# Governance Transfer by Regional Organizations: the Southern African Development Community

Anna van der Vleuten & Merran Hulse

Research assistance by Anique Claessen and Jody van der Helm

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Radboud University Nijmegen

Institute for Management Research

Nijmegen, the Netherlands

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## List of Abbreviations

AAF-SAAP African Alternative Framework to Structural Adjustment Programmes  
ACSRT African Centre for Study and Research on Terrorism  
AGOA African Growth and Opportunities Act  
ANC African National Congress  
ASF African Standby Force  
AU African Union  
CEDAW Convention on the Elimination of All Forms of Discrimination against Women (UN)  
COMESA Common Market for Eastern and Southern Africa  
COSATU Congress of South African Trade Unions  
DRC Democratic Republic of the Congo  
EC European Community  
ECOWAS Economic Community Of West African States  
EEM Electoral Expert Mission

ELS Employment and Labour Sector Committee

EOM Electoral Observer Mission

EPA Economic Partnership Agreement  
EU European Union   
EU-ACP European Union - African, Caribbean and Pacific Group of States  
FANR Food, Agriculture and Natural Resources  
FLS Frontline States   
GAD Gender and Development (Declaration)  
GPA Global Political Agreement (Zimbabwe)  
ILO International Labour Organization  
IMF International Monetary Fund   
ICP International Cooperating Partners  
I&S Infrastructure and Services  
ISDSC Inter-State Defence and Security Committee  
ISS Institute for Security Studies  
MDGs Millennium Development Goals  
MCO Ministerial Committee of the Organ  
MDC Movement for Democratic Change  
MPLA People's Movement for the Liberation of Angola  
NEDLAC National Economic Development and Labour Council  
NEPAD New Partnership for Africa’s Development  
NICOC National Intelligence Coordinating Committee  
OAU Organization for African Unity  
OPDS Summit The Organ on Politics, Defence and Security Summit  
OSISA Open Society Initiative for Southern Africa  
PAP Pan-African Parliament  
PFA Platform for Action  
PPRM Policy Planning and Resource Mobilization  
RENAMO Resistência Nacional Moçambicana

RETOSA Regional Tourism Organization of Southern Africa  
REWC Regional Early Warning Centre  
RISDP Regional Indicative Strategic Development Plan  
SADC Southern African Development Community  
SADCBRIG SADC Standby Brigade  
SADCC Southern African Development Coordination Conference  
SADC CIVPOL Southern African Development Community Civilian Police  
SADC PF Southern African Development Community Parliamentary Forum  
SEOM SADC Electoral Observer Mission  
SHD&SP Social and Human Development and Special Programs  
SIPO Strategic Indicative Plan for the Organ  
SNC SADC National Committee

SSA Sub-Sahara Africa  
SSF SADC Standby Force   
TIFI Trade, Industry, Finance, and Investment  
UK United Kingdom  
UN United Nations  
UNITA União Nacional para a Independência Total (Angola)  
UNSC United Nations Security Council  
US United States  
USSR Union of Soviet Socialist Republics  
ZANU-PF Zimbabwe African National Union Patriotic Front

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## Introduction & summary

The Southern African Development Community has two primary objectives, namely economic cooperation in pursuit of the eradication of poverty, and political cooperation to achieve the peace and stability which is conducive to economic development. Its roots are in the Frontline States (FLS) and the Liberation struggles of the colonial/post-colonial era. For many years South Africa, the regional hegemon because of the size of its economy, was a malevolent power in the region, the historical legacy of which continues to constrain its range of action in the current day. Also as a result of the experiences of colonialism, Apartheid and civil war, the principle of non-interference in the sovereign affairs of nation-states is highly valued and actors are loath to violate it, which in some cases can hinder processes of governance transfer.

Institutionally, because of SADC’s origins in the FLS, the security apparatus of the organization (the Organ) was for some time separate and parallel to the economic and other political bodies. This resulted in some messy SADC military interventions in member states in the late 1990s, after which the operations of the SADC Organ were reintegrated into SADC by an institutional overhaul in 2001. SADC is now a larger and more coherent organization than it was, yet it still suffers from severe financial constraints, being heavily dependent on donor funding from development partners. As a result it suffers from a lack of human capital and financial resources, which exacerbates problems with implementation.

Our findings suggest that SADC is to a varying extent engaged in the promotion of good governance, democracy, human rights and rule of law, although it frames these concepts in a more narrow way than might be expected.

The concept of good governance is mainly framed in terms of good economic/corporate governance and fighting corruption, as part of the aim to increase economic growth and become more attractive to FDI. Democracy tends to be equated with the holding of well-organized elections. Much effort has been put into the creation of an election observation mechanism, including a code of conduct, and election observer missions are sent to all elections. However, the level of democracy in SADC member states on average is low and has hardly increased since 1995. Some countries are democracies in name only, while others remain unconsolidated. Also SADC norms do not address the institutional aspects of elections, such as the relative merits of Proportional Representation (PR) systems. This is unfortunate, as in ethnically divided societies, the aim of political stability would warrant the promotion of the PR system, where opposition parties are assured of participation. The stability and security of the state have priority over the promotion of democratic practices, and respect for democracy is enforced mainly if it means protecting incumbent governments. The democratic character of SADC itself is rather weak. It has no regional parliament and no parliamentary oversight over its institutions. The development of regional policy is mostly done through summitry and tripartite structures, to the detriment of the involvement of national parliaments (including the opposition). Human rights tend to be focused on socio-economic rights more than civil-political rights. The principle of non-discrimination is important (mainly the result of the region’s experiences of officially sanctioned racism during colonialism and Apartheid), particularly on grounds of gender and HIV/AIDS infection. Lip service is paid to the principles of rule of law; the contradictions and tensions resulting from the coexistence of a legal system and a system of customary law and traditional practices are not addressed properly, and the dissolution of the regional court after ruling Zimbabwean government policy contrary to the rule of law highlights the double standards SADC holds when it comes to the promotion and implementation of certain norms.

With respect to the standards contained in regional policy documents, most reflect continental (AU) and/or global (UN and ILO) norms. There has been no major change in standards over time. The key actors involved in governance transfer are representatives of governments at the level of the SADC Council and Summit, and the SADC Secretariat (although hampered by low staff numbers), trade unions and women’s organizations at both national and regional level. As regards policy formulation, first broad strategy documents such as the RISDP and SIPO are approved; next, specific topics are addressed in Protocols (which are binding when ratified by two thirds of the member states) which formulate standards and propose monitoring systems (for example, production of reports by national tripartite committees, discussion of reports by regional tripartite committees, Council, and/or Summit). Targets are generally not formulated in quantifiable terms, except for the representation of women in decision-making (50/50 by 2015) and other targets in the Gender protocol. Implementation is monitored by the committees, but there are no enforcement mechanisms. Also as regards the promotion of democracy, observer missions are sent to almost all elections, but there is no follow-up. Member states routinely invite SADC observers and all missions are conducted according to the SADC Principles and Guidelines. The recommendations in the reports remain dead letter. The conclusions of the reports seem to be confirmed in most cases by reports by other organizations, which voice similar concerns. We noticed two exceptions: Swaziland and Zimbabwe. In a few cases diplomatic or military interventions have taken place. In those cases political violence threatened the stability and the legitimacy of an incumbent government. As a result, governance transfer is mainly protecting the status quo. The SADC Tribunal was considered to be a potentially relevant mechanism to obtain member state compliance with governance standards. However, it has been suspended, which represents a great step backwards in the provision of good governance, respect for human rights and the rule of law within the SADC region.

Because of its dependence on external funding, SADC member states are sensitive to their attractiveness to foreign investors and to political conditionality by international donors. Also, political opposition movements, social movements and NGOs within SADC member states push for change, for instance in Swaziland where people demonstrate in favour of the establishment of political parties. In spite of this double pressure, SADC governments mainly adopt measures which satisfy donors without undermining their own position. As a result, many principles and measures contained in the SADC documents remain paper tigers. In addition, the ratchet effect, considered in path dependency literature as the mechanism which prevents institutional development from rolling back, does not seem to work properly. When vaguely formulated principles or freshly created institutions start to unfold and influence proceedings more than considered desirable, they are ignored or redressed.

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## Overview

### 2.1 History of SADC

The roots of SADC can be traced back to the Frontline States (FLS)[[1]](#footnote-1) of the 1970s, whose objective was the political liberation of Apartheid-era South Africa. The FLS developed two substructures, one for economic cooperation which would eventually become SADCC, and one for cooperation on security which would develop into the SADC Organ.

#### Economic cooperation

As regards economic cooperation, the ministers of foreign affairs of the FLS held a first discussion on regional economic cooperation in May 1979, in Gaborone, Botswana. Their meeting led to an international conference in Arusha, Tanzania in July of the same year, of all independent countries and international donor agencies. In April 1980, Zimbabwe obtained independence and joined the FLS. In Lusaka, Zambia the leaders of the FLS adopted the declaration ‘Southern Africa: Towards Economic Liberation’. With the signing of the Lusaka Declaration, the majority-ruled states of southern Africa formed SADC’s forerunner, the Southern African Development Coordination Conference (SADCC). They elected Seretse Khama, president of Botswana, the first chairman. The primary objective of SADCC was to increase economic cooperation amongst members in order to reduce economic dependence on a hostile South Africa and to promote an equitable development of the economies of the region. In 1981, the SADCC was formalised by means of a Memorandum of Understanding on the Institutions of the SADCC.

By the late 1980s, it had become apparent to the SADCC policy makers that the organization needed a treaty or some legally binding instruments (Actrav 2011). In 1989 the Summit of the Heads of State or Government decided that SADCC should be formalized ‘to give it an appropriate legal status’ and replace the Memorandum with an Agreement, Charter, or Treaty. In 1992, this decision was implemented when SADCC was renamed and reorganized as Southern African Development Community (SADC). The Treaty establishing the SADC was signed in Windhoek, Namibia on 17 August 1992 and entered into force on 30 September 1993. The 1992 Treaty represented a shift in regional objectives from opposition to Apartheid and minority-rule to economic cooperation and integration between member states. South Africa joined SADC in 1994, thus officially ending the longstanding hostilities between South Africa and its regional neighbours.

In 2001 SADC embarked on a major project of institutional reform, intending to centralize and rationalize the organization, particularly the Head Office and the Secretariat, with the intention to provide stronger leadership and increased capacity to implement policies. An amended Treaty was signed in March 2001 at an Extra-Ordinary Summit Meeting in Namibia. Asides from reaffirming SADC’s continued support for respect for the rule of law, human rights, and democratic norms, the amended version of the Treaty is more ambitious in scope, including new objectives on combating HIV/AIDS, gender mainstreaming, and the eradication of poverty. Importantly, the amended Treaty includes the official establishment of the Organ on Politics, Defence and Security Cooperation and the incorporation of the pre-existing Committees in SADC.

#### Cooperation in security matters

As regards cooperation in security issues, the Inter-State Defence and Security Committee (ISDSC) was established as a substructure of the FLS by Mozambique, Tanzania and Zambia in 1975. The aim was to coordinate their efforts to aid the liberation of neighbouring countries struggling against colonial and minority rule (Malan 1998). As other countries in the region gained independence, they too joined the FLS and the ISDSC. The ISDSC had no charter or constitution, no headquarters or secretariat. It brought together the ministers responsible for Defence, Home Affairs/Police, and State Security/Intelligence. With the end of Apartheid in South Africa in 1994, the FLS decided to dissolve but the ISDSC was retained and its membership expanded parallel to the expansion of SADC membership. Its objectives concerned Defence, Public Security and State Security (the last including political instability, armed conflict, influx of refugees, religious extremism and other potential threats to the stability of the subregion), and consolidation and expansion of cooperation between member states. In 2001 the ISDSC and its subcommittees were incorporated under the SADC Organ.

The SADC Organ was of later date than the ISDSC. It was first discussed in 1994, when a Workshop on Democracy, Peace and Security was held in Windhoek which sought to put SADC on a course towards formal involvement in security cooperation, conflict mediation and military cooperation. In January 1996, the Ministers of Foreign Affairs, Defence and Security met in Gaborone and agreed on the establishment of a SADC Organ for Politics, Defence and Security ‘which would allow more flexibility and timely response, at the highest level, to sensitive and potentially explosive situations’ (ISS, press statement). However, an ongoing dispute between Zimbabwe, in favour of a parallel flexible and informal approach reminiscent of the FLS, and South Africa, in favour of a legal mechanism under the control of the SADC Summit, prevented the Organ from functioning properly until its restructuring in 2001 (Francis 2006). The unsatisfactory manner in which the 1998 military interventions in the DRC and Lesotho were decided and conducted resulted in discussions at the August 1999 SADC Summit in Maputo about the way to resolve the dispute regarding the Organ. The Summit made the decision ‘that the Council of Ministers should review the operations of all SADC institutions, including the Organ (…) and report to the Summit within six months. (…) the Organ should continue to operate and be chaired by President Mugabe of Zimbabwe’. In May 2000 at an extraordinary ministerial meeting in Swaziland, the structure and functions of the Organ were eventually finalised. In August 2001 the Protocol on Politics, Defence and Security Cooperation was signed by the SADC Heads of State or Government in Blantyre, Malawi.

### 2.2 Membership

The SADCC had nine members. Namibia joined upon its independence in 1990. At the time the SADC Treaty of 1992 was signed, SADC had 10 member states. The five subsequent members ascended to SADC between 1994 and 2005 (see Table 2.1).

SADC currently has 15 member states, although Madagascar has been suspended from the organization since 2009 after a political crisis resulted in an unconstitutional change of government. The Seychelles briefly left SADC in a dispute over unpaid membership dues. Suffering financial difficulties caused by declining tourism, the Seychelles found itself in significant arrears to SADC. Claiming it was unable to pay, and that SADC did not in any case provide value for money, in August 2003 the Seychelles gave the required one year notice to leave SADC. The country rejoined in 2007, claiming an improvement in the economy and a ‘foreign policy shift’ in which SADC membership was seen to have a role to play in the Seychelles’ increasingly active role in international relations (afrol News, 2 December 2005).[[2]](#footnote-2) However, Council and Summit records show that SADC was dismayed over the Seychelles’ decision to leave, and approached the government through diplomatic channels and asked them to rejoin, even arranging a hugely decreased annual membership fee (from approximately US$2 million to US$75,000) in order to bring the country back into the fold (SADC Council and Summit Records 2007).

**Table 2.1 – Membership of SADC and its forerunners**

|  |  |  |  |
| --- | --- | --- | --- |
| State | Membership | | |
| Angola | Members of the Frontline States | Founding members of SADCC (1980) | Founding members of SADC (1992) |
| Botswana |
| Lesotho |
| Mozambique |
| Tanzania |
| Zambia |
| Zimbabwe |
| Malawi |  |
| Swaziland |  |
| Namibia |  | Joined 1990 |
| South Africa |  |  | Accession 28 Aug 1994 |
| Mauritius |  |  | Accession 28 Aug 1995 |
| DRC |  |  | Accession 28 Feb 1998 |
| Seychelles |  |  | Joined 1997, left 2004 (for financial reasons), rejoined 2007 |
| Madagascar |  |  | Accession 21 Feb 2006, suspended since 2009 for ‘unconstitutional change of government’ |

Initially, SADC did not have any formal membership requirements beyond the payment of membership dues. The Treaty specifies in Article 8 that ‘the admission of any State to membership of SADC shall be effected by a unanimous decision of the Summit’, and that ‘membership of SADC shall not be subject to any reservations’. This rather vague policy on membership criteria was put to the test in August 2001 when Rwanda, supported by Mozambique, submitted an application for membership to SADC. Considering the hostile relations between Rwanda and the DRC, it was fairly unlikely that Rwanda’s application would be seriously entertained. In February 2002, the SADC Council claimed there was a moratorium on the acceptance of new members and therefore Rwanda’s application could not be considered, but that it would discuss the issue at its next meeting (SADC Council and Summit Records 2002). The following year, the Council had come up with new criteria for membership, which the Summit approved. The new criteria were:

1. Potential members should be well versed with and share SADC’s ideals and aspirations as enshrined in the SADC Treaty;
2. Commonality of political, economic, social and cultural systems of the applicant with the systems of the SADC region, as well as the observance of the principles of democracy, human rights, good governance and the rule of law in accordance with the African Charter of Human and People’s Rights;
3. Should have a good track record and ability to honour its obligations and to participate effectively and efficiently in the SADC Programme of Action for the benefit of the Community;
4. Should have levels of macro-economic indicators in line with targets set in the RISDP; and
5. Should not be at war and should not be involved or engaged in subversive and destabilizing activities, and have territorial ambitions against SADC, any of its Member States or any Member State of the African Union. (SADC Council and Summit Records 2003)

By March 2004, SADC was considering applications from both Rwanda and Madagascar. The Madagascan application seemed to proceed apace, with the Summit noting that the country has ‘no history of generating conflicts and war with its neighbours and other SADC countries’. Madagascar was granted official candidate status for one year in August 2004. SADC fielded a fact-finding mission to Madagascar, during which the Executive Secretary and Troika of Ministers of Foreign Affairs met with representatives of the Malagasy government, members of the opposition, NGOs, civil society, trade unions, and parliamentarians. The opposition leaders ‘indicated to the Delegation that the Government is a dictatorship and that there is no respect for Democracy in Madagascar’ (SADC Council and Summit Records 2004). In response the delegation explained that the principle behind the SADC Principles and Guideline Governing Democratic Elections is to foster democracy in member states. Madagascar became a full member of SADC in February 2006, experienced a constitutional coup in 2009, and has since then been suspended from SADC.

In relation to the Rwandan bid, the 2004 Summit merely noted that the country had been informed of the new criteria, ‘which they have to meet’ (SADC Council and Summit Records 2004). Evidently Rwanda was not deterred by the new criteria, as it resubmitted a new application in 2005. The SADC Summit noted that it ‘appreciates Rwanda’s intention to join SADC. However Rwanda should be encouraged and assisted by SADC Member States to normalize its relations with the DRC before her application can be considered’ (SADC Council and Summit Records 2004). In the end, the Rwandan application was rejected outright. Prega Ramsamy, outgoing SADC Executive Secretary in 2005, said of the Rwandan bid, ‘there are procedures to be followed. As a result, we have returned the Rwandan application… [m]ore groundwork has to be done’ (Konopo 2005). The Rwandan President, Paul Kagame, later said in 2007 that ‘Rwanda has since reconsidered its position and is no longer interested in joining SADC… As a country we need to rationalize on which organizations to join in order to avoid overlaps and of course we realized that there were duplications in the roles of most of these regional groupings’ (IOL News, 5 September 2007). Rwanda instead joined the East African Community in 2007. It seems likely that the allegations that Rwanda were sponsoring militia in the Eastern part of the DRC put an end to its ambitions to join SADC, and also that its attempts to join SADC are what pushed the Council and Summit to clarify SADC’s membership criteria (interview PR).

The inclusion of democracy, respect for human rights and the rule of law is a welcome addition to the membership criteria, but does not change the fact that, previously, extremely undemocratic states were not prevented from joining SADC (DRC in 1997), nor do SADC member states which are rated as very undemocratic, namely Swaziland, Zimbabwe and the DRC, experience sanctions by SADC (although in the cases of Zimbabwe and the DRC there are ongoing SADC-backed negotiations working towards improved political dialogue; for more details, see section 3).

### 2.3 Identity and mission

SADC is bound together by the common goals and interests expressed in the Treaty and the two primary policy documents, the Regional Indicative Strategic Development Plan (RISDP), and the Strategic Indicative Plan for the Organ (SIPO). ‘The RISDP and SIPO are the heartbeats of the Community’ (Tanzanian President Jakaya Kikwete, in an address to the Summit, SADC Council and Summit Records 2006, Annex), and they make clear that the prevailing mission of SADC is ‘to promote sustainable and equitable growth and socio-economic development through efficient productive systems, deeper cooperation and integration, good governance, and durable peace and security, so that the region emerges as a competitive and efficient player in international relations and the world economy’ (Treaty 2001: Article 5 and RISDP 2003: 4). SADC’s mission essentially consists of twin processes; on the one hand technocratic trade integration (the economic dimension), and on the other, creating conditions of peace and stability (the political dimension), which includes the promotion of democratic and human rights norms, and which is seen as a precondition for sustainable economic development. They are intended as parallel, but in essence there is more emphasis today on the peace and security aspect than there is on the trade and [economic] governance aspect (interview GM).

SADC has a regional identity that is rooted in the Liberation struggle and the principles of solidarity, sovereignty and post-colonial independence. SADC’s root organizations, the FLS, and SADCC, were opposed to colonial and minority rule and many states provided a safe-haven for exiled ANC leaders and training camps for guerrilla fighters. The Apartheid government retaliated with a policy of regional destabilization towards its neighbours, notably Zimbabwe, Namibia, Angola, and Mozambique. When Apartheid finally came to an end, it was generally felt that a great debt was owed by South Africa to its neighbours for helping the ANC achieve its aim of majority-rule. Considering its previous role of hostile destabilizer in the region, and the debt owed to neighbouring states, democratic South Africa has long been keen to avoid any resemblance to the Apartheid government and as such is reluctant to be seen to be telling other states what to do, or criticising any figures from the Liberation struggle who are still active in the region’s politics. The Liberation struggle is so central to the identity of the region that SADC member states have pledged almost US$1.5 million to the Hashim Mbita Project, a long-running research project to record the history of the liberation movements in the eight ‘core’ countries of Angola, Botswana, Mozambique, Namibia, South Africa, Tanzania, Zambia, and Zimbabwe (SADC Council and Summit Records, Report of the Organ 2006/07).

The shared experiences of colonialism and long struggles for independence have created a strong sense of unity and solidarity. As former Tanzanian President Benjamin Mkapa put it:

SADC is rooted in struggle; from which we have much to learn…the first lesson is unity. Without unity the armed struggle would have buckled in the face of the superior weaponry of our erstwhile enemies. And today, as we wage the struggle to carve for ourselves a place at the table of a global economy, we must remain united. There is no alternative to unity (Address to the SADC Summit, 3 October 2002, SADC Council and Summit Records, Annex).

However, the principle of unity and solidarity does not extend so far as to surrender aspects of ‘hard won and jealously guarded’ sovereignty to supranational regional organizations. The Treaty and the RISDP emphasize ‘the sovereign equality of all member states’, and interference in the internal affairs of countries is unwelcome.

The issue of land reform, particularly in the countries that hosted significant settler populations, is central to the post-colonial regional identity, and impacts on domestic and regional politics. These governments view the concentration of fertile land in the hands of a few thousand wealthy (usually white) farmers as an historical injustice from the colonial era that must be rectified in order to right the wrongs of the past and set the region on a more equitable and sustainable path. This has met with criticism, both domestically and internationally, for creating agricultural inefficiencies and food shortages, to which Mkapa has said

Frankly, I find it insulting that there are powers and people who believe food shortages in the region can only be averted when Africans become servants on white people’s land… not many black farmers in Africa will be as productive as their white counterparts… but that is no reason to perpetuate historic injustices (Address to the Summit, 25 August 2003).

Taken together, these aspects of regional identity make it difficult for SADC member states to criticize each other, for then they are open to accusations of acting like a ‘Western puppet’ or violating the principle of sovereign equality. For the same reasons, international criticism is often dismissed as neo-colonial meddling; however SADC is careful not to alienate western donors too much, as many SADC projects are dependent on funding from European and American development funds.

