

The SADC Tribunal: A case for effective enforcement of judgments

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By

Carlo Mcleod

(St NO: 9714413)

Prepared under the supervision of Ms. Yvonne Dausab

at the Faculty of Law, UNIVERSITY OF NAMIBIA

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DECLARATION

I the undersigned, hereby declare that the work contained in this dissertation for the purpose of obtaining my degree of LL B is my own original work and that I have not used any other sources than those listed in the bibliography and quoted in the references.

Signature:

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I, Yvonne Dausab hereby certify that the research of this dissertation was carried out under my supervision

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ABBREVIATIONS/ACRONYMS

The following abbreviations/acronyms are used in the text unless the context in which the particular abbreviations indicates otherwise;

AEC	African Economic Community
AJIL	American Journal of International Law
AU	African Union
BYIL	British Yearbook of International Law
CFI	Court of First Instance attached to the ECJ
CJ	Court of Justice of the AU
CMLR	Common Market Law Reports
EC	European Community
ECJ	Court of Justice of the European Union
ECR	European Court Reports
EC Treaty	Treaty establishing the European Community as amended
EP	European Parliament
EU	European Union
EU	Treaties collectively refers to all the treaties which make up the EU namely, the original TFEU, ECSC Treaty Euratom Treaty, and all subsequent amending treaties such as the Merger Treaty 1965, the Single European Act 1986, the Treaty on the EU 1992 as amended, the Treaty of Amsterdam 1999, the Treaty of Nice 2003 and the Lisbon Treaty 2007 as well as all the treaties of accession entered into between the EU and new member states
GA	General Assembly of the UN
ICJ	International Court of Justice
ILR	International Law Reports
Protocol	The SADC Protocol on the Tribunal and the Rules of Procedure thereof
REC	regional economic community
SADC	Southern African Development Community

SAJIL	Southern African Journal of International Law
SAYIL	South African Yearbook of International Law
SC	Security Council of the UN
Summit	The Summit of the Heads of State or Government of SADC states
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
Trade Protocol	SADC Protocol on Trade
Treaties	The Treaty of EU and the Treaty on the Functioning of the EU as amended by the Lisbon Treaty
Treaty	Treaty Establishing the Southern African Development Community
Tribunal	SADC Tribunal
UN	United Nations Organisation
UN Charter	Charter of the United Nations signed at San Francisco on 26 June 1945

ABSTRACT

This study examines whether the SADC Tribunal's mandate and authority have any legal force in light of recent developments. These developments include the Tribunal's ruling in *Campbell v Republic of Zimbabwe*, the subsequent non-compliance by the Zimbabwean Government with the Tribunal's decision, the lack of concrete action taken by Southern African Development Community (SADC) members and the Summit's decision to review the Tribunal's role.

By discussing the Campbell ruling, the study shows that the current enforcement measures are inadequate, that the rules dealing with defaulting SADC members lack clarity, and that members use sovereignty to avoid the principle compliance with regional and international obligations.

Being new in the field, the Tribunal has not yet developed significant jurisprudence although it has delivered a number of judgments some of which are referred to in this study. The Tribunal is expected to develop its own jurisprudence having regard to the jurisprudence developed by other international and regional courts and Tribunals involved in the judicial settlement of disputes.

Moreover, while SADC member states have regimes for enforcing judgments from foreign national courts ('foreign judgments'), they do not have regimes for enforcing judgments of international courts, including the SADC Tribunal.

Enforcing a community judgment raises issues which are not present when enforcing a foreign judgment. This study argues that the existing regimes for enforcing foreign judgments cannot be used to enforce judgments of the SADC Tribunal. A new and special regime is needed for the enforcement of community judgments.

Thus, it is argued that the SADC Tribunal and its judgments satisfy some but not all of the requirements that have to be met in order for a foreign judgment to be registered for

enforcement. This is so given that the default rule is that judgments of an international tribunal are not executable at national level unless the domestic law of a given state so provides.

CHAPTER 1

1. INTRODUCTION

1.1. BACKGROUND OF THE STUDY

The Southern African Development Community (hereinafter: SADC) was established in 1992 as a successor to the original Southern African Development Coordination Conference (hereinafter: SADCC). The latter had been formed in Lusaka, Zambia on 1st April 1980, through the so-called Lusaka Declaration (Southern Africa: Towards Economic Liberation).

The original members were the so-called “Frontline States” (FLS) a group of countries in Southern Africa that tried to overcome its dependency on South Africa and its apartheid regime of the time. The goal was first and foremost the political liberation of Southern Africa and the end of apartheid.

Already in May 1979 consultations had been held between Ministers of Foreign Affairs and Ministers responsible for Economic Development from Angola, Botswana, Lesotho, Mozambique, Swaziland, United Republic of Tanzania and Zambia in Gaborone, Botswana. Subsequently a meeting was held in Arusha, Tanzania in July 1979 which later led to the establishment of SADCC.

On 17th August, 1992, the SADC Treaty and Declaration was signed, creating a “community” of State parties in the Southern African region.¹ The Treaty provided, in Article 9, for the establishment of various institutions to serve and govern the Southern African region.

The SADC Tribunal was one such institution. Article 16 of the Treaty provided that the Tribunal would be constituted to ensure adherence to, and the proper interpretation of, the provisions of this Treaty, and that its composition, powers, functions, procedures and other related matters would be prescribed in a Protocol. The relevant Protocol was

¹ Referring to the SADC Tribunal

signed² on the 7th August, 2000 by the Summit, which comprises the heads of all member states.³

When the SADC Treaty was amended in 2001, the Amendment Treaty made specific reference to this Tribunal Protocol. Most importantly, for present purposes, the amendment altered the wording of Article 16, to provide that the Tribunal Protocol "shall, notwithstanding the provisions of Article 22⁴ of this Treaty, form an integral part of this Treaty. "The Tribunal Protocol was itself later amended on 3rd October, 2002.⁵

However, it was only in November, 2005, that the members of the Tribunal were sworn in and the Tribunal was inaugurated, operating from premises in Namibia. In November 2008, the Tribunal handed down judgment in the landmark case of Campbell (Pvt) Ltd and Others v The Republic of Zimbabwe and Others.⁶

The Tribunal ruled that the Government of Zimbabwe had violated the human rights provisions of the Treaty in using race as the basis upon which to dispossess white farmers of their land. When the Zimbabwe Government twice refused to comply with the orders of the Tribunal, the Tribunal referred each instance of non-appropriate action to the Summit for "appropriate action" to be taken.⁷

Having accepted the 2001 Amendment Treaty, and the Tribunal Protocol, up to this point, the Zimbabwe Government⁸ belatedly sought to challenge the validity of the Tribunal Protocol, claiming that neither the 2001 Amendment Treaty nor the Tribunal

² Southern African Development Community

³ SADC presently comprises 14 countries -- Angola, Botswana, Democratic Republic of Congo (DRC), Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe. Madagascar, originally part of SADC, is currently suspended.

⁴ See attached Appendix of the SADC Treaty.

⁵ There were two further amendments on the 17th August, 2007 and 17th August, 2008. It is the October 2002 amendment which is of primary importance here.

⁶ SADC (T) Case No. 2/2007. This case, being the main focus of this study will be discussed more in detail in chapter 2.

⁷ William Campbell and another v Republic of Zimbabwe SADC (T) 03/2009 (June) and Fick and Another v Republic of Zimbabwe SADC (T) 01/2010 (July).

⁸ While technically correct, it is a little misleading to refer to the Zimbabwe Government here. Although as a matter of law and international protocol there can only be a single position put forward by the Zimbabwe Government, the stance was only taken by the ZANU PF component of the "unity" or "inclusive" government in the face of objections from the MDC component.

Protocol had been validity brought into force. In August 2010, the Summit decided to limit the operations of the Tribunal, ostensibly to allow for time to consider this issue.⁹

To this end, it commissioned a review of the role, responsibilities, and terms of reference of the Tribunal by an independent consultant and specialist in international law, Dr. Lorand Bartels of Cambridge University.¹⁰ Action against Zimbabwe was deferred pending the outcome of the review. The Tribunal was enjoined not to entertain any new cases in the interim.

However, when the Bartels Report was presented, the Summit chose to ignore its fundamental recommendations, and, in May 2011, determined that the jurisdiction of the Tribunal was to be altered. The Summit held that appropriate legal instruments to change the jurisdiction of the Tribunal and the legal framework within which the Tribunal operates were to be prepared for presentation at the next Summit to be held in August 2012.

The Tribunal was not to hear any further cases henceforth, whether pending or otherwise, and members of the Tribunal were not to be reappointed or replaced, effectively rendering the Tribunal defunct. There is little doubt that the jurisdictional amendments will be to remove the right of private individuals to approach the Tribunal for relief against their governments.

The effect of the 2001 Amendment Treaty and the question as to whether the Amendment Treaty and Tribunal Protocol have entered into force are given axis around, which turns the decision to effectively dissolve the Tribunal and the legal disputes which have arisen.

⁹ SADC Tribunal Newsletter, September 2010 edition.

¹⁰ The Report was issued under the auspices of the WTI Advisors, an affiliate of the World Trade Institute.

The Bartels Report, the Southern African Litigation Centre¹¹ and the Zimbabwe Lawyers for Human Rights have each challenged the validity of the Tribunal. Some of the key issues raised by them relate to the judgment in the Campbell case, the suspension of the Tribunal, and the positions adopted in respect to these issues.

