries have ratified the Rome Statute of the ICC, however, only South Africa and Senegal have passed implementing legislation to align their national systems with the Rome Statute." **Marauhn** added that socio-economic and political conditions are intrinsically related to domestication: "the European Convention on Human Rights was not adopted until 1950 when Europe had abolished its dictatorships."

"Secondly", Marauhn responded to Nzomo, "we need to strengthen the involvement of NGOs and civil society more generally." **Kuveya** in agreement pointed out that "to date only five NGOs have been officially recognised by the SADC Tribunal, and this is not enough!" Civil society engagement through NGOs remain a prerequisite for advancing human rights at a grassroots level.

## ICC investigations in Africa

**Ole Thonke**, Deputy Head of the Africa Department, Ministry of Foreign Affairs of Denmark, Copenhagen, turned the focus to the ICC, questioning whether it can be seen as a welcomed addition to democracy and human rights in Africa. Making reference to ICC investigations in the Democratic Republic of Congo (DRC) as well as Northern Uganda, participants questioned whether the present involvement of the ICC contributes to or undermines peace. In addition, without questioning the ICC's inherent capacity to realise peace and justice, does it selectively open investigations in conflicts while ignoring others?

**Hondora** highlighted that both Uganda and the DRC had ratified the Rome Statute, and in the case of Uganda, the referral was made by President Museveni himself. Museveni's present opposition to ICC investigations in Uganda as well as responses by African heads of state to

the arrest warrant issued against the Sudanese President al-Bashir make evident that the ICC's involvement and the entire process of accountability have become highly politicised. "Many African countries use the ICC", noted Hondora.

Hondora continued that following questions arose in international discussions, in response to the arrest warrant issued against President

al-Bashir: why al-Bashir? why now? and will the indictment exasperate the crisis in Darfur? "Putting on my 'amnesty hat' to answer these questions", Hondora responded that "at the end of the day someone has to be brought to account. The case of al-Bashir sends a strong signal to African countries that serious crimes in violation of international law will not be tolerated."



Thilo Marauhn, Lloyd Kuveya, Florian Pfeil, George W. Kanyeihamba, Tawanda Hondora

## Regional Approaches to Trade and Development

Central to the morning panel of the second day was a focus on the role of the African Union (AU) and Regional Economic Communities (RECs) in advancing intra-regional trade and economic development in Africa.

Framing the discussion, **Brian Chigawa**, Director for Legal and Institutional Affairs at the Common Market for Eastern and Southern Africa (COMESA), Lusaka, outlined the challenges met by economic institutions regionally as well as sub-regionally, noting in particular that the colonial influence on regional integration in Africa today remains significant. Economic dependencies on former colonial powers remains strong, and the colonial infrastructure based on export remains a constraint to inter-regional trade.



Brian Chigawa

Chigawa outlined the advancements made by RECs in relation to Stage 3 of the Abuja Treaty implementation, which calls for the establishment of a free trade area and a Customs Union

at the level of each REC. He pointed out that the Common Market for Eastern and Southern Africa (COMESA) launched a free trade area with nine member states in 2000, today encompassing 14. In addition, COMESA plans to launch a customs union this year. The Southern African Development Community in relation, launched a free trade area last year and aims to develop a customs union by 2010.

According to Chigawa, factors of production, trade financing and low levels of industrialisation are the main challenges of economic development today. He noted that "progress has been made with regards to easing the factors of production, but free movement of goods and people is still difficult." In addition, Africa is still perceived as risky for investment. "Peace and security issues on the continent have had a tremendous impact on investments. Economic development and issues of peace and security are two sides of the same medal." Nevertheless these challenges are being addressed by the RECs, he argued. COMESA launched the Trading for Peace programme in 2006, researching the role of trade in peace-building and poverty

reduction in the Great Lakes region. In addition, conflict resolution mechanisms as well as sub-regional courts are being firmly established. Lastly, Chigawa added that Africa's regional economic communities continue to suffer from overlapping memberships, inevitably increasing the inherent complexity of economic cooperation between African states.

Regional trade blocks are trying to harmonise and complement their operations, "not only technically but also politically." The East African Community (EAC), SADC and COMESA launched their first tripartite summit in October 2008. Attended by respective Heads of State and Government, they agreed on the harmonisation of trading arrangements amongst the three RECs, free movement of business persons and joint implementation of inter-regional infrastructure programmes. To improve trade within and between the RECs, Chigawa called for trade facilitation reforms, in particular a simplification of trade-related regulations and requirements for 'low value, grassroots level trade'.