### 2.4 Institutional features

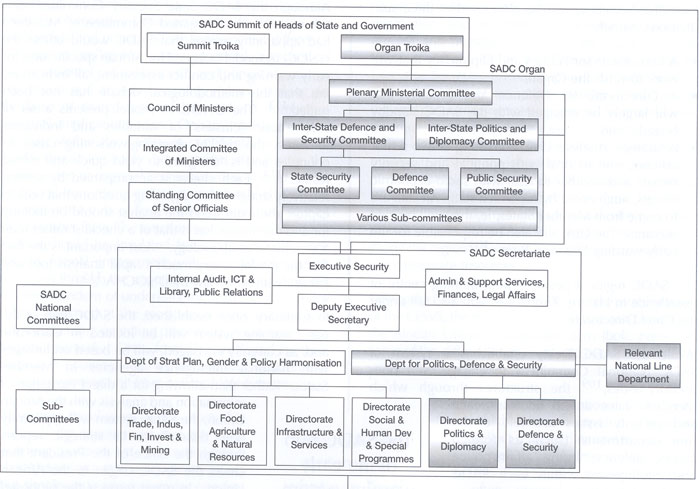
There are eight institutions within SADC (see Figure 2.1), namely:

1. the Summit of Heads of State and Government
2. the Organ on Politics, Defence & Security Cooperation
3. the Council of Ministers
4. Ministerial Committees (sectoral)
5. the SADC Tribunal (currently suspended)
6. Standing Committee of Senior Officials
7. SADC National Committees
8. SADC Secretariat.

SADC Parliamentary Forum (SADC PF) is an institution which is linked to SADC but not part of it. We will discuss each institution in turn, including SADC PF because of its relevance to the topic of this report.

The **Summit** consists of the heads of state of each member state, and is the supreme policy-making institution of SADC, with responsibility for the policy direction and control of functions. All decision-making is by consensus. The Summit meets at least once a year, usually in August or September, in one of the member states. Extra-Ordinary Summits are held as and when necessary. The chairmanship of the Summit is held on a rotational basis for one year.

**Figure 2.1 – Institutional structure of SADC**

Source: Cilliers 2005

**The Organ** on Politics, Defence and Security is a mechanism for conflict prevention, management, resolution and peace-building. Its key objectives relate to military and defence issues, crime prevention, intelligence, foreign policy, human rights, and democracy. The Authority of the Organ is exercised based on the Troika system. Decision making is based on consensus (Article 8c). In a conflict situation it is not expected that all member states act in concert; action may involve a coalition of the willing under the SADC banner. The Organ operates at Summit, ministerial and technical levels, and it cooperates with the Inter-State Defence and Security Committee (ISDSC), a former sub-structure of the Frontline States (cf. supra).

**The Council of Ministers** is composed of ministers from each member state, usually from the Ministries of Foreign Affairs and Economic Development, Planning or Finance. The Council is responsible for supervising and monitoring the functions and development of SADC, and ensuring that policies are properly implemented, as well as making recommendations to the Summit. The Council meets before the Summit and at least one other time during the year, and is chaired by the country that is chairing SADC.

**The Integrated Committee of Ministers** is the institution aimed at ensuring policy guidance, coordination and harmonisation of cross-sectoral activities. It is constituted by at least two ministers from each member state and reports to the Council.

**The Standing Committee of Senior Officials** consists of one Permanent/Principal Secretary or an official of equivalent rank from each member state. This Committee is a technical advisory committee to Council, and meets in advance of Council, chaired by the same country that is chairing SADC.

As regards the presidency of the SADC, there are six-monthly rotating chairs for the Organ and the Summit. A **Troika** system is applied for the Summit, the Organ, the Council of Ministers, the Ministerial Committee of the Organ (MCO) and the Standing Committee of Officials. The Troika is made up of the immediate past, current and forthcoming SADC Chairpersons of each institution. It has the authority to take quick decisions on behalf of SADC and enables the provision of policy direction to SADC institutions in the period between the regular Summits. When the Summit Troika and the Organ Troika are combined, the two are referred to as the Double Troika.

**SADC National Committees** (SNC) are composed of key stakeholders including ‘government, private sector, civil society, non-governmental organizations; and workers and employers organizations’ in SADC member states (SADC Treaty 2001: Art. 16). Their main purpose is to ‘ensure broad and effective participation’ of key stakeholders in policy formulation and implementation (SADC Council and Summit Records 2001). The Committees are also responsible for the initiation of projects. Technical committees will deal with specific matters, such as the Employment and Labour Sector (ELS) Committee.

The SNCs were created by the amended Treaty in 2001. For the setting up of these National Committees, the Summit approved Guidelines which contain provisions for the functions, compositions and Secretariats of SNCs as well as steps for launching of SNCs (SADC Council and Summit Records 2001). The SNCs are to submit yearly reports to the SADC Secretariat on their composition, operational needs and activities (SADC Council and Summit Records 2003). In June 2002, Council noted that 10 member states had established an SNC. In three more states the decision making process was under way, while no information was available from the DRC. Several Committees reported a lack of funds as a major obstacle to proper functioning. Botswana reported that it was negotiating with the *Friedrich Ebert Stiftung* to obtain resources for holding a first workshop; Mozambique was dependent on Japanese funds, while Malawi and Namibia reported that the functioning of their SNCs was hampered by budgetary constraints (SADC Council and Summit Records 2002, 2003). In most cases, the secretariat services are provided by a ministry. The SNCs reported that they held meetings to prepare the SADC Council of Ministers’ and Summit Meetings and to prepare inputs into the RISDP (SADC Council and Summit Records 2003). In July 2003 the SADC Secretariat convened a workshop to exchange best practices and identify the challenges in order for them to be effective vehicles for regional integration at the national level. The outcome of the workshop is telling: a report identified a lack of qualified and experienced staff, a lack of financial and material resources including computers, internet facilities, printers, photocopiers, fax machines, and adequate office space. There was also a lack of clarity as regards the role of the SNC at the interface between the SADC Secretariat and the local level, a lack of commitment from the members in the subcommittees and weak coordination and information flow between the SADC Secretariat and SNCs and at Member State level. The Council thereupon directed the SADC Secretariat to facilitate annual meetings of the SNCs, to exchange best practices. The first meeting took place four years later. The SNCs currently are operational, but the majority continue to suffer from severe capacity constraints. This hampers the effective implementation of RISDP/SIPO at the national level (SADC Council and Summit Records 2007).

**The Tribunal** is the judicial arm of SADC. Established in 1992 by Article 9 of the SADC Treaty, it is composed of 10 judges nominated by member states and recommended by the Council to the Summit, which then appoints them to the bench. According to Article 16, the Tribunal is to ensure adherence to, and proper interpretation of, the provisions of the SADC Treaty and subsidiary instruments, and adjudicate upon disputes referred to it. In order to bring a case before the court, there must be an averment that a member state has violated SADC law, and that the applicant has exhausted all courts at the national level. The Tribunal was not operational until 2005. It heard its first case, brought by a Malawian citizen against the SADC Secretariat, in 2007. Since then the Tribunal has made about 20 rulings. Cases heard in the Tribunal tend to fall into one of three categories:

* individuals versus SADC itself (employment issues),
* individuals versus member states (human rights issues), or
* incorporated companies versus member states (commercial issues).

However, the Tribunal’s operations have been suspended since May 2011, after a six month review period during which it was not operational (more details in Section 3).

**The Secretariat** is the principal executive institution of SADC, and is responsible for strategic planning, co-ordination and management of SADC programmes, and implementation of the regional strategic plan. It is also mandated with promoting cooperation with external organizations and diplomatic representation of SADC (Adelmann 2009). The Executive Secretary (currently Tomaz Augusto Salomão of Mozambique) is its most senior official and has the power to negotiate and sign treaties on behalf of SADC.

Until 2001, each member state was responsible for a different sector. Tanzania, for instance, was responsible for Trade and Industry, Zimbabwe for Agriculture, Mauritius for Tourism and South Africa for Investment and Finance. There were two drawbacks to this arrangement of decentralized Sectoral Coordinating Units. First, the sectors were not moving at the same pace, because ‘depending on the resources that countries would put in those sectors, they would either run with it or, you know, walk with it’ (interview PR). Intersectoral linkages were weak or absent. Second, the Summit found that 80 percent of the 470 project proposals had a strong national character and only a minority could be considered regional projects (SADC Summit and Council Records 2001). A comprehensive developmental strategy was missing and therefore most projects were not in line with the strategic goals of SADC. In order to address these concerns, in 2001 SADC adopted a more centralised approach through which the 21 Co-ordinating Units were grouped into the following five Directorates:

* **Trade, Industry, Finance, and Investment (TIFI)**

The mandate of the TIFI Directorate is to ‘coordinate regional trade and financial liberalization; to facilitate competitive, diversified industrial development; increased investment and the integration of the SADC economy into the global economy; and to foster regional integration through the SADC Free Trade Area, the creation of the Customs Union, Common Market and the Monetary Union’ (SADC website). In order to achieve this, the TIFI Directorate runs seven regional programmes in fields such as customs cooperation, investment and development finance, macroeconomic convergence and regional and multilateral trade policies.

* **Infrastructure and Services (I&S)**

The I&S Directorate aims to improve the quality of infrastructure throughout the region, thereby improving access to water and sanitation, telecommunications, improving the regional energy grid, and boosting tourism. The Directorate runs a number of programmes in these domains.

* **Food, Agriculture and Natural Resources (FANR)**

The FANR Directorate’s main function is the coordination and harmonization of agricultural policies in order to ensure food security, in line with the RISDP. It runs programmes on agriculture, natural resources and environment and sustainable development.

* **Social and Human Development and Special Programmes (SHD&SP)**

The SHD&SP receives the biggest chunk of the SADC budget (see Table 2.3 below). Health and education are seen as central to human development in the region, and most of the Directorate’s energies are directed at these two areas. It runs programmes dedicated to

* Health and Pharmaceuticals
* HIV and AIDS
* Education, Skills, Development and Capacity Building (including Education Policy Support Initiative, which involves constructing a regional database on education)
* Employment, Productivity, Labour, and Social Security
* Special Programmes (including the Illicit Drug Control Programme)
* Culture and Information.
* **Policy Planning and Resource Mobilization (PPRM)**

The PPRM runs the SADC Statistics Programme and is responsible for the implementation and coordination of relevant statistical projects.

The **SADC Parliamentary Forum (SADC PF)** was established in 1996, in accordance with Article 9 of the SADC Treaty, as an autonomous institution. It is a regional platform of the national parliaments. The plenary assembly is constituted of four representatives elected by each national parliament. It was designed by the Summit as a consultative forum to exchange experiences and best practices. The Forum, however, wanted to transform itself into a regional parliament in order to ‘spread a culture of human rights and gender equality, as well as good governance, transparency and accountability’ which would consolidate democracy in the SADC region (SADC Council and Summit Records 2004). In 2003, the Forum submitted a Motivation document entitled ‘The Case for a SADC Parliament’, a ‘Draft Agreement Amending the Treaty’, and a ‘Draft Protocol on the SADC Parliament’. The Summit expressed its reservations in view of the fact that the AU was already in the process of creating a Pan-African Parliament (SADC Council and Summit Records 2004). It was decided that all member states would discuss the documents and submit their comments to the SADC Secretariat by 15 May 2004. The SADC Secretariat was asked to prepare a position paper based on the national discussions and to convene a consultative regional forum on the draft position paper. At the 2004 meeting in Mauritius, the Summit rejected the proposal for the establishment of a SADC Parliament, but ‘encouraged the continuation of the SADC PF’ (SADC Summit and Council Records 2004). SADC would be focusing attention and resources on the Pan-African Parliament (PAP) of the AU (Matlosa 2004). The Forum could ‘decide on issues they can bring to that [the PAP] Parliament’ (interview PR). According to Prega Ramsamy, former Executive Secretary of the SADC Secretariat, SADC did not need a regional parliament at the time as it was still an intergovernmental organization. Establishing a regional parliament was considered premature, and in any case, SADC did not have sufficient resources to fund such a regional parliament (interview PR).

Arguably, the SADC PF has a vested interest in promoting democratization in the region as it includes parliamentarians from all parties, including the opposition. For the same reason representatives of SADC member states view it as a suspicious body, hence the existing tension between the PF and SADC executive (Matlosa 2004). Summit stated that ‘the idea of establishing SADC Parliament may be considered in the distant future’ (SADC Council and Summit Records 2004). The topic has since remained off the agenda. In section 3, the competition and collaboration between the SADC PF and SADC in relation to election monitoring is discussed.

### 2.5 Resources

SADC headquarters are located in Gaborone, Botswana, while the Tribunal is located in Windhoek, Namibia.

The total budget available to SADC has increased steadily in recent years, despite the impact of the economic recession. SADC relies on contributions from Member States and grants from International Co-operating Partners (see Table 2.2).

**Table 2.2 – SADC Budget, US $, millions**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
|  | 2005/06 | 2006/07 | 2007/08 | 2008/09 | 2009/10 | 2010/11 | 2011/12 |
| Contributions from member states | 14.8 | 16.5 | 26.0 | 24.77 | 25.0 | 29,3 | 32.0 |
| Contributions from foreign donors and/or grants | 22.7 | 24.0 | 19.35 | 25.11 | 28.0 | 47.0 | 51.5 |
| Total budget | 37.5 | 40.5 | 45.35 | 49.0 | 53.0 | 76.3 | 83.5 |

**Sources**: SADC Media Briefing on Outcome of the Meeting of SADC Council of Ministers March 2011; allAfrica.com, Lusaka Times, SADC Today, SADC Council and Summit Records.

**Table 2.3 – Allocation of SADC budget 2011/12**

|  |  |
| --- | --- |
| Sector | Percentage of Budget |
| Social Human Development and Special Projects | 32.94 |
| Infrastructure and Services | 16.87 |
| Food, Agriculture and Natural Resources | 15.92 |
| Trade, Industry, Finance and Investment | 12.97 |
| The Organ | 12.21 |
| Policy Planning and Resource Mobilization | 5.87 |
| The Tribunal | 1.8 |
| Gender | 1.23 |
| Macro-economic Surveillance | 0.19 |

**Source**: SADC Media Briefing on Outcome of the of the Meeting of SADC Council of Ministers, March 2011

Up until 2003, Member States had been making equal contributions to SADC institutions. From April 2003, their contributions take into account the relative level of their gross domestic product, which is a more equitable and sustainable basis. Funding from development partners consistently makes up more than half the SADC budget. In order to address the overreliance on external funding, the Council of Ministers has proposed the creation of a Resource Mobilization Strategy and a SADC Development Fund. Angola, taking over the Chairmanship of SADC from August 2011, has vowed to ‘try to put [the] Development Fund into operation in order to respond to severe political and economic challenges faced by the Community’ (Angolan Minister for Foreign Affairs Georges Chikoti in address to the SADC Summit, 17 August 2011). Interestingly, Madagascar is still expected to contribute membership fees despite being suspended from the organization. It is also interesting to note that 1.8 percent of the overall budget has been allocated to the Tribunal for the fiscal year 2011/12, despite the fact that its operations have been effectively ceased.

As of February 2010, SADC staff numbered 213. There were 183 at the Secretariat; 13 at the Tribunal (although a number of these have not had their contracts renewed because of the suspension of the Tribunal); and 17 at the SADC Plant Genetic Resources Centre in Lusaka, Zambia. Despite the steady increase in staff numbers and the overall budget available, SADC suffers from a chronic lack of resources and staff, which stunts the organization’s capacity to implement decisions (Adelmann 2009).

## Mapping

### 3.1 Prescription & policy

The following documents have been identified as sources of governance export in SADC and have been scrutinized for mentions of good governance, rule of law, human rights and democracy.

**Table 3.1 Relevant SADC Documents and concepts of governance**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Year | Title | GG\* | Dem\* | Law\* | HR\* |
| 1992 | Treaty of the Southern African Development Community |  | X | X | X |
| 1997 | Code on HIV/AIDS and Employment in SADC |  |  |  | X |
| 1997 | Declaration on Gender and Development |  | X |  | X |
| 1999 | The Gender Plan of Action |  | X |  | X |
| 2001 | Framework of Activities for Gender in SADC |  | X |  | X |
| 2001 | Agreement Amending the Treaty of SADC | X | X | X | X |
| 2001 | Protocol on Politics, Defence and Security Cooperation |  | X | X | X |
| 2001 | Protocol against Corruption | X |  | X |  |
| 2003 | Regional Indicative Strategic Development Plan (RISDP) | X | X | X | X |
| 2003 | Charter of Fundamental Social Rights in SADC | X |  | X | X |
| 2003 | SADC Declaration on HIV/AIDS (Maseru declaration) |  |  |  | X |
| 2004 | Principles and Guidelines Governing Democratic Elections | X | X | X | X |
| 2004 | Strategic Indicative Plan for the Organ (SIPO) | X | X | X | X |
| 2007 | Code on Social Security in the SADC |  |  |  | X |
| 2008 | Protocol on Gender and Development |  | X | X | X |

\* GG = Good Governance; Dem = Democracy; Law = Rule of Law; HR = Human Rights

#### 3.1.1 The founding documents

#### The 1992 Treaty and the 2001 Amended Treaty

The *Treaty of the Southern African Development Community* (SADC), signed by member states in Windhoek, Namibia on 17 August 1992 and entering into force in September 1993, after ratification by two thirds of its member states, is the founding document of the organization. Its preamble refers to the Declaration made in Lusaka in 1980, but also to the founding documents of the African Economic Community (the Lagos Plan of Action, the Final Act of Lagos, 1980, and the Treaty of Abuja, 1991) as well as to ‘principles of international law’ in general. In 2001 SADC embarked on a major project of institutional reform in order to integrate the Organ in its structure (see previous section). The *Agreement Amending the Treaty of SADC* was signed at an Extraordinary Summit Meeting in Windhoek, and entered into force on 14 August 2001.

In the original Treaty there is no noticeable reference to the concept of good governance. The amended Treaty mentions among the objectives of SADC that its institutions ‘promote common political values, systems and other shared values’ and are to be ‘democratic, legitimate and effective’ (SADC Treaty 2001: Article 5). In both Treaty texts the rule of law is mentioned as a principle which SADC and its member states should act in accordance with and SADC should ensure ‘the guarantee of ... the rule of law’ (SADC Treaty 1992/2001, Preamble). The treaty stipulates that SADC and its member states should act in accordance with human rights (SADC Treaty 1992/2001: Article 4). Furthermore, there is a specific reference to human rights in the context of non-discrimination:

‘SADC and Member States shall not discriminate against any person on grounds of gender, religion, political views, race, ethnic origin, culture, ill health, disability, or such other ground as may be determined by the Summit’ (SADC Treaty 1992/2001: Article 6).

As regards democracy, SADC is ‘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’ (SADC Treaty 1992/2001, Preamble). Democracy is one of the principles to be respected, but only in the amended Treaty, democracy becomes an explicit objective as SADC shall ‘consolidate, defend and maintain democracy’ (SADC Treaty 2001: Article 5), though without specifying what is meant by ‘democracy’ or how SADC will defend it.

In general, the standards and objectives formulated in the Treaties remain highly abstract. Member States pledge ‘to adopt adequate measures to promote the achievement of the objectives of SADC’ (SADC Treaty 1992/2001: Article 6), but no specific policies are formulated. Such policies are to be found mainly in the domain of economic integration, which was the core objective of the establishment of SADC. Therefore, we would argue that the SADC Treaties do not reflect in an equitable way the two central objectives of the organization, economic integration to combat poverty and political cooperation to establish peace and security as preconditions for development. This can be explained by the fact that the political role including democracy promotion was to be taken up by the Organ on Politics, Defence and Security Cooperation, which was officially established by the amended Treaty (SADC Treaty 2001: Article 10A), but which has its functions described in a separate Protocol (cf. infra). Other policies were to be formulated in Protocols and in the RISDP/SIPO.

As regards the instruments created for governance transfer, we find the creation of three institutions; the Organ, the Tribunal and the SADC National Committees (see Section 2). The SADC Tribunal is intended ‘to ensure adherence to and the proper interpretation of the provisions of this Treaty (...) and to adjudicate upon such disputes as may be referred to it’ (SADC Treaty 2001: Article 16). As such the Tribunal is an instrument for the interpretation and enforcement of the norms regarding the rule of law, human rights and democracy articulated in the Treaty. As with the Organ, all further procedural matters are settled in a separate Protocol (see below). For more details on the functioning of the Tribunal, see Section 3.2 where its rulings are discussed, as well as the reasons why its functioning has been suspended in May 2011. The slightly more prominent role of democracy in the amended Treaty is also embodied by the establishment of a third institution, the SADC National Committees (SNC).

#### 2001 Protocol on Politics, Defence and Security Co-operation

In March 2001, the Council recorded with dismay that more than four years since the establishment of the Organ, SADC still had not been able to ensure that it becomes fully operational. This failure was considered to hamper SADC’s abilities to ‘address the ongoing instability and conflicts in the region in a coordinated and coherent manner’ (SADC Council and Summit Records 2001). The Treaty was amended in 2001 mainly to settle the dispute about the mutual relations between SADC and the Organ. The functions and procedures of the Organ are described in this Protocol. Given its history, it is no wonder that the Protocol pays much attention to the coordination between the Organ, its chairperson, the troika and the ministerial committees on the one hand, and SADC institutions on the other hand. The Protocol has 13 signatories and 12 ratifications (Angola and Madagascar have neither signed nor ratified; the DRC has signed but not ratified), making it legally binding in the states party to it since 2004.

The objectives of the Organ concern, first, the maintaining and restoring of security and stability. It should ensure the observance of human rights and the protection of the people against instability as a result of the breakdown of law and order. As regards human rights standards, it refers to the UN Charter and Conventions and AU documents. Second, the Organ promotes the development of democratic institutions and practices.

In Article 11, it outlines the methods and procedures to be utilized in conflict prevention, management and resolution. The Organ may intervene to solve intra-state conflict in case of ‘large-scale violence between sections of the population or between the state and sections of the population’ (Art. 11.2). An early warning system is to be established ‘to prevent the outbreak and escalation of conflict’ (Art. 11.3). Peaceful means for conflict management include preventive diplomacy, negotiations, conciliation, mediation, good offices, arbitration and adjudication by an international tribunal. ‘Enforcement action’ (presumably military intervention) may be taken in instances where there is evidence of genocide, ethnic cleansing, gross violation of human rights, military coup or other threats to the legitimacy of the state, civil war, insurgency, or conflict which threatens the stability of the region or member states (Art. 11.2b). Acting on the advice of the Ministerial Committee, the Chairperson of the Organ ‘may recommend to the Summit that enforcement action be taken’, in accordance with Article 53 of the UN Charter and only with the authorization of the UN Security Council (Art. 11.3).

Although the Protocol does not actually state it, previous incidences and the salience of the norm of non-intervention in the region’s political culture suggest that military interventions will only be undertaken by invitation of a recognised Head of State, and with the aim of upholding the legitimacy of a government (as opposed to overthrowing it). The practice of (non-) intervention and the establishment of the Early Warning System will be discussed in section 3.2.

#### 3.1.2 The core documents: RISDP and SIPO

*The Regional Indicative Strategic Development Plan (RISDP) and the Strategic Indicative Plan for the Organ (SIPO) are the core documents of SADC. They stem from the need for revision of the operations of SADC institutions which was deemed necessary by the end of the 1990s. The nationally-based sectoral units were removed from the member states and centralized in five Directorates located in Gaborone, Botswana. Hence a roadmap was needed which would spell out the regional challenges and the plans to deal with them. The RISDP is the roadmap for economic cooperation in light of the challenge of globalization; the SIPO is the roadmap for political cooperation in light of the challenge of internal conflicts and instability in the region. The documents outline the policies which SADC member states have to develop in order to realize the objectives presented in the Treaties, but the specific aims and instruments are to be found in the various protocols.*

#### 2003 Regional Indicative Strategic Development Plan

Against the background of reviewing the operations of its institutions, a process which started in 1999, the necessity of an overall regional strategy became increasingly clear. The Secretariat took the lead, seconded by national officials, and several drafts were discussed in regional workshops and by the newly established SADC National Committees. In 2003 the RISDP was endorsed by the Summit.

The RISDP is not a legally binding agreement, but ‘it enjoys political legitimacy’ (Tralac 2011). As the name suggests, it is indicative and not prescriptive. It outlines the necessary conditions to attain SADC objectives. The overarching goal of SADC is the alleviation of poverty and all the organization’s programmes, projects and activities are aimed at addressing this objective (SADC Council and Summit Records 2003). Against that background, the RISDP also posits a broader political agenda with issues such as security, stability, peace, and democracy. In formulating these strategies, it has taken into consideration the Millennium Development Goals (MDGs) adopted by the UN General Assembly, the Constitutive Act of the African Union, the Treaty establishing the African Economic Community, and most prominently the New Partnership for Africa’s Development (NEPAD).