The SADC Treaty sets out the various institutions of SADC which include, the Summit of Heads of State or Government (Summit), Council of Ministers (Council), a Standing Committee of Officials, the Secretariat, the Tribunal and national committees¹². These institutions have been in place and functional since 1993 when the Treaty came into force except for the Tribunal which was officially inaugurated at its seat in Windhoek, Namibia on 18 November 2005.

1.1.1. THE SUMMIT

The SADC Summit, the supreme policy-making institution of SADC, consists of the heads of state or government of SADC member states¹³. It has no equivalent in the UN system but, the UN organ nearest to it is the UN General Assembly which consists of representatives of all member states of the UN. However, functionally the two institutions are worlds apart. The Summit does appear to find equivalence in the EU in the form of the European Council (EC)¹⁴ and the Council of Ministers of the EU (EU Council)¹⁵.

Functionally, the Summit differs from European Council in that, even though the EC has overall policy direction over the EU, the EC has no law-making powers¹⁶ as does the Summit. The Summit performs law-making functions similar to those of the EU Council

¹¹ Opinion Piece from The Southern Africa Litigation Centre - 22.09.11 available at www.southernafricalitigationcentre.org/download/5/26.

¹² These institutions are established by article 9 of the Treaty

¹³ Articles 10 and 22 Treaty.

¹⁴ Article 10 Treaty.

¹⁵ The European Council which is established by Article 13 TEU consists of the heads of state or government of member states of the EU. The EC performs mainly political functions and is now formally part of the European Union structure through amendments made introduced by the Lisbon Treaty.

¹⁶ The EU Council of Ministers which was established by Article 13 TEU forms part of the structures of the European Union and has power to make decisions which are binding on member states of the EU.

except that the Summit performs such function on the recommendation of the Council¹⁷, while the EU Council performs the law-making function subject to the complex consultation, co-operation and co-decision procedures of the EU Treaties.

The main functions of the Summit are to provide overall policy direction and control to SADC and to adopt legal instruments for the implementation of the provisions of the Treaty, to create committees and other institutions and organs of SADC, to appoint the Executive Secretary and the Deputy Executive Secretary and to decide on the admission of new members to SADC¹⁸.

The decisions of the Summit are taken by consensus and are binding on SADC member states unless the Summit decides otherwise¹⁹.

The Summit may delegate its law-making function to the Council or to any other institution of SADC²⁰. The Treaty provides for the election of a Chairperson and Deputy Chairperson of SADC on a one yearly rotational basis, and requires that Summit meet at least twice a year. For present purposes the most important functions of the Summit are its policy decisions and the adoption of legal instruments which include protocols and other subsidiary legislation. This process has already commenced²¹.

1.1.2. THE COUNCIL

Article 11 of the Treaty deals with matters relating to the Council. The Council consists of one minister from each member state, preferably a minister responsible for foreign or external affairs, and it performs supervisory, executive and advisory functions under the overall supervision of the Summit²².

¹⁷ Article 15.1 TEU

¹⁸ Article 10 Treaty

¹⁹ Article 10.9 Treaty.

²⁰ Article 10.3 Treaty.

²¹ Currently there are 23 SADC protocols.

²² Functions of the Council are listed in Article 11.2 Treaty.

The supervisory function includes overseeing the functioning and development of SADC and the implementation of SADC policies and execution of its programmes. Its advisory functions include advising the Summit on overall SADC policy and functioning, recommending to Summit the establishment of various structures, appointments of the Executive Secretary and the Deputy and on the adoption SADC legal instruments.

The executive functions entail approval of policies, strategies and programmes (presumably emanating from subordinate bodies), directing, coordinating and supervising the operations of subordinate SADC institutions, determining terms and conditions of SADC staff, developing the SADC common agenda and performing other duties assigned to it by the Summit or the Treaty.

The Council can exercise legislative powers if such power is delegated to it by the Summit pursuant to Article 10.3 of the Treaty. The power to delegate is likely to be quite useful when SADC has developed to the stage where there is need for detailed legislation.

As with the Summit, the Council has a Chairperson and a Deputy appointed by the relevant office holders of the Summit. Decisions are by consensus and Council reports to the Summit.

1.1.3. THE STANDING COMMITTEE OF OFFICIALS (SCO)

The SCO is another committee of the Council which acts in a technical advisory capacity to the Council. It consists of one permanent secretary or a person of equivalent rank from each member state. The function of the SCO is to process documentation from the ICM to the Council. All its other procedural matters are the same as those of the Council and it reports to and is responsible to the Council.

1.1.4. THE SECRETARIAT

The Secretariat is described as the 'principal executive institution of SADC'.²³ The

²³ Article 14 Treaty.

Secretariat is responsible for planning and management of SADC programmes, implementation of decisions of all the other institutions of SADC, except those of the SCO and the Tribunal, coordination and harmonisation of SADC policies and strategies, gender mainstreaming and various other SADC activities²⁴. In addition, the Secretariat also performs the administrative and other linked functions of SADC and, in this respect, prepares administrative regulations and other rules for management of SADC affairs.

The Secretariat is headed by the Executive Secretary who is directly responsible to Council for matters relating the activities of SADC and administrative and financial matters including the appointment of SADC staff in accordance with conditions laid down by the Council, and the preparation of SADC's annual reports²⁵.

In particular the Secretariat could be charged with the responsibility of bringing disputes or defending matters brought against SADC by other parties. Since the Treaty does not specifically deal with these matters, it will then be up to the Summit or Council to determine the extent of the Secretariat's powers. For example, the provisions regulating the manner in which matters may be brought before the Tribunal by the Secretariat may be spelt out in subordinate legal instruments of SADC.

1.1.5. THE SADC PARLIAMENTARY FORUM (SADC-PF)

Both the original and the amended Treaties make no provision for a legislative institution of SADC. This lacuna in SADC was realized as long ago as 1993 when Speakers/Presiding Officers of several states gathered in Windhoek, Namibia, for a consultative meeting on a SADC Parliamentary Forum.

That meeting culminated in the passing of a resolution calling for the establishment of a parliamentary forum whose structures, role, functions and administrative issues would be provided for in a constitution.

²⁴ The responsibilities of the Secretariat are listed in Article 14.1.
²⁵ Articles 14.2 and 15 Treaty.

The constitution of the SADC-PF was subsequently approved by the national parliaments of the member states and forwarded to the Summit of SADC in Blantyre, Malawi, in August 1997²⁶. At this meeting the Summit formally approved the constitution of the forum and the establishment of the SADC-PF²⁷ as an autonomous institution of SADC.

The SADC-PF was established under Article 9.2 of the Treaty which provides for the establishment by the Summit of “other institutions” as may be necessary and, as such, it is not one of the “core” institutions of SADC listed in Article 9.1 of the Treaty.

The SADC-PF constitution provides for a membership of three nominees from each of the thirteen member states, together with the presiding officer of each of the member states²⁸. The three members are to be “elected” to the SADC-PF by their national parliaments but the procedure for elections is not set out leading one to assume that each national parliament can devise its own procedure for election.

By its constitution, the SADC-PF is established as an advisory, recommendatory and consultative body²⁹. It has no legislative powers, and its recommendations in relation to SADC are not binding on SADC and its institutions. Its function in the law-making process is therefore confined to the making of recommendations on the harmonization of laws in the region, and considering and making recommendations on international treaties and draft treaties referred to it by SADC. As stated earlier, its constitution envisages the forum transforming into a SADC Parliament with full legislative powers at some future date.

The SADC-PF constitution confers power on the forum to consider and approve its own budget and this power gives the forum a large measure of autonomy in performing its functions. This apparent autonomy may be explained by the fact that its funds are not

²⁶ The constitution of the SADC –PF is a publication of SADC-PF and can be accessed on its website www.ssdcpf.org. (visited 02/09/11). The secretariat of SADC-PF is located in Windhoek, Namibia.

²⁷ The SADC-PF consists of all SADC member states except Madagascar.

²⁸ Article 6 SADC-PF constitution.

²⁹ Article 8(3) SADC-PF constitution.

SADC funds, but are sourced from contributions from national parliaments and donations from well-wishers.

The constitution also empowers the SADC-PF to scrutinize and make recommendations on the budget of SADC³⁰. This power appears to be self-declared as the SADC Treaty gives exclusive powers over the SADC budget to the Executive Secretary and the Council. In any event, the power has never been used by the SADC-PF.

The SADC-PF has power to discuss any matter pertaining to SADC but has no real power to approve anything relating to SADC. Its functions are limited to giving advice or making recommendations to the executive authorities of SADC.

1.2. STATEMENT OF THE RESEARCH PROBLEM

The SADC Tribunal was created for the purpose of adjudicating cases properly brought before it on matters which pertain to the governing treaty.

Tragically, the Tribunal in *Mike Campbell (Pvt) Ltd and Others v Republic of Zimbabwe* (Case no 2 of 2007) has proven to be ineffective at enforcing its judgment against Zimbabwe; therefore, this international tribunal and others similarly situated should be given more power over willing member-states so that their decisions will actually be enforceable with consequences.

The *Campbell* matter is an example of how difficult it is to enforce judgments made by an international tribunal because it involves a sovereign nation, which by treaty, has availed itself of a consensual dispute resolution, received an adverse judgment, and to this day has neither complied, nor been forced to comply by the SADC entity itself or its signer-states.

The SADC Tribunal decision should be an obligation because Article 16 of the SADC Treaty states that Tribunal decisions are “binding.” Thus, if a state intended to become a

³⁰ Article 8(3)(c)(vii) SADC-PF constitution.

member of SADC when it signed and ratified the treaty, then decisions must also be considered obligations under the treaty that, in theory, a member state would implement against itself even when adverse.