#### **Linear economic integration: addressing the real challenges?**

Turning from COMESA to SADC, **J.B. Cronje**, researcher at the Trade Law Centre for Southern Africa (tralac), Cape Town, provided a more



J.B. Cronje

critical view of economic integration at the level of RECs. Weak implementation of agreements still appears to hamper regional integration: "Implementation does not seem to be a priority. Member states shy away from firm commitments. SADC provides a good example. In total, over 20 SADC protocols have been adopted, of which only very few have been fully implemented."

Cronje noted that the SADC Trade Protocol included the establishment of a Free Trade Area (FTA). Beyond the FTA, SADC's ambitions for regional integration are outlined in the Regional Indicative Strategic Development Plan (RISDP) that considers the FTA a building block for the

establishment of a customs union by 2010, a common market by 2015, a monetary union by 2016 and a common currency by 2018. Cronje argued, that "member states continue to reaffirm their commitment to the RISDP milestones, yet it is regional consensus that the linear model of regional integration, which underpins this strategic plan, does not address the real challenges of regional integration."

Fundamentally, efforts need to be targeted towards the development of adequate infrastructure (incl. roads, railway, etc.), a greater reduction of non-tariff barriers (incl. customs and border procedures), and more comprehensive consultation with the private sector in particular the adaptation of policies in support of good business decisions. The FTA calls for trade liberalisation through the removal of import tariffs from other member states as well as a reduction of non-tariff barriers. Cronje upheld that initiatives to target non-tariff barriers have remained insufficient, and with regards to tariff reductions "one has to remember that import tariffs function as specific instruments for different countries." For South Africa, import tariffs are important in the country's industrial policy, used selectively to protect the clothing and textile industry among others. For other SADC member states, import tariffs continue to be a source of government revenue. The trade-industry-fiscal nexus should not be ignored.

In addition, Cronje argued that the launch of the FTA requires a greater focus on the Southern African Customs Union (SACU), a REC within SADC. "If SACU consisting of Botswana, Lesotho, Namibia, South Africa and Swaziland is indeed seen as a building block for the SADC customs union to be established by 2010, its agenda needs to be given greater priority." South Africa is also a member of both RECs and as a dominant economic player in the region, a focus on the future of SACU is crucial. In conclusion Cronje noted that SACU has established a revenue sharing formula whereby customs and excise collected in the common customs area are paid into South Africa's National Revenue Fund and shared among member states. He called upon SADC to equally address the equitable sharing of national revenue in upcoming agendas.

### Economic integration requires new strategies

“To get a realistic picture of regional economic integration”, **Helmut Asche**, Professor for Economics and Politics in Africa at the University of Leipzig, pointed out that one “should take a look at the COMESA website. Under ‘Achievements’ it will tell you ‘is under construction’.” He went on to argue that “the impact of RECs on economic integration, across the continent as a whole, remains modest.” Despite the different advancements made by RECs, “the degree of inter-regional trade in Africa (as a share of total foreign trade) as well as intra-regional trade within RECs remains very low in comparison to



Helmut Asche

international standards.” Steps taken towards regional integration are often merely advancements on paper. Asche argued that “the establishment of a customs union for example, as has been done by a few RECs, requires in economic terms not only the establishment of a common external tariff but also an internal liberalisation of trade.” He argued that “almost all of the RECs today are ‘preferential trade areas’ and not more. They are not free trade areas or customs unions.”

### Will RECs survive the EPA negotiations

Asche outlined the current negotiation process on an Economic Partnership Agreement (EPA) between the European Union and the ACP (Africa, Caribbean, and Pacific) countries which was meant to reinforce regional integration. The agreement calls for reciprocal reduction of import tariffs by the EU and ACP countries, as well as focusing on the so-called “Singapore Issues” including investment agreements with rights of establishment, competition, intellectual property and government procurement. The regional groupings within which African countries are negotiation are not in line with the borders of the formally recognised RECs, except for the East African Community (EAC). Asche projected that under the EPA negotiations “the EU is aiming to rearrange the regional economic communities in its interest, and apart from

the EAC, whose countries all signed an interim EPA, many RECs will not survive.”