At the launch of the RISDP in 2004, Benjamin William Mkapa, then president of Tanzania and Chairperson of SADC, set out how sustainable economic growth alone is not sufficient to reduce poverty. Investment in human capital is needed, including investment in health care, education and gender equality, but also good governance,

‘which calls for participation, transparency, accountability and predictability, facilitates effective formulation and implementation of policies as well as sound macroeconomic management. It ensures the transparent use of public funds, encourages growth of the private sector, promotes delivery of public services, and helps establish the rule of law, all of which are indispensable to effective poverty reduction’ (SADC Council and Summit Records 2004).

The need for good governance is thus considered instrumental for the effective functioning of SADC and the goal of poverty reduction. In the 163 page document, there are many references to ‘good governance’ as one of the ‘key integration and development enablers’. Governments are not the only target, but also businesses, as ‘good political, economic and corporate governance are prerequisites for sustainable socio-economic development’ (RISDP 2003:4-5). The RISDP also defines (reflections of) bad governance, including unequal distribution of political power, corruption, lack of transparency and accountability and inefficient bureaucracies (RISDP 2003: 17). Corruption is defined as a ‘criminal economic activity’, which

‘... includes bribery or any other behaviour in relation to persons entrusted with responsibilities in the public or private sectors which violates their duties as public officials, private employees, independent agents or other relationships of that kind and aimed at obtaining undue advantage of any kind for themselves or others’ (RISDP 2003: 142).

Good financial governance is one of the objectives of the Plan, since the management of revenue and expenditure is to be improved to generate savings, improve the use of foreign aid, and pursue more effective debt relief strategies. Therefore, member states are called upon to improve on their public finance mobilisation, expenditure and management systems. Member states should restructure state-owned enterprises to promote broader participation of the population in equity markets (RISDP 2003: 80). Public resource management should be also more accountable and transparent in order to attract investment (RISDP 2003: 75). NEPAD has identified best practices in accounting and auditing standards, and the member states are asked to implement these standards. Upholding the rule of law is also viewed as a necessary condition to attract investments, as features of an attractive, enabling, investment environment are a ‘stable and predictable political environment, a favourable regulatory environment’ and a ‘transparent legal system’ (RISDP 2003: 78).

As regards human rights, extensive attention is paid to women’s rights, repeating the aims of the 1997 Declaration on Gender (see below). This is reflected in the RISDP glossary, which contains the definitions of a high number of concepts related to gender (such as gender equity, gender equality, gender responsive budgeting, and gender empowerment). Gender equality is considered a fundamental human right, but it is predominately presented as instrumental to achieving economic development and poverty eradication. To that end, SADC opts for the double strategy of integrating a gender perspective into all national and regional policies, programs, and activities (gender mainstreaming), and the adoption of specific measures to address the constraints faced by women (affirmative action). The RISDP itself applies gender mainstreaming, as gender issues pop up in all policy areas, including mining, energy, agricultural research, forestry, fisheries and wildlife, and water management, to name but a few.

Furthermore, attention is paid to the right to health linked to ‘sustainable food security’, which refers to ‘achieving lasting access to safe and adequate food at all times by all people in SADC for an active and healthy life’ (Executive Summary). The right to education is addressed, to be further elaborated in a Protocol on Education and Training. In the field of employment, SADC recognizes the ‘need for social security nets’ and warns against child labour practices (RISDP 2003: 42). Finally, the importance of free media is recognized in ‘the need to promote pluralistic media systems, protect the freedom of the press and other media and to ensure objectivity and responsible journalism’ so the population has access to good quality information (RISDP 2003: 43).

Democracy is highlighted as an essential part of the region’s ‘promising future’. Effective, legitimate, and democratic institutions are considered necessary to promote shared values and to enable integration and development (RISDP 2003: 4-5). In the RISDP, democracy is less about elections (domain of the Organ) and more about participation of stakeholders in decision-making at all levels through inclusive decentralisation and involving civil society in ‘community building at both regional and national levels’ (RISDP 2003: 6; 56). Tripartism and social dialogue are important in addressing labour and employment issues, and women should enjoy equal access to decision-making. Interestingly, the RISDP itself constituted an exercise in democracy, for it was

‘guided by a participatory approach through which extensive consultations took place in all SADC Member States. Government agencies, the private sector, nongovernmental organizations (NGOs) and civil society, academic and research institutions, International Cooperating Partners (ICPs) and many other stakeholders contributed to this process. The exercise was overseen by SADC Council of Ministers through the Integrated Committee of Ministers’ (RISDP 2003, Acknowledgements).

The drawback of the participatory approach is that the classic checks and balances between the legislative and the executive are distorted, as parliaments are put at a distance. National parliaments are not given a role in SADC policy formulation or implementation, which has resulted in complaints by national parliamentarians of being left in the dark about regional integration policies (Saurombe 2009).

The implementation of the RISDP is also supposed to take place through a multilayered participatory approach. At the regional level, the Summit and the Council of Ministers – through the Integrated Committee of Ministers (ICM) – will monitor the process, using the progress reports from the Secretariat, and provide political and strategic guidance. The Secretariat will coordinate and monitor implementation, and play a central role as facilitator and coordinator. At the national level, the SADC National Committees (SNCs) will coordinate and monitor implementation. They have the task to ensure broad and inclusive consultations and to create consensus on SADC policies. Thus, the RISDP provides the broad framework; the stakeholders have to draw up detailed implementation plans for each programme, ‘clearly spelling out issues such as who the different actors are, implementation and management roles, benchmarks, and sustainability’ (RISDP 2003: 84), as well as targets and timeframes. The private sector and NGOs are explicitly addressed as stakeholders who, ‘based on areas of their interest or speciality ... can add tremendous value in the development of some programmes, sourcing funding and undertaking the implementation’ (RISDP 2003: 88). New Public Management strategies are mentioned, such as the exchange of best practices in the field of corporate governance, HIV and AIDS treatment, and employment and labour. Public-private partnerships should be established ‘with key stakeholders within the region and with specialised intergovernmental agencies to share expertise, information, and experiences on best practices in dealing with the identified challenges’ (RISDP 2003: 21).

As regards the actual adoption of measures, the RISDP shows concern at the lack of enforcement mechanisms at the regional level. It notes for instance that the SADC Gender Unit has monitored the implementation of the 1997 Declaration on Gender through annual reporting mechanisms, but that little progress has been made. At regional and national levels, there is a lack of benchmarks and concrete targets. In a draft version of the RISDP, it was feared that the monitoring and evaluation process ‘may be seen as a punitive measure rather than a development tool’ (RISDP Draft, 2003: 102). In the final version this fear is not voiced. There is rather disappointment as to the lack of progress and a concern that it all remains good intentions without clear implementation measures.

#### 2004 Strategic Indicative Plan for the Organ

Not long after the signing of the Protocol on Politics, Defence and Security Co-operation in 2001, a working group was convened to draw up a plan to implement the objectives contained in the Protocol. The Strategic Indicative Plan for the Organ (SIPO) was endorsed by the Summit in August 2003. The core objective of the SIPO is to create a peaceful and stable political and security environment through which the region will endeavour to realize its socio‐economic objectives. The SIPO is intended to do three things: provide guidelines and strategies for action; shape the institutional framework for the day to day activities of the Organ; and align the regional security agenda with that of the AU (van Nieuwkerk, 2007). Building on the norms set in the Treaty and the Protocol, such as good governance, democracy, human rights and the fight against corruption, the document specifies actions to be taken to promote these norms.

SIPO states that ‘The regional political situation is characterised by the acceptance of political pluralism. In this regard, SADC countries hold regular democratic elections and conduct consultations aimed at enhancing and deepening a democratic culture’ (SIPO 2004: 15). Against that background, SIPO proposes measures for the consolidation of democracy. It encourages political parties to accept the outcome of elections. It also recommends the establishment of a SADC Electoral Commission and common electoral standards for the region, including a code of electoral conduct. This recommendation has resulted in the Principles and Guidelines Governing Democratic Elections, which includes a code of conduct (see below).

Interestingly, SIPO also aims at promoting ‘regional awareness’ with the SADC region. To that effect, SIPO proposes educational and cultural diplomacy strategies to be implemented, including introducing SADC-related matters into school curricula, promoting cultural and sporting events, and establishing a forum for academic and research institutions on the region’s foreign policy. The Hashim Mbita Project (see section 2) which records the liberation struggles of the region is an example of such Organ activities.

As regards human rights, specific attention is paid to combating human trafficking and combating and prevention of rape, abuse and violence against women and children. SIPO recommends the establishment of a Regional Commission for the promotion of and respect for human rights; and to strengthen Members States judicial systems (SIPO 2004: 20). It also recommends developing a ‘culture of observance of the existing international provisions on Human Rights’ (2004: 40).

SIPO shows concern as to the activities of law enforcers, which is a realistic concern given a background of corruption and legal transgressions by domestic security forces in many SADC countries. Law enforcement officers should receive training on effective law and order maintenance strategies. Within the police services professional accountability should be developed. Defence forces should be professionalized through training programs, and civil‐military relations should be improved (although exactly how civil‐military relations might be improved is not elaborated).

Finally, all activities by the Organ should be strictly monitored and evaluated. There should be regular reporting including a review of the implementation of planned activities and provision of information on regular basis to stakeholders (SIPO 2004: 45-46).

#### 3.1.3 Specific documents on gender

*Gender equality is considered crucial to achieve the overall SADC objectives of poverty eradication and sustainable development. There are a number of documents which provide the policy framework for the achievement of gender equality. The objectives mentioned in the strategic SADC documents, such as the RISDP and the SIPO, are based upon or elaborated in the specific documents analyzed in this section.*

#### 1997 Declaration on Gender and Development (GAD)

The ‘rebirth’ of SADC in the 1990s coincided with the preparations for the UN Fourth World Conference on Women in Beijing in 1995. Southern African women NGOs and women from government gender units set up a regional task force to represent the demands of the region in Beijing. Based on the Beijing Platform for Action (PFA), at national level, priorities were formulated such as education, health, power and decision making, poverty and violence against women. In September 1997, the SADC Summit in Blantyre, Malawi signed the Gender and Development Declaration. It is a brief, non-binding document.

The Declaration recognises gender equality as a fundamental human right. It refers to the principle of non-discrimination on grounds of gender in Article 6 of the SADC Treaty and to UN documents: the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW), the *Nairobi Forward Looking Strategies*, the *Africa Platform of Action* and the *Beijing Declaration* and *Platform for Action*. It notes that in spite of some progress in some member states, disparities between women and men still exist in a number of areas. At the regional level, the efforts to mainstream gender into SADC sectoral programmes and projects have not yet met with much success. As a result, the Declaration calls upon the member states to undertake action.

The Declaration commits member states to protect and promote the human rights of women and children. They shall repeal and reform ‘all laws, constitutions and social practices which still subject women to discrimination’ and enact ‘gender sensitive laws’ (Art. 8). This is interesting in two respects. First, the fact that not only written sources of discrimination but also discriminatory ‘social practices’ are to be reformed. Second, the enactment of gender sensitive laws is a far-reaching commitment. It clearly reflects the Beijing concept of gender mainstreaming, in the sense that in every domain gender effects have to be taken into account.

In order to combat poverty, member states should promote ‘women’s full access to, and control over productive resources such as land, livestock, markets credit, modern technology, formal employment, and a good quality of life’ (Art.8). Education and health issues are also linked to overall economic objectives, as access to quality education, reproductive and other health services for women and men is expected to improve overall productivity and economic performance.

The Declaration commits member states to adopt an integrated approach to deal with the issue of violence against women through a combination of legislative, social, and economic measures, service provision, education and training. The mass media should ‘disseminate information and materials in respect of the human rights of women and children’. Following ‘Beijing’, the reproductive and sexual rights of women and the girl child are recognized as human rights. Sexual rights are a relatively recent issue, and its acceptance by SADC as an issue for regional policymaking can be explained as a reaction to the threat of HIV/AIDS to the economic and social functioning of several SADC member states. The complex interaction between the economic subordination of women and their cultural subordination in sexual relations places women at greater risk of HIV than men (Klugman 2000: 147). Thus, gender equality as regards sexual rights is crucial to address successfully both poverty and HIV/AIDS.

The Declaration mainly lists broad commitments to standards, but as regards representation of women in politics and decision-making at national and regional levels, it sets a minimum target of 30 percent by 2005.

Half of the Declaration concerns the establishment of an institutional framework for mainstreaming gender issues into all SADC activities. The SADC Secretariat should coordinate gender issues at the regional level, and to this effect a Gender Unit is to be established in the Secretariat as well as Gender Focal Points whose task would be ‘to ensure that gender is taken into account in all sectoral initiatives, and is placed on the agenda of all ministerial meetings’. At the political level, a Standing Committee of Ministers responsible for Gender Affairs is to be established. They are given advice by the Advisory Committee consisting of one representative from Government and one member from NGOs in each Member State.

#### 1998 Addendum [to the 1997 Declaration on Gender and Development] on the Prevention and Eradication of Violence Against Women and Children

After the Summit in Malawi where the GAD was signed, in March 1998 a SADC Conference on the prevention of violence against women was convened by the Ministers of Justice and Ministers of Gender/Women’s Affairs and representatives of NGOs. At this conference a series of measures were proposed to tackle the problem of violence against women. The measures were collected in a three-page document. This addendum was approved and signed in September 1998 as an integral part of the 1997 GAD.

The Addendum reaffirms the commitment of member states to the prevention and eradication of violence against women and children in the region, and identifies the various forms of violence. Violence against women and children is recognised as a ‘serious violation of fundamental human rights’ (Art. 4). It calls for legal measures such as the adoption of sexual offences and domestic violence legalisation and the review of criminal laws applicable to cases of sexual offences. It also calls for social, economic, cultural and political measures such as introducing awareness programmes and involving the media. It calls for services (legal aid, health, and statistics) and budgetary allocations. The Addendum also asks SADC to consider adopting legally binding instruments in this area.

#### 1999 The Gender Plan of Action

The Plan of Action seeks to make tangible the commitments contained in the Declaration and Addendum. It outlines a number of objectives, strategies and activities in the following areas: gender policy and institutional frameworks; women’s human rights; access to economic structures and control of resources; politics and decision making; peace and stability; gender capacity building and training; dissemination of information and networking; and coordination of SADC participation and position at African and global events. The SADC Gender Unit was to coordinate these activities.

#### 2001 Framework of Activities for Gender in SADC

Following the restructuring of SADC institutions in 2001, the Plan of Action was replaced by a Framework of Activities. It perceives three broad strategic objectives for the SADC gender programme. These include gender mainstreaming, which covers all sectors; coordination and outreach; and monitoring the implementation of the Declaration and Addendum, as well as other regional, continental and global gender equality instruments (RISDP 2003).

The Gender Unit, established to coordinate and monitor all activities, has been very active indeed. It has facilitated information exchange, produced resource materials, created a pool of gender-trainers in the region, and enhanced networking among women MPs and NGOs. In its annual reports, it reminded member states of the minimum target of 30 percent of women in politics and decision-making by the year 2005. Its efforts to mainstream gender into all sectoral programs, however, turned out to be less successful. Only the ELS Committee developed a strategy which aims at integrating and mainstreaming gender issues into its policies and activities. A partial explanation for this failure is lack of staff and resources. In 2000, the Ministers responsible for Gender/Women’s Affairs allocated 85.000 US$ to the budget of the SADC Secretariat for gender activities. The Gender Unit consisted of only two officers, and because of the work load the Gender Unit approached the Commonwealth for assistance with staffing. A technical advisor was provided for a period of two years.

The bi-annual implementation reports are given regular attention at Council and Summit meetings. These urge member states to use gender sensitive language, to include an unequivocal commitment to the promotion of gender equality in their national constitutions, to adopt quotas for women in decision-making and to submit their reports on the implementation of measures to eradicate gender-based violence. After each round of elections in a member state, progress in meeting the 30 per cent target is assessed. Member states are also urged to sign and ratify the Protocol of the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

Gender equality is almost always framed in terms of poverty eradication. However, in 2000, at the meeting of Ministers responsible for Gender/Women Affairs, it was for the first time explicitly linked to peace and security. This echoes UN Resolution 1325, which was adopted by the UN Security Council in 2000. Resolution 1325 addresses the disproportionate impact of armed conflict on women as well as their undervalued contribution to conflict prevention and management. SADC Ministers acknowledged the limited participation of women in peace-keeping and conflict resolution delegations and asked for better linkages between the SADC Gender Unit, governments, and NGO groups which are active in the field of peace and conflict resolution. The Council supported the request to include women in conflict prevention management and resolution processes (Council 2000).

The main obstacles for implementation at the national level reflect those at the regional level: the limited human and financial capacity of gender coordination machineries, and poor linkages between these and sectoral ministries.

#### 2008 SADC Protocol on Gender and Development (SADC Gender Protocol)

Time and again, Council had to acknowledge that not much progress had been realized. One of the weaknesses was that the Gender and Development Declaration and its Addendum did not have the same legally binding effect as Protocols. As a result, member states failed to incorporate the provisions into domestic laws and policies. A Protocol, if adopted, would oblige member states to amend their laws to ensure equal rights for women across a wide range of issues. In 2005, for the tenth anniversary of the Beijing World Conference on Women, the Gender Unit conducted a Gender Audit of progress in implementing the GAD. The Audit found that ‘governments had failed to deliver on the one concrete target in the Declaration – achieving 30 percent women in decision-making’, that women constitute the majority of the poor, and that gender-based violence is extremely high (Gender Links 2008). It proposed a number of sector-specific gender mainstreaming interventions, which should be used as a starting point to design gender mainstreaming strategies and programmes for the directorates and to develop monitoring and evaluation tools to track progress. It also called for binding instruments and a time frame. Following the Gender Audit, Council approved the upgrading of the GAD into a Protocol, but the Summit decided ‘it was not as yet an opportune time’ to do so (Council 2006).

Magdaline Mathiba-Madibela, the head of the Gender Unit at the Secretariat, started developing a Draft Protocol, in collaboration with Member States and other key stakeholders such as legal and gender experts. Sixteen regional and national NGOs[[3]](#footnote-3) working to promote women’s rights in the region constituted the Southern African Gender Protocol Alliance and pushed all parties to go ahead. In 2007, the Draft Protocol was approved by the ministers responsible for Gender and the ministers of Justice. In August 2008, the heads of state and government discussed it at the Summit. Thirteen member states (except Botswana and Mauritius) signed the Protocol. As of May 2011, eight member states have ratified the Protocol, namely Angola, the DRC, Lesotho, Mozambique, Namibia, the Seychelles, Tanzania, and Zimbabwe. South Africa is in the process of doing so. The slow rate of ratification is a concern: many of the Protocol’s objectives are required to be met by 2015, yet the Protocol has not yet become legally binding as it has yet to be ratified by two-thirds of member states. Implementation of the Protocol is closely monitored by the Gender Alliance which edits an annual Barometer and national reports.

The substantive content of the Protocol is not new. It reiterates women’s rights as they are contained in international documents such as the CEDAW, continental documents such as the Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa (African Women’s Protocol or Maputo Protocol) of the AU and the previous SADC Declaration on Gender and Development.

What is new is the number of time bound commitments to achieve key objectives. The Protocol has six targets to be met by 2010, and 14 by 2015. The aim of the Protocol is to enhance all existing non-binding commitments and create a strong legal framework for gender equality with clear targets and indicators to enhance accountability and monitoring mechanisms specific to the SADC region (Council 2008): ‘states are not only expected to commit themselves to making far-reaching changes, but they are to achieve them within the time frame provided’ (Munalula 2011: 190). It also draws on good practice in the region, such as the requirement to follow the example set by two countries by including gender equality in the national constitution.

The notion of gender equality is addressed in a remarkably consistent way. This is reflected by the language of the document, where all references to the two genders place *women* before *men* (Munalula 2011). Men’s position and rights are addressed as well, reflecting the approach in the Maputo Protocol. Thus men are awarded the same rights as women, for instance as regards paternity leave, and they are not only presented as perpetrators but also as victims of rights violations.

Violations of women’s rights include sexual harassment, which for the first time in a southern African document also includes situations where there are no unequal power relations. According to Mulela Munalula, this addresses the problem of the southern African culture of ‘joking relationships’ where victims of sexual harassment have difficulties in being taken seriously (Munalula 2011). The Protocol again (see GAD 1997) defines sexual and reproductive rights as a fundamental human right. It insists that gender-based violence must be reduced by 50 per cent, and urges member states to ‘ensure that perpetrators of gender-based violence, including domestic violence, rape, femicide, sexual harassment, female genital mutilation and all other forms of gender-based violence are tried by a court of competent jurisdiction’ (Art. 20). It warns that ‘traditional norms, including social, economic, cultural and political practices which legitimise and exacerbate the persistence and tolerance of gender based violence’ are to be eliminated (Art. 21). Reflecting UN Resolution 1325 the Protocol addresses human rights abuses, especially of women and children, in armed conflict, and calls upon member states to ‘ensure that the perpetrators of such abuses are brought to justice before a court of competent jurisdiction’ (Art. 28).

The position of women in decision-making is one of the key areas, in both politics and conflict resolution. In relation to political decision-making, the 30 per cent quota is replaced by the request that ‘States Parties shall, by 2015, ensure equal participation of women and men in policy formulation and implementation of economic policies’ (Art. 15). Specific legislative measures have to be adopted ‘to enable women to have equal opportunities with men to participate in all electoral processes including the administration of elections and voting’ (Art. 13). Referring to UN Resolution 1325 on women in conflict resolution and peace building, ‘States Parties shall endeavour to put in place measures to ensure that women have equal representation and participation in key decision-making positions’ in such processes by 2015 (Art. 28).

The link between gender equality and poverty eradication is addressed in Article 18, which states that ‘States Parties shall, by 2015, review all policies and laws that determine access to, control of, and benefit from, productive resources by women’ such as water, land and capital; and in Article 19 which addresses discrimination in wage employment. In a progressive move, extending gender equality to the informal economy, the Protocol also asks for ‘the recognition of the economic value of, and protection of, persons engaged in agricultural and domestic work’ (Art. 19). However, this does not seem to include unpaid work, which is mostly done by women (household tasks). A first step in the direction of recognition of all aspects of women’s work is the call on member states to carry out time-use studies on the multiple roles played by women.

**Adoption & application**

The Protocol presents the same institutional framework for implementation and monitoring as the 1997 Declaration (Art. 34). Gender equality, as enshrined in, and protected by the rule of law occupies an important place in the document. Each state is obliged to institute a legislative framework to promote gender equality and to amend or repeal discriminatory laws. They should institute dispute resolution and adjudication facilities to enforce gender equality and sanction discrimination. Much is expected from the domestic legal systems to codify and uphold women’s rights. Gender equality and equity shall be included in the constitutions of the member states (Art. 4). Legislation and other measures are to be adopted to ensure equality in the treatment of women in judicial and similar proceedings, including customary and traditional courts and national reconciliation processes; and to ensure equal legal status in civil and customary law, including the right to acquire and hold rights in property; the right to equal inheritance; and the right to secure credit. Women should also have equitable representation on, and participation in, all courts, including traditional courts, alternative dispute resolution mechanisms, and local community courts.

Each state is obliged to allocate the necessary resources. As regards mechanisms for implementation, apart from the strict deadlines in many articles, the Protocol advocates affirmative action measures to attain the 50 per cent target in decision-making positions in the public and private sectors by 2015 (Art. 12); the already mentioned time-use studies (Art. 16); and public awareness-raising campaigns (Art. 12). The absence of a clear target and deadline in certain articles potentially weakens their impact. For example, Article 8 on the promotion of equal rights in marriage, and Article 21 on the elimination of practices which legitimise and exacerbate the persistence of gender-based violence, both lack clear targets and deadlines. More generally, the private sphere seems to be left alone more than what would be justified given the many discriminatory practices and beliefs which hamper the attainment of gender equality in the public domain (Munalula 2011).

