

1991

Africa

Recommended Citation

Africa, 25 INT'L L. 1053 (1991)

<https://scholar.smu.edu/til/vol25/iss4/12>

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REGIONAL DEVELOPMENTS

Africa*

The last decade has been a time of crisis and challenge for Sub-Saharan Africa. It has experienced ten years of economic decline, political problems, wars, increasing numbers of refugees, wide-scale starvation, and epidemics of AIDS and cholera.¹ While the media have reported on these problems and the international community's efforts to assist their victims, they have not been as diligent in reporting on the efforts that the African people themselves are making to deal with their situation. In fact, the African people have been actively seeking to overcome their difficulties through increasing popular participation in the economic and political structures of the various African countries and through regional cooperation and coordination.

The experiences of the last decade have convinced the majority of Africans that the political and economic development strategies that Africa implemented in the 1970s and early 1980s were flawed and that new policies need to be formulated and implemented.² Under the intellectual leadership of the United Nations Economic Commission on Africa, Africans have come to recognize that while their difficulties may be due in part to a hostile external environment, they are also caused by domestic policies. Of particular concern are excessive state

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1. Between 1980 and 1989 Sub-Saharan Africa experienced a 2.2% decline in real GDP per capita, and many Africans are now as poor as they were thirty years ago. For a detailed discussion of the economic problems faced by Africa, see THE WORLD BANK, SUB-SAHARAN AFRICA: FROM CRISIS TO SUSTAINABLE DEVELOPMENT (1989).

2. During the 1980s international financial institutions and the African leadership disagreed both about the causes and the appropriate means for resolving Africa's problems. Only after a long and difficult debate did they appear to reach some basis for agreement. See THE WORLD BANK, *supra* note 1.

interferences in civil society, which have stifled private initiatives and distorted the political economies of Africa; bloated state bureaucracies; and policies that favor politically influential minorities at the expense of the majority, who tend to be poor and politically weak. There is now widespread agreement that in order to achieve sustainable development, Africa must design and implement new development strategies that are sensitive to the needs of the poor; that involve efficient and accountable government; that provide for greater public participation in economic and political life; that allow increased opportunity for private initiative in the economy and other aspects of the development process; and that are based on a realistic assessment of each country's financial and economic resources.³ Moreover, it is recognized that if Africa is to participate fully in the international economy, it must take advantage of the benefits of scale that can be derived from regional cooperation and economic integration.

This new African perception is reflected in the growing number of indigenous nongovernmental organizations⁴ that are working on local development initiatives and on promoting private sector economic activity. In the last two years African governments and nongovernmental organizations have concluded a number of regional agreements that are designed to support these activities, which often occur in isolation from each other, by promoting regional economic integration and by coordinating popular participation in the political and economic development of Africa. This report describes the most significant of these agreements: The African Peoples Charter for Popular Participation in Development⁵ and the African Economic Community Treaty.⁶ It also briefly discusses a recent development in the Eastern and Southern African Preferential Trade Area that is pertinent to the issue of regional integration.⁷

3. Numerous African countries, such as Ghana, Benin, Nigeria, Zimbabwe, Mali, Tanzania, Uganda, and Mozambique are implementing adjustment strategies that, to a greater or lesser extent, are based on these principles.

4. The term "nongovernmental organizations" refers to all organizations that are legally and functionally independent of the government, regardless of their specific legal form or function. The term may therefore encompass trade unions, women's and youth groups, student organizations, private voluntary organizations, welfare groups, professional and business associations, sports clubs, and civic organizations.

5. This Charter was adopted by the governments, nongovernmental organizations, and international organizations that attended the International Conference on Popular Participation in the Recovery and Development Process in Africa, held in Arusha, Tanzania, on Feb. 12-16, 1990. The text of the Charter is printed in U.N. Doc. E/ECA/CM.16/11 [hereinafter Charter].

6. This Treaty was signed at the meeting of the heads of government of the member states of the Organization for African Unity, held on June 3-5, 1991, in Abuja, Nigeria. The key provisions of the treaty were reprinted in the June 17 and 18, 1991, issues of *The Guardian* (Lagos, Nigeria). For a general discussion of the final draft version of the Treaty, see Harsch, *Africa Seeks Economic Unity*, 5 AFRICA RECOVERY, June 1991, at 12.

7. See The Eastern and Southern African Preferential Trade Area: Charter on a Regime of Multinational Industrial Enterprise, *done at Mbabane, Swaziland*, Nov. 23, 1990, reprinted in 30 I.L.M. 696 (1991).