Drawing on the economists Paul Collier and Anthony Venables, he argued that “economic integration between less developed countries bears no benefit: least developed countries don’t gain anything as they are less competitive in an integrated and liberalised market. Relatively less developed countries would gain a bit. Benefits out of external and internal trade will mostly be drawn by the more industrialised countries.” Asche concluded that regional integration requires RECs to address, upfront, intra-regional divergence through intra-regional industrialisation policies. Asche also joined Cronje in support of revenue compensation mechanisms, such as revenue sharing among SACU member states, providing considerable compensation to the smaller and more fragile economies, for the trade benefits that flow to South Africa.

### Boosting trade in Africa: what is the panacea?

In the subsequent panel discussion, Dr **John Emeka Akude**, Lecturer in the Department of Political Science and European Affairs, University of Cologne, pointed out that the lack of inter-African trade has been a topic since the 1970s: “why has nothing changed since then?” **Asche** responded that intra-regional divergence within the RECs needs to be overcome. Secondly, as Cronje noted, internal trade barriers are not being reduced, partly for fiscal reasons. “African governments fear that following the removal of internal tariff barriers, sheer market forces will not be enough to bring about change.” “They are not wrong! Sheer market forces won’t solve the problem. The only solution is liberal industrial policies whereby different countries specialise on different goods.” **Chigawa** added that African countries’ foreign exchange earnings are heavily dependent on primary commodities. The export bases need to be diversified to increase the competitive value of African products.

**Kanyehamba**, as former Minister of Commerce in Uganda, argued that “Ministers such as myself are hampered by a lack of knowledge in trade negotiations regionally as well as inter-

nationally. We need to be trained in order to understand the system." **Asche** in response asked: "yes, capacity building is very important, the question is from whom?" **Cronje** added that "there remains a disconnection between capacity building at an individual level and the challenges associated with poor institutional trade capacities." Individuals need to be provided with sufficient institutional support in terms of resources, incentives and knowledge of trade issues in order to avoid brain-drain. "I have seen many highly qualified officers leaving the public for the private sector."

Nigerian Ambassador, **Abdul-Kadir Bin Rimdap**, concluded the discussion by pointing out

that "the lack of demand as well as competitive value of African products including coffee from Ethiopia or copper from Zambia should also be correlated with the impacts of the economic and financial crises. The impact of the crises on regional economic integration will continue to unfold. **Chigawa** added that the progress made by RECs should not remain fully denigrated. "We need to remember where Africa came from. COMESA intra-regional trade has significantly increased due to the FTA agreement. It started out with much lower numbers." Chigawa remained optimistic that the RECs constitute building blocks of economic integration in Africa. "I am not a prophet of doom", he concluded, "I have hope for the future of the continent."



J.B. Cronje, Günther Taube, Brian Chigawa, Helmut Asche

## African Regionalisation: Building Block for Global Governance?

Global governance faces a fundamental dilemma. The policy authority for global problems is primarily held by nation states, while potential solutions to them are vested at the regional and global level. Does African regionalism provide a solution to this dilemma by providing a link between national and global governance? Can regions become the primary locus for effective solutions?

### The informality of cross-border regionalism in Africa

In his introduction, **Timothy Shaw**, Director of the Institute for International Relations, University of the West Indies, St. Augustine, argued that 'regionalism' needs to be redefined. Not only formal inter-governmental pressures are presently defining and redefining regionalisms, but also informal and non-state cross-border relations. Extra governmental flows

of "drugs, foods, guns, manufactures, money, people, religions, vehicles etc." are a growing problem. Shaw restated to previous presentations that in most parts of Africa, such informal exchange is considerably larger than formal flows of trade. Regional integration may in part be driven more by the informal sector as well as by corporate strategies than by inter-governmental negotiations and declarations. In turn a move beyond intergovernmental law to mixed-actor governances is increasingly needed, as exemplified through the Ottawa Process against land mines or the Kimberley Process to stem the flow of conflict diamonds. Shaw argued that the direction of a 'new global and regional governance' will also be inevitably defined by the emerging economies of Brazil, Russia, India and China (the BRICs).

"Who defines African regionalism in the new century: the AU and/or the BRICs? Will these

countries develop an axis to other burgeoning actors in the 'new middle (G20)' or to the historical south (G77)?" Shaw upheld that the BRICs maintain their own ambitions with regards to regional development in Africa, drawing on China's increasing aid to Africa outside of OECD Development Assistance Committee (DAC) rules. The BRICs may be able to advance mutually beneficial inter-regionalisms by advancing new forms of 'network diplomacies' and not being confined to the traditional 'club diplomacies', he argued.