1.3. SIGNIFICANCE OF THE STUDY

This study contributes to the debate surrounding the challenges faced by SADC in relation to the lack of effective enforcement of the Tribunal's judgements. It is hoped that this study will contribute to assist the Heads of Summit and other key institutions to realise that international tribunals will have to obtain some teeth with a strong enough bite to encourage even sovereign states to respect the treaties they've entered into; otherwise, neither human rights, nor other agreed upon laws will be enforceable against the SADC member states involved.

1.4. HYPOTHESIS/RESEARCH QUESTIONS

This study conceptualises the obligation to protect and promote the effective enforcement of judgements of the SADC Tribunal. It addresses the question as to whether the Tribunal is a suitable forum for protection of human rights in SADC, and what, in light of its newly acquired role, is an appropriate mandate with respect to states obligations under the treaty.

1.5. LITERATURE REVIEW

The study is based on a review of the available literature and materials on the topic, followed by a critical assessment of that literature and material. Conclusions will be drawn in the form of two options/recommendations on how the Tribunal might operate in future.

These two options/recommendations will be based on the experiences drawn mainly from few selected international judicial organs. The relationship between the Tribunal

and the Court of Justice of the AU (CJ), a similar institution, albeit intended to operate at continental level is considered in chapter two with a view to draw some experiences from it.

The Tribunal has also registered and determined its first case, *Mike Campbell (Pvt) Limited v Republic of Zimbabwe*. This case is also discussed in detail with the mindset of the possible effect of the treaty provisions on the rights and obligations of those subject to it.

1.6. LIMITATIONS OF THE STUDY

There are several other International judicial organs or Regional Courts of Justices in the world but, in view of the limitations of space, this study focuses only on the SADC Tribunal, Court of Justice of the European Union (ECJ), International Court of Justice (ICJ), ECOWAS, COMESA and Court of Justice of the AU (CJ). The CJ is referenced more often because its representative of the geographical regions of Africa and it is considered representative of the issues surrounding the role of the SADC Tribunal in the protection and promotion of human rights in Africa.

1.7. SUMMARY OF THE CHAPTERS

This introductory chapter is followed by a study on the SADC Tribunal and an exposition of the legal issues faced during its recent judgement in the case of *Mike Campbell (Pvt) Ltd and Others v Republic of Zimbabwe*. Under this chapter two, the work also identifies and discusses the common issues that are experienced from other similar judicial organs. Chapter three seeks an answer on how the SADC Tribunal's challenges can be resolved. It recommends two options on how SADC can achieve to resolve these challenges. The fourth and final chapter of the study seeks to involve the NGO's and civil society in creating awareness on a national and international level about the Tribunal's activities which may be used as an advocacy tool.

CHAPTER 2

2. ESTABLISHMENT OF THE SADC TRIBUNAL

The SADC Tribunal, according to Article 9 of the SADC Treaty of 1992, is one of eight common institutions.³¹ Its basic role and purpose can be found in Article 16 of the SADC Treaty³²:

1. The Tribunal shall be constituted to ensure adherence to and the proper interpretation of the provisions of this Treaty and subsidiary instruments and to adjudicate upon such disputes as may be referred to it.
2. The composition, powers, functions, procedures and other related matters governing the Tribunal shall be prescribed in a Protocol adopted by the Summit.
3. Members of the Tribunal shall be appointed for a specified period.
4. The Tribunal shall give advisory opinions on such matters as the Summit or the Council may refer to it.
5. The decisions of the Tribunal shall be final and binding.

The details regarding the functions and the organization of the Tribunal are laid down in the Protocol of the Tribunal in the Southern African Development Community. In line with Article 4 (4) of the Protocol, the first members of this permanent Court were appointed by the Summit of Heads of State or Government, the Supreme Policy Institution of SADC, during its Summit of Heads of State or Government held in

³¹ Namely, the Summit of Heads of State & Government, SADC Tribunal, Council of Ministers, Organ on Politics, Defence and Security Cooperation, Sectoral/Cluster Ministerial Committees, SADC Secretariat, Standing Committee of Senior Officials, and SADC National Committees. See also Oliver C. Ruppel and Francois X. Bangamwabo, *The SADC Tribunal: A Legal Analysis of its Mandate and Role in Regional Integration*, in: *Monitoring Regional Integration in Southern Africa Yearbook 2008* (Namibian Economic Policy Research Unit 2008, 7).

³² There exist other more specific dispute settlement provision, e.g. regarding trade within SADC under the Southern African Development Community Protocol on Trade, Annex VI, at <http://www.sadc.int/documents/trade/annex6.doc>; see Joost Pauwelyn, *Going Global or Regional or Both? Dispute Settlement in the South African Development Community (SADC) and Overlaps with Other Jurisdictions*, in particular that of the WTO, *Minnesota Journal of Global Trade*, vol. 1, 2004; available online at SSRN: <http://ssrn.com/abstract=478041>.

Gaborone, Botswana on 18th August 2005. The inauguration of the Tribunal and the swearing in of the Members took place on 18th November 2005 in Windhoek, Namibia.

In terms of the Treaty, the Tribunal, which is charged with the responsibility of adjudicating over disputes and the interpretation of the Treaty and subsidiary instruments, is constituted and with its powers, composition and functions to be prescribed in a protocol³³. The SADC Protocol on the Tribunal (Protocol) has been adopted by the SADC Summit and ratified by more than a majority of member states.

The Tribunal itself became operational on 18 November 2005 when judges were officially appointed. Unlike other subsidiary legal instruments of SADC, the Protocol forms an integral part of the Treaty meaning that a state party to the Treaty cannot avoid being party to the Protocol³⁴.

The Tribunal is mandated by both the Treaty and Protocol to ensure adherence to and the proper interpretation of the Treaty and subsidiary instruments and to adjudicate disputes referred to it in terms of the Treaty and other subsidiary legal instruments³⁵. In the process it is required and expected to develop its own jurisprudence³⁶.

The Tribunal is a new entity which, cannot rely on the jurisprudence and wisdom of a predecessor. In the absence of established rules and principles of how the Tribunal will perform its task, there is no doubt that it is facing a mammoth task.

The Tribunal is directed to apply various sources of law which include the SADC treaty and principles international law in carrying out its task³⁷. For all intents and purpose, these sources of law include the Treaty, protocols and other subsidiary legal

³³ Article 16 Treaty

³⁴ Article 16(2) Treaty.

³⁵ Article 16 Treaty and Article 14 Protocol

³⁶ Article 21(b) Protocol

³⁷ Article 21 Protocol.

instruments adopted by the SADC under the Treaty, and these constitute “enactments” or “legislation” of SADC³⁸.

In the resolution of disputes there is, of course, a wealth of jurisprudence which has been developed over the years by other national and international tribunals. It can safely be assumed that in its infancy, the Tribunal will have to rely heavily on the jurisprudence developed by comparable regional and international tribunals until such time that it has developed its own jurisprudence. In essence, this is how most tribunals, be they national or international, get onto their feet.

The Tribunal consists of not less than ten members appointed from nationals of states who qualify for appointment to the highest judicial offices in their respective states. Currently there are five regular members and five alternate members of the Tribunal³⁹. Five of the members are designated by the Council of Ministers as regular members who shall sit regularly on the Tribunal and the rest of the members shall constitute a pool from which the president of the Tribunal may invite a member to sit in place of a temporarily absent regular member.

The president is elected by members of the Tribunal. The Tribunal shall also elect the Registrar and his or her assistant by secret ballot from a list of nationals of member states. The Tribunal shall also employ other staff members to enable it to perform its functions.

Member states and SADC institutions are to take all measures necessary to ensure execution of decisions of the Tribunal. All decisions of the Tribunal shall be binding upon the parties to the dispute and enforceable within the territories of the state’s concerned.

If any party fails to comply with a decision the aggrieved party may refer the matter to the Tribunal. If the Tribunal finds such failure it shall report its findings to the Summit for appropriate action to be taken.

³⁸ The Summit, Council or other organs of SADC acting under delegated powers are empowered to adopt legal instruments including protocols under Articles 10 and 22 Treaty.

³⁹ Available at: < www.sadc-tribunal.org>. (Accessed on 30 October 2011).

As of March 2004, 20 of the SADC Protocols had entered into force and binding upon the ratifying states. The automatic entry into force of the Tribunal protocol is by virtue of article 16(2) which provides that the protocol shall form an integral part of the SADC Treaty.

This provision dispensed with the requirements in article 22 that a protocol will enter into force upon ratification by 9 SADC states and that only the states that have ratified a protocol will be bound by it.

2.1. THE ENFORCEMENT AND BREAKDOWN OF THE TRIBUNAL

Mike Campbell (Pvt) Ltd and Others v Republic of Zimbabwe (Case no 2 of 2007)

The Mike Campbell matter is the only case the Tribunal has heard that dealt with substantive human rights issues. Defence of the principles of rule of law in the Tribunal's judgment was thorough, but the Tribunal declined to explore any of the novel aspects of its jurisdiction.

The Tribunal has the potential to implement and apply international human rights instruments, which it declined to, do in this case, even though it considered points of argument relating to international law and made several comparative analyses based on international human rights law.

The case concerned Zimbabwe's land redistribution programme. Upon independence from the UK in 1980, the question of farm ownership by the white community was purposefully left unanswered. In order to conclude negotiations between Zanu-PF and the Rhodesian Government, Lord Carrington, the then British Foreign Secretary, was deliberately vague about the question of white farmers' land rights – a position that ultimately rendered land rights precarious for all Zimbabweans.