I. Popular Participation

One of the consequences of the economic and political adjustment process that Africa is undergoing and of the growth in influence of the nongovernmental sector is a reassessment of the appropriate relationship between the state and civil society. In February 1990 an international meeting was held in Arusha, Tanzania, that was attended by over 500 representatives of African governments, the United Nations, intergovernmental organizations, and nongovernmental organizations.⁸ The purpose of the meeting was to "search for a collective understanding of the role of popular participation in the development and transformation of the region" and to "formulate policy recommendations for national governments, popular organizations and the international community in order to strengthen participatory processes and patterns of development."⁹ The participants at the meeting adopted the African Peoples Charter for Popular Participation in Development, which, while not a legally binding document, is having an influence on a number of regional initiatives and on developments in a number of countries.¹⁰ These are discussed below.

The Charter asserts that "nations cannot be built without the popular support and full participation of the people"¹¹ and that the goal of African development must be "human-centred development that ensures the overall well-being of the people through sustained improvement in their living standards and the full and effective participation of the people in charting their development policies, programmes and processes and contributing to their realization."¹² The Charter then establishes guidelines on the respective roles and responsibilities of the people,¹³ governments,¹⁴ and the international community.¹⁵

The Charter states that the people must establish organizations that are independent and "genuinely grass-root, voluntary, democratically administered and self-reliant."¹⁶ The people are urged to pay special attention to "the reduction of the burden on women" and must take action to "ensure their full equality and

8. The meeting was organized by the U.N. Economic Commission for Africa in collaboration with other United Nations agencies and with nongovernmental organizations as part of the effort to implement the United Nations Programme of Action for African Economic Recovery and Development (UNPAAERD). This programme is due to end in 1991 and was the subject of a review meeting in September 1991.

9. Charter, *supra* note 5, para. 1 of the Preamble.

10. Twenty-three African governments sent representatives to this meeting. The United States was represented by eight individual U.S. nongovernmental organizations and by PACT and Inter-Action, whose members include most of the U.S. nongovernmental development organizations active in Africa.

11. Charter, *supra* note 5, art. I(7).

12. *Id.* art. I(8).

13. *Id.* art. II(13-15).

14. *Id.* art. II(16-20).

15. *Id.* art. II(21, 22).

16. *Id.* art. II(13).

effective participation in the development process.”¹⁷ It adds that popular participation must be “practiced at the family level because home is the base for development.”¹⁸ The specific actions for which the people and popular organizations are responsible are enumerated in article III(23B). They include promoting education; strengthening the “productive power” of workers, peasants, women, youth, and students; changing prevailing attitudes towards women and traditional beliefs that are an impediment to development; and developing national and regional networks of organizations in order to promote regional economic cooperation and integration and intra-African trade.¹⁹

According to the Charter, governments must “yield space to the people” and “promote political accountability by the State to the people” and must “take action to ensure women’s involvement at all levels of decision making”;²⁰ must “vigorously implement” international and regional human rights instruments;²¹ and must redirect resources from defense to “productive activities and to social services to the people.”²² The specific actions for which governments are responsible are spelled out in article III(23A). They include promoting literacy and skills training, enhancing equitable access to such productive inputs as land, credit, and technology, promoting the role women play in the economy, and intensifying efforts to increase regional economic integration.

The international community is asked to support indigenous efforts that promote “the emergence of a democratic environment and facilitate the people’s effective participation and empowerment in the political lives of their countries.”²³ The specific measures asked of the international community include fostering the democratization of development, support for indigenously designed development and transformation programs, technical assistance designed to strengthen national capabilities for policy analysis and the design and implementation of economic reform and development programs, debt reduction, and the

17. *Id.* art. II(14).

18. *Id.* art. II(15).

19. The Charter establishes guidelines for voluntary development organizations, trade unions, women’s organizations, youth and student organizations, and the media that detail some of their specific responsibilities in achieving the general objectives of the Charter. For example, African voluntary development organizations should develop or strengthen national, subregional, and regional institutional structures in order to facilitate cooperation and dissemination of information; the media should fight for freedom of the media; and trade unions should organize rural workers in accordance with ILO Convention 141 concerning Organizations of Rural Workers and Their Role in Economic and Social Development. *Id.* art. III(D-H).

20. *Id.* art. II(16).