#### 3.1.4 Other documents

#### 1997 Code on HIV/AIDS and Employment in SADC

In 1994 a group of NGOs and trade unions in South Africa and Zimbabwe started to mobilise and demand the development of a regional code of conduct concerning HIV/AIDS and employment. The initiative was taken up by the tripartite SADC Employment and Labour Sector (ELS) committee. The scope of the code is limited to the workplace. The awareness of the grave economic consequences of the HIV/AIDS epidemic for the economic growth of the region, as well as social problems in the workplace between those with and without HIV/AIDs motivated the development of the code.

The code mainly protects the rights of employees with HIV/AIDS and related illnesses, based on the principle of non-discrimination between individuals with and without HIV/AIDS, or between HIV/AIDS-infected and those suffering from other medical problems. The code states that there should be no compulsory HIV/AIDs testing for job access or training, HIV/AIDS should not be a factor in job status, promotion, or transfer, and HIV/AIDS-infected employees should have equal access to medical treatment and sick leave provisions. The SADC code should be implemented by member states in their national legislation, and implementation should be monitored by the SADC ELS and tripartite committees in the member states.

#### 2000 SADC HIV and AIDS Strategic Framework (2000-2004)

#### 2003 SADC Declaration on HIV/AIDS (Maseru declaration)

#### 2003 SADC HIV and AIDS Strategic Framework and Programme of Action (2003-2007)

#### 2008 SADC HIV and AIDS Strategic Framework and Programme of Action (2009-2015)

At the global and continental level, various initiatives were developed concerning HIV/AIDS.[[4]](#footnote-4) As the world region hardest hit by HIV/AIDS, SADC member states saw recent gains in economic and political development being eroded by the epidemic. As a result, the SADC Summit agreed that combating HIV/AIDS should be one of SADC’s main priorities. The Maseru Declaration of 2003 lists three objectives of SADC in relation to fighting the spread of HIV/AIDs:

1. To promote sustainable and equitable economic growth and socio-economic development that will ensure poverty alleviation with ultimate objective of its eradication;
2. Combat HIV/AIDS and other deadly and communicable diseases;
3. Mainstream gender in the process of community and nation building (Maseru Declaration, Preamble, 2003).

The Declaration calls for the upholding of human rights and fundamental freedoms for all, including prevention of stigma and discrimination of people living with HIV/AIDS. Further elaboration is left to the Strategic Framework. SADC developed a strategic framework for the period 2000-2004, but a revision was necessitated by the restructuring of SADC in 2001, when the 21 country-based sectoral units were replaced by Directorates at the SADC Secretariat. To realign the regional strategy with the new institutional structure and new policy documents, a new strategic framework was developed. An institutional structure comparable to the gender structure was set up, defining HIV/AIDS as a cross-cutting issue and creating a small specialized unit with four experts at the SADC Secretariat within the Department of Strategic Planning, Gender and Policy Harmonisation and assigning focal persons to each Directorate. At the national level, national HIV/AIDS Councils will report to the SADC National Technical Committees.

As regards content, HIV/AIDS is framed as a developmental challenge aggravated by poverty, and as a humanitarian crisis. Following the RISDP, SADC policy on HIV/AIDS is gender mainstreamed, and, in turn, HIV/AIDS is mainstreamed into all key intervention areas. As regards the implementation mechanisms, the second section of the new framework outlines activities to be undertaken, performance indicators, timeframes, responsibilities, and cost estimates. However, in the framework of governance export, these policies are less relevant as they mainly concern health.

#### 2001 Protocol against Corruption

The SADC Protocol Against Corruption was adopted by the SADC Heads of State at the August 2001 Summit held in Malawi. It was the first sub-regional anti-corruption treaty in Africa (Transparency International 2011). The Protocol was signed by 14 member states (Madagascar did not sign the Protocol as it was not yet a member of SADC). It entered into force on 6 July 2005, 30 days after its ratification by two thirds of the SADC membership. It has been ratified by 13 member states (all except Madagascar and the Seychelles).

SADC Heads of State are ‘concerned about the adverse and destabilising effects of corruption throughout the world on the culture, economic, social and political foundations of society’ (Preamble), and acknowledge that corruption ‘undermines good governance which includes the principles of accountability and transparency’ (Preamble). Therefore, ‘each State Party undertakes to adopt measures, which will create, maintain and strengthen ... systems of Government hiring and procurement of goods and services that ensure the transparency, equity and efficiency of such systems’ (Art. 4b). The concern with increasing output legitimacy is visible in the commitment ‘to adopt measures, which will create, maintain and strengthen ... mechanisms to encourage participation by the media, civil society and nongovernmental organizations in efforts to prevent corruption’ (Art. 4i).

As regards implementation, member states undertake to develop and adopt ‘standards of conduct for the correct, honourable and proper fulfilment of public functions as well as mechanisms to enforce those standards’ (Art. 4a). They are called upon to develop or strengthen mechanisms ‘needed to prevent, detect, punish and eradicate corruption in the public and private sector’ (Art. 2a). Finally, each member state shall ‘empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized and shall not invoke bank secrecy as a basis for refusal to provide assistance’ (Art. 8.2). A Committee with state representatives has been established to oversee the implementation of the Protocol.

#### 2003 Charter on Fundamental Social Rights in SADC

At the Blantyre Summit in 2001, the Heads of State adopted a Charter on Fundamental Social Rights (Charter). At first it had the status of a consultation document, until it was signed at the 2003 Summit in Dar es Salaam to be opened for ratification by SADC member states (Nkowani 2007: 43). Angola, Botswana and Madagascar have not yet signed the Charter.

The SADC Treaty stipulated that every sector should have a Protocol in which the aims of the Treaty were further elaborated, and which specified how they would be implemented. Article 5 of the SADC Treaty laid down the objectives for the Employment and Labour Sector (ELS), to be specified at a later date in a Protocol. The SADC Protocol on Trade did not deal with employment and labour issues, although there are obvious links to it. The Congress of South African Trade Unions (COSATU, the powerful South African trade union) expressed its disappointment that there were no social clauses in the SADC Protocol for Trade (Interview AC). These are the domain of the SADC ELS, the tripartite forum where labour ministers, employers and trade unions meet to discuss the harmonisation of labour standards and to map out common strategies to be used in international forums such as the International Labour Organisation (ILO). The Charter was the outcome of a drafting process in which experts from the ILO and representatives from trade unions, employers, and governments participated. The ELS opted for a charter modelled on the European Social Charter (which was approved by the Council of Europe in 1961) instead of a Protocol (Nkowani 2007: 44). A protocol is legally-binding,[[5]](#footnote-5) but a charter is not and does not require ratification by member states. The ELS is the only SADC sector with a Charter. In order to be on the same ‘wavelength’ as the other sectors, the current process of revision of the text will probably include a change of status of the Charter into a Protocol, due to be approved in April 2012 (Interview AC).

The codification of social and labour rights was deemed necessary for regional integration for several reasons. First, the awareness has developed that low labour standards have a negative impact on economic productivity and efficiency; a key word in the Charter is (increased) ‘productivity’ which reflects the common interest of all stakeholders (Interview AC), while the linking of trade and investment with the social responsibilities of business is a new phenomenon (Zampini 2005). Second, against the background of SADC’s central aims of increasing the economic performance and productivity of the region in order to fight poverty (trade and investment as an alternative to development aid), the Charter should prevent the weakening of workers’ rights. The region needs foreign investment to increase employment, and transnational corporations choose to settle in the region because of the availability of cheap labour. Due to the competition for attracting foreign investment a race to the bottom of social rights might develop, ‘beggar-thy-neighbour investment incentive competition’ as Zampini calls it (2008: 94).[[6]](#footnote-6) For that reason, the development of a regional framework was deemed necessary. COSATU explicitly warned for the erosion of the ‘gains that we made in South Africa’ if companies relocate to Lesotho, Mozambique and Swaziland to avoid progressive labour laws in South Africa (COSATU 2003). Third, the changing political climate in the region was conducive to demands for industrial democracy; also, trade union activism had shifted from the political struggle against minority regimes to the struggle for labour rights in a globalising economy.

The basic norms in the Charter refer to the UN Declaration of Human Rights (1948) and the African Charter on Human and Peoples’ Rights (OAU 1981). It is also inspired by the constitutive Act of the AU where social and economic issues are ‘viewed as two sides of the same coin’ and no longer as ‘by-products of the political agenda (that is, independence of foreign rule)’ (Nkowani 2007: 43). The document clearly reflects ILO standards, ILO Conventions, and the ILO Decent Work Agenda.

**Prescription & policy**

In general, the Charter has the objective ‘to promote the formulation and harmonisation of legal, economic and social policies and programmes, which contribute to the creation of productive employment opportunities and generation of incomes’ (Art. 2b), such as health and safety standards (Art. 11) and social security schemes (Art. 10).

As regards good governance, ‘freedom of association, the right to organise and collective bargaining’ (Art. 4) should be guaranteed, and industrial and workplace democracy should be promoted by the member states (Art. 13). Interestingly, these rights ‘shall apply to all areas, including export processing zones’ (Art. 4), although if actually implemented this could reduce the attractiveness of the region to foreign investment.

As regards human rights, the Charter ‘embodies the recognition by governments, employers and workers in the Region of the universality and indivisibility of basic human rights proclaimed in instruments such as the United Nations Universal Declaration of Human Rights, the African Charter on Human and Peoples’ Rights, the Constitution of the ILO, the Philadelphia Declaration and other relevant international instruments’ and ‘Member States undertake to observe the basic rights referred to in this Charter’ (Art. 3). Listing the standards laid down in ILO Conventions, the Charter specifies social and economic rights for specific groups of workers, such as women (Art. 6 on gender discrimination), children (Art. 7), workers who have reached retirement age (Art. 8) and people with disabilities (Art. 9). As regards gender, it is also stipulated that ‘reasonable measures are developed to enable men and women to reconcile their occupational and family obligations’ (Art.6c). Several articles are concerned with the fight against poverty. Article 10.2 entitles ‘persons who have been unable to either enter or re-enter the labour market and have no means of subsistence’ to receive sufficient resources and social assistance’, while Article 14 asks for wages ‘which provide for a decent standard of living’. Finally, according to Article 11c, ‘the conditions of employment for every worker in the Region shall be stipulated in national law, a collective agreement or a contract of employment’.

The Charter does not contain deadlines or targets. To ‘promote’ the harmonisation of occupational health and safety regulations does not require the development of SADC standards or the adoption of EU-style framework directives. In addition, as Nkowani observes, the absence of a regional court with appropriate jurisdiction precludes the development of such common norms through jurisprudence the way in which the European Court of Justice did (Nkowani 2007). An often recurring formula in the Charter is that ‘Member States shall create an enabling environment so that...’. This provision is vague as it does not call for specific measures or instruments. However, it is not totally devoid of meaning, as there is an ongoing tripartite consultation process on policy formulation and implementation at both the regional and the national level. The process, based on consensus between all stakeholders, is mainly driven by workers’ representatives (Interview AC). They are represented by the Southern African Trade Union Coordination Council (SATUCC) which is based in Gaborone, near SADC Headquarters. The ILO and the SADC Secretariat cooperate intensively. Their collaboration is covered by a Memorandum of Understanding which is renewed regularly (Zampini 2008).

**Adoption & application**

In general, ‘the responsibility for the implementation of this Charter lies with the national tripartite institutions and regional structures’ (Art. 16.1). They shall ‘prevent non-implementation of this Charter’ and ‘shall submit regular progress reports to the Secretariat’ (Art. 16.2). Tripartite structures in member states, such as the National Economic Development and Labour Council (NEDLAC) in South Africa, are to develop activities for monitoring and implementing the objectives. Their effectiveness depends on the level of maturity and strength of the employers’ and workers’ organizations, as evident in the contrast between weak unionism in some countries (Lesotho, Zambia) with strong unionism in others (South Africa, Zimbabwe) (ILO 2008).

In order to attain the specific objectives set forth in the Charter, ‘Member States shall establish a priority list of ILO Conventions which shall include Conventions on the abolition of forced labour (No. 29 and No. 105), freedom of association and collective bargaining (No. 87 and No. 98), elimination of discrimination in employment (No. 100 and No. 111), minimum age of entry into employment (No. 138) and other relevant instruments’ and they shall ‘take appropriate action to ratify and implement’ these conventions.

In 2003 most member states had already ratified almost all core ILO conventions, in part as a result of a long history of pressure by and assistance from the ILO for the ratification of the conventions. In 2010, 100 per cent ratification was achieved when Namibia finally ratified Convention No. 100 on equal remuneration for women and men. SADC was proud to be the first Regional Economic Community (REC) of the AU that had ratified all seven core conventions. Every year the ELS produced a table highlighting conventions not yet ratified and used peer pressure to motivate the laggards (Interview AC).

The next step should be to ensure that the member states actually implement the conventions, and introduce or improve national legislation. To that effect, the Charter calls for the establishment of a regional reporting mechanism (Art. 5a-b). As of yet, there is no uniform instrument with which to assess member states’ performance, but the ELS has established a committee which is developing such a mechanism. It is intended to have a double aim: to enable the ELS to ‘know what is happening in the member states’ and also ‘to support each other at the ILO level’ so that SADC member states are not harassed at the annual ILO conferences because of non-compliance with the ILO standards (Interview AC). If the instrument is approved (scheduled for April 2012), it would facilitate yearly assessment. For the time being there is no comprehensive monitoring, but the ELS does make a contribution to the SADC progress report every year.

The main constraints that member states face in implementing the Charter are capacity constraints in terms of human resources, expertise and financial resources (Interview AC). This explains the prominent role of the ILO. The ILO and the SADC Secretariat together organize training sessions for the tripartite partners at the ILO Training Centre in Italy.

#### 2004 Principles and Guidelines Governing Democratic Elections

It is often observed that, after the political transitions of the 1990s, SADC countries have adopted the formal attributes of democracy without realizing substantive democracy. The danger of ‘electoralism’, where democracy is equated with the holding of elections, lurks in the background (Matlosa 2004). New steps were deemed necessary for the consolidation of democracy, which is pursued by SADC as both a goal in itself (political participation is considered a good in and of itself), and for instrumental reasons (a stable democratic order as a prerequisite for sustainable economic growth) (RISDP 2003). However, the relation between democracy and economic growth has been reversed by research which has shown how a higher level of economic development of the SADC region is necessary for the consolidation of democracy (Breytenbach 2002). The assumption that elections contribute to conflict management has been questioned as well, as elections in deeply divided multi-ethnic countries[[7]](#footnote-7) often seem to exacerbate conflicts and political instability (Breytenbach 2002). Therefore SADC should ‘anticipate these conflicts and put in place effective institutional mechanisms for constructively managing them’ (Matlosa 2004: 10).

Against this background, in 2004 the Summit adopted the SADC *Principles and Guidelines Governing Democratic Elections* (Principles). The document reflects the commitment in the SADC Treaty and the 2001 *Protocol on Politics, Defence and Security* *Cooperation* to promote the development of democratic institutions and practices, and the commitment in the SIPO (2003/4) to establish common electoral standards in the region, including a code of electoral conduct.

The ‘Principles’ are broadly aligned with those articulated in the *African Union Declaration on the Principles Governing Democratic Elections in Africa* which was adopted during the 2002 AU Summit in Durban, South Africa. Strikingly, in the years preceding the adoption of the Principles, two similar sets of electoral standards had been produced in the region, namely the SADC Parliamentary Forum’s *Norms and Standards for Elections in the SADC Region* (2001) and the Electoral Institute for the Sustainability of Democracy in Africa (EISA)/Electoral Commissions Forum’s (ECF) *Principles for Election Management, Monitoring and Observation in SADC* (2003).[[8]](#footnote-8) The SADC PF suggests in its Strategic Plan for 2006-2010 that their document has directly influenced SADC to produce its own document, and the former Executive Secretary of SADC confirms that it was one of the sources used in the process of elaborating the official SADC document (Interview PR). There are no major contradictions between the three documents, which raises the question why they have not been combined in a single document. This is because they have different constituencies; because of the role of opposition parliamentarians in the SADC PF and the relative autonomy of Electoral Commissions, SADC governments have preferred to develop their own set of standards, even though there is much overlap with the other sets (Matlosa 2004). On election observation, the SADC Principles are less comprehensive than the SADC PF document and on the technical issue of election management they are less comprehensive than the EISA/ECF document. The main added value is that this is the first time that heads of state and government have committed themselves to these principles. In spite of the title, the document is more elaborate on election observation than on election management.

Unfortunately, the Principles do not address the institutional aspects of elections, such as the relative merits of First-Past-The-Post (FPTP) systems and Proportional Representation (PR) systems. This is unfortunate, as in deeply divided societies, the aim of political stability would warrant the promotion of the PR system, where opposition parties are assured of participation. In FPTP systems, legitimate opposition is ‘sidelined not by unfree elections, but by less representative electoral procedures’ (Breytenbach 2002: 90).

**Prescription & policy**

According to the Principles, the constitutions of all member states should enshrine the principles of equal opportunities and full participation of the citizens in the political process*.* The document has five main components. The first component deals with the conduct of elections. It contains ten principles aimed at ensuring equal opportunities for all stakeholders. They deal with equal opportunities for political parties before and during the elections (freedom of association, transparent funding, access to media, impartiality of the judiciary and electoral commissions). Furthermore, they aim at guaranteeing equal opportunities for citizens (voter education, right to vote and be voted for, political tolerance). The member states are called upon to safeguard the basic human and civil liberties of all citizens including the freedom of movement, assembly, association, and expression. Finally, the principles concern the situation after the elections (acceptance of election results proclaimed free and fair by all parties, possibility to challenge results).Key to the defence of these rights is the independence of the judiciary and the impartiality of the electoral institutions. The second component deals with the mandate of SADC Observer Missions (SEOMs) and their constitution by the Chair of the Organ. The other components concerntheguidelines on the observation of elections (deployment of the mission two weeks before the elections), a code of conduct for SADC election observers and a list of their rights and responsibilities (accept no gifts or favours, strict impartiality, produce a report within 30 days), and the responsibilities of the member state holding elections towards their citizens (ensure the peace and security of all) and towards SEOM (allow unhindered access).

**Adoption & application**

The Principles were adopted in 2004 by the Summit. The document is not binding and did not require ratification by the member states. Since 2004, there have been 21 (sets of) parliamentary and/or presidential elections. According to Article 3.1, ‘In the event a Member State deems it necessary to invite SADC to observe is elections, the SADC Electoral Observation Missions (SEOM) have an Observation role. The mandate of the Mission shall be based on the Treaty and the Protocol on Politics, Defence and Security Cooperation’. The Organ is the responsible body for the organization of observer missions. Upon request by the member state, the chairperson of the Organ officially constitutes the Mission (Art. 3.2). In the next section of this report, the actual conduct of the Election Observer Missions and their outcomes are discussed.

#### 2007 Code on Social Security in the SADC

Referring to the RISDP and to the Charter of Fundamental Social Rights, as well as the ILO Convention Concerning Minimum Standards of Social Security No. 102, the Code aims at contributing to the welfare of the people in the SADC region (Art. 3). Inclusive economic and social development should contribute to the eradication of poverty. The basic idea is set out in Article 4, which states that everyone in SADC has the right to social security. Other articles apply the principles of non-discrimination to specific groups and specify parents’, women’s and children’s rights, as well as those of disabled people and migrants. The Code enumerates a set of minimum standards for social protection. As regards implementation and monitoring, an Independent Committee of Experts should be established by every member state to monitor compliance and to make recommendations (Art. 21). The Code also asks for the involvement of civil society in the formulation, implementation, and monitoring of social security policies.

### 3.2 Instruments

*SADC has developed several instruments and mechanisms in order to promote the principles and implement the policies contained in the documents which were discussed in the previous section. Typically, when it comes to socio-economic rights, SADC has opted for delegation of implementation to a multilevel system of tripartite committees, including representatives from governments, employers, and employees, as well as other stakeholders (NGOs). These committees produce monitoring reports, and elaborate new policy documents in those cases where implementation has been found lacking. There are no enforcement mechanisms other than the exchange of best practices. This mechanism was found linked to social rights, gender equality, and HIV/AIDS. The SADC Secretariat plays a central role in this multi-level system. However, when it comes to political rights, different mechanisms have been developed. In this domain the Organ plays a key role. The following instruments are discussed here: the Electoral Observer Missions, the Early Warning System, the SADC Standby Brigade, military and diplomatic interventions, and the dispute settlement mechanism (the Tribunal).*

#### 3.2.1 Electoral Observer Missions

SADC has conducted Election Observer Missions (SEOMs) since 2004. The Protocol on Politics, Defence and Security Cooperation provides the legal basis for the SEOMs. It became legally binding in March 2004 with the ratification by 9 member states (now 11), and the provisions for conducting SEOMs came into effect. Appendix 3 offers an overview of the elections for which data was available and the type of statement or report that was released.

Between 2004 and 2011, 27 elections took place across the SADC region. SADC sent a SEOM to 25 of these. In one case, the Secretariat was invited instead of an Observer Mission. In two cases no evidence was found to confirm that a SEOM was actually sent, namely Madagascar in 2006, and South Africa in 2009. The first two missions, in 2004, to South Africa and Malawi, were essentially pilot missions as they were only deployed at the last stage of the electoral process, and as a result did not have a comprehensive picture of the process (SADC Council and Summit Records 2004). For 14 missions, a report or written statement was found (52 percent of all SEOMs). However, all reports are ‘preliminary reports’ which are issued immediately after the elections. No trace was found of final reports, which according to the Principles should be produced as well. For 13 missions, no preliminary report was found, only a reference in the media or a brief statement in the records of the Summit. When approached, the SADC Organ was not forthcoming in producing the missing reports.

All elections were given SADC endorsement except for the highly-disputed elections in Zimbabwe in June 2008 (see below). In all other reports, incidents and shortcomings are observed but they are justified by ‘the novelty of a free multiparty democracy’ in a poor country (SEOM DRC 2006; SEOM Lesotho 2007) or not considered ‘of such magnitude to substantially affect the credibility of the overall electoral process’ (for instance, SEOM Botswana 2009).

The reports of the elections observed by the SADC observers have been compared to the SADC Principles and Guidelines Governing Democratic Elections to determine to what extent the observers actually use them as a yardstick; over time, to see whether the focus points change, and to standard democracy scores and the reports of other regional election observer missions, to see whether there are striking differences or similarities between this data.

#### Referral to the SADC Principles and Guidelines

The SADC document formulates nine criteria (Art. 4) on which the evaluation is to be based, namely:

1. Constitutional and legal guarantees of freedom and rights of the citizens;
2. Conducive environment for free, fair and peaceful elections;
3. Non-discrimination in the voters’ registration;
4. Existence of updated and accessible voters roll;
5. Timeous announcement of the election date;
6. Where applicable, funding of political parties must be transparent and based on agreed threshold in accordance with the laws of the land;
7. Polling Stations should be in neutral places;
8. Counting of the votes at polling stations; and
9. Establishment of the mechanism for assisting the planning and deployment of electoral observation missions.

When the SEOMs are compared over time, there seems to be a shift in relation to the referral to the Principles and Guidelines. Up until 2009, the SEOMS use the Principles as their terms of reference, but they do so mainly in general. For example, during the elections in the DRC in 2005, equitable access to the state media for all political parties and the voters’ registration process were indicated as areas that require improvement, but there was no reference to the specific SADC principles on media access and voters’ registration (SEOM DRC 2006). The same goes for elections in Lesotho in 2007; issues were raised concerning media access and party funding, but despite these ‘shortcomings’ the elections were declared ‘credible, peaceful and transparent’ (SEOM Lesotho 2007). There is no reference to the corresponding Principles.