After commercial methods failed to fairly redistribute land in Zimbabwe, legal methods were the next available option. In 1992, the Land Acquisition Act authorised the acquisition of land for ‘resettlement’ purposes, which technically violated citizens’ constitutional rights to ‘peaceful enjoyment of property’ but was upheld by the Supreme Court as constitutional.⁴⁰

The process was accelerated in 2000, when the Government made political commitments to help ‘veterans’ of the independence struggle to obtain farmland. A constitutional amendment was passed that expanded the original Acquisition Act. These new powers committed the Government to paying for resettlements but not to paying the true value of the land in question, and effectively violated more of the remaining rights of property owners.⁴¹

The Zimbabwean Government maintained that the British were under an obligation to pay for the land. Due to increasing chaos in Zimbabwe when its Government allowed veteran groups to occupy farms owned by the white community, refused to intervene and accused their critics of neo-colonialism, the British Government withdrew a programme that was designed to pay for the land.

The Supreme Court of Zimbabwe first heard a case on land occupation in 2001 and held that the Government had consistently failed to enforce the law and that farm invasions were unlawful.⁴² The Government’s response was to embark on a series of actions that weakened the Supreme Court and to pass a new constitutional package aimed at ending all future litigation from farmers who had their land seized.⁴³

On 11 October 2007, Mike Campbell (PVT) Limited, a Zimbabwean-registered company, instituted a case with the Tribunal to challenge the acquisition of agricultural

⁴⁰ Naldi, G. J. 1998. “Constitutional challenge to land reform in Zimbabwe.” in *Comparative and International Law Journal of Southern Africa*, 31(78).

⁴¹ The Land Acquisition Act 2000 and the Constitution of Zimbabwe Amendments Act (No. 2) of 2000.

⁴² *Commercial Farmers Union v Minister of Lands, Agriculture and Rural Resettlement and Others* 2001 (2) SA 925 (ZS).

⁴³ Naldi, G. 2009. “Mike Campbell (Pvt) Ltd et AL v The Republic of Zimbabwe. Land reform programme held in breach of the SADC treaty.” in *Journal of African Law*, 53(2): 305–320.

land in Zimbabwe by the Government of Zimbabwe on the grounds that their due process rights had been infringed and that the policy of land redistribution was being applied in a discriminatory manner. Under Article 28 of the Protocol, the applicants applied for an interim measure to prevent evictions whilst their case was being heard.⁴⁴

The Tribunal held that the applicants did not, in this case, have to exhaust domestic remedies, because adequate domestic forums were not available in Zimbabwe. It furthermore held that human rights jurisdiction and human rights treaties had not been incorporated into the SADC Protocol under Article 21(b) of the Protocol, but that the Tribunal was entitled to develop novel sources of law. Under the SADC treaty, member states who had committed themselves to, the Tribunal would adhere to norms of “democracy, human rights and the rule of law.”⁴⁵

On the issue of access to remedies, the Tribunal found that the failure to provide any international human rights laws for remedy was a violation of the right to a fair hearing. Given that the African Commission had specifically condemned the creation and use of ‘ouster clauses’ it was thus held that the statutory land reform programme was incompatible with international human rights law.⁴⁶

The issue of property was not ruled on by the Tribunal. It held, however, that a programme of land distribution could be justified as a matter of social necessity, if that program adhered to the rule of law and were not arbitrary or discriminatory. The Tribunal furthermore held that the application, but not the purpose, of the programme was discriminatory, as had previously been argued by the United Nations (UN) Committee on Racial Discrimination.

⁴⁴ Ebobrah, S. 2009. “Litigating human rights before sub-regional courts in Africa: Prospects and challenges.” in *African Journal of International and Comparative Law*, 17(1): 79-101.

⁴⁵ Article 4(c) of the 1992 SADC Treaty.

⁴⁶ The African Commission previously condemned ouster clauses in *Constitutional Rights Project, Civil Liberties Organisation and Media Rights Agenda v Nigeria*, comm nos 140/94, 141/94, 145/95, Thirteenth Annual Activity Report.

The enforcement of the legislation since 2000 had been almost entirely directed against whites in Zimbabwe.⁴⁷ The Tribunal, after considering numerous international precedents, concluded that the Constitution of Zimbabwe Act (No. 17) “affected disproportionately and unjustifiably a large number of a particular racial group” and ordered the Government to pay compensation to the claimants.

Under Article 32 of the Protocol, the international law of enforcement of foreign judgments applies to Tribunal judgments. Prior to the Mike Campbell case, this had been identified as a weakness in the Tribunal’s legal framework, because in the case of absence of clear mechanisms or frameworks of enforcement, failure to enforce a judgment would become a political question, to be resolved through the diplomatic forums of the SADC.

In Mike Campbell the Tribunal found against the Government of Zimbabwe and awarded damages to the applicant. The Government was however reluctant to act against the “war veterans” because they were key Zanu PF supporters. This intransigence led the Zimbabwe forum of non-governmental organisations (NGOs) to take the Government back to the Tribunal to enforce the judgment. The Tribunal found against the Government again, but the Government still refused to enforce the judgment.

The Minister of Justice and Legal Affairs, Patrick Chinamasa, said in a statement that the Tribunal did not bind Zimbabwe because it had been ratified by less than two thirds of the SADC’s members. This interpretation ignored the amendments to the SADC Treaty made in 2000, which accommodated the Tribunal and authorised it to exercise its jurisdiction separately from the conditions of the Protocol.⁴⁸

Under the SADC treaty, Article 16(5) provides that the decisions of the SADC Tribunal shall be final and binding on the parties of the dispute. A legal opinion written by J.J.

⁴⁷ ‘4th Periodic report of Zimbabwe submitted to the Committee on the Elimination of Racial Discrimination’, UN doc CERD/C329/Add.1, paras 21–26.

⁴⁸ Zimbabwe Lawyers for Human Rights, ‘Hon Chinamasa’s attempt to pull out of SADC Tribunal futile and unjustifiable’, Press Release, 3 September 2009.

Gauntlett SC and Professor Jeffrey Jowell QC in November 2009 concluded that the Government of Zimbabwe was bound by the Tribunal and had to enforce its rulings.⁴⁹

In January 2010, the Zimbabwean High Court ruled that Tribunal orders were unenforceable in Zimbabwe.⁵⁰ The claimants in Mike Campbell then applied to the South African High Court, under the terms of the SADC Treaty, to permit them to enforce the original ruling against Zimbabwean commercial properties within South Africa.

This request was granted, though other SADC members were quick to issue statements that this would not apply in their jurisdiction.⁵¹ On 1 June 2010, the Tribunal heard an application for contempt against the Government of Zimbabwe. This was ignored by Zimbabwe, who simply repeated their objection to the enforceability of Tribunal judgments.

During the SADC summit in Windhoek in August 2010, Pres. Mugabe threatened to block any discussion of Zimbabwe and its human rights record. Senior members of the SADC Secretariat issued press statements, insisting that Zimbabwe would be on the agenda, but during the course of discussions the issue was avoided.⁵² The summit communiqué stated that it was decided "that a review of the role, functions and terms of reference of the SADC Tribunal should be undertaken and concluded within six months."

Joao Samuel Caholo, Deputy Executive Secretary of the SADC, told journalists that the Tribunal would not be able to conclude any old cases or take on new ones, before the end of the review process to be carried out by SADC Justice Ministers.⁵³

⁴⁹ The Zimbabwean Telegraph 'Legal opinion on SADC Tribunal ruling explained', 30 October 2011, <http://www.zimtelegraph.com>.

⁵⁰ 'Zimbabwe court rejects SADC ruling to end farm seizures', 30 October 2011, <http://news.bbc.co.uk>.

⁵¹ 'Zimbabwean Government could lose more assets in SADC', Namibia Economist, 29 October 2011, <http://www.economist.com.na>.

⁵² Dumisani Muleya & Faith Zaba, 'Zimbabwe issue suspiciously blocked from SADC debate', The Zimbabwe Independent, 20 October 2011, <http://allafrica.com>.

⁵³ Alex Bell, 'SADC Tribunal suspended over Government refusal to honour rulings', South West Africa Radio <http://allafrica.com>.

2.2. OTHER RESOLUTION OF DISPUTE MECHANISMS IN AFRICA

The setting up of Tribunals and international courts in Africa are critical in that it presents a more focused and integrated approach to dealing with challenges peculiar to it and certain regions within it which may share similar socio-economic, political, legal and cultural systems.

However, it is rare that any sovereign nation will simply conform to the decision of a Tribunal or an international court that renders an adverse decision. The reality is the majority of disputes require the implementation of the [decision] in order to settle matters finally. Despite this stigma, Africa, in its pursuit to resolve disputes and protect human rights, has taken bold steps to address these matters. One such example of such a court is the African Court on Human and Peoples' Rights.

2.2.1. THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

On 10 June 1998 the African Heads of State and Government (ASHG) adopted the Protocol to the African Charter on Human and Peoples' Rights (the Court Protocol) in Ouagadougou, Burkina Faso. The Comoros deposited the required 15th instrument of ratification⁵⁴ on 25 December 2003 culminating in the Protocol coming into force on 25 January 2004. In the SADC region, out of the 14 member states 9 have not yet ratified the Protocol.⁵⁵

The 24 states which have ratified the Protocol only two, Burkina Faso and Malawi, have made the declaration in terms of article 34(6) allowing individuals and NGOs direct access to the Court in cases against them. This is the Achilles heel of the Court which can be abused by member states not willing to be embarrassed by victims and civil society taking them before the ultimate regional human rights court in the region. This

⁵⁴ Art 34 of the Protocol

⁵⁵ These are: Angola, Botswana, DRC, Madagascar, Namibia, Seychelles, Swaziland, Zambia and Zimbabwe.

weakness might be justification enough for some analysts to call the Court a “two legged stool”.⁵⁶

The Court is established in terms of article 1 of the Court Protocol. The Court shall complement and reinforce the mandate of the Commission as conferred upon it by article 45 of the Commission. It is based in Arusha, Tanzania. It currently consists of 11 judges,⁵⁷ an acting registrar and five legal officers and the Court has opened its doors to receiving cases. The court has since adopted its rules and these will be harmonized with the Commission’s rules of procedure to ensure a smooth working relationship between the two human rights mechanisms.