Timothy Shaw

Ambassador Professor **Maria Nzomo**, from the Institute of Diplomacy and International Studies, University of Nairobi and Former Ambassador and Permanent Representative of Kenya to the United Nations and other International Organizations in Geneva, joined Shaw in her statement on the increase of extra-governmental flows: "Religion for example is becoming an industry, fundamentalism has found a market and both are beyond the control of the state." The poorer the people become, the more important becomes religion. "Drugs, guns, pirates" are the profound implications of globalisation, regionalisation, and the restructuring of the nation-state. These make it necessary to transcend the traditional focus on formal and public modes of governance at the national as well as global level.

"Multilateral global governance institutions are little more than a collection of national governances with all their forms and problems", maintained Nzomo. Members of institutions like the World Trade Organisation or the Human Rights Council are nation states, each negotiating for pre-set national as opposed to regional interests. African nations do not operate in unified sub-regional blocks in multilateral negotiations, and as a result often fail to protect Africa's overarching interests. Nzomo argued that the source of fragmentation among African countries at the

global level can be traced back to divisions at the regional level (historical, linguistic, developmental divisions). In addition, the BRICs further instrumentalise the divisions among African states in their interests. Therefore, she critically assessed whether one can talk about "African regionalisation as a 'building block' for global governance, when we don't have an 'African block'." Blocks are amorphous and RECs are mushrooming.

In contrast, on matters of human rights, Nzomo argued that African nations develop a continental solidarity. In March 2006 the United Nations Human Rights Council established the Universal Periodic Review (UPR) process as a peer-review mechanism, i.e. an intergovernmental process by which states review the fulfilment of human rights obligations of states, similar to the African Peer Review Mechanism (APRM) established in 2003. "The UPR was initially met with strong resistance by many African countries, wanting to protect their governance from being reviewed."



Maria Nzomo

Nzomo upheld that the lack of a unified front is not the only reason for Africa's marginal advancements at multilateral negotiations. "The rules of operation at the last Doha round, which were meant to favour developing countries, were never made." Nzomo maintained that to date, Africa will gain nothing out of the Doha Rounds "partly due to the way the negotiations were framed from the very beginning."

The panel's third speaker, **Udo Volz**, Deputy Head of Division for West and Central Africa, Federal Foreign Office, argued that the building block for global governance was effective regional governance. "I agree that organised crime and fundamentalism is increasing. Nation states need regional partners to address these issues." In this respect, Volz argued, ECOWAS has been one of the most advanced RECs, as evidenced in the



Udo Volz

joint policy responses to the 'dutch disease'. Effective cooperation between the Federal Foreign Office (AA) and RECs requires unified political and economic intentions. "The Maghreb Arab Union, for example, fails to establish a common voice to this day, jeopardising the effectiveness of cooperation with the AA." Equally, the BRICs, particularly China, require stable sub-regional institutions, "or else, their successes will remain short-term."

Dr **Henning Melber**, Executive Director of the Dag Hammarskjöld Foundation, Uppsala, and Member of the SEF Advisory Board, as chair of the panel, returned to Nzomo's contribution on the power to African states to represent their interests in global institutions. **Nzomo** illustratively drew upon her experience as a participant at the last election for the Director General of the World Health Organisation in November 2006. "Different groups of African nations had received different instructions with regards to whom they should vote. African countries remained diverged. Towards the end of the election however, we were instructed to all vote for China. "African heads of state were at the FOCAC Summit in Beijing at the time and "had been given 'baskets of goodies'." She added that the election of Dr Chan as Director General of the WHO, was not being questioned, however was significant in illustrating Africa's participation.

### **African problems with international dimensions**

Ambassador **Abdul-Kadir Bin Rimdap** argued that extra governmental flows, including drugs and guns, as well as recent coups d'état, including Guinea (December 2008) and Madagascar (March 2009), can be traced back to international origins: "criminal activities in Africa are sus-

pending in a global order." **Geoffrey Mugumya** added that piracy off the coast of Somalia further exemplifies the issue. "When we look at conflicts in Africa we look at the manifestation of the conflict but not the real sources." Somalia, with no stable government since 1991, has the largest open coastline in Africa. The increased threat of maritime piracy bears international consequences, and has resulted in international piracy operations. Focus on the underlying causes however, remains marginal. Somali piracy is merely a symptom of deeper issues.