The Mission statement on the 2009 elections in Malawi contains the first explicit reference to adherence to the SADC Principles, where it states that the Malawi elections complied with them. However, it is questionable whether this evaluation is correct, for the Electoral Commission was deemed unprepared, there were problems with the verification of the voters roll, isolated incidents of violence were reported, and media coverage was problematic, since ‘both state and private media were perceived to be acting unethically and unprofessionally due to non-adherence to the Malawi Media Code of Conduct’ (SEOM Malawi 2009). The preliminary report of the 2010 Tanzania elections actually explicitly formulated the criteria on which the SEOM based its evaluation. In the Statement on the elections in Seychelles in May 2011, the same criteria are presented as ‘pre-conditions for free and fair elections’. More importantly, there is actual reference to the SADC Principles and Guidelines, since recommendations include the ‘establishment of a national electoral commission as opposed to an Electoral Commissioner in line with Article 7.3 of the SADC Principles and Guidelines’ and ‘Strengthening and broadening the mandate of a Media Commission that is independent and will, among other things, expedite the participatory formulation of the Code of Conduct and access of all political parties to State media as provided in Article 2.2.5 of the SADC Principles and Guidelines’. Therefore we conclude that the Principles are increasingly viewed as specific standards which should guide (future) behaviour instead of a general background document which one may refer to if convenient.

#### Focus points and ‘best practices’

Starting with the first SEOM reports, negative comments are voiced time and again concerning media bias, inadequate voter education, lack of funding or use of public resources for campaign funding by the ruling party and the verification of the voters’ roll. Equal coverage by mostly state-owned media is the most persistent problem, creating a huge advantage for the incumbent government.

The reports also give positive feedback, for instance, they applaud the gender equity in the electoral management and electorate (Zimbabwe 2005; Zanzibar 2005; DRC 2006). This positive counterpart to the concerns is labelled as ‘best democratic practices and lessons learnt’ in the report on Lesotho, turning it into a new instrument for governance transfer. These ‘best practices’ are supposed to be copied by other SADC member states. In this context, practices such as the use of transparent ballot boxes (Malawi, Namibia, Tanzania, Mauritius), the provision of materials for voting for the blind and those with special needs more in general (Malawi, Botswana, Namibia, Tanzania, Seychelles), changing regulation on the age for voter registration (from 21 to 18 in Botswana), provision of medical emergency services at some polling stations (Malawi, Mozambique), grant the right to vote to prisoners (Lesotho 2007, Namibia) and the use of environmental friendly campaign material (Mauritius) are highlighted and promoted. Strikingly, as regards Lesotho, the Mixed Member Proportional (MMP) electoral model is presented as best practice for the SADC region. This is an aspect which is not part of the Principles and Guidelines, and it is an exception to the rule that SADC does not discuss the electoral system of the member states. This exception might be understood as post hoc legitimizing the SADC involvement in transforming the electoral system in Lesotho after its much criticized military intervention in 1998 (see further details below). Starting with the SEOM to the Malawi elections in 2009, the consultation with stakeholders and discussion of issues and concerns expressed by them is a new theme which is brought up in the evaluation and the reports. It reflects the practice developed by SADC PF and SADC ECF election observer missions to increase the legitimacy of these missions.

#### Reliability of SADC reports

SADC Summit stresses time and again that well-organized elections are crucial to the consolidation of democracy. Given the positive assessment of elections by the SEOMs, one would expect a relatively high score on democracy in the region, or at least an increase over the years. However, SADC remains at the same level of a rather modest 6.34 in 2008 (1995: 6.27) out of 10 (see Appendix 1). Between 2004 and 2009, the democracy scores of SADC countries show small setbacks in three cases (Mauritius, South Africa and Madagascar), and small to modest improvements in three other cases (DRC, Namibia and Zambia). As a result, countries which are in the range of consolidated democracies stay there, such as Mauritius, South Africa and Botswana (≥ 8.50), whereas countries with a weakly developed democracy, such as Zimbabwe and Swaziland (≤ 2.50) have not shown any improvement between 2004 and 2009 (Appendix 1).

We have checked whether holding elections contributes to the consolidation of democracy or to the weakening of democracy. As far as data is available, we have compared democracy scores in the year prior to elections, the year in which elections take place and the year after elections (Table 3.2).

**Table 3.2 Democracy scores,\* SEOM assessments and other assessments**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Country | Democracy score year prior to elections […] | Democracy score year of elections […] | Democracy  score year after […] | SEOM assessment | Other assessments |
| Angola | 3,25 [2007] | 3,25 [2008] | [2009] | [no report found] | SADC ECF: free & fair  EU EOM: concerns re. media, transparency  Human Rights Watch: elections did not comply with SADC Principles & Guidelines |
| Botswana | 8,67 [2003] | 8,67 [2004] | 8,67 [2005] | - |  |
| 8,67 [2008] | [2009] | [2010] | Minor concerns re. impartiality of electoral commission and media bias. Not significant enough to affect credibility of results | SADC ECF: slow but free & fair  SADC PF: uneven media coverage and funding, imbalanced gender representation |
| DRC | 4,33 [2005] | 5,00 [2006] | 5,00 [2007] | Commended for conducting acceptable elections considering difficult circumstances | SADC PF: similar to SEOM  EU EOM: concerns, 46 recommendations |
| [2010] | [2011] | [2012] | - | - |
| Lesotho | 8,25 [2006] | 8,25 [2007] | 8,25 [2008] | Commended for peace, tolerance and political vigour. Minor concerns re. equal access to public media. More serious concerns re. party funding for electoral purposes | SADC PF: free & fair but concern re. gender equity  Commonwealth: positive (successful intervention by electoral commission to curb media bias)  EU EOM: positive |
| Madagascar | 7,58 [2005] | 7,17 [2006] | 7,17 [2007] | [no report found] | SADC PF: significant improvement, free & fair |
| Malawi | 6,67 [2003] | 6,50 [2004] | 6,50 [2005] | - |  |
| 6,50 [2008] | [2009] | [2010] | Concerns re. unpreparedness and lack of independence of electoral commission, use of ethnicity as campaigning tool, media. Overall credible, peaceful, and free. | SADC ECF: similar concerns  SADC PF: peaceful & free, commended for gender equity; concerns re. funding, media  Commonwealth: same concerns but considered to create a markedly unlevel playing field and tarnishing the democratic character  EU EOM: same concerns.  Both EU and Commonwealth criticize UNDP technical assistance (international personnel instead of capacity-building national staff) |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Mauritius | 10,0 [2004] | 10,0 [2005] | 9,58 [2006] | - | - |
| [2009] | [2010] | [2011] | Minor incidences of ‘misunderstanding’.  Overall free and fair. | SADC PF: More efforts for gender equity needed; complaints about media coverage have been effectively dealt with; elections free & fair  SADC ECF: concerns re. gender, ethnicity; elections credible and peaceful |
| Mozambique | 6,92 [2003] | 6,92 [2004] | 6,92 [2005] | - | - |
| 7,33 [2008] | [2009] | [2010] | Concerns re. publication and verification of voters roll, voter education. Commended provision of security by law enforcement agencies at polling stations. | SADC ECF: shared notes with SEOM  EU EOM: similar concerns; also funding; commended for gender quota  Commonwealth: id. |
| Namibia | 7,75 [2003] | 7,75 [2004] | 8,17 [2005] | - |  |
| 8,17 [2008] | [2009] |  | Some incidences of political violence, minor allegations of media bias, irregular party funding. Technically well-managed. Overall free and fair. | SADC PF: minor incidents, but commended for progress gender equity, elections free, transparent and credible |
| Seychelles | 6,90 [2005] | 6,90 [2006] | 6,90 [2007] | [no report found] | Commonwealth: free & fair |
| [2010] | [2011] | [2012] | Minor concerns but credible and free elections | SADC ECF: met with SEOM; minor concerns but credible and free elections |
| South Africa | 9,33 [2003] | 9,33 [2004] | 9,33 [2005] | - |  |
| 8,92 [2008] | [2009] | [2010] | [no report found] | SADC ECF: free & fair  EU EEM: credible, transparent  SADC PF: free & transparent, commended for gender equality |
| Swaziland\*\* | 1,08 [2007] | 1,08 [2008] | [2009] | Elections competently managed. Recommend improving electoral system, esp. secrecy of the ballot and usage of transparent ballot boxes. | Commonwealth: serious concerns, also on gender equity; elections not credible because of inconsistencies between the constitutional and legislative framework and fundamental human rights |
| Tanzania | 5,17 [2004] | 5,17 [2005] | 5,17 [2006] | Zanzibar – commended for peace, tolerance, political vigour, and gender equity in election management. Minor concerns re. voters roll. Tanzania: free and peaceful. | Commonwealth: serious concerns, but improvement compared to previous elections;  SADC PF: concerns, also re. gender equity but overall free & fair |
| [2009] | [2010] | [2011] | Few incidents; commended for gender equity; open transparent, free and fair | SADC ECF: shared notes with SEOM and EU EOM, minor concerns  EU EOM: concerns re. transparency, gender equity;  Commonwealth: minor concerns |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Zambia | 6,25 [2005] | 6,67 [2006] | 6,67 [2007] | [no report found] | SADC PF: incidents but significant improvement; concerns re. gender equity; free & fair  Commonwealth: id.  EU EOM: id. |
| 6,67 [2007] | 7,58 [2008] | [2009] | [no report found] |  |
| Zimbabwe\*\* | 1,92 [2004] | 1,92 [2005] | 1,92 [2006] | Commended for well-managed and transparent elections and for gender equity. Minor criticism re. voter’s registration process. | Consortium incl. the South African Council of Churches: serious flaws, elections did not live up to the SADC Principles and Guidelines |
| 1,92 [2007] | 1,92 [2008] | [2009] | 1st round: tense atmosphere, concerns re. intimidation from security forces. However, deemed free and fair.  2nd round: serious politically motivated violence. Many deliberately spoiled ballots. Elections did not reflect will of the people. | SADC ECF: 1st round partly free but wanting re. fairness because of lack of transparency  SADC PF, EU EOM: refused access |

\* Scale ranges from 0-10 where 0 is least democratic and 10 most democratic. Source: Freedom House and Polity IV, data combined by Lohaus and Van Hüllen (2011), see Appendix 1.

\*\* In bold: clearly diverging views in different reports re. the elections.

The data in Table 3.2 seems to indicate that holding elections does not substantially affect democracy scores, negatively or positively, as these remain mainly unchanged before and after the elections. There seems to be no clear connection either between the level of democracy in a country and the assessment of the elections by the SEOM. Whether scores are a high 8 or a low 1, time and again minor incidences are deplored and elections are declared overall free and fair. Recommendations are framed in very diplomatic language. As this could indicate a lenient attitude on the part of SADC, we have compared the available reports of the official missions mandated by the Organ with available reports by the SADC Parliamentary Forum, SADC Electoral Commissions (coordinated by EISA), EU and Commonwealth. The results of the comparison have been summarized in Table 3.2.

From their own reports results that the observer missions consult with each other and discuss their findings. This practice of caucusing to share observation findings has been consistently encouraged by EISA and other international NGOs that have a long-standing involvement in election observation. In the past this did not always happen, but over the years the practice has taken root and is more the norm than the exception now. Given the scarcity of resources, a certain division of labour has developed where SADC PF is at an earlier stage present in the target country and the SEOM will draw on their expertise and on their feedback (interview PR). This does not mean that the observers will necessarily adopt a common stance, but there is a tendency for a broad consensus to emerge from consultations. The comparison shows that in general, the reports agree as regards concerns as well as positive feedback and overall assessment. A striking feature of SADC-PF and EU observer missions is their consistent attention to gender equality. They remind the member states that ‘Lesotho like the majority of other SADC countries continues to lag behind in the advancement of women in politics’ (SADC PF Lesotho 2007) and that ‘it is worth noting that Botswana is not a signatory to the SADC Gender protocol for a 50-50 gender representation’ (SADC PF Botswana 2009). They also explicitly applaud countries that perform relatively well with regard to equal representation of women, such as Namibia. In some cases, the same concerns (for instance concerning media coverage and campaign funding) are weighted slightly differently. The overall picture, where all missions seem to agree in general on the quality of the elections observed, shows only two cases of clear disagreement: Swaziland and Zimbabwe.

After the 2008 Swaziland elections, the SADC EOM congratulated the people of Swaziland ‘for the lesson of civility, good behaviour, mutual tolerance and, above all, for the tremendous efforts to reach the perfection as they embark on their gradual and challenging road for the entrenchment of democracy’ (SEOM Swaziland 2008). It seems odd that these elections are declared free and fair while Swaziland scores a mere 1,08 on democracy. In fact, it is not an electoral democracy but an absolute monarchy. King Mswati III wields absolute authority over the cabinet, legislature, and judiciary. Political parties are illegal. Of the lower house of parliament, 55 members are elected by popular vote within the *tinkhundla* system, in which local chiefs control the elections and vet all candidates. The king appoints the other 10 members. He also appoints 20 members of the 30-seat Senate, with the remainder selected by the lower house (Freedom House 2011). Prodemocracy groups boycotted the 2008 parliamentary elections. No wonder that COSATU, the main South African trade union, accuses SADC of entertaining double standards, because ‘the SADC observer mission accepted an electoral outcome conducted in an environment of banned political parties and arrests of political activists’ (COSATU 2008). Also the Commonwealth report of the 2008 elections disagrees with the positive assessment by the SEOM. It is not so much the elections which are problematic, because the concerns raised (voter education, media, and secrecy of the ballot) echo the concerns raised by the SEOM, but it is the wider issue of governance which is at stake. The Commonwealth report shows how constitutional provisions are incompatible with international standards as regards the respect of freedom of association and assembly, separation of powers and the rule of law. It concludes by saying that ‘it is ultimately for the people of Swaziland to decide on the process and direction which should be pursued, with due regard to respect for the Monarchy as well as local traditions and custom, while meeting its international obligations as a fully-fledged member of the Commonwealth, SADC, the African Union and other global institutions’ (Commonwealth expert team report, 24 September 2008).

As regards Zimbabwe, we have noticed a disagreement concerning the elections in 2005 as well as in 2008. In 2005, the SEOM congratulated ‘the people of Zimbabwe following the holding of peaceful, credible, well managed and transparent elections’ (SEOM Zimbabwe 2005). However, an observer mission consisting of representatives of the South African Council of Churches and Southern African NGOs came to the conclusion that there were serious flaws in the election process and that they did not live up to the Principles and Guidelines (Solidarity Peace Trust 2005). Election observers from COSATU, SADC PF and EISA were not admitted at all. The opposition party complained about massive pre-electoral gerrymandering, flawed registration, unequal access to media and free assembly restrictions (Kersting 2007). As a result, there seem to be reasons to doubt the positive conclusions of the SEOM.

A similar scenario seemed probable in 2008, but it turned out differently. After the first round, on 30th March, the SEOM declared that in spite of ‘issues and concerns that require change and improvement’, ‘political parties, candidates and the electorate were conversant with … the SADC Guidelines Governing Democratic Elections’, even though the elections clearly did not abide by some of the principles, like the existence of an updated and accessible voters roll and equal access the state media, and again several organizations were denied accreditation to observe the elections, including the SADC-PF. However, after the second round, on 29 June, the SEOM changed its tune. It released a statement which highlighted the unstable and violent period leading up to the run-off election. The security forces failed to act effectively (or did not act at all) to stop the violence or arrest the perpetrators of violence. Furthermore, several Presidential candidates pronounced that they would not accept and respect the results of the elections, which goes against the SADC Principles and Guidelines. The SEOM came to the conclusion that ‘the elections did not represent the will of the people of Zimbabwe’, since the process leading up to the presidential run-off elections ‘did not conform to SADC Principles and Guidelines Governing Democratic Elections’ and ‘the prevailing environment impinged on the credibility of the electoral process’. Our hunch is that there are two reasons for the apparent U‐turn on the part of SADC election observers. First, politically motivated violence and intimidation had intensified so badly that it became difficult to endorse the elections without damaging SADC EOM credibility among SADC member states, especially those who had started to become increasingly critical of the Mugabe regime. Added to this was the observation that ‘Numerous SEOM teams reported being harassed in the course of their duties’. If Mugabe could not even guarantee the safety of SADC observers who had until then loyally defended his practices, why continue protecting him? The June 2008 elections marked a watershed in the attitude of SADC towards the Zimbabwean problem, as will be discussed under the heading of ‘interventions’.

Assessing the practice of electoral observer missions since 2004, we may conclude that member states now routinely invite SADC observers and that all missions are conducted according to the SADC Principles and Guidelines. The reports of the missions include statements by stakeholders, and are based on observations by the SEOM as well as by other missions. The conclusions of the reports seem to be confirmed in most cases by other reports, which voice similar concerns. We noticed two exceptions: Swaziland (2008) and Zimbabwe (2005; 2008). The situations in these countries would seem to warrant a SADC intervention; to what extent such an intervention has been forthcoming will be discussed in the following section. The SADC Principles are not legally binding and the SEOM reports have no legal status. Unfortunately, we could not assess the impact of the reports and investigate whether a learning effect was produced by the concerns, best practices and recommendations. There were no SEOM reports available for the same country for consecutive elections. Still the political value of the missions is clear, as they embody a consensus among Southern African states as regards the application of Southern African standards of democracy (Matlosa 2005).

#### 3.2.2 Interventions and non-interventions

Based on the Protocol on Politics, Defence and Security-Cooperation (see section 3.1),

‘Enforcement action may be taken in instances where there is evidence of genocide, ethnic cleansing, gross violation of human rights, military coup or other threats to the legitimacy of the state, civil war, insurgency, or conflict which threatens the stability of the region or member states (Art. 11.2b).

All enforcement actions are to be taken in consultation with the AU and UN, and with the authorization of the UN Security Council.

#### Interventions by SADC

SADC has intervened militarily twice, in Lesotho and DRC; both interventions were heavily contested and revealed strong divergence of opinion between SADC member states. In both cases SADC was invited to intervene by the government of the country. It has intervened through diplomacy and mediation in Zimbabwe and Madagascar.

**Lesotho 1998**

Elections were held in Lesotho in March 1998, in which the ruling Lesotho Congress for Democracy Party won an overwhelming majority. The opposition alleged fraud and lodged a legal challenge, which was dismissed. After rioting broke out in the capital city of Maseru, the Basotho government and opposition parties sought mediation from the South African government. A report was produced that noted some potentially serious irregularities in the conduct of the election, but was unable to conclusively say the result did not reflect the will of the people (Southall and Fox 1999). The ambiguity of the report fuelled political tension and in mid‐September a mutiny broke out at the main army barracks in Maseru. The Prime Minister of Lesotho, Pakalitha Mosisili, wrote to the heads of state of South Africa, Botswana, Mozambique and Zimbabwe to request military intervention to quash the mutiny. On 22 September, South African troops entered Lesotho, joined by a small number of Batswana troops the following day. Lesotho was occupied for seven months, and the government was upheld. South Africa, who was the Chair of SADC at the time, justified the decision to enter Lesotho by claiming that it had intervened on behalf of SADC after being invited by a legitimate government (Likoti 2007). There has been some debate whether the intervention was actually a SADC mission as claimed, or a unilateral military action by South Africa and Botswana who claimed the mantle of SADC in order to legitimize their actions. At the time, the official business of the SADC Organ was suspended, due to the ongoing dispute between South Africa and Zimbabwe over its role, so this avenue of SADC decision-making was for all intents and purposes closed down. Furthermore, SADC at that time had no official policy or institutional structures to deal with interventions, but the serious nature of such a matter would generally require endorsement from the Summit.

In any case, the Summit was not involved in sanctioning the intervention and the intervening countries did not have a formal mandate from SADC by way of a Summit resolution. Nor did the operation have a mandate from any other international bodies, such as the UN or AU. Whether the intervention was intended to uphold democracy, human rights and the rule of law, or a South African operation to maintain secure access to water supplies, as alleged by Fako Johnson Likoti, is not clear (Likoti 2007). What *is* clear is that had the Protocol on the Organ been in force in 1998, the intervention would have been illegitimate under SADC’s own standards, due to the lack of a resolution from the Summit or the UN Security Council.

**DRC (1998-present)**

Shortly after joining SADC, the DRC government, headed by Laurent Kabila, found itself battling a rebel force backed by former allies, Rwanda and Uganda. Kabila appealed to SADC for military intervention to rescue his embattled regime (Francis 2006). In the end, Angola, Namibia and Zimbabwe committed troops to support the DRC government and became involved in a protracted five year war in the Congo. The SADC intervention was not motivated by human rights concerns. Also, this was not an issue of defending democracy, as Kabila made himself president after an insurgency to overthrow the dictatorship of Mobutu Sese Seko. Zimbabwean, Namibian and Angolan involvement were motivated primarily by their own geo‐strategic and security concerns and by the economic gains to be reaped in the free‐for‐all war economy of the DRC (Francis 2006). As was the case during the Lesotho intervention, SADC had no official documents pertaining to rules and procedures for intervention in 1998. Whether the intervention in the DRC was legitimate is not immediately clear. The mission was justified on the grounds of external aggression from Rwanda and Uganda, legitimate grounds for intervention according to SADC’s own standards (SADC Treaty Article 4). However, the decision to intervene was taken without full consultation and consensus amongst the necessary SADC officials. Nor did the mission have the backing of the UN Security Council, which the Protocol for the Organ made mandatory in 2001. All things considered, it appears that SADC did not have a legal mandate for its intervention in the DRC.

SADC spent much of the 2000s struggling to work towards calming the situation in the DRC. In 2002, at an Extra-Ordinary Summit called to discuss the political situation in the region, the Summit expressed concern at the slow progress in the implementation of the Lusaka Ceasefire Agreement (signed by DRC, Angola, Namibia, Zambia, Zimbabwe, Rwanda, and Uganda in July 1999). To address this, the Summit tasked the Organ with responsibility to formulate a strategy for speeding up implementation of the Agreement. In 2004, the Inter-State Politics and Diplomacy Committee (ISPDC) met and ‘reminded itself of the SADC collective undertaking to safeguard the security and political stability of the region within the framework of the Protocol on Political, Defence and Security Cooperation and the Mutual Defence Pact’. To this end the ISPDC mandated the Organ to send an assessment mission to the DRC to discuss with the government ways forward in achieving peace in the DRC. However, this mission did not take place because ‘the relevant authorities in the DRC were not available to receive the mission’ (SADC Council and Summit Records 2004, Annex, 6th MCO on PDSC). The same year, the SADC Summit vehemently condemned the coup attempt of June 2004 and reaffirmed that ‘SADC would not tolerate and would not allow unconstitutional change of governments in the region’ (SADC Council and Summit Records 2004, Annex, 6th MCO on PDSC).

To the historic elections in 2006, the first ever after over forty years of independence, the Organ sent an Observer Mission (see Appendix 3) as well as Military Liaison Officers. After the elections, won by Joseph Kabila, two assessment missions were sent in 2007, the first being the SADC Secretariat Assessment Mission, the second a Senior Officials Mission. The latter produced a report that recommended a two-pronged approach to handling the DRC situation. On the one hand was the ‘Diplomacy of Peace’, which included SADC establishing a Mission Office in the DRC to coordinate the SADC Plan of Action for the DRC (this was indeed established). On the other hand was the ‘Diplomacy of Development’ approach which advocated SADC seeking investment in the peace-process from International Cooperating Partners on the DRC’s behalf, and encouraging external investment in the country.

In November 2008, renewed violence broke out in Eastern Congo. An Extra-Ordinary Summit decided that SADC would immediately deploy a SADC Team of Military Experts to assess the situation, and dispatch the SADC Military Monitoring Commission to monitor the border between DRC, Rwanda, Burundi, and Uganda (SADC Communiqué Extra-Ordinary Summit, 9 November 2008). The Summit also declared that SADC would not standby and witness acts of violence by armed groups against the people of the DRC, and would, if necessary, send peacekeeping forces under UN mandate to the DRC. SADC did indeed send military officials on a fact-finding mission to the North Kivu area in late November with the aim ‘to evaluate the conditions of the displaced in the region so as to have an intervention plan in their favour’ (congoplanet.com, 24 November 2008). However, despite continued fighting in the region, SADC did not sent peacekeeping troops. Security analysts suggested that SADC ‘doesn’t have the capacity to immediately deploy the kind of well-trained EU-style battle group that is needed’ (Henri Boshoff, military expert at the ISS, quoted in Newsweek Magazine, 12 November 2008). It seems that, mindful of its low capacity to carry out armed interventions, and poor outcomes in previous military missions, SADC was reluctant to commit to a proper peacekeeping intervention in Eastern DRC. SADC’s response to the crises was roundly criticized from many quarters for being ‘slow in coming and feckless’ (Newsweek Magazine, 12 November 2008).