On the 28th of June 2008 the Executive Council of the AU, at its 13th ordinary session in Sharm-el-Sheikh, Egypt adopted a new Protocol to the Statute on the African Court of Justice and Human Rights. The Protocol is a single legal instrument merging the African Court on Human and Peoples Rights and the Court of Justice of the AU. The Court of Justice of the AU is provided for in article 18 of the AU Constitutive Act.

This Court shall be the general law section of the yet to be merged African Court on Human and Peoples’ Rights and Justice. The new merged court shall consist of 16 judges and shall have a human rights and general law section. State parties, AU institutions, national human rights institutions and inter-governmental bodies accredited to the AU may lodge cases with the court. Individuals and non-governmental organizations will only be able to bring cases to the court if the State party being sued has made a declaration allowing for this.⁵⁸

The judgments of the current human rights Court shall be binding, final and not subject to appeal.⁵⁹ The Council of Ministers shall monitor the execution of the Court’s

⁵⁶ M Makau ‘The African Human Rights Court: A two legged stool?’ (1999) 21 Human Rights Quarterly 342

⁵⁷ Sophia A.B. Akuffo(Ghana), Modibo-Tounty Gouindo(Mali), Jean Mutsunzi(Rwanda), Fatsah Ouguergouz(Algeria), Hamdi Faraj Hanoush(Libya), Kellelo Justina Mafoso-Guni(Lesotho), El Hadji Guisse(Senegal), Bernard Ngoepe(South Africa), Githu Muigai-now resigned (Kenya), Joseph Mulenga(Uganda)and Gerard Niyungeko (Burundi): www.africancourtcoalition.org/editorial.asp

⁵⁸ Art 5(3) and 34(6) of the Protocol

⁵⁹ Art 28 of the Protocol

judgments.⁶⁰ State parties have an obligation to comply with the Court's judgments and to ensure their execution.⁶¹ In interpreting cases brought before it the Court shall apply the provisions of the ACHPR and any other human rights instruments ratified by the states concerned.⁶²

2.2.2. A CRITIQUE ON THE IMPLEMENTATION OF INTERNATIONAL COURT AND TRIBUNAL JUDGEMENTS.

After a judgment is rendered against a sovereign nation, compliance might be “partially or fully refused for practical, legal, or policy reasons” even if there is a treaty or other binding obligation requiring it. In the international law setting, it is presupposed that the tribunal has zero power to induce compliance with its decisions.

Therefore, where adjudication is involved, the governing body which created the tribunal is responsible for implementation. Currently, it is so difficult for international courts to implement their decisions that in anticipation of the implementation phase they often adjust their decisions to make them more likely to be complied with. “It has been suggested that the International Court of Justice, anticipating non-compliance, goes so far as to deny jurisdiction or refuses to grant an order for interim measures of protection.

The inability of international courts to induce compliance is quite evident from the actions of the courts that are leaning toward lessening sentences or avoiding adjudication in hopes that they won't have to suffer the embarrassment of non-compliance.

Many international organizations have compliance provisions written into their constitutions, which provisions grant “notification procedures, monitoring procedures, or

⁶⁰ Art 29 of the Protocol

⁶¹ Art 30 of the Protocol

⁶² Art 7 of the Protocol

enforcement procedures.” Only enforcement provisions grant international courts the authority to induce compliance with the judgment.

In respect of dispute resolution in SADC, the SADC Treaty states in Article 32 that disputes arising under the treaty shall be referred to the Tribunal (which accomplishes nothing in the way of actual enforcement). Article 33 states that “sanctions may be imposed against any member-state that: “(a) persistently fails, without good reason, to fulfill obligations assumed under this Treaty; [or] (b) implements policies which undermine the principles and objectives of SADC...”.⁹⁶ Article 33 appears to be more promising for SADC Tribunal decisions, because it at least allows SADC to resort to a certain degree of self-help in getting member-states to comply with “obligations” assumed under the Treaty.

SADC Tribunal decisions should be an obligation because Article 16 of the SADC Treaty states that Tribunal decisions are “binding.” If states intended to become a member of SADC when it signed and ratified the Treaty, then decisions must also be considered obligations under the treaty that, in theory, a member state would implement against itself even when adverse.

CHAPTER 3

3. HOW CAN THE SADC TRIBUNAL'S CHALLENGES BE RESOLVED?

The future of the Southern African Development Community's Tribunal (SADC Tribunal) hangs in the balance. In reaction to this crisis, ignited by the government of Zimbabwe's refusal to comply with several of the Tribunal's judgments, the August 2010 SADC Summit suspended the Tribunal for a period of six months.

The Summit ordered a review of the Tribunal's operations, role, responsibilities and terms of reference. Although the dispute over the operations of the Tribunal will be resolved politically by the Summit, the controversy has raised complex legal issues.

The Summit should review the provisions of the SADC Treaty. Some of its provisions are loosely drafted. It is difficult to conclude that the language used in amending article 16(2) was intended to result, or that it actually resulted, in the Protocol on the Tribunal entering into force.

However, it is clear that on 3 October 2002, more than a year after the amendment of the Treaty, SADC member states reinterpreted article 16(2) and agreed that they were to regard the Protocol of the Tribunal as having entered into force. The problem is that their assertion is in conflict with article 22 of the SADC Treaty.

The tension must be resolved, which exists between: (i) on the one hand, the clear and unambiguous meaning of article 22 of the Treaty, and the conduct of SADC member states suggesting that the Protocol did not enter into force on 14 August 2001; and (ii) on the other hand the very clear statement in the 3 October 2002 Agreement.

In light of this, SADC member states must resolve the crisis, ideally by amending the Treaty and ensuring clarity on several disputed legal issues. The process and ramifications of the various options to resolving this dispute will be carefully considered.

3.1.1. RETENTION OF THE STATUS QUO - OPTION 1:

SADC member states through the Summit could decide to reiterate and affirm the Protocol on the Tribunal entered into force on 14 August 2001. Such a pronouncement would have the effect of drawing a line under the key issue of enforcement of the Tribunal's judgements.

It would also confirm that member states are of the view that whatever the shortcomings in the language used in article 16, 21 and 22, the Protocol on the Tribunal must be considered as being in force and binding on member states. Such a declaration would, naturally and as a consequence, result in a demand that the government of Zimbabwe comply with the decisions of the Tribunal.

Retaining the *status quo* would pose several challenges for SADC. The government of Zimbabwe could withdraw its membership because of its disregard and rejection to the Tribunal's judgement. If it did not voluntarily adopt this option, the government of Zimbabwe could be suspended or expelled from SADC, or have some other punitive measure taken, if it does not comply with the decisions of the Tribunal.

The voluntary withdrawal, suspension or expulsion of the government of Zimbabwe from SADC would arguably, leave SADC with some member states which share the view that the Protocol on the Tribunal entered into force and therefore not willing to be subjected to its jurisdiction. Although unlikely, retaining the *status quo* could have the effect of forcing the government of Zimbabwe to comply with the orders issued by the Tribunal.

The view that the SADC Tribunal was improperly established and that it has exceeded its mandate is likely to be shared by other SADC states, which may explain why the August 2010 Heads of member State Summit agreed to review the Tribunal's mandate, role and responsibilities.

3.1.2. AMENDMENT OF ARTICLE 16 OF THE SADC TREATY - OPTION 2

The SADC Summit could amend the SADC Treaty using its powers under article 36 of the Treaty and stipulate that the Protocol on the Tribunal entered, or will enter, into force on a given date. The controversial issue with this option would be over the date when the Protocol is deemed to have entered, or will enter into force.

If it were decided to reaffirm that the Protocol entered into force on 14 August 2001, this would reignite the issues and arguments discussed above. On the other hand, a decision to change the date on which the Protocol is deemed to have entered, or will enter, into force from 14 August 2001 will also be controversial.

If the Summit resolves that the Treaty must be amended and that the Treaty did not enter into force on 14 August 2001, this would mean that all decisions handed down by the Tribunal are a nullity and of no legal consequence. Such a pronouncement would have the effect of confirming that the Tribunal was improperly established. This would most likely result in the usual cacophony that SADC is pandering to the wishes of the Zimbabwean government.

The second and an extremely important issue, which the Summit would have to decide is whether the Protocol on the Tribunal should be subject to the strictures of article 22, or if it is to be deemed in force on its adoption by the Summit. Each of these two options has advantages and disadvantages. Subjecting the Protocol on the Tribunal to the onerous and peremptory provisions of article 22 would underscore its importance.

In addition, such a process would ensure that parliaments, lawyers' bodies, members of the judiciary and other key stakeholders in each of the SADC member countries have the opportunity to consider the provisions of the Protocol and its implications and make relevant contributions, as appropriate. Indeed article 4(c) requires SADC member states to act in accordance with the principles of human rights, democracy and the rule of law.