Beyond the call for stronger international response, **Brian Chigawa** argued that the permanent memberships of the UN Security Council need to be expanded in order to improve Africa's role in global governance. **Nzomo** agreed that "a democratisation of the UN in this respect is urgently needed!"

In a few concluding remarks, Ethiopian Ambassador **Kassahun Ayele Tesemma** argued that one should not 'yet' consider the RECs to be 'failed building blocks' for global governance. "One needs to remember where Africa came from and the improvements that have been made." He stressed that "side by side with undeniable problems, there is a clear tendency towards democracy among African states." **Nzomo** added that "the problem of global governance can not be traced back to African membership. The African particularities of the problem are merely a very small part and I don't see how global governance as a whole, excluding Africa, is developing in a positive manner." She concluded that, to date, the RECs do not constitute effective building blocks for Africa's global economic and political integration. Good global governance requires effective regional governance.

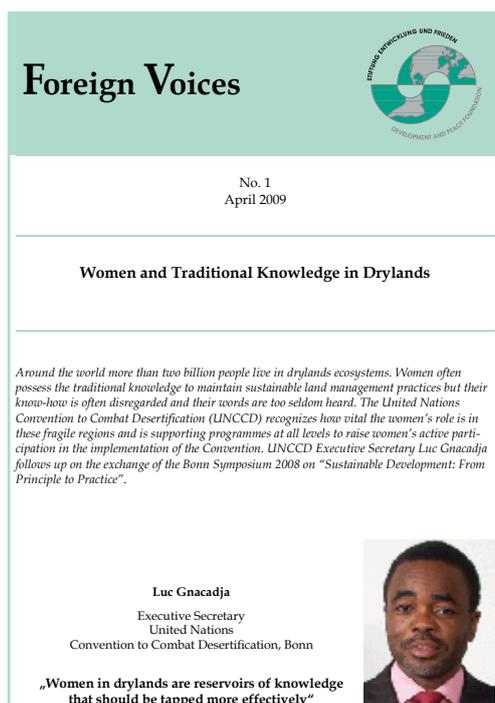


Udo Volz, Maria Nzomo, Henning Melber, Timothy Shaw

## Online Publication: Foreign Voices

The Development and Peace Foundation (SEF) launched the Foreign Voices series to give a voice to experts from other regions of the world and to deliver insights into new discourses and political perspectives. Foreign Voices aim to communicate positions and debates surrounding development, peace and security issues into the public discourse, aiming to move beyond national expert circles or academic arenas.

Each issue of Foreign Voices consists of politically concise statements by one or two authors, depending on the nature of the topic. The Foreign Voices are published in English three or four times a year on the SEF website.



Women often possess the traditional knowledge to maintain sustainable land management practices but their know-how is often disregarded and their words are too seldom heard. Following on from this assumption, **Luc Gnacadja**, Executive Director of the United Nations Convention to Combat Desertification (UNCCD), calls for improved participation of women in dryland development programmes.

His views are presented in Foreign Voices No. 1/2009 "Women and traditional knowledge in drylands". Due to traditional genderbased roles, women carry multiple workloads, yet have limited access to resources and information. UNCCD is therefore in the process of establishing a gender policy to be implemented in desertification and land degradation programmes.

[http://www.sef-bonn.org/download/publikationen/foreign\\_voices/foreign-voices-1-2009.pdf](http://www.sef-bonn.org/download/publikationen/foreign_voices/foreign-voices-1-2009.pdf)

In the wake of the xenophobic attacks in South African cities in May 2008, **Dr Aurelia Wa Kabwe-Segatti** explores the issue of governance of migration in South Africa and its obvious shortcomings in the current issue of Foreign Voices, entitled "In the aftermaths of the xenophobic violence in South Africa: How can South African cities respond?" The South African authorities proved to be unprepared for these events, while international observers were taken by surprise by the scale of the violence. An analysis of the political failures can help South African cities to counter xenophobia among their residents in the future. Dr Aurelia Wa Kabwe-Segatti from the Forced Migration Studies Programme at the University of the Witwatersrand, Johannesburg, was a speaker at the Berlin Summer Dialogue 2008.

[http://www.sef-bonn.org/download/publikationen/foreign\\_voices/foreign-voices\\_2008-3.pdf](http://www.sef-bonn.org/download/publikationen/foreign_voices/foreign-voices_2008-3.pdf)



Report on a conference organised by the Development and Peace Foundation (SEF), Capacity Building International (InWEnt) and the Renner Institute

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