On November 28th, 2011 presidential elections will take place. SADC has launched its largest SEOM ever to monitor the elections (SADC Media Release, 12 November 2011). Although SADC refers to DRC as a different country compared to 2006, when the first elections took place, in Eastern Congo armed groups including members of the national army continue to commit numerous crimes, including mass rape. This seems not to have been subject of criticism by the Organ, in spite of Article 11 of the Protocol which states that the Organ may seek to resolve any conflict which includes ‘(…) large-scale violence between sections of the population or between the state and sections of the population, including genocide, ethnic cleansing and gross violation of human rights’ (SADC Protocol on Politics, Defense and Security Cooperation 2001).

**Zimbabwe (2000 – present)**

The political situation in Zimbabwe has been the long-running saga of southern Africa and has been the issue over which SADC attracts the most criticism. In 2000, the government of Robert Mugabe stepped up its land reform programme by issuing white landowners with compulsory purchase orders. The Zimbabwean government refused to pay the landowners compensation for the compulsory land seizures, claiming that the British government was responsible for compensating the farmers under the terms of the Lancaster House Agreement. The decision to go ahead with land reform without compensation for former landowners and the frequently violent process of seizing farmland attracted international condemnation. Meeting in August 2000, the SADC Summit noted ‘its concern with the US Senate’s intention to put political pressure and impose economic sanctions on Zimbabwe… Summit expresses its solidarity with the Zimbabwe Government in its endeavours to equitably reform the land question in Zimbabwe for the benefit of all its people’ (SADC Council and Summit Records 2000). A year later, as the situation in Zimbabwe worsened, the Summit commended Nigerian President Obasanjo for his efforts in mediating between Britain and Zimbabwe on the land issue, and called on Britain to ‘cooperate fully and enter into dialogue with Zimbabwe with the purpose of finding a solution to this colonial legacy’ (SADC Council and Summit Records 2001).

In 2002, Mugabe was re-elected president in an election condemned as seriously flawed by the opposition and international observers. The Commonwealth suspended Zimbabwe’s membership on the grounds of election tampering and human rights abuses associated with land redistribution. The SADC Summit seemed torn between condemning ‘Western interference’ and acknowledgement that there was a real breakdown of the rule of law and systematic human rights abuses happening in the country. On the one hand it condemned ‘distorted and negative perceptions on Zimbabwe projected by the international and regional media’, while simultaneously expressing concern that the military was too involved in the political process and implying in most diplomatic terms that Zimbabwe was falling short in a number of areas, notably the right to freedom of opinion, association, and peaceful assembly; investigating political violence; the independence of the judiciary, and press freedom (SADC Council and Summit Records 2003). In 2003, the Council of Ministers noted that Zimbabwean officials were being excluded from donor-funded SADC projects. USAID was refusing to fund the participation of Zimbabwean nationals, which had the effect of ‘undermining the solidarity of SADC’. It was decided that no meetings from which Zimbabwe was to be excluded would be convened, whereupon ‘Zimbabwe expressed its profound gratitude to SADC Member States for the solidarity and support they have provided to that country in the face of pressure from sections of the international community’ (SADC Council and Summit Records 2003). Meanwhile the situation within Zimbabwe remained unstable, with protests marred by police brutality and the opposition leader charged with two counts of treason. Parliamentary elections were held in March 2005, in which Mugabe’s party, Zanu-PF, won two thirds of the vote. The opposition claimed the polls had been rigged. The SADC election observation mission noted some concerns but declared the election largely peaceful and credible (see previous section).

Behind the scenes, South African President Thabo Mbeki was trying to soothe the situation by engaging Mugabe in ‘quiet diplomacy’. Away from the scrutiny of the media, Mbeki tried to get Mugabe to make concessions to improve governance in Zimbabwe, while in exchange Mbeki promised to engage the US, UK and IMF in an attempt to ease sanctions and release funds that could help with Zimbabwe’s spiralling economic problems (Graham 2006). This approach was roundly criticized from both domestic and international quarters as at best a ‘non-policy’, or at worst, appeasement of a despot, which threatened South Africa with a loss of credibility in international affairs. Mbeki’s quiet diplomacy had little effect on the Zimbabwean government and state-sanctioned violence and political intimidation continued. On March 28 2007, the SADC Summit met in Dar-Es-Salaam, Tanzania, for an emergency two-day meeting to address the mounting political crisis in Zimbabwe. While observers had hoped SADC would use the opportunity to make a strong statement against the political crackdown in Zimbabwe, the result was instead a continuation of quiet diplomacy. The major outcome was the decision that Mbeki would facilitate a dialogue between ZANU-PF and the opposition.

The presidential and parliamentary elections in 2008 brought matters to crisis point (see also previous section). The opposition party was the likely winner of the first round, but the results were withheld by the Zimbabwe Electoral Commission for an unprecedented amount of time. The Summit met to try to resolve Zimbabwe’s electoral stalemate, which was fuelling an increase in violence in the country. When finally announced, the results precipitated a run-off between Mugabe and opposition leader Morgan Tsvangirai, in which Mugabe won. An attempt by the UN to impose sanctions on Zimbabwe was thwarted by China and Russia, but the US and the EU widened their existing sanctions. In the aftermath of the election, Mbeki, with the backing of SADC, managed to broker a power-sharing deal, the Global Political Agreement (GPA), between Mugabe’s Zanu-PF and the opposition party. Tsvangirai would become the Prime Minister while Mugabe would remain as President, and control of the various ministries would be divided between the parties. At a meeting of the SADC Council in February 2009, it was acknowledged that the situation in Zimbabwe was very bad, but it was framed almost entirely in terms of economic problems such as hyperinflation and deindustrialization, and not in terms of a lack of rule of law, democratic freedoms, or respect for human rights. Although the ministers did note the importance of Zimbabwe complying with the GPA, the solution to Zimbabwe’s problems lay in ‘stabilizing the macro-economic climate’, but this was hampered by western-imposed sanctions. The Council called on SADC member states to support the Economic Recovery Plan for Zimbabwe and work towards normalizing Zimbabwe’s status with international financial institutions. The SADC Secretariat also set up a Humanitarian and Development Assistance Framework for Zimbabwe, which provided a mechanism through which assistance given by member states was distributed to Zimbabwe.

In May 2009 Jacob Zuma assumed the Presidency of South Africa. During the power-struggle between him and Mbeki for leadership of the ANC, Zuma had indicated that he was prepared to take a tougher stance towards Mugabe, which won him supporters who were disillusioned with the Mbeki doctrine of quiet diplomacy. And indeed this seemed to be the case. At an Extra-Ordinary Summit meeting held in Zambia in March, SADC leaders received a report from President Zuma on the situation in Zimbabwe. The report was fairly critical and highlighted concerns about widespread human rights violations. SADC issued a stern communiqué rebuking Mugabe, which many African and international commentators interpreted as SADC finally preparing to take a stand on the Zimbabwe situation. The Summit recalled

past SADC decisions on the implementation of the Global Political Agreement (GPA) and noted with disappointment insufficient progress thereof…Summit noted with grave concern the polarisation of the political environment as characterised by, inter alia, resurgence of violence, arrests and intimidation in Zimbabwe…In view of the above, Summit resolved that:

* There must be an immediate end of violence, intimidation, hate speech, harassment, and any other form of action that contradicts the letter and spirit of GPA
* All stakeholders to the GPA should implement all the provisions of the GPA and create a conducive environment for peace, security, and free political activity
* SADC should assist Zimbabwe to formulate guidelines that will assist in holding an election that will be peaceful, free and fair, in accordance with SADC Principles and Guidelines Governing Democratic Elections.

The Troika of the Organ shall appoint a team of officials to join the Facilitation Team and work with the Joint Monitoring, evaluation and implementation of GPA (Communiqué of the Summit of the Organ Troika, 31 March 2011).

This certainly seemed like a positive development, but the suggestion that it indicates the emergence of determined action by SADC seems rather optimistic, especially if we consider that a few weeks after this statement was made, it was decided that the Tribunal’s operations should be suspended, due in large part to the politically inconvenient rulings the court had made against the Zimbabwean government. SADC’s response towards crisis in Zimbabwe has been to close ranks around the country, fending off ‘western interference’ while seeking ‘African solutions for African problems’. As the political culture of the region forbids outright condemnation of Liberation-era leaders such as Mugabe, the countries that are actually in a position to challenge Zimbabwe are reluctant to do so. Combined with the politically sensitive land reform issue, quiet diplomacy seemed like the only politically expedient option of dealing with Mugabe. To the outside world, it seemed that SADC and South Africa were doing little to resolve the crisis, which attracted much criticism and international pressure. But, as African security analyst Greg Mills puts it, ‘Zimbabwe is not a complete failure…South Africa has kept the GPA on course, preventing Zanu-PF [Mugabe’s party] from abrogating the agreement and trying to stage its own election before the [new] constitution is written, or trying to push things through the constitutional process’ (interview GM). However, the core problems afflicting Zimbabwe have not been addressed.

**Madagascar (2009-present)**

As opposed to Swaziland and Zimbabwe, Madagascar used to be considered one of the stable middle range democracies in SADC (see Appendix 1 and 2). However, beginning in January 2009 Madagascar experienced violent protests against the allegedly autocratic governance of President Marc Ravalomanana, led by the former major of Antananarivo, Andry Rajoelina. Having lost the support of the military, Ravalomanana was forced from power and Rajoelina declared himself acting President on 21 March 2009. SADC was swift in its response: the Organ Troika indicated it would recommend that the Summit impose tough sanctions against Madagascar and an Extra-Ordinary Summit meeting ten days later suspended Madagascar’s membership in SADC for an unconstitutional change of government. SADC, in an effort to ‘restore democratic normalcy in Madagascar’ spent US$900,000 in the quarter to June 2009 on political mediation. It appointed Joachim Chissano, former president of Mozambique, as mediator. An agreement providing for a transitional government of unity was brokered, but Rajoelina did not respect the terms of the agreement, leaving Madagascar in an ongoing situation of crisis (Cawthra 2010). In August 2010, the Summit approved the establishment of a SADC Liaison Office in Madagascar in order to support the dialogue process (SADC Council and Summit Records 2010). After protracted negotiations, in September 2011 the efforts of SADC mediation contributed to the adoption of a roadmap intended to restore constitutional normalcy. Ten of the eleven political stakeholders signed the agreements, which allow for the appointment of a transitional government, a Prime Minister appointed by the consensus of all stakeholders, and the creation of an independent electoral commission. The deal calls for a power-sharing agreement until Presidential and parliamentary elections can be held and allows Ravalomanana to return to the country. The implementation of the roadmap seems to run into difficulties as ‘consensus prime minister’ Omer Beriziky has not managed yet to form a government of unity (Radio Netherlands Worldwide, 17 November 2011).

The swift intervention by SADC in Madagascar contrasts with their reluctant attitude on Zimbabwe, but can be explained by political and economic differences. SADC countries feel less constrained to intervene in Madagascar because they have no direct economic or geopolitical interests in the island state, as opposed to their interests in Zimbabwe. Also, Rajoelina and Ravalomanana are no heroes of the Liberation struggles. And last but not least, SADC intervenes to defend incumbent governments, not democracy in general.

#### Non-intervention

There are two cases where, according to its own principles, inaction by SADC seems less appropriate than diplomatic or even military action would have been (Angola) or would be (Swaziland).

**Angola (1992-2008)**

Angola, one of SADC founding members, was torn by civil war starting immediately after the Portuguese decolonization in 1975. The warring factions were, on the one hand, the Marxist-Leninist MPLA (supported by Cuba, USSR, Vietnam, Mozambique, Algeria, Libya), and on the other, the anti-Communist UNITA (supported by Apartheid-era South Africa, the US, Israel, Zaire). The MPLA won the countries first post-independence elections in 1992. However the leader of UNITA, Jonas Savimbi, refused to recognise the outcome of the elections and returned to armed conflict. After the end of the Cold War and Apartheid, UNITA found its foreign support network disappearing. SADC’s position on the matter was to support the Angolan government in quelling unrest in the country by starving UNITA of resources. In August 1997, the UN Security Council passed resolution 1127 which imposed sanctions on UNITA for a lack of compliance in implementing peace agreements aimed at bringing an end to the war. SADC immediately expressed its support for the measure, but it did not appear to make any concrete interventions in the Angolan war like it did in the DRC. One possible reason that SADC did not intervene may have been the involvement of Executive Outcomes (a South African private military company) on the side of the MPLA. As an African security analyst put it: ‘They were a very useful proxy [to support the Angolan government] without getting one’s hands dirty’ (interview GM). At an Extra-ordinary Summit in January 2002, it was reported that the MPLA government was committed to achieving peace through dialogue whereas Samvibi continued to wage guerrilla warfare. Summit commended the imposition of sanctions against UNITA and recommended they be listed as international terrorist organization (SADC Council and Summit Decisions 2002). Although according to other sources ‘serious human rights abuses, including torture, abduction, rape, sexual slavery, and extrajudicial execution’ continued to be perpetrated by *both* government forces and UNITA (Freedom House 2003), SADC continued to lend rhetorical and diplomatic support to the government.

Fighting continued up until the assassination of Savimbi in 2002. After his death, the peace process was renewed, with elections scheduled for 2004, but this date was constantly pushed back. Civil societies criticized this delay of the elections, accusing the MPLA of imposing a ‘permanent *coup d’état*’ (Bauer & Taylor, 2005: 160). SADC Summit remained silent on the issue. The elections finally took place in 2008. The election was criticized by Human Rights Watch, who claimed that the evidence obtained by them ‘suggests the polls did not meet the SADC Principles and Guidelines in key areas’ (Human Rights Watch, 15 September 2008). SADC’s own assessment of the election is not known: although there is evidence (in news reports) that a SEOM was sent, we have not been able to obtain a copy of the report.

**Swaziland**

Swaziland is one of the last absolute monarchies remaining in the world. Organized demonstrations in September 2010 were met by a major state-sanctioned crackdown on prodemocracy groups and activists. This action went unremarked in SADC, prompting activists to note that, when it comes to Swaziland, ‘there is no SADC criticism of the way King Mswati runs the country. Nobody in SADC tells the king to respect human rights…’ (Comfort Mabuza, Media Institute of Southern Africa, quoted on clubofMozambique.com, 27th May 2011). Various groups within the region, including the Open Society Initiative for Southern Africa (OSISA), a democracy and governance watchdog, and COSATU, the Congress of South African Trade Unions, have called on SADC to condemn King Mswati for these actions, but to little avail. Instead of isolating or putting pressure on Mswati, SADC has somewhat ironically rewarded him with prominent positions in the area of Politics, Defence and Security Cooperation (Swaziland Solidarity Network press release, 29 March 2011).

Why Swaziland remains unsanctioned by SADC in general, and South Africa in particular, is not clear. The Swazi royal family certainly does not have the cache that Liberation-era leaders have (the Swazi government on occasion collaborated with the Apartheid government), and it would be easy for South Africa to put severe financial pressure on the country, as Swaziland is dependent on SACU earnings for more than half of its national revenue, collection and distribution of which is controlled by South Africa. The support of incumbents in power trumps the defence of democracy.

#### 3.2.3 SADC Regional Early Warning Centre (REWC)

In the Protocol on Politics, Defence and Security Cooperation (2001), SADC calls for the establishment of an early warning system to monitor early signs of conflict and negative socio-economic developments in the region ‘in order to facilitate timeous action to prevent the outbreak and escalation of conflict’ (Art. 11.3.b). In the future, it will be part of a continental network of early warning centres. The decision making process on this issue began in June 2004 when the Interstate Defence and Security Committee (ISDSC) of the Organ approved the principles underpinning the concept of an early warning system and constituted a team of experts to develop the structure and working system and deal with administrative and financial issues. The launch of the Centre was for some time blighted by limited human capacity and financial resources. Eventually, in July 2010, Mozambican President Armando Guebuza officially inaugurated the REWC (clubofmozambique.com, 14 July 2010). The REWC is linked to a National Focal Point in each member state which is supposed to feed the REWC information on developments in each country. The 2006/07 Report on the Activities of the Organ reported that 13 member states had appointed National Focal Points, with Madagascar the only state without one.

The REWC’s function is to help member states detect the early signs of political or socio-economic crises and conflicts, as well as impending natural disasters, so that steps towards the prevention, management and solution of crises can be taken in a coordinated and responsive fashion. A set of Insecurity and Conflict Indicators was developed and approved by the ISDSC in July 2006. The REWC has been criticised for equating security with the state rather than with human security and for sidelining the involvement of civil society organizations in conflict prevention, management, and resolution, even though the SIPO actively calls for their input. On the other hand, the REWC does have relatively good contact with research institutions in the region, such as the Institute for Security Studies (ISS) in South Africa (Tiruneh 2010, 20). An assessment of its functioning is premature; also, no traces of reports of the REWC were found.

#### 3.2.4 SADC Standby Force (SSF)

The SADC Standby Force (SSF) falls under the framework of the African Union. Regionally-based peace-keeping forces are envisaged as the building blocks of an African Standby Force, as called for in Article 13.1 of the Protocol Relating to the Establishment of the Peace and Security Council of the African Union (2002). It is worth noting that preparations for the establishment of a peacekeeping force in SADC predate the AU’s initiative by several years (Cilliers and Malan 2005, 12). In 2005, the SADC Council of Ministers noted that ‘the SADC Standby Force will consist of a Standby Brigade (SADCBRIG) comprising of military and a SADC Civilian Police (SADC CIVPOL) as approved by the Organ Troika’ (Record of the Meeting of the Council of Ministers, 24/25 February 2005). It also noted that the SSF will be managed on a day-to-day basis by a Planning Element located at the Secretariat in Gaborone. By August 2006, the Permanent Planning Element, consisting of five officers responsible for SADCBRIG and three for SADC CIVPOL, had been fully deployed to the Secretariat (Report on the Activities of the Organ 2005/2006, SADC Council and Summit Records 2006, Annex). The long term structure of the Planning Element allowed for 18 personnel, to be budgeted for from 2006/07 onwards. As of October 2010, 17 posts had been filled: six by senior military officers from SADC member states, seven personnel that had been funded by contributions from the AU Peace Facility, and four seconded personnel responsible for CIVPOL. The SADCBRIG was officially launched at the meeting of the SADC Summit on 17 August 2007 in Lusaka, Zambia. Since then, the region has undertaken a number of practise peace-keeping exercises, culminating in a field-training exercise in September 2009, which involved almost 7000 participants from SADC member states, and was intended to test the validity of the guiding documents (Hendricks and Musavengana 2010, 23).

The fact that the REWC, the SSF and its management at the Planning Element are now at least nominally functional, means that SADC should have increased capacity for effective promotion of peace and security, as, in theory, it creates a ‘collateral capability’ to intervene in cases of instability and/or humanitarian disaster. Additionally, as Hendricks and Musavengana point out, the SSF is supposed to operate in accordance with the principles and processes of good conduct as specified by the AU and UN, ‘and the spin-off will be the standardization of norms, procedures and practices that could eventually cascade to the security forces at national level’ (2010, 24), resulting in increasingly professionalized national security forces. However, as it stands, there seems to be a question mark over the accountability of the SSF. Initially, SADC seems to have expected that SACBRIG would be deployed under an AU or UN mandate (Cilliers and Malan 2005, 14). However, the Memorandum of Understanding on the Standby Force states that ‘the SADCBRIG shall only be deployed on the authority of the SADC Summit’. Hendricks and Musavengana suggest that it would be problematic if sole authority to deploy the force rested with the SADC Summit, and that in the interests of good governance, this authority should reside with the AU Peace and Security Council (2010, 24). SADC’s previous experiences of military operations (see previous section), in which member states were bitterly divided on the issue of whether or not to intervene, also suggests that it may be difficult for them to reach a consensus position on whether to deploy the SSF in the case of future instability. As Baker and Maeresera note, there is a question mark over SADC member states ability to achieve sufficient consensus to rapidly deploy the SSF to a conflict situation, particularly if it involves a SADC country, and even more so if that country does not invite the intervention (2009, 109).

#### 3.2.5 The SADC Tribunal

Established in 1992, the SADC Tribunal is the judicial arm of the organization, designed to ‘ensure that the regional economic bloc member states adhere to the provision of the SADC Treaty and other subsidiary instruments and to make sure that no member state falls foul of SADC law’ (Dipholo 2011). Article 15 of the Protocol on the Tribunal states that

1. The Tribunal shall have jurisdiction over disputes between Member States, and between natural or legal persons and Member States.

2. No natural or legal person shall bring an action against a Member State unless he or she has exhausted all available remedies or is unable to proceed under the domestic jurisdiction. (SADC Protocol on Tribunal, Article 15).

The Summit or the Council can ask the Tribunal for an advisory opinion. Domestic courts may refer a matter regarding SADC law to the Tribunal for a preliminary ruling on the interpretation, application or validity of provisions of SADC law. In cases in which a member state is in conformity of its own laws but those laws are a stark violation of SADC law, a decision of the Tribunal may have the effect of overturning that of a domestic court. The decisions of the Tribunal are final and supposed to be legally binding upon the parties involved. Decisions are to be enforced in member states in accordance with the member state’s laws and rules of civil procedure for the enforcement of foreign judgments. Where there has been a refusal to abide by the decision, the aggrieved party can approach the Tribunal again. If the Tribunal is of the view that the other party does not intend to comply with the decision, it must report the matter to the Summit, where the latter is under a legal duty to take ‘appropriate action’ against the recalcitrant party.

Table 3.3 lists all decisions by the Tribunal. The commercial and employment cases are not relevant here. The case of the [United People's Party of Zimbabwe v SADC & Others](http://www.sadc-tribunal.org/docs/case122008.pdf) (SADC (T) Case 12/2008) concerns the exclusion of one political party, the United People’s Party, from the mandate given by the Extra-Ordinary Summit of the Organ to constitute an all-inclusive government after the elections in Zimbabwe in 2008. The Tribunal decided that the mandate only concerned the political parties which had gained seats in the national parliament. As the United People’s Party did not win a seat in the March 2008 elections, and as the elections had been declared free and fair, the party was properly excluded from the power-sharing process and its complaint was dismissed by the Tribunal.