21. *Id.* art. II(17). The Charter specifically calls on African governments to implement the African Charter on Human and People’s Rights, the Universal Declaration of Human Rights, the Convention on the Rights of the Child, the ILO Convention No. 87 concerning Freedom of Association and the Protection of the Right to Organize, and the Convention on the Elimination of All Forms of Discrimination Against Women.

22. *Id.* art. II(19).

23. *Id.* art. II(21).

release of aid for development on a participatory basis.²⁴ Finally, the international community is asked to support African nongovernmental organizations, women's and youth organizations, and trade unions in "training, networking and other programming activities, as well as the documentation and wide dissemination of their experiences."²⁵

Article IV of the Charter proposes that a set of ten indicators should be used to monitor the implementation of the Charter at both the national and regional level.²⁶ The indicators are: the literacy rate, freedom of association, the rule of law and social and economic justice, press and media freedom, decentralization of the decision-making process, political accountability, popular representation in national bodies, promotion of the ecological, human, and legal environment, the number and scope of grassroots organizations involved in development activities, and the extent of implementation of the 1989 Abuja Declaration on Women.²⁷

The legal community has been affected by these developments in African society. Public interest law groups have been created and are active in protecting human rights, organizing and supporting nongovernmental development organizations, and in providing legal services to the poor in countries such as Kenya, Nigeria, Namibia, Zimbabwe, and Uganda.²⁸ The African Bar Association is being reactivated and it is expected to play an important role in fostering the development of bar associations in those countries where the bar association is weak or nonexistent and of regional cooperation in the legal profession. It is understood that a particular focus of the Association will be to foster cooperation between common and civil law African countries.

These developments have already begun to create new opportunities for popular participation in policy making and for greater freedom of action for the nongovernmental sector, including the private business sector. Popular opposition, in many cases led by grassroots organizations, trade unions, women's, student, and youth organizations, and other nongovernmental groups, has led to substantial political and constitutional changes and, in some cases, to changes in the political leadership of the country. In the last few years a number of dictatorships and one-party states, including Benin, Congo, Mali, Togo, Tanzania, Zambia, and Zaire have succumbed to popular pressure for multiparty political processes. In Zimbabwe popular opposition forced President Mugabe to abandon his efforts to convert his country into a one-party state, and in Cape Verde and Benin elections have led to the first democratic transfers of power in Africa in over forty years.

24. *Id.* art. III(23C).

25. *Id.* art. III(23C)(7).

26. *Id.* art. IV(25, 26).

27. *Id.* art. IV(24).

28. These developments have resulted in political harassment of lawyers in a number of countries. The bar in the United States has on occasion played an important role in assisting these lawyers and could help support their efforts to develop public interest law in Africa.

The new pressure for popular participation in political and economic life has helped improve the prospects for the resolution of such longstanding African problems as apartheid in South Africa, and civil war in Angola, Mozambique, and Ethiopia on a basis that will allow for peaceful and sustained development for the people of these countries. In Liberia the member states of the Economic Community of West Africa (ECOWAS) organized an international peace-keeping force that was able to end the worst of the carnage in the country's civil war and to begin a negotiating process that might still lead to a viable government for that troubled land.

There have been other efforts to forge a more constructive relationship between the state and civil society in Africa. In May 1991 a conference on Security, Stability, Development and Cooperation in Africa was held in Kampala, Uganda. It was attended by 700 people, including five heads of state, three former heads of state, the head of the African Leadership Forum, and the heads of the Organization of African Unity (OAU) and the U.N. Economic Commission on Africa. The conference, which prepared recommendations for the OAU, called for all African states to accept the following principles: adherence to the rule of law legislated by freely elected representatives, popular participation in governance, political pluralism, respect for human rights and fundamental freedoms, the establishment of an African Court of Justice on Human Rights, and the monitoring and observance of these commitments. It also called for strengthened OAU dispute-resolution procedures and for a reexamination of the OAU's principle of noninterference in the internal affairs of member states on the ground that this principle has hindered peaceful resolution of internal disputes. Finally the conference called for greater economic cooperation and integration in Africa.²⁹

In July 1991 Africa's heads of state met with over 100 African development and environmental nongovernmental organizations in Cairo, Egypt. The topic of the meeting was the impact of environmental issues on African countries and on their ability to achieve sustainable development. The purpose of the discussion was to formulate a common African position on the environment and development that can be presented at the United Nations Conference on Environment and Development in Rio de Janeiro, Brazil, in June 1992.³⁰ This would appear to be the first international meeting for which African governments and African nongovernment organizations have sought to coordinate their strategies.