Due to slow pace of decisions taking by member states, the disadvantage of this option is that it may be years before the Protocol is approved, signed and ratified by two-thirds of SADC member states. But it could be argued that this may be a price worth paying to ensure that the Protocol is adopted after a full, considered review process in each SADC member state.

An alternative to the above would be the amendment of article 16(2) of the Treaty to clearly stipulate that the Protocol on the Tribunal shall, notwithstanding the provisions of article 22, enter into force on its adoption by the Summit.

The phrase “entry into force” should be used in lieu of the phrase “shall form an integral part of the treaty”. This would have the advantage of ensuring that the Protocol enters into force within a relatively short period of time, i.e. on its adoption during one of the periodic SADC summits.

Alternatively, the Summit could direct each member state to consider the draft Protocol on the Tribunal before its consideration and adoption by the Summit. SADC member states must resolve the dispute and in the process should ensure that the sanctity of the region’s dispute resolution mechanism is preserved. Whatever the disputes over its establishment, SADC has - in practice - already had an operational court.

Two other regional courts exist in Africa, the East African Community Court of Justice and the Economic Community of West African States Community Court of Justice. For this reason, and in order to achieve the goals behind the creation of the regional economic community, the best outcome is an affirmation of the need to have a dispute resolution mechanism.

However, the SADC Treaty must be amended. The Tribunal’s troubled history has revealed numerous genuine problems that need to be addressed. These problems relate to: (i) the meaning of some of the SADC Treaty’s provisions; (ii) the dispute over the entry into force of the Protocol on the Tribunal and the meaning of some of the

provisions of the Treaty; (iii) the quality of jurisprudence emanating from the Tribunal as highlighted, among other cases, by the Campbell decision; (iv) the structure of the Tribunal; and (v) the normative legal framework(s) that should be applied by the Tribunal, and the nature and scope of its jurisdiction.

These problems must be addressed by SADC in good faith, with the objective of creating a durable dispute resolution mechanism, and one that will garner the respect and support of the region and its people. The review process that has been initiated by SADC must therefore address the very obvious legal problems affecting the Tribunal.

CONCLUSION

3.2. THE ROLE OF NGO'S AND CIVIL SOCIETY IN MITIGATING THE SADC TRIBUNAL'S CHALLENGES

The SADC NGOs have a critical role to play in ensuring that the regional court system functions effectively and that the majority of the people fully utilize the protective mechanisms. As stated by Padilla,⁶³ the most effective weapon in the arsenal of civil society activists is the marshalling of shame.

He proposes that NGOs can play an extremely important role in the preparing and disseminating succinct, accurate and thoughtful press communiqués and assuring that they are distributed to the relevant national and international media. SADC NGO and other relevant NGOs may liaise with the Council of Ministers in obtaining names of states that have not complied with regional courts' decisions as well as those which have not ratified key treaties and protocols.

This information may then be used as advocacy tools. It is strategic for SADC NGO to urge the Council of Ministers to be independent and firm when dealing with states that do not comply with court decisions.

⁶³ D Padilla 'An African Human Rights Court: Reflections from the perspective of the Inter-American System' AHRLJ 192 2002 at 193

The ratification of key regional documents and making the special declaration as provided in article 5(3) and 34(6) of the Court Protocol will help strengthen and increase access to the regional courts. It is the role of SADC CNGO to launch a campaign of expeditious ratification of protocols in the region. This may be done through working with eminent personalities in the region to raise awareness about important protocols and appeal for full ratification.

At the national level NGOs may also engage with Ministers of Justice and Foreign Affairs, Attorneys-General and legal experts to urge and support the ratification of regional instruments. Organizations may design a ratification guideline for each protocol that has not been ratified and present this to the relevant state officials.

SADC NGO may also arrange for country visits by Commissioners from the African Commission on Human and Peoples' Rights or Registrars of both the African Court and SADC Tribunal to help expedite the ratification process.

SADC NGO and its coalition of NGOs should organize regional meetings to disseminate the essential content of important protocols not yet in force and lobby consistently for ratification by the relevant authorities. Such meetings could include raising awareness about the African Court and the SADC Tribunal.

Access to justice is a real challenge for most people in the African region. It is therefore imperative that NGOs provide legal aid and representation to individuals who wish to take up cases to the SADC Tribunal and the African Court as the cost of litigation, particularly at the regional level could be quite prohibitive.

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2. Agreement Amending the Treaty of the Southern African Development Community
3. Protocol on Tribunal and Rules of Procedure Thereof
4. First Protocol to the European Convention for the Protection of Human Rights
5. Treaty of the Southern Africa Development Community
6. Treaty of the European Union
7. Vienna Convention on the Law of Treaties, 1969

DECLARATION AND TREATY OF SADC

PREAMBLE

WE, the Heads of State or Government of:

The People's Republic of Angola

The Republic of Botswana

The Kingdom of Lesotho

The Republic of Malawi

The Republic of Mozambique

The Republic of Namibia

The Kingdom of Swaziland

The United Republic of Tanzania

The Republic of Zambia

The Republic of Zimbabwe

HAVING REGARD to the objectives set forth in "Southern Africa: Toward Economic Liberation

- A Declaration by the Governments of Independent States of Southern Africa, made at Lusaka, on the 1st April, 1980";

IN PURSUANCE of the principles of " Towards a Southern African Development Community – A Declaration made by the Heads of State or Government of Southern Africa at Windhoek, in

August, 1992," which affirms our commitment to establish a Development Community in the Region;

DETERMINED to ensure, through common action, the progress and well-being of the people of Southern Africa;

CONSCIOUS of our duty to promote the interdependence and integration of our national economies for the harmonious, balanced and equitable development of the Region;

CONVINCED of the need to mobilise our own and international resources to promote the implementation of national, interstate and regional policies, programmes and projects within

the framework for economic integration;

DEDICATED to secure, by concerted action, international understanding, support and cooperation;

MINDFUL of the need to involve the people of the Region centrally in the process of development and integration, particularly through the guarantee of democratic rights, observance of human rights and the rule of law;

RECOGNISING that, in an increasingly interdependent world, mutual understanding, good neighbourliness, and meaningful co-operation among the countries of the Region are indispensable to the realisation of these ideals;

TAKING INTO ACCOUNT the Lagos Plan of Action and the Final Act of Lagos of April 1980, and the Treaty establishing the African Economic Community signed at Abuja, on the 3rd of June, 1991;

BEARING IN MIND the principles of international law governing relation between States;

Have decided to establish an international organisation to be known as the Southern African Development Community (SADC), and hereby agree as follows:

CHAPTER ONE

ARTICLE 1

DEFINITIONS

In this Treaty, unless the context otherwise requires:

"Treaty" means this Treaty establishing SADC;

"Protocol" means an instrument of implementation of this Treaty, having the same legal force as this Treaty;

"Community" means the organisation for economic integration established by Article 2 of this Treaty;

"Region" means the geographical area of the Member States of SADC;

"Member State" means a member of SADC;

"Summit" means the Summit of the Heads of State or Government of SADC established by Article 9 of this Treaty;

"High Contracting Parties" means States, herein represented by Heads of State or Government or their duly authorised representatives for purposes of the establishment of the Community;

"Council" means the Council of Ministers of SADC established by Article 9 of this Treaty;

"Secretariat" means the Secretariat of SADC established by Article 9 of this Treaty;

"Executive Secretary" means the chief executive officer of SADC appointed under Article 10 (7) of this Treaty;

"Commission" means a commission of SADC established by Article 9 of this Treaty;

"Tribunal" means the tribunal of the Community established by Article 9 of this Treaty;

"Sectoral Committee" means a committee referred to in Article 38 of this Treaty;

"Sector Coordinating Unit" means a unit referred to in Article 38 of this Treaty;

"Standing Committee" means the Standing Committee of Officials established by Article 9 of this Treaty;

"Fund" means resources available at any given time for application to programmes, projects and activities of SADC as provided by Article 26 of this Treaty.

CHAPTER TWO

ESTABLISHMENT AND LEGAL STATUS

ARTICLE 2

ESTABLISHMENT

1. By this Treaty, the High Contracting Parties establish the Southern African Development Community (hereinafter referred to as SADC).
2. The Headquarters of SADC shall be at Gaborone, Republic of Botswana.

ARTICLE 3

LEGAL STATUS

1. SADC shall be an international organisation, and shall have legal personality with capacity and power to enter into contract, acquire, own or dispose of movable or immovable property and to sue and be sued.
2. In the territory of each Member State, SADC shall, pursuant to paragraph 1 of this Article, have such legal capacity as is necessary for the proper exercise of its functions.

CHAPTER THREE

PRINCIPLES, OBJECTIVES AND GENERAL UNDERTAKINGS

ARTICLE 4

PRINCIPLES

SADC and its Member States shall act in accordance with the following principles:

- a) sovereign equality of all Member States;
- b) solidarity, peace and security;
- c) human rights, democracy, and the rule of law;
- d) equity, balance and mutual benefit;
- e) peaceful settlement of disputes.

ARTICLE 5

OBJECTIVES

1. The objectives of SADC shall be to:

- a) achieve development and economic growth, alleviate poverty, enhance the standard and quality of life of the people of Southern Africa and support the socially disadvantaged through regional integration;
- b) evolve common political values, systems and institutions;
- c) promote and defend peace and security;
- d) promote self-sustaining development on the basis of collective self-reliance, and the interdependence of Member States;
- e) achieve complementarity between national and regional strategies and programmes;
- f) promote and maximise productive employment and utilisation of resources of the Region;

g) achieve sustainable utilisation of natural resources and effective protection of the environment;

h) strengthen and consolidate the long standing historical, social and cultural affinities and links among the people of the Region.