Limiting the capacity of the Tribunal is the fact that its decisions are always referred to the Summit (who must reach consensual agreement) for enforcement action. This is exemplified by the famous Tribunal’s rulings on Zimbabwe’s land reform programme in the case of Mike Campbell and 78 other farmers (SADC (T) Case No. 02/2007). It was this case that led the court to rule that it had jurisdiction over human rights issues.[[9]](#footnote-9)

**Table 3.3 All rulings by the Tribunal**

|  |  |  |
| --- | --- | --- |
| Year | Case | Issue |
| 2007 | [Ernest Francis Mtingwi v SADC Secretariat](http://www.sadc-tribunal.org/docs/case012007.pdf) | Employment rights |
| [Campbell v Republic of Zimbabwe Interim Ruling](http://www.sadc-tribunal.org/docs/case022007-1.pdf) | Human rights |
| [Campbell v Republic of Zimbabwe (Main Decision)](http://www.sadc-tribunal.org/docs/case022007.pdf) | Human rights |
| 2008 | [Gideon Stephanus Theron and 7 Others v Zimbabwe (application to intervene in Campbell case)](http://www.sadc-tribunal.org/docs/case022008.pdf) | Human rights |
| [Gondo and Others v Republic of Zimbabwe](http://www.sadc-tribunal.org/docs/Case_052008.pdf) | Human rights |
| [Luke Tembani v Republic of Zimbabwe](http://www.sadc-tribunal.org/docs/case072008.pdf) | Human rights |
| [Albert Fungai Mutize & Others v Campbell & Others](http://www.sadc-tribunal.org/docs/case082008.pdf) | Human rights |
| [Nixon Chirinda and Others v Mike Campbell and Others](http://www.sadc-tribunal.org/docs/case092008.pdf) | Human rights |
| [Campbell v Zimbabwe Contempt of Court](http://www.sadc-tribunal.org/docs/case112008.pdf) | Human rights |
| [United People's Party of Zimbabwe v SADC & Others](http://www.sadc-tribunal.org/docs/case122008.pdf) | Electoral issues |
| [Bach’s Transport (PTY) LTD v Democratic Republic of Congo](http://www.sadc-tribunal.org/docs/case142008.pdf) | Commercial issues |
| 2009 | [The United Republic of Tanzania v Cimexpan (Mauritius) LTD & Others](http://www.sadc-tribunal.org/docs/case012009.pdf) | Commercial issues |
| [Bookie Monica Kethusegile-Juru v SADC Parliamentary Forum](http://www.sadc-tribunal.org/docs/case022009J.pdf) | Employment issues |
| [Campbell v Republic of Zimbabwe (Contempt of Court Ruling)](http://www.sadc-tribunal.org/docs/case032009.pdf) | Human rights |
| [Swissbourgh Diamond Mines & Others v The Kingdom of Lesotho](http://www.sadc-tribunal.org/docs/case042009.pdf) | Commercial issues |
| [Clement Kanyama v SADC Secretariat](http://www.sadc-tribunal.org/docs/case052009.pdf) | Employment rights |
| [Angelo Mondlane v SADC Secretariat](http://www.sadc-tribunal.org/docs/case072009.pdf) | Employment rights |
| 2010 | [Fick & Others v Republic of Zimbabwe](http://www.sadc-tribunal.org/docs/case012010.pdf) | Human rights |

In Campbell, the Republic of Zimbabwe argued that there should be a Protocol on Human Rights and Agrarian Reform first to give effect to the principles in the SADC Treaty. Only then the Tribunal would have jurisdiction concerning the validity of the land reform program. However the Tribunal argued that ‘we do not consider that there should first be a Protocol on human rights in order to give effect to the principles set out in the Treaty’ because the Protocol on Tribunal instructs the Tribunal to ‘develop its own Community jurisprudence having regard to applicable treaties, general principles and rules of public international law and any rules and principles of the law of the member States’ (SADC Protocol on Tribunal 2007, Article 21). As Article 4 (c) of the SADC Treaty requires states to act in accordance with the principles of human rights, democracy, and the rule of law, the Tribunal does not need a protocol on human rights to be allowed to develop jurisprudence in this domain. Also, based on Article 6(1) of the Treaty, Member States should ‘refrain from taking any measure likely to jeopardize the sustenance of its principles, the achievement of its objectives and the implementation of the provisions of the Treaty’. Consequently, they are under a legal obligation to respect, protect and promote the fundamental rights listed in Article 4. As a result, the Tribunal argued that

‘It is clear to us that the Tribunal has jurisdiction in respect of any dispute concerning human rights, democracy and the rule of law, which are the very issues raised in the present application’ (SADC (T) Case No. 2, p. 25).

The Tribunal cited several international treaties and case law from international and national courts to stress the fundamental right of access to court. As the Zimbabwean Amendment No. 17 on land acquisition had ousted the jurisdiction of the courts on these matters, this right had been violated and Mike Campbell was entitled to bring his matter before the SADC Tribunal. The Tribunal ruled that

‘the Applicants have established that they have been deprived of their agricultural lands without having had the right of access to the courts and the right to a fair hearing, which are essential elements of the rule of law, and we consequently hold that the Respondent has acted in breach of Article 4 (c) of the Treaty’ (SADC (T) Case 02/2007, p.41).

Subsequently the Tribunal had to decide on the crucial question whether the land reform program was discriminatory. It ruled that this was indeed a case of indirect discrimination on the basis of race and that thereby Article 6 of the Treaty had been violated. It ordered the Zimbabwe government not to seize land from the 79 farmers and ruled that the government must compensate those it had already evicted from their farms.

The Zimbabwean government did not comply with the ruling and the farmers that brought the matter before the court experienced increased intimidation and violence. Zimbabwe challenged the validity of the Tribunal, claiming that ‘even though Zimbabwe has signed the Treaty creating the regional court, Mugabe insists it is invalid because the Tribunal Treaty was never ratified by two thirds of members of the bloc’ (Mpofu 2010). Zimbabwe’s Justice Minister ‘took the time to lecture journalists on the fact that the SADC Tribunal Treaty was only ratified by five countries out of the 15 that make up SADC…or the Tribunal to work properly it needs ratification by 10 member states’ (Tazvida 2010). However, the Zimbabwe Human Rights NGO Forum rejected this argument, because in the SADC Treaty the Tribunal is exempted from the requirement that all protocols are to be ratified by a two-third majority of the member states before entering into force. Thus, they argued, when the SADC Treaty was ratified the Tribunal automatically became a legally binding authority. Their view was confirmed by the Agreement Amending the Protocol on Tribunal, which entered into force on the 17th of August 2007, and stated that the Protocol entered into force with the adoption of the amended and consolidated Treaty in 2001. But although ‘under international law, the Treaty should trump an underlying Protocol; getting that in writing is a different story’ (Hager 2009).

The Tribunal subsequently ruled that the Zimbabwean government was in contempt of court and referred the matter to the Summit for action. The Summit in turn referred the matter to the Ministers of Justice for consideration and advice on the action to be taken by the Summit. They observed that ‘due to the complexity of the legal issues regarding Zimbabwe there was need for an independent legal opinion’, so they directed the Secretariat to seek this out and report back to the Summit (SADC Council and Summit Records 2009). As a result, an independent six-month review of the Tribunal was commissioned,[[10]](#footnote-10) during which time the court ceased to take on new cases or make rulings in existing cases. The findings of the review were that the Tribunal was properly established in accordance with international law. However, rather than uphold the findings of the review, the Summit instead decided to further extend the court’s suspension and initiate a process to amend the Tribunal’s legal instruments. It is widely expected that this will limit the rights of individuals to access the court, limiting its jurisdiction to inter-state disputes. The decision was denounced by civil society organizations and human rights lawyers as a blow to the rule of law and respect for human rights in the region. Four of the ten judges at the Tribunal wrote an ‘unprecedented’ letter of protest to the SADC Secretariat, claiming the Summit’s decision was illegal, and accusing the SADC Ministers of Justice of acting in bad faith for going against the findings of the independent review.

In a recent interview, Judge Ariranga Pillay, former President of the Tribunal and one of the authors of the letter, supposed that the Summit felt they had unintentionally ‘created a monster… they didn’t think through the implications of a SADC Tribunal… they thought that, in passing the judgements we were passing, the Tribunal judges were just engaging in judicial activism’. The findings of the independent review ‘gave them a fright and they started backtracking’. Up until that point, from the SADC leaders’ perspective, the Tribunal had merely been a vehicle ‘to get funds from the European Union and others… It gave of all the right buzz words: ‘democracy, rule of law, human rights’… and then they got the shock of their lives when we said these principles are not only aspirational but also justiciable and enforceable’ (Ariranga Pillay, Mail and Guardian, 19 August 2011).

The suspension of the Tribunal was obviously convenient for Zimbabwe, as well as the other heads of state who were reluctant to punish Zimbabwe. It was also convenient for the government of Lesotho, which was facing a multimillion dollar lawsuit for breach of contract brought against it by Swissbourgh Diamond Mines Ltd; and for Botswana, which was facing a potential lawsuit over the enforced removal of indigenous San people from their traditional lands in the Kalahari Desert. These countries all had an interest in limiting individual access to the regional court, while the other SADC member states did not raise any objections to the dismantling of the court, presumably in the interests of solidarity and political expediency. Even South Africa, which claims respect for human rights as a central plank in its foreign policy, raised no objection to the dismantling of the court, and there are allegations that South African Justice Minister Jeff Radebe aided his Zimbabwean counterpart, Patrick Chinamasa, in formulating an ‘extra-legal’ solution to the Tribunal’s findings against the Zimbabwean government’ (Christie, Mail and Guardian, 10 June 2011).

It is not difficult to see that the suspension of the Tribunal, and the plans to bar individual access to a regional court where national recourse has failed, represents a great step backwards in the provision of good governance, respect for human rights and the rule of law within the SADC region.

#### Summary

From its early days SADC was engaged in governance transfer because of its roots in the struggle for majority rule and against apartheid and racial discrimination. In the founding documents democracy, good governance, rule of law and human rights are cited as fundamental principles. This general pronouncement has been implemented in a very haphazard way, for lack of political will, because the internal strife between Zimbabwe and South Africa continues to undermine the functioning of SADC, and because of a lack of resources. Gender equality has received more consistent attention due to the involvement of very active NGO’s. Still, Summit often limits itself to claiming that progress has been realized. Democracy has been translated into ‘holding regular elections’. This form of governance transfer has to a certain extent been a success, as principles have been formulated, observer missions sent and elections assessed according to these principles. Overall policies promoting these principles are cast in instrumental terms pointing at their importance in achieving a reduction in poverty (women’s rights, economic and social rights, position of people with HIV/AIDS, reduction of corruption) and an increase in political stability (democracy, rule of law). After the restructuring of SADC in 2001, standards have become more specific and laid down in binding protocols, but their contents have not changed. Targets have been formulated only as regards gender equality, mainly linked to ‘Beijing’. They are referred to, but there is no enforcement mechanism. Diplomatic and military interventions have met with limited success. The Tribunal, a potential mechanism for ensuring compliance, has been suspended and its future is uncertain.

## Explaining

After discussing the standards promoted by SADC and the instruments it has at its disposal to promote them, we should look for explanations in order to account for continuity and change in the contents of standards as well as in their adoption and application. Without suggesting that we propose a coherent model, we distinguish between factors at different levels.

### 4.1 International level

Examining the international level, we should distinguish between on the one hand the international level as source of norms such as the respect for human rights, fair and free elections and the rule of law, and on the other hand the exercise of pressure by actors situated at the international level resulting in the uneven promotion of these global norms.

As regards the former, standards contained in SADC documents reflect and are embedded in previously agreed standards as aid down in UN documents as well as continental documents. Preambles refer to these documents more specifically. The notion of different African concepts and standards than those internationally agreed upon, surfaces in academic work (Cobbah 1987; Mapaure 2011) and speeches by politicians (Benjamin Mkapa, Thabo Mbeki and Robert Mugabe) but is not reflected by standards in SADC documents. In SADC documents on gender, the existence of different regional standards than the ‘global’ gender equity standard is acknowledged because the tension between them hampers implementation of the global standards. In SADC states, customary laws, religious laws and ‘living law’[[11]](#footnote-11) coexist with state law. These ‘other’ laws often sometimes reflect specific principles as regards gender and race and clash with the ‘global’ non-discrimination clause. Nevertheless, at least in principle SADC documents recognize the prevalence of global standards concerning non-discrimination (Banda 2006).

As regards the latter, the Cold War had a strong and negative influence on the promotion of good governance in southern Africa. Particularly for the US and the UK, Marxist-inspired political movements and governments were a cause for concern and lead them to support repressive anti-communist governments or counter-revolutionaries,[[12]](#footnote-12) which had an undermining effect on the rule of law and a destabilising effect on regional politics. As a result, southern African countries are often somewhat suspicious of Western motivations and political conditionality for aid and trade, and some governments can be particularly anti-Western in sentiment. This is probably a contributory factor in the eastwards turn of southern Africa; Chinese investment and trade with southern Africa has grown exponentially in the past decade,[[13]](#footnote-13) and provides SADC states with an alternative to the political conditionality of Western investment and trade.

Since the end of the Cold War, southern Africa has been relatively neglected by the US (Bauer and Taylor 2005). Its involvement is mainly limited to the African Growth and Opportunities Act (AGOA), signed by President Bill Clinton in 2000, which is aimed at boosting trade and investment opportunities with Africa. Countries are eligible to receive the benefits of AGOA

‘if they are determined to have established, or are making continual progress toward establishing the following: market-based economies; the rule of law and political pluralism; … efforts to combat corruption; policies to reduce poverty, increasing availability of health care and educational opportunities; protection of human rights and worker rights; and elimination of certain child labor practices’ (AGOA 2011).

Zimbabwe is the only SADC member state which has been excluded from AGOA from the very start because of its poor governance record. Madagascar was removed from the AGOA list of beneficiaries following the coup in 2009, and DRC has been removed in January 2011 because of a lack of progress on the criteria mentioned. These three countries continue to receive humanitarian assistance from the US such as food aid. Although AGOA conditionality clearly is a strong instrument for governance transfer, its application is not fully consistent with assessments of rule of law, political pluralism and protection of human rights, to name but some of the AGOA eligibility criteria. According to the data presented in Appendices 1 and 2, at least Angola and Swaziland should be removed from the list as well. Arbitrary application fuels anti-Western sentiments in some SADC countries.

Other Western states also engage in governance transfer, notably the United Kingdom, Germany, the Netherlands and the Scandinavian countries. They give financial and technical assistance to projects aimed at democracy promotion, anti-corruption, the fight against HIV/AIDS, women’s rights. Many studies of good governance as well as complete study centres in the region are financed by these European governments and foundations from these countries.

A number of international organizations engage in governance transfer in the region, including the United Nations, the European Union and the Commonwealth of Nations.

#### United Nations

The UN framework is often referred to in the founding documents of SADC, particularly the Universal Declaration of Human Rights (1948) and the Millennium Development Goals (MDG) which were set in 2000 with the aim to end poverty by 2015. However, the MDG targets concerning the reduction of poverty and hunger, access to education, gender equity in education, and HIV/AIDS have not found their way into SADC policy documents. As regards the relatively strong standard-setting on gender, the UN and especially the 1995 Beijing conference have played a major mobilizing role. The standards in CEDAW have influenced SADC documents on gender, which in turn go further in some places than the standards contained in CEDAW.

As regards instruments for promotion of governance, the SIPO requires that any SADC military intervention in the region acquire a mandate from the UN Security Council before proceeding. As we have seen, the two military interventions under SADC banner predating the SIPO took place without such mandate. The UN itself has a variable history of interventions in the region. The UN General Assembly was one of the earliest proponents of imposing economic sanctions against Apartheid South Africa, but this was repeatedly vetoed by the UK, US and France, who were major trading partners of South Africa. It wasn’t until the late 1980s (and after lobbying from the likes of Desmond Tutu) that economic sanctions were imposed. However the UN did impose a mandatory arms embargo in 1977. More recently, the UN has imposed sanctions against UNITA in Angola, apparently after lobbying from SADC countries. A proposal on imposing sanctions against Zimbabwe in the aftermath of the disputed election of 2008 was vetoed by Russia and China. Other UN governance transfer operations have included eight peace-keeping missions to four SADC countries since the late 1980s: four to Angola between 1988 and 1999, one to Namibia in 1989/1990, one to Mozambique between 1992 and 1994, and two to the DRC, from 1999 to the present. In September 2010, the UN and SADC signed an agreement to work together on conflict prevention, mediation, and elections. The UN/SADC Framework for Cooperation is intended to provide a two-way process to exchange knowledge of the SADC region with the UN and improve electoral capacity in the region. Under the framework the UN has been working with SADC on mediation in the political crisis in Madagascar. It seems that SADC considers the UN a useful partner in the area of security and conflict management, probably because the UN is one of the few international actors willing and able to deploy effective peace-keeping missions to conflict areas. This was perhaps especially relevant in cases such as Angola, where civil war was destabilizing the region, but regional leaders were unwilling or unable to intervene.

#### European Union

The European Community/European Union (EC/EU) has a long history of engagement with the region. Four of the six founding member states have had a presence as colonizer in the region at some time in history, leaving traces in the electoral, legal and administrative systems as well as a problematic heritage, exemplified by the land reform programmes.

In 1977 the EC Member States adopted a collective strategy to put pressure on the Apartheid government and encourage the economic development of the FLS by means of aid and trade (Holland 1988). However, the EC did not adopt proper sanctions against South Africa until 1985. Since then, the EC/EU has used sanctions as an instrument of governance transfer a number of times. From 1993 to 2003 the EU imposed an arms embargo and travel restrictions against the government of the DRC, and in 2003 financial sanctions were added to the list. A lack of respect for democracy was the justification given by the EU for the sanctions (Kreutz 2006). The EU has also imposed targeted sanctions on Zimbabwe since 2002 for a lack of respect for democratic standards, human rights violations, and harassment of EU staff in the country (Kreutz 2006). However, the European sanctions seem to have had a ‘boomerang effect’ on SADC, perversely strengthening SADC’s insistence on unity and solidarity, particularly when it comes to Zimbabwe (Van der Vleuten and Ribeiro Hoffmann 2010). This is undoubtedly because of Mugabe’s influential position in the region: SADC frequently denounces the sanctions against Zimbabwe, while making no mention of those against the DRC. Kabila simply does not have the kudos a Liberation leader like Mugabe has and cannot convince the other leaders to take a similar stance on the sanctions afflicting his government.

The EU has long been a major sponsor of regional integration efforts in southern Africa. It strongly supported the SADCC from its inception, and in 1986 the relationship was formalised through the signing of a Regional Indicative Programme under the Lomé framework. The Lomé framework, which shaped cooperation between the EC/EU and the African, Caribbean and Pacific Group of States, developed from a classic multilateral aid and trade cooperation agreement to a more encompassing policy framework. The European Parliament requested that aid be linked to minimum conditions of human rights protection (Smith 1998). In Lomé IV (1990-2000) for the first time emphasis was put on the promotion of human rights, democracy and good governance, strengthening of the position of women and increasing regional cooperation. However, it lacked a legal basis for responding to human rights violations. In 2000, the Lomé Convention was replaced with the Cotonou Agreement, which ended non-reciprocal trade preferences for trading partners, and introduced the principal of aid being conditional on good governance. The Cotonou Agreement is being implemented on a region-to-region basis via the medium of Economic Partnership Agreements (EPAs). Its stated objectives are the eradication of poverty through the establishment of a trade partnership, the promotion of regional integration, economic cooperation and good governance, and the integration of the SADC states into the world economy. The EU states that respect for democracy and human rights are central to EU-ACP relations. In effect, the EU has linked preferential trade to compliance with what it regards as acceptable standards of governance. It is also worth noting that the SADC Secretariat is heavily reliant on European funding; if it were to be withdrawn, the Secretariat would probably have to close down as SADC would be unable to pay its staff’s wages (Saurombe 2009). As a result the EU is in a strong position to influence commitment to human rights and related standards by means of its aid policies and trade policies and huge power asymmetry, yet critics have noted that the EU can be inconsistent, even apparently hypocritical, in how this policy is exercised (Youngs 2004; Hettne and Söderbaum 2005; Farrell 2005; Storey 2005; Orbie 2008).

#### Commonwealth of Nations

The Commonwealth of Nations, of which ten SADC countries are members, also nominally engages in governance transfer, although it lacks an effective mechanism through which to censure members who violate its stated norms. The Commonwealth promotes democracy, human rights, rule of law, individual liberty, free trade and multilateralism. Zimbabwe was suspended from the Commonwealth in 2002 for poor human rights, and withdrew its membership in 2003. Since then the Commonwealth appears to have lost its appetite for promoting governance norms: a leaked memo in 2010 told Commonwealth staff that it was not their job to criticise human rights abuses in member states (Borger, *The Guardian*, 8 October 2010).

#### African Union

Even more so than the UN, the African Union framework is central to SADC. The Preamble of 1992 SADC Treaty takes into account the Lagos Plan of Action (1980), the Final Act of Lagos (1980), and the African Economic Community Treaty (1991). The Lagos Plan of Action and the Final Act of Lagos laid the blame for Africa’s economic woes on Structural Adjustment Programmes, vulnerability to economic shocks, and inequalities in the global economy, and went on to outline a strategy for increasing Africa’s self-sufficiency and economic development. The commitments in the Lagos Plan and Final Act were incorporated into the Abuja Treaty in 1991. These documents are primarily concerned with economic matters. The Lagos Plan of Action includes a chapter entitled Women and Development, which seems to be the only part of the Plan that conceivably refers to notions of good governance, human rights, or rule of law (although anything related to democracy is notably absent). While most of the gender issues raised in this chapter are framed in economic terms, it contains a subsection on legislative and administrative matters which calls for the establishment of appropriate bodies to monitor and review the implementation of equal treatment laws (rule of law) and calls for women to be more involved in the drafting of legislation (good governance). It seems that SADC references the Lagos Plan and the Final Act more to support the idea of African states working together in order to become more economically self-reliant, than anything to do with governance norms.

The Abuja Treaty of 1991 established the African Economic Community, an integral part of the then Organization for African Unity (OAU). Like The Lagos Plan which influenced it, the Treaty is primarily concerned with economic matters and doesn’t have much to say on the matter of governance, although it does include ‘accountability, economic justice, and popular participation in development’ as part of its stated principles (Article 3), and calls for the protection of children (Article 72) and the greater integration of women in development issues (Article 75).

The amended SADC Treaty of 2001, in addition to the Treaties already mentioned in 1992, includes a reference to the Constitutive Act of the African Union. Signed in Togo in 2000, it sets out the framework under which the African Union (the reconstituted OAU) is to operate. Importantly, and in marked contrast to the Lagos Plan and Abuja Treaty, it introduces governance concerns right from the outset. It commits the AU to ‘promote and protect human and peoples’ rights, consolidate democratic institutions and culture, and ensure good governance and the rule of law’ (Preamble), taking into account the UN Charter, the Universal Declaration of Human Rights, and the African Charter on Human and Peoples’ Rights.

The turn of the millennium was a turning point in the promotion of governance norms, both at the continental and regional level, and the creation of the New Partnership for Africa’s Development (NEPAD) was instrumental in this. NEPAD was dreamed up by the leaders of South Africa (Thabo Mbeki), Nigeria (Olusegun Obasanjo), Algeria (Abdelaziz Bouteflika), and Senegal (Abdoulay Wade). Its aims are to eradicate poverty, promote sustainable growth and integrate Africa into the global economy, and promote the empowerment of women. Democracy and good economic, political and corporate governance are assumed to be preconditions for sustainable development. NEPAD was adopted by the AU in July 2001 as its economic development plan. As the AU is essentially the umbrella organization of the RECs, NEPAD has filtered down to the regional level and influenced the promotion of democratic and governance norms. This is reflected in SADC by the amended Treaty of 2001 and the RISDP and SIPO, which place a renewed emphasis on the same norms that are part of NEPAD. As a new instrument of governance promotion, the AU and NEPAD have introduced a peer review mechanism by which the progress of states in matters of governance is reviewed. The key benchmarks include democracy, the respect for human rights and the adoption of sound economic policies. The African Peer Review mechanism is a voluntary scheme which lacks coercive elements. States may stay out or withdraw. Not all SADC member states have signed up.[[14]](#footnote-14) Given the limitations inherent to the mechanism, critics raise serious doubts about its potential to induce reforms in unwilling states (Akokpari 2004).

### 4.2 Regional level

#### South Africa, the regional hegemon

South Africa, or more specifically, the ‘Mandela-Mbeki doctrine’ (Landsberg 2000), was central to the change from the ‘old’ model of African cooperation, as represented by the Lagos Plan and the Abuja Treaty, and the ‘new’ model, as represented by NEPAD and the reconstituted AU and SADC, with its emphasis on good governance, democracy, and human rights as the foundations underlying sustainable development. South Africa was emerging as a modern, progressive, democratic state; the great hope of Africa. In the optimism of a post-Cold War and pre-9/11 world, the South African leadership saw a window of opportunity in which the fortunes of Africa could be reversed, the beginning of an ‘African Century’ in which South Africa would be front and centre (Nathan 2005).

During his term in office, Mbeki popularised the idea of the 21st century as a period of African Renaissance. The African Renaissance would comprise the flowering of democracy, economic growth and development, continental cohesion, and African influence in international relations, and NEPAD was key in promoting the idea of the African Renaissance throughout the continent. Mbeki was the primary actor in the development of NEPAD and the attendant change of the OAU into the AU.[[15]](#footnote-15) He ‘went about mobilizing support for his plan with the external powers even before it was drafted’, garnering support from the UK, the US, Japan, the EU, the Nordic countries, the World Bank, the UN and the IMF (Nabudere 2002: 5). Only then was the plan drafted in consultation with other African leaders, while civil society organizations were not consulted at all; a decision which was subsequently heavily criticised.