II. Economic Integration

On June 3, 1991, the heads of states attending the OAU Summit signed the Treaty of African Economic Cooperation.³¹ This treaty has the following four objectives: to "promote economic, social, and cultural development and the integration of African

29. See Lone, *Africa Moves Toward Radical Restructuring of Political Framework*, 5 AFRICA RECOVERY, June 1991, at 1. The recommendations of this meeting were presented to the OAU meeting in Abuja, Nigeria, in June 1991.

30. See Koch, *Africa Plans for Summit*, The Weekly Mail, July 5-11, 1991, at 7.

31. See *supra* note 6.

economies'';³² to establish a framework for the utilization of the material and human resources of Africa;³³ to promote cooperation to raise the standard of living of African peoples and enhance economic stability;³⁴ and to coordinate and harmonize policies among subregional economic groups in order to foster the "gradual establishment" of an African Economic Community.³⁵

The treaty envisages meeting these objectives through a six-stage process that will occur over thirty-four years³⁶ beginning within thirty days of the Treaty's ratification by two-thirds of the OAU's member states. The first stage, lasting five years, will focus on strengthening existing subregional economic communities and on establishing such communities in areas where they do not exist.³⁷ The second stage, which will last eight years, will focus on the stabilization of tariff and nontariff barriers, the strengthening of sectoral integration, and the harmonization and coordination of activities of the regional communities, as well as on preparation for the gradual removal of intra-African trade barriers.³⁸ The third stage, lasting ten years, will concentrate on the establishment, at the level of each regional community, of a free trade area based on the gradual removal of trade barriers to intra-community trade with the view to the eventual establishment of regional Customs Unions based on the adoption of a common external tariff.³⁹ The fourth stage, which will last for two years, will seek to harmonize and coordinate tariff barriers among the regional economic communities with a view to establishing a continent-wide common external tariff.⁴⁰ The fifth stage, lasting four years, will concentrate on the establishment of an African Common Market through the adoption of common sectoral policies, the harmonization of monetary, financial, and fiscal policies, and the principle of the free movement of persons.⁴¹ The sixth and final stage, lasting five years, will concentrate on the consolidation of the Common Market and its broadening to include free movement of capital as well as goods and persons and on the creation of a Pan-African Economic and Monetary Union, an African Central Bank, an African Parliament, and the structures for African multinational enterprises.⁴²

32. Treaty of African Economic Community art. 4(1)(a).

33. *Id.* art. 4(1)(b).

34. *Id.* art. 4(1)(c).

35. *Id.* art. 4(1)(d).

36. *Id.* art. 6.

37. *Id.* art. 6(2)(a). At present there are seven regional economic groupings in Africa: Communauté Économique de l'Afrique de l'Ouest (CEAO); Communauté Économique des Pays des Grands Lacs (CEPGL); Economic Community of West African States (ECOWAS); Preferential Trade Area for Eastern and Southern Africa (PTA); Southern African Development Coordination Conference (SADCC); Union of the Arab Maghreb (UAM); and Union Douanière et Économique de l'Afrique Centrale (UDEAC). It should be noted that there is also a Southern African Customs Union in which South Africa is the dominant country.

38. *Id.* art. 6(2)(b).

39. *Id.* art. 6(2)(c).

40. *Id.* art. 6(2)(d).

41. *Id.* art. 6(2)(e).

42. *Id.* art. 6(2)(f).

The economic focus of the agreement is indicative of the greater pragmatism of Africa. The immediate focus of the Pan-Africanist agenda is no longer on political unity, which, while it remains the ultimate goal, is now to be preceded by economic unity. Moreover, the efforts at achieving African unity are based less on the public sector directly implementing integration than on governmental acts designed to create a climate conducive for economic integration. Consequently, it is fair to say that the Treaty envisages that the key integrating role will be played by the private and nongovernmental sector. In this sense the Treaty builds on the structural adjustment policies presently being pursued by most African governments and is consistent with the development vision expressed in the African Charter for Popular Participation in Development, which perceives of development as a "bottom-up" process based on private initiative supported by governmental action.