2. In order to achieve the objectives set out in paragraph 1 of this Article, SADC shall:

a) harmonise political and socio-economic policies and plans of Member States;

b) encourage the people of the Region and their institutions to take initiatives to develop economic, social and cultural ties across the Region, and to participate fully in the implementation of the programmes and projects of SADC;

c) create appropriate institutions and mechanisms for the mobilisation of requisite resources for the implementation of programmes and operations of SADC and its Institutions;

d) develop policies aimed at the progressive elimination of obstacles to the free movement of capital and labour, goods and services, and of the people of the Region generally, among Member States;

e) promote the development of human resources;

f) promote the development, transfer and mastery of technology;

g) improve economic management and performance through regional co-operation;

h) promote the coordination and harmonisation of the international relations of Member States;

i) secure international understanding, co-operation and support, and mobilise the inflow of public and private resources into the Region;

j) develop such other activities as Member States may decide in furtherance of the objectives of this Treaty.

ARTICLE 6

GENERAL UNDERTAKINGS

1. Member States undertake to adopt adequate measures to promote the achievement of the objectives of SADC, and shall refrain from taking any measure likely to jeopardise the sustenance of its principles, the achievement of its objectives and the implementation of the provisions of this Treaty.
2. SADC and Member States shall not discriminate against any person on grounds of gender, religion, political views, race, ethnic origin, culture or disability.
3. SADC shall not discriminate against any Member State.
4. Member States shall take all steps necessary to ensure the uniform application of this Treaty.
5. Member States shall take all necessary steps to accord this Treaty the force of national law.
6. Member States shall co-operate with and assist institutions of SADC in the performance of their duties.

CHAPTER FOUR

ARTICLE 7

MEMBERSHIP

States listed in the Preamble hereto shall, upon signature and ratification of this Treaty, be members of SADC.

ARTICLE 8

ADMISSION OF NEW MEMBERS

1. Any state not listed in the Preamble to this Treaty may become a member of SADC upon being admitted by the existing members and acceding to this Treaty.

2. The admission of any such state to membership of SADC shall be effected by a unanimous decision of the Summit.
3. The Summit shall determine the procedures for the admission of new members and for accession to this Treaty by such members.
4. Membership of SADC shall not be subject to any reservations.

CHAPTER FIVE

INSTITUTIONS

ARTICLE 9

ESTABLISHMENT OF INSTITUTIONS

1. The following Institutions are hereby established:
 - a) The Summit of Heads of State or Government;
 - b) The Council of Ministers;
 - c) Commissions;
 - d) The Standing Committee of Officials;
 - e) The Secretariat; and
 - f) The Tribunal.
2. Other institutions may be established as necessary.

ARTICLE 10

THE SUMMIT

1. The Summit shall consist of the Heads of State or Government of all Member States, and shall be the supreme policy-making Institution of SADC.
2. The Summit shall be responsible for the overall policy direction and control of the functions of SADC.

3. The Summit shall adopt legal instruments for the implementation of the provisions of this Treaty; provided that the Summit may delegate this authority to the Council or any other institution of SADC as the Summit may deem appropriate.
4. The Summit shall elect a Chairman and a Vice-Chairman of SADC from among its members for an agreed period on the basis of rotation.
5. The Summit shall meet at least once a year.
6. The Summit shall decide on the creation of Commissions, other institutions, committees and organs as need arises.
7. The Summit shall appoint the Executive Secretary and the Deputy Executive Secretary, on the recommendation of the Council.
8. Unless otherwise provided in this Treaty, the decisions of the Summit shall be by consensus and shall be binding.

ARTICLE 11

THE COUNCIL

1. The Council shall consist of one Minister from each Member State, preferably a Minister responsible for economic planning or finance.
2. It shall be the responsibility of the Council to:
 - a) oversee the functioning and development of SADC;
 - b) oversee the implementation of the policies of SADC and the proper execution of its programmes;
 - c) advise the Summit on matters of overall policy and efficient and harmonious functioning and development of SADC;
 - d) approve policies, strategies and work programmes of SADC;
 - e) direct, coordinate and supervise the operations of the institutions of SADC subordinate to it;

- f) define sectoral areas of co-operation and allocate to Member States responsibility for coordinating sectoral activities, or re-allocate such responsibilities;
 - g) create its own committees as necessary;
 - h) recommend to the Summit persons for appointment to the posts of Executive Secretary and Deputy Executive Secretary;
 - i) determine the Terms and Conditions of Service of the staff of the institutions of SADC;
 - j) convene conferences and other meetings as appropriate, for purposes of promoting the objectives and programmes of SADC; and
 - k) perform such other duties as may be assigned to it by the Summit or this Treaty;
3. The Chairman and Vice-Chairman of the Council shall be appointed by the Member States holding the Chairmanship and Vice-Chairmanship of SADC respectively.
 4. The Council shall meet at least once a year.
 5. The Council shall report and be responsible to the Summit.
 6. Decisions of the Council shall be by consensus.

ARTICLE 12

COMMISSIONS

1. Commissions shall be constituted to guide and coordinate co-operation and integration policies and programmes in designated sectoral areas.
2. The composition, powers, functions, procedures and other matters related to each Commission shall be prescribed by an appropriate protocol approved by the Summit.
3. The Commissions shall work closely with the Secretariat.
4. Commissions shall be responsible and report to the Council.

ARTICLE 13

THE STANDING COMMITTEE OF OFFICIALS

1. The Standing Committee shall consist of one permanent secretary or an official of equivalent rank from each Member State, preferably from a ministry responsible for economic planning or finance.
2. The Standing Committee shall be a technical advisory committee to the Council.
3. The Standing Committee shall be responsible and report to the Council.
4. The Chairman and Vice-Chairman of the Standing Committee shall be appointed from the Member States holding the Chairmanship and the Vice-Chairmanship, respectively, of the Council.
5. The Standing Committee shall meet at least once a year.
6. Decisions of the Standing Committee shall be by consensus.

ARTICLE 14

THE SECRETARIAT

1. The Secretariat shall be the principal executive Institution of SADC, and shall be responsible for:
 - a) strategic planning and management of the programmes of SADC;
 - b) implementation of decisions of the Summit and of the Council;
 - c) organisation and management of SADC meetings;
 - d) financial and general administration;
 - e) representation and promotion of SADC; and
 - f) coordination and harmonisation of the policies and strategies of Member States.
3. The Secretariat shall be headed by the Executive Secretary.
4. The Secretariat shall have such other staff as may be determined by the Council from time to time.

ARTICLE 15

THE EXECUTIVE SECRETARY

1. The Executive Secretary shall be responsible to the Council for the following:

a) consultation and coordination with the Governments and other institutions of Member States;

b) pursuant to the direction of Council or Summit, or on his/her own initiative, undertaking measures aimed at promoting the objectives of SADC and enhancing its performance;

c) promotion of co-operation with other organisations for the furtherance of the objectives of SADC;

d) organising and servicing meetings of the Summit, the Council, the Standing Committee and any other meetings convened on the direction of the Summit or the Council;

e) custodianship of the property of SADC;

f) appointment of the staff of the Secretariat, in accordance with procedures, and under Terms and Conditions of Service determined by the Council;

g) administration and finances of the Secretariat;

h) preparation of Annual Reports on the activities of SADC and its institutions;

i) preparation of the Budget and Audited Accounts of SADC for submission to the Council;

j) diplomatic and other representations of SADC;

k) public relations and promotion of SADC;

l) such other functions as may, from time to time, be determined by the Summit and Council.

2 The Executive Secretary shall liaise closely with Commissions, and other institutions, guide, support and monitor the performance of SADC in the various sectors to ensure conformity and harmony with agreed policies, strategies, programmes and projects.

The Executive Secretary shall be appointed for four years, and be eligible for appointment for another period not exceeding four years.

ARTICLE 16

THE TRIBUNAL

1. The Tribunal shall be constituted to ensure adherence to and the proper interpretation of the provisions of this Treaty and subsidiary instruments and to adjudicate upon such disputes as may be referred to it.
2. The composition, powers, functions, procedures and other related matters governing the Tribunal shall be prescribed in a Protocol adopted by the Summit.
3. Members of the Tribunal shall be appointed for a specified period.
4. The Tribunal shall give advisory opinions on such matters as the Summit or the Council may refer to it.
5. The decisions of the Tribunal shall be final and binding.

ARTICLE 17

SPECIFIC UNDERTAKINGS

1. Member States shall respect the international character and responsibilities of SADC, the Executive Secretary and other staff of SADC, and shall not seek to influence them in the discharge of their functions.
2. In the performance of their duties, the members of the Tribunal, the Executive Secretary and the other staff of SADC shall be committed to the international character of SADC, and shall not seek or receive instructions from any Member States, or from any authority external to SADC. They shall refrain from any action incompatible with their positions as international staff responsible only to SADC.

CHAPTER SIX

MEETINGS

ARTICLE 18

QUORUM

The quorum for all meetings of the Institutions of SADC shall be two-thirds of its Members.

ARTICLE 19

DECISIONS

Except as otherwise provided in this Treaty, decisions of the Institutions of SADC shall be taken by consensus.

ARTICLE 20

PROCEDURE

Except as otherwise provided in this Treaty, the Institutions of SADC shall determine their own rules of procedure.

CHAPTER SEVEN

CO-OPERATION

ARTICLE 21

AREAS OF CO-OPERATION

1. Member States shall cooperate in all areas necessary to foster regional development and integration on the basis of balance, equity and mutual benefit.
2. Member States shall, through appropriate institutions of SADC, coordinate, rationalise and harmonise their overall macro-economic and sectoral policies and strategies, programmes and projects in the areas of co-operation.