The African Renaissance and NEPAD is one dimension of the Mandela-Mbeki doctrine. The other is a particular approach to conflict resolution. The South African experience of power-sharing and reconciliation between blacks and whites led to a belief that a similar model could be applied to other conflicts in Africa. For historical reasons, similar to Germany’s position in post-war Europe, it is not in South Africa’s interests to force its will on its neighbours (even though its hegemonic position means it easily could), but it can offer its resources and leadership to bring rival groups to the negotiating table, and keep the calm (usually through some sort of government of national unity) until a free and fair election can be safely held (The Economist, 8 May 2003). The Mandela-Mbeki doctrine has been crucial in influencing the manner in which SADC currently approaches governance transfer, especially in cases of conflict. SADC’s interventions post-1998 have generally followed this approach; favouring negotiated settlements and power-sharing deals over the kind of approach taken by ECOWAS in Cote d’Ivoire, however critics maintain this approach merely legitimates leaders such as Mugabe who have stolen elections, and allows them to stay in power.

As opposed to its strong reputation at the international level, benefiting from Mandela’s status, and at the continental level, South African hegemony within the region is vulnerable and easily contested, as we have set out before. As a result, South Africa cannot freely act as teacher and paymaster for the promotion of good governance standards in the region without being accused of neo-imperialism or neo-colonialism.

#### Regional instability and heterogeneity

Political stability is the objective which has unwritten priority in SADC and understandably so because of the turbulent remote and recent past of the region and continuing threats to stability even in the present. SADC has tended to ascribe lack of stability to external factors such as colonialism and western interference. At present five SADC member states,[[16]](#footnote-16) have a negative score on the ‘political stability and absence of violence’ index of the World Bank, indicating ‘the likelihood that the government will be destabilized or overthrown by unconstitutional or violent means including domestic violence or terrorism’ (2011: 118). These five countries also do poorly on indicators for ‘rule of law’ and ‘voice and accountability’. Swaziland is an interesting exception, because it is considered stable although it ranks low on democracy.

SADC member states are all considered developing countries, although the Seychelles and South Africa seem to be anomalies in the region; the former due to its wealth, the latter due to its highly developed industries and regional investor role. Four SADC member states are considered upper middle income countries, four are lower middle income countries and no less than seven belong to the low income countries where gross national income gets as low as 160$ pro capita (DRC).

Appendix 1 presents comparative data for all SADC member states concerning economic, political and developmental aspects. The countries are similar to each other when compared to other world regions because of their low GDP/capita, high HIV/AIDS rates and low HDI. When compared with each other however, there is considerable heterogeneity. As regards GDP/capita, the Seychelles, Botswana, Mauritius and South Africa are relatively well off, whereas other countries, particularly the DRC and Zimbabwe, are extremely poor. As regards HIV/AIDS, South Africa, Botswana, Swaziland and Lesotho are hard hit, as opposed to the DRC, Angola and the island states. As regards democracy, we may divide the countries in three categories: consolidated democracies, a middle group of unconsolidated democracies, and nominal democracies. Angola, Swaziland and Zimbabwe fall into the last category, while Botswana, Lesotho, Mauritius and South Africa into the first. The other member states have democratic institutions which are vulnerable and unstable. As regards state capacity to implement policies, there are fragile states which are still in the process of state-building after protracted civil war (Angola, DRC) as well as modestly well-functioning states. Variety in many cases reflects colonial heritage, for instance the official language (English, French or Portuguese), different legal systems in Lusophone and formerly British states, different electoral and administrative systems.

These member state characteristics influence the functioning of SADC and its capabilities to support the export of good governance in several ways. First, overall low GDP means that SADC member states, as well as the SADC Secretariat, struggle with very limited financial and institutional capabilities. Secondly, the heterogeneity tends to produce lowest-common denominator outcomes as regards standards and policies and hampers active promotion of standards of good governance.

## Conclusion

When it comes to governance transfer to and by SADC, it might be useful to think of it as a two-fold process. The first dimension consists of the ‘top-down’ process; from the international level to the regional level. This comes from the likes of the UN, the EU and other international donors. They promote a particular model of regional governance similar to that of the European Union: market-orientated, open regionalism focused on trade liberalization, coupled with democratic and human rights norms. Governments in targeted regions wish to attract much-needed funding, but at the same time do not want action plans dictated to them. Having an agenda like the RISDP, containing the ‘right’ norms and standards, serves the dual purpose of attracting donor funding, while at the same time reducing the risk of donors ‘wanting to fund something that is not a priority’ (Interview PR).

For the second dimension it might be useful to borrow Fredrik Söderbaum’s concept of sovereignty-boosting governance, in which weak post-colonial states use regional organizations to boost the official status and sovereignty of their governments (Söderbaum 2004). Engaging in high-level summitry and signing protocols can legitimize a government, even as its state institutions crumble around it. It looks good for a domestic audience, and also serves as a useful forum for solving regional problems on a flexible and politically expedient basis while at the same time giving the impression that there is a process for dealing with problems. This is a potential reason why policy is frequently vaguely formulated (i.e. the membership criteria), and, when challenged or resulting in inconvenient outcomes, is clarified on the hoof, or scrapped altogether if governments realise they have created something they can no longer control (i.e. the Tribunal). This helps to explain why on paper, at the level of prescription, SADC harbours grand ambitions of governance transfer, but when it comes to the level of application, the reality does not live up to the aspiration.

This is not to say that SADC never engages in effective governance transfer, for clearly sometimes it does (see for example the case of gender mainstreaming, or the more limited success in getting all SADC members to ratify the core ILO conventions), merely to say that the scope in which governance transfer can be successful is limited by a number of conditions. The first of these is that it must be, in some minimal sense, in the interests of the dominant regional power. Much as the EU requires the leadership of France and Germany if anything is to happen, so SADC requires the participation and leadership of South Africa, even if South Africa’s interests and leadership ability are in large part determined and constrained by Mugabe’s influence. The second condition is that there must be some source of international pressure which is able to ‘shame’ the regional organization for failure to comply with a global norm. As long as King Mswati’s regime is tolerated by the international community, there is no urgency for SADC to bell the cat. The third condition is the presence of some sort of demand from civil society for the implementation of certain governance standards. In large part this is why gender-mainstreaming has been relatively successful in SADC: there is both international pressure and demand from highly active civil society groups in the region. The fourth condition for governance transfer in SADC to be successful is that it must not be perceived to be a potential threat to state sovereignty. As the suspension of the Tribunal and the refusal to allow the Parliamentary Forum to transform into a legislative body illustrate, SADC member states are unwilling to allow any regional body or policy the power to override national law and politics.

#### Methodological issues

Data collection turned out to be no easy task. Key documents were downloaded from the SADC website, but other documents had to be retrieved from other websites. Documents on the SADC website are often available for a short amount of time only. Some documents are referred to in the media or in other documents, so we know they exist, but we have not been able to trace them down (Code of Conduct on Child Labour, reports from election observer missions, etc.). A visit to the SADC library in Gaborone, Botswana, made clear that it does not retain a comprehensive collection of SADC material, but only a limited and arbitrary selection. Still, the visit provided us with some more material. We were kindly but clearly refused access to Organ documents, which is unfortunate because the Organ is the key player in SADC as regards norm promotion through interventions. The lack of transparency in certain bodies is disappointing. Additionally, SADC as an organization does not seem to have a system or clear policy for dealing with requests for information. It seems that the institutional shuffling that began in 2001 (and went on for sometime after) may have complicated the archiving and storage of documentation. We were told that the early SEOM reports from 2004 may have been ‘lost’ in this process. As regards interviews, we have managed to talk to some people, although gaining access was more difficult than expected. We would have liked to talk to some others as well, but they did not reply or they declined, such as a former judge from the Tribunal (although he did succinctly reply to some questions via email).

Finally, we would like to highlight the problem of detecting ‘silences’, because we tend to focus and analyze what is said and written and institutionalized, rather than what is not said and remains unwritten and is not institutionalized. SADC stresses time and again the importance of political stability and human rights, but it deals nowhere with the issue of the rights of refugees (their human rights, economic and political rights, citizenship status) who constitute a vulnerable group and are both consequence and cause of political instability and conflict. SADC repeats in many places its commitment to human rights standards, but nowhere in its Protocols it addresses the rights of lesbian, gay, bisexual and transsexual/transgender (LGBT) people, the issue of violence against gays and lesbians and the issue of discrimination based on sexual orientation. These are two examples, but there might be more. Also, in spite of all references to human rights in many documents, there is no SADC institution with a specific mandate to deal with human rights issues, there is no sector at the Secretariat specifically entrusted with human rights protection and there is no protocol detailing human rights standards. These silences and absences are hard to track down in a systematic way, but may be telling in the framework of governance transfer.

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PR: Interview with Prega Ramsamy, Former Executive Secretary of SADC 2001-2005, Wednesday 7th September 2011, Johannesburg, South Africa.

## Appendix 1 Data SADC Member States

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
|  | Population  (thousands) | GDP  (US$, billions) | GDP/capita  (PPP, US$) | Human Development Index | Democracy | Gender Gap | HIV/AIDS  prevalence rate in adults aged 15-49 |
| Most recent year for which data was available | 2010 | 2010 | 2010 | 2010 | 2008 | 2010 | 2009 |
| Angola | 19,082 | 82,471 | 5,749 | .482 | 3.25 | .6712 | 2.0 |
| Botswana | 2,007 | 14,866 | 15,180 | .631 | 8.67 | .6876 | 24.8 |
| DRC | 65,966 | 13,103 | 329 | .282 | 4.58 | - | 1.4 |
| Lesotho | 2,171 | 2,316 | 1,351 | .446 | 8.25 | .7678 | 23.6 |
| Madagascar | 20,714 | 8,837 | 938 | .481 | 7.17 | .6713 | 0.2 |
| Malawi | 14,901 | 5,397 | 821 | .395 | 6.50 | .6824 | 11.0 |
| Mauritius | 1,299 | 9,724 | 14,194 | .726 | 9.58 | .6520 | 1.0 |
| Mozambique | 23,391 | 9,495 | 1,012 | .317 | 7.33 | .7329 | 11.5 |
| Namibia | 2,283 | 11,700 | 6,935 | .622 | 8.17 | .7238 | 13.1 |
| Seychelles | 87 | 0,937 | 23,308 | .771 | 6.90 | - | - |
| South Africa | 50,133 | 363,655 | 10,518 | .615 | 8.92 | .7535 | 17.8 |
| Swaziland | 1,186 | 3,698 | 5,156 | .520 | 1.08 | - | 25.9 |
| Tanzania | 44,841 | 22,543 | 1,417 | .461 | 5.17 | .6829 | 5.6 |
| Zambia | 13,089 | 16,192 | 1,516 | .425 | 7.58 | .6293 | 13.5 |
| Zimbabwe | 12,571 | 7,467 | 436 | .364 | 1.92 | .6574 | 14.3 |
|  |  |  |  |  |  |  |  |
| SADC Total/Average | **273,721/ 18,248)** | **564,934/ 37,662** | **4,530** | **.503** | **6.34** | **.6927** | **11.8** |
| World Total/  Average | 7,000,000 | 63,170,000 | 11,200 | .679 | 5.46 | - | 0.8 |
| EU Total/  Average | 501,000 | 16,282,000 | 30,388 | .821 | 8.05 | .7251 | 0.3 |

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## Appendix 2 Graphs

[in a separate document]

## Appendix 3 Election Observer Missions

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Country, Date of elections** | **Type of elections** | **SADC EOM (SEOM)** | **SADC-PF** | **SADC ECF** | **Commonwealth and EU** |
| *South Africa*  April 2004 | Presidential, parliamentary | SEOM was sent, \*\* |  | Observer Mission Report |  |
| *Malawi*  May 2004 | Presidential, parliamentary | SEOM was sent, \*\* |  | Observer Mission Report |  |
| *Botswana*  October 2004 | Presidential and parliamentary | SEOM was sent, \*\* |  | Observer Mission Report |  |
| *Namibia*  November 2004 | Presidential and parliamentary | SEOM was sent, \*\* |  | Observer Mission Report |  |
| *Mozambique*  December 2004 | Presidential and parliamentary | SEOM was sent, \*\* |  | Observer Mission Report |  |
| *Mauritius*  2005 | Presidential, parliamentary | SEOM was sent, \*\* |  | Observer Mission Report |  |
| *Zimbabwe*  31-03-2005 | Parliamentary | Preliminary Statement  (03-04-2005) | *Access refused to SADC-PF\** | No mission sent | *Access refused to Commonwealth and EU* |
| *Zanzibar*  30-10-2005 | Presidential, parliamentary, Councillors | Preliminary Statement  (??-12-2005) |  | Observer Mission Report | Commonwealth report |
| *Tanzania*  14-12-2005 | Presidential, Parliamentary, Local | *SADC Secretariat*  *\*, \*\** | Interim Statement (17-12-2005) | Observer Mission Report | *Commonwealth and EU were invited\*\** |
| *Seychelles*  28/29/30-07-2006 | Presidential | *SEOM was sent\*, \*\** |  |  | Commonwealth |
| *DRC*  30-07-2006 | Presidential and Parliamentary | Preliminary Statement  (01-08-2006) | Interim Statement  (03-08-2006) | *\*\* (EISA: EOM was sent)* | EU EOM final report |
| *Zambia*  28-09-2006 | Presidential, Parliamentary,  Local | *SEOM was sent\*, \*\** | Interim Statement  (02-10-2006) | *\*\* (EISA: EOM was sent)* | EU EOM prelim statement; Commonwealth |
| *Madagascar*  03-12-2006 | Presidential | *\*\* SEOM was sent* | Interim Statement  (07-12-2006) | Observer Mission Report |  |
| *Lesotho*  17-02-2007 | Parliamentary  *King dissolved parliament* | Preliminary Statement  (18-02-2007) | Interim Statement (20-02-2007) | Interim Statement | EU statement; Commonwealth |
| *Zimbabwe*  27-03-2008 | Harmonized | Preliminary Statement  (30-03-2008) | *Access refused to SADC-PF* | Observation Statement | *Access refused to Commonwealth and EU* |
| *Zimbabwe*  27-06-2008 | Presidential, Parliamentary | Preliminary Statement  (29-06-2008) | *Access refused to SADC-PF\** | Observation Statement | *Access refused to Commonwealth and EU* |
| *Angola*  05-09-2008 | Legislative | *SEOM was sent\*, \*\** |  | Observation Statement | EU EOM final report |
| *Swaziland*  18-09-2008 | National Assembly | Interim Statement  (20-09-2008) |  | Observation Statement | Commonwealth |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Country, Date of elections** | **Type of elections** | **SADC EOM (SEOM)** | **SADC-PF** | **SADC ECF** | **Others** |
| *Zambia*  30-10-2008 | Presidential *unscheduled; death of President Mwanamasa* | *SEOM was sent \*\*[[17]](#footnote-17)* |  | Observation Statement | EU EEM report[[18]](#footnote-18) |
| *South Africa*  22-04-2009 | National and Provincial | *SEOM was sent\*, \*\** | Interim Statement | Observer Mission Report | EU EEM report ; Commonwealth |
| *Malawi*  19-05-2009 | Presidential and Parliamentary | Preliminary Report  (21-05-2009) | Interim Mission Statement | Observer Mission Report | EU EOM report; Commonwealth |
| *Botswana*  16-10-2009 | General Elections | Preliminary Report  (18-10-2009) | Interim Statement  (19-10-2009) | Observation Statement  (18-10-2009) |  |
| *Mozambique*  28-10-2009 | Presidential,  Parliamentary and Provincial | Preliminary Report  (30-10-2009) | *\*\* (EISA: EOM was sent)* | Interim Statement | EU EOM prelim statement; Commonwealth |
| *Namibia*  27/28-11-2009 | Presidential and National Assembly | Preliminary Statement  (30-11-2009) | Interim Statement | *\*\* (EISA: EOM was sent)* | EU EOM\*, \*\* |
| *Mauritius*  05-05-2010 | Parliamentary | Launch Statement  (25-04-2010)  Preliminary Statement  (07-05-2010) | Interim Statement  (07-05-2010) | Observation Statement |  |
| *Tanzania*  31-10-2010 | General elections | Preliminary report  (02-11-2010) | Interim Statement | Preliminary Statement | EU EOM prelim statement; Commonwealth interim statement |
| *Seychelles*  19/20/21-05-2011 | Presidential | Statement  (22-05-2011) |  | Preliminary Statement | Commonwealth expert team report |
| *DRC*  28-11-2011 | Presidential and Parliamentary | SEOM sent |  |  |  |

\* Elections were scheduled and allegedly observed by SADC EOMs (Source: EISA 2011)

\*\* No report found

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SADC-PF Interim Statement on elections Madagascar (December 2006)

[www.sadcpf.org/documents/Interim%20Statement%20Madagascar(final).doc](http://www.sadcpf.org/documents/Interim%20Statement%20Madagascar(final).doc)

SADC-PF Interim Statement on elections Malawi (May 2009)

<http://www.sadcpf.org/index.php?disp=SADC%20PARLIAMENTARY%20FORUM%20ELECTION%20OBSERVER%20MISSION%20TO%20THE%20REPUBLIC%20OF%20MALAWI%20ELECTIONS%202009>

SADC-PF Interim Statement on elections Botswana (October 2009)

<http://www.sadcpf.org/index.php?disp=Interim+Mission+Statement+SADC+Parliamentary+Forum+Election+Observer+Mission+to+Namibia+Elections+2009>

SADC-PF Interim Statement on elections Namibia (November 2009)

<http://www.sadcpf.org/index.php?disp=Interim%20Mission%20Statement%20SADC%20Parliamentary%20Forum%20Election%20Observer%20Mission%20to%20Namibia%20Elections%202009>

SADC-PF Interim Statement on elections Mauritius (May 2010)

<http://www.sadcpf.org/Mauritius_2010_INTERIM_MISSION_STATEMENT.pdf>

SEOM Preliminary Statement on Zimbabwe (April 2005)

<http://www.idea.int/africa/southern/upload/SADC%20Election%20Observer%20Mission%20Preliminary%20Statement-2.pdf>

SEOM Preliminary Statement on Zanzibar (October 2005)

<http://www.sardc.net/editorial/sadctoday/view.asp?vol=267&pubno=v8n5>

SEOM Preliminary Statement on the Democratic Republic of Congo (July 2006)

<http://reliefweb.int/node/212764>

SEOM Preliminary Statement on Lesotho (February 2007)

<http://www.southerntimesafrica.com/article.php?title=Sadc%20Electoral%20Observer%20Mission%20Preliminary%20Statement%20on%20Lesotho&id=951>

SEOM Preliminary Statement on Harmonized Elections Zimbabwe (March 2008)

<http://www.eisa.org.za/PDF/zim2008sadc.pdf>

SEOM Preliminary Statement on the Zimbabwe Presidential Run‐off and House of Assembly

By‐elections (June 2008)

<http://www.eisa.org.za/PDF/zim2008sadc2.pdf>

SEOM Interim Statement on Swaziland (September 2008)

<http://www.eisa.org.za/PDF/swa2008sadc.pdf>

SEOM Preliminary Report on Malawi (May 2009)

*Only electronic pdf-version not published on website, accessed via contact at the SADC Secretariat (11-07-2011)*

SEOM Preliminary Report on Botswana (October 2009)

<http://www.africanelections.org/botswana/news/page.php?news=4401>

SEOM Preliminary Report on Mozambique (October 2009)

<http://www.eisa.org.za/PDF/moz2009sadc.pdf>

SEOM Preliminary Statement on Namibia (November 2009)

<http://myliberiawins.org/namibia/features/page.php?news=4749>

SEOM Launch Statement on Mauritius (April 2010)

<http://www.sadc.int/index/browse/page/738>

SEOM Preliminary Statement on Mauritius (April 2010)

*Only electronic pdf-version not published on website, accessed via contact at the SADC Secretariat (11-07-2011)*

SEOM Preliminary Report on Tanzania (October 2010)

<http://www.sadc.int/index/browse/page/804>

SEOM Statement on Seychelles (May 2011)

*Only electronic pdf-version not published on website, accessed via contact at the SADC Secretariat (11-07-2011)*

1. Angola, Botswana, Lesotho, Mozambique, Tanzania, Zambia, Zimbabwe. [↑](#footnote-ref-1)
2. There is potentially a geopolitical dimension to the Seychelles’ decision to rejoin: after it pulled out of SADC, Madagascar, the dominant state in the African Indian Ocean region, opted to join, leaving the Comoros as the only remaining state in the region focusing purely on Indian Ocean cooperation. [↑](#footnote-ref-2)
3. Nowadays there are 40 member organizations (Genderlinks). [↑](#footnote-ref-3)
4. Millennium Development Goals, 2000; the Abuja Declaration on HIV and AIDS and Plan of Action, 2001; the Declaration of Commitment on HIV and AIDS adopted at the UN General Assembly Special Session on HIV and AIDS, 2001; and the New Partnership for Africa’s Development in 2001 [↑](#footnote-ref-4)
5. The SADC Protocols have the same legal force as the Treaty itself; they come into force after two thirds of SADC member states have ratified it. It legally binds its signatories after ratification (Ruppel 2009: 292). [↑](#footnote-ref-5)
6. In the Namibia Ramatex case (1995-2008), SADC member states were competing with each other for foreign investment and lost thousands of jobs (for more details, see Zampini 2008: 99). [↑](#footnote-ref-6)
7. Angola, Congo DR, Madagascar, Malawi, Mozambique, South Africa, Tanzania and Zambia are heterogeneous multi-ethnic countries where all groups are minorities. Lesotho, Seychelles and Swaziland are ethnically homogeneous; the other countries are multi-ethnic where one group constitutes a majority (Botswana, Mauritius, Namibia and Zimbabwe) (Breytenbach 2002). [↑](#footnote-ref-7)
8. The EISA principles were an initiative of civil society organisations (CSOs) and the electoral management bodies (EMBs). The Electoral Commissions Forum of SADC Countries (SADC-ECF) consists of all the Electoral Commissions of SADC Member States. It was launched in Cape Town in July 1998 and is governed by a Constitution which mandates it to ‘Strengthen co-operation amongst Electoral Commissions in the Southern African Development Community; Promote conditions conducive to free, fair and transparent elections in countries in the Southern African Development Community’ (SADC ECF, 2009, Final Report on Malawi elections). [↑](#footnote-ref-8)
9. The other human rights cases are all linked to the Campbell one. Some were submitted by other farmers disagreeing with Campbell. The Tribunal declared that it did not have jurisdiction in such disputes between individuals. The other all involved Campbell and other farmers against the Republic of Zimbabwe. [↑](#footnote-ref-9)
10. The review was undertaken by WTI Advisors Ltd, an affiliate of the World Trade Institute, and funded by the German Technical Cooperation Programme towards Governance Reform Effectiveness of SADC Structures. [↑](#footnote-ref-10)
11. Living law is an informal flexible ‘law’ reflecting the day-to-day practices of people (Banda 2006: 14). [↑](#footnote-ref-11)
12. Notably Mobutu Sese Seko in Zaire, the Apartheid government in South Africa, UNITA in Angola, and RENAMO in Mozambique. [↑](#footnote-ref-12)
13. With the exception of Swaziland, which recognizes Taiwan instead of the PRC. [↑](#footnote-ref-13)
14. Have not signed up: Botswana, Madagascar Namibia, Seychelles, Swaziland and Zimbabwe. [↑](#footnote-ref-14)
15. Mbeki was the first chairperson of the AU when it was inaugurated in Pretoria in 2002. [↑](#footnote-ref-15)
16. Angola (but improving), DRC, Madagascar, Malawi (only slightly negative) and Zimbabwe. [↑](#footnote-ref-16)
17. See: <http://www.afrol.com/articles/31394>; <http://allafrica.com/stories/200810230926.html>. [↑](#footnote-ref-17)
18. <http://eueom.eu/missionarchive/election-expert-mission-2008>. [↑](#footnote-ref-18)