

HUMAN RIGHTS ASPECTS OF EUROPEAN UNION-SADC ECONOMIC PARTNERSHIP AGREEMENT

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EX-POST EVALUATION OF THE EU-SADC ECONOMIC PARTNERSHIP
AGREEMENT

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Human rights in the EU-SADC EPA

WHY HUMAN RIGHTS?

- **Business must be conducted with human rights in mind because inter alia:**
 - **Businesses, although owned by corporations, governments etc, is conducted by people (employees, contractors and suppliers), to serve people's needs (consumers), and within the context where people live (community), and within the context of governments regulation.**
 - **Therefore, business operations impact the above stakeholders in all areas of their value chains.**
 - **Among this impact, is the impact on the human rights of all the stakeholders stated above.**
 - **Hence it is accepted that business must be conducted with due regard to its impact on economic, social and environment/governance (ESG) areas of its operations.**
 - **Businesses, like states are also obliged to respect human rights i.t.o the horizontal application thereof.**
- **The effect is that businesses must look beyond profit-making and consider ESG impact too.**



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WHAT ARE HUMAN RIGHTS?

- According to the Office of the High Commissioner for Human Rights (OHCHR), human rights are:

“...rights we have simply because we exist as human beings - they are not granted by any state. These universal rights are inherent to us all, regardless of nationality, sex, national or ethnic origin, color, religion, language, or any other status. They range from the most fundamental - the right to life - to those that make life worth living, such as the rights to food, education, work, health, and liberty. Human rights are inalienable. They should not be taken away, except in specific situations and according to due process.”



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WHAT ARE HUMAN RIGHTS?

- **Core international human rights conventions:**
- International Convention on the Elimination of All Forms of Racial Discrimination (1965).
- International Covenant on Civil and Political Rights (1966).
- International Covenant on Economic, Social and Cultural Rights (1966).
- Convention on the Elimination of All Forms of Discrimination against Women (1979).
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984).
- Convention on the Rights of the Child (1989).
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990).
- International Convention for the Protection of All Persons from Enforced Disappearance (2006)



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WHAT ARE HUMAN RIGHTS?

- **Core international human rights continued:**
- Convention on the Rights of Persons with Disabilities (2006).
- Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (2008).
- Optional Protocol to the International Covenant on Civil and Political Rights (1966).
- Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (1989).
- Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (1999).
- Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (2000).
- Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000).



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WHAT ARE HUMAN RIGHTS?

- **Core international human rights continued:**
- Optional Protocol to the Convention on the Rights of the Child on a communications procedure (2011).
- Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (2002).
- Optional Protocol to the Convention on the Rights of Persons with Disabilities (2006).



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WHAT ARE HUMAN RIGHTS?

- **Core African human rights conventions and institutions:**
- African human rights conventions:
- African Charter on Human and Peoples Rights (1981).
- African Charter on the Rights and Welfare of the Child (1990).
- Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa (2003).
- OAU Refugee Convention (1969).
- African Commission on Human and Peoples Rights (ACHPR).
- African Court on Human and Peoples Rights.

- **In addition, African states provide for human rights in various legislative instruments, such as the Bill of Rights in the Constitution of the Republic of South Africa.**



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WHAT IS THE EU-SADC EPA STANCE ON HUMAN RIGHTS?

- **The EU-SADC EPA parties commit to sustainability in the implementation of the agreement (Chapter II).**

“2.The Parties understand this objective to apply in the case of this Agreement as a commitment that:

(a) the application of this Agreement shall fully take into account the human, cultural, economic, social, health and environmental best interests of their respective populations and of future generations.”

- **The EPA is therefore focused on people-centred development.**



Human rights in the EU-SADC EPA

WHAT IS THE EU-SADC EPA STANCE ON HUMAN RIGHTS?

- **The EU-SADC EPA recognises the right of parties to regulate in their jurisdictions, including in the environment, labour protection.**
- **EPA parties are obliged to effectively enforce, its environmental and labour laws, and they cannot derogate from this duty.**
- **EPA parties commit to enhance the contribution of trade and investment to the goal of sustainable development in its economic, social and environmental dimensions.**



Human rights in the EU-SADC EPA

WHAT IS THE EU-SADC EPA STANCE ON HUMAN RIGHTS?

- **The EPA parties may co-operate in the areas of:**
 - (a) the trade aspects of labour or environmental policies in international fora, such as the ILO Decent Work Agenda and MEAs;
 - (b) the impact of this Agreement on sustainable development;
 - (c) corporate social responsibility and accountability;
 - (d) trade aspects of mutual interest to promote the conservation and sustainable use of biological diversity;
 - (e) trade aspects of sustainable forest management; and
 - (f) trade aspects of sustainable fishing practices.



Human rights in the EU-SADC EPA

WHAT IS THE EU-SADC EPA STANCE ON HUMAN RIGHTS?

- African people have a right to economic, social and cultural development.
- SADC states, like all African states have an obligation to ensure the exercise of this development.
- The EPA is one of the avenues via which this development can be enhanced.
- Questions:- Do all SADC states have the capacity to enable this level of development?

-What assistance do they need to enable them to do so?



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ISSUES ARISING

- What happens if a party doesn't adhere to the commitments to adhere to or enforce the rights above?
- What about the access to enforcement of rights by citizens and NGOs at
 - Domestic level, bearing in mind the unequal levels of the rule of law in African states based on e.g WGI, FH, Mo Ibrahim Index. Some SADC states are among the worst in this regard.
 - ACHPR, bearing in mind:
 - the exhaustion of local requirements rule before the ACHPR can be approached?
 - the weak enforcement of the Commission's reports.
 - ACJ, bearing in mind that:
 - the court doesn't have compulsory jurisdiction, and only 8 states have consented to the jurisdiction of the court?
 - Non-state parties don't have *locus standi* before the SADC Tribunal.
- Furthermore, non-state parties do not have access to DSMs in trade agreement.



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Concluding remarks

- **There is a sufficient human rights basis in Africa as a region.**
- **The challenges at state level lie in terms of access to and enforcement of human rights.**
- **African states and SADC states in particular, require various forms of assistance to place them at a level whereby their people can enjoy the human rights available to them.**
- **Rule of law surveys consistently show that there are challenges in some SADC states in terms judicial resources and the separation of powers. These states require assistance to capacitate their judiciaries accordingly.**



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END

THANK YOU