III. The Eastern and Southern African Preferential Trade Area

At least one of Africa's regional groupings, the Preferential Trade Area for Eastern and Southern Africa (PTA), has made and is continuing to make significant strides towards achieving a viable regional economic community. The PTA, which is an agreement among eighteen African countries,⁴³ seeks to promote regional cooperation and development in all spheres of economic activity with the view to establishing a Common Market among the member countries.⁴⁴ Amongst other things, the member countries specifically agree to reduce trade barriers, to establish a payments and clearing mechanism among themselves, to simplify and harmonize trade documentation and procedures, and to promote trade and other business arrangements among member countries.⁴⁵

Since the Treaty entered into force on September 30, 1982, a number of developments have occurred pursuant to the terms of the Treaty. The member countries have established a multilateral clearing facility operated through the Reserve Bank of Zimbabwe and based on the PTA Unit of Account (UAPTA).⁴⁶ The clearing facility allows member countries to use national currencies to settle accounts during a two-month transactions period, with net balances being settled in convertible currencies thereafter. The existence of this facility has resulted in member states being able to issue their citizens with traveler's checks denomi-

43. The member countries are Angola, Burundi, Comoros, Djibouti, Ethiopia, Kenya, Lesotho, Malawi, Mauritius, Mozambique, Rwanda, Somalia, Sudan, Swaziland, Tanzania, Uganda, Zambia, and Zimbabwe. It is expected that a post-apartheid South Africa will join the PTA.

44. Treaty for the Establishment of the Preferential Trade Area for Eastern and Southern African States, signed on Dec. 21, 1981, at Lusaka, Zambia, entered into force on Sept. 30, 1982, reprinted in 21 I.L.M. 479 (1982).

45. *Id.* art. 3.

46. See Operating Procedures Manual, PTA Multilateral Clearing Facility (Reserve Bank of Zimbabwe, 1984). The value of 1 UAPTA is equal to 1 SDR.

nated in UAPTA that are accepted in all PTA member countries and that can be settled through the clearing facility. The PTA has also adopted a Protocol on the Establishment of a Third Party Motor Vehicle Insurance Scheme⁴⁷ and has established an Eastern and Southern African Trade and Development Bank.⁴⁸

In the last year the PTA countries have deepened the process of regional integration by adopting a Convention for the Formation of Multilateral Industrial Enterprises.⁴⁹ Multinational Industrial Enterprises (MIEs), which will be limited liability companies, must have shareholders from at least two member states who each count for at least 10 percent of the capital and together account for a minimum of 51 percent of the capital of the enterprise,⁵⁰ which shall be no less than 500,000 UAPTA.⁵¹ This means that foreign investors can own up to 49 percent of the capital. MIEs can engage in activity that falls within the scope of the Charter, whose objectives include the development of capital and intermediate goods, agro-industry, labor-intensive industry, infrastructure development, the rational and efficient use of raw materials, and the expansion of intraregional and international trade.⁵²

The advantages of such enterprises include ease of trading throughout the PTA region, the right to establish branches and subsidiaries in the territories of all PTA member countries, and the right to repatriate capital, royalties, dividends, and intracorporate loans.⁵³ MIEs may also be exempt from import duties, restrictions on the use of expatriate employees, and corporate income taxes.⁵⁴ The charter also obliges signatory states to grant national treatment to all MIEs.⁵⁵ According to article 17, MIEs are required to implement programs for increasing local value added, for promoting exports, and for training. They are also required, pursuant to article 17(1)(c), to supply annual reports, external audits, and reports on share

47. Annex XIV, Protocol on the Establishment of a Third Party Motor Vehicle Insurance Scheme (Addis Ababa, Ethiopia, 1986). The protocol establishes a multilateral mechanism (the National Bureau) for settling transborder insurance claims. The mechanism enables national insurers to assure their policy holders that they will be covered for accidents occurring in other member countries.

48. Charter for the Eastern and Southern African Trade and Development Bank (August 1988). The bank, which is jointly owned by the PTA member states, is intended to provide financial and technical assistance to promote economic and social development in member countries and to promote intra-PTA trade and economic activity. The bank has an authorized capital of 400 million UAPTA, divided into 40,000 shares of which one third are paid-in shares and the rest are callable. See art. 5 of the Charter.

49. Eastern and Southern Africa Preferential Trade Area: Charter on a Regime of Multinational Industrial Enterprises, *done at Mbabane, Swaziland*, Nov. 23, 1991, *reprinted in* 30 I.L.M. 696 (1991). Pursuant to art. 26, the treaty will enter into force when it is signed and ratified by at least nine member states.

50. *Id.* art. 5(1)(a).

51. *Id.* art. 5(1)(e). According to this provision an exception is made for MIEs in which less-developed member states participate. In this case the capital must be at least 200,000 UAPTA.

52. *Id.* art. 2.

53. *Id.* art. 15.

54. *Id.*

55. *Id.*