3. In accordance with the provisions of this Treaty, Member States agree to co-operate in the areas of:

- a) food security, land and agriculture;
- b) infrastructure and services;
- c) industry, trade, investment and finance;
- d) human resources development, science and technology;
- e) natural resources and environment;
- f) social welfare, information and culture; and
- g) politics, diplomacy, international relations, peace and security.

4. Additional areas of co-operation may be decided upon by the Council.

ARTICLE 22

PROTOCOLS

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

2. Each Protocol shall be approved by the Summit on the recommendation of the Council, and shall thereafter become an integral part of this Treaty.

3. Each Protocol shall be subject to signature and ratification by the parties thereto.

ARTICLE 23

NON-GOVERNMENTAL ORGANISATIONS

1. In pursuance of the objectives of this Treaty, SADC shall seek to involve fully, the people of the Region and non-governmental organisations in the process of regional integration.

2. SADC shall co-operate with, and support the initiatives of the peoples of the Region and non-governmental organisations, contributing to the objectives of this Treaty in the areas of co-operation in order to foster closer relations among the communities, associations and people of the Region.

CHAPTER EIGHT
RELATIONS WITH OTHER STATES, REGIONAL AND
INTERNATIONAL ORGANISATIONS

ARTICLE 24

1. Subject to the provisions of Article 6(1), Member States and SADC shall maintain good working relations and other forms of co-operation, and may enter into agreements with other states, regional and international organisations, whose objectives are compatible with the objectives of SADC and the provisions of this Treaty.

2. Conferences and other meetings may be held between Member States and other Governments and organisations associated with the development efforts of SADC to review policies and strategies, and evaluate the performance of SADC in the implementation of its programmes and projects, identify and agree on future plans of co-operation.

CHAPTER NINE
RESOURCES, FUND AND ASSETS

ARTICLE 25

RESOURCES

1. SADC shall be responsible for the mobilisation of its own and other resources required for the implementation of its programmes and projects.

2. SADC shall create such institutions as may be necessary for the effective mobilisation and efficient application of resources for regional development.

3. Resources acquired by SADC by way of contributions, loans, grants or gifts, shall be the property of SADC.
4. The resources of SADC may be made available to Member States in pursuance of the objectives of this Treaty, on terms and conditions mutually agreed between SADC and the Member States involved.
5. Resources of SADC shall be utilised in the most efficient and equitable manner.

ARTICLE 26

FUND

The Fund of SADC shall consist of contributions of Member States, income from SADC enterprises and receipts from regional and non-regional sources.

ARTICLE 27

ASSETS

1. Property, both movable and immovable, acquired by or on behalf of SADC shall constitute the assets of SADC, irrespective of their location.
2. Property acquired by Member States, under the auspices of SADC, shall belong to the Member States concerned, subject to provisions of paragraph 3 of this Article, and Articles 25 and 34 of this Treaty.
3. Assets acquired by Member States under the auspices of SADC shall be accessible to all Member States on an equitable basis.

CHAPTER TEN
FINANCIAL PROVISIONS

ARTICLE 28

THE BUDGET

1. The budget of SADC shall be funded by contributions made by Member States, and such other sources as may be determined by the Council.
2. Member States shall contribute to the budget of SADC in proportions agreed upon by the Council.
3. The Executive Secretary shall cause to be prepared, estimates of revenue and expenditure for the Secretariat and Commissions, and submit them to the Council, not less than three months before the beginning of the financial year.
4. The Council shall approve the estimates of revenue and expenditure before the beginning of the financial year.
5. The financial year of SADC shall be determined by the Council.

ARTICLE 29

EXTERNAL AUDIT

1. The Council shall appoint external auditors and shall fix their fees and remuneration at the beginning of each financial year.
2. The Executive Secretary shall cause to be prepared and audited annual statements of accounts for the Secretariat and Commissions, and submit them to the Council for approval.

ARTICLE 30

FINANCIAL REGULATIONS

The Executive Secretary shall prepare and submit to the Council for approval financial regulations, standing orders and rules for the management of the affairs of SADC.

CHAPTER ELEVEN
IMMUNITIES AND PRIVILEGES

ARTICLE 31

1. SADC, its Institutions and staff shall, in the territory of each Member State, have such immunities and privileges as are necessary for the proper performance of their functions under this Treaty, and which shall be similar to those accorded to comparable international organisations.

2. The immunities and privileges conferred by this Article shall be prescribed in a Protocol.

CHAPTER TWELVE
SETTLEMENT OF DISPUTES

ARTICLE 32

Any dispute arising from the interpretation or application of this Treaty, which cannot be settled amicably, shall be referred to the Tribunal.

CHAPTER THIRTEEN
SANCTIONS, WITHDRAWAL AND DISSOLUTION

ARTICLE 33

SANCTIONS

1. Sanctions may be imposed against any Member State that:

- a) persistently fails, without good reason, to fulfill obligations assumed under this Treaty;
- b) implements policies which undermine the principles and objectives of SADC; or

c) is in arrears for more than one year in the payment of contributions to SADC, for reasons other than those caused by natural calamity or exceptional circumstances that gravely affect its economy, and has not secured the dispensation of the Summit.

4. The sanctions shall be determined by the Summit on a case-by-case basis.

ARTICLE 34

WITHDRAWAL

1. A Member State wishing to withdraw from SADC shall serve notice of its intention in writing, a year in advance, to the Chairman of SADC, who shall inform other Member States accordingly.

2. At the expiration of the period of notice, the Member State shall, unless the notice is withdrawn, cease to be a member of SADC.

3. During the one year period of notice referred to in paragraph 1 of this Article, the Member State wishing to withdraw from SADC shall comply with the provisions of this Treaty, and shall continue to be bound by its obligations.

4. A Member State which has withdrawn shall not be entitled to claim any property or rights until the dissolution of SADC.

5. Assets of SADC situated in the territory of a Member State which has withdrawn, shall continue to be the property of SADC and be available for its use.

6. The obligations assumed by Member States under this Treaty shall, to the extent necessary to fulfil such obligations, survive the termination of membership by any State.

ARTICLE 35

DISSOLUTION

1. The Summit may decide by a resolution supported by three-quarters of all members to dissolve SADC or any of its Institutions, and determine the terms and conditions of dealing with its liabilities and disposal of its assets.

2. A proposal for the dissolution of SADC may be made to the Council by any Member State, for preliminary consideration, provided, however, that such a proposal shall not be submitted for the decision of the Summit until all Member States have been duly notified of it and a period of twelve months has elapsed after the submission to the Council.

CHAPTER FOURTEEN

AMENDMENT OF THE TREATY

ARTICLE 36

1. An amendment of this Treaty shall be adopted by a decision of three-quarters of all the Members of the Summit.

2. A proposal for the amendment of this Treaty may be made to the Executive Secretary by any Member State for preliminary consideration by the Council, provided, however, that the proposed amendment shall not be submitted to the Council for preliminary consideration until all Member States have been duly notified of it, and a period of three months has elapsed after such notification.

CHAPTER FIFTEEN

LANGUAGE

ARTICLE 37

The working languages of SADC shall be English and Portuguese and such other languages as the Council may determine.

CHAPTER SIXTEEN
SAVING PROVISIONS

ARTICLE 38

A Sectoral Committee, Sector Coordinating Unit or any other institution, obligation or arrangement of the Southern African Development Coordination Conference which exists immediately before the coming into force of this Treaty, shall to the extent that it is not inconsistent with the provisions of this Treaty, continue to subsist, operate or bind Member

States or SADC as if it were established or undertaken under this Treaty, until the Council or Summit determines otherwise.

CHAPTER SEVENTEEN
SIGNATURE, RATIFICATION, ENTRY INTO FORCE, ACCESSION
AND DEPOSITARY

ARTICLE 39

SIGNATURE

This Treaty shall be signed by the High Contracting Parties.

ARTICLE 40

RATIFICATION

This treaty shall be ratified by the Signatory States in accordance with their constitutional procedures.

ARTICLE 41

ENTRY INTO FORCE

This Treaty shall enter into force thirty (30) days after the deposit of the instruments of ratification by two-third of the States listed in the Preamble.

ARTICLE 42

ACCESSION

This Treaty shall remain open for accession by any state subject to Article 8 of this Treaty.

ARTICLE 43

DEPOSITARY

1. The original texts of this Treaty and Protocols and all instruments of ratification and accession shall be deposited with the Executive Secretary of SADC, who shall transmit certified copies to all Member States.
2. The Executive Secretary shall register this Treaty with the Secretariats of the United Nations Organisation and the Organisation of African Unity.

CHAPTER EIGHTEEN

TERMINATION OF THE MEMORANDUM OF UNDERSTANDING

ARTICLE 44

This Treaty replaces the Memorandum of Understanding on the Institutions of the Southern African Development Coordination Conference dated 20th July, 1981.

IN WITNESS WHEREOF, WE, the Heads of State or Government have signed this Treaty.

DONE AT Windhoek, on 17th Day of August, 1992 in two (2) original texts in the English and Portuguese languages, both texts being equally authentic.

THE PEOPLE'S REPUBLIC OF ANGOLA

REPUBLIC OF BOTSWANA

KINGDOM OF LESOTHO

REPUBLIC OF MALAWI

REPUBLIC OF MOZAMBIQUE

REPUBLIC OF NAMIBIA

KINGDOM OF SWAZILAND UNITED

REPUBLIC OF TANZANIA

REPUBLIC OF ZAMBIA

REPUBLIC OF ZIMBABWE