



Governance Transfer by the Southern African Development Community (SADC)

A B2 Case Study Report

Anna van der Vleuten and Merran Hulse



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Foreword

Tanja A. Börzel and Vera van Hüllen

This working paper is part of a series of eight case study reports on governance transfer by regional organizations around the world. It was prepared in the framework of the SFB 700 project B2, “Exporting (Good) Governance: Regional Organizations and Areas of Limited Statehood”. Together with regional experts, we have investigated how and under which conditions regional organizations prescribe and promote standards for (legitimate) governance (institutions) at the national level. A comparison of major regional organizations shall enable us to evaluate to what extent we can observe the diffusion of a global governance script. Do regional organizations demand and promote similar criteria for “good governance” institutions, or do regional and local particularities prevail? The B2 case study reports present detailed findings for eight regional organizations in Africa, the Americas, Asia, and the Middle East. They cover the African Union (Julia Leininger), the Economic Community of West African States (Christof Hartmann), the Southern African Development Community (Anna van der Vleuten and Merran Hulse), the Organization of American States (Mathis Lohaus), Mercosur (Andrea Ribeiro Hoffmann), the North American Free Trade Agreement (Francesco Duina), the Association of Southeast Asian Nations (Anja Jetschke), and the League of Arab States (Vera van Hüllen).

The B2 case study reports rely on a common set of analytical categories for mapping the relevant actors, standards, and mechanisms in two dimensions of governance transfer.¹ First, we examine the prescription of standards and the policies for their promotion (objectives, instruments) that create the institutional framework for governance transfer. Second, we investigate the adoption and application of actual measures. Regarding the actors involved in governance transfer, we are interested in the role of regional actors on the one hand, as standard-setters and promoters, and domestic actors on the other, as addressees and targets of governance transfer. Even though the question of which criteria regional organizations establish for legitimate governance institutions is an empirical one, we relate the content and objectives of governance transfer to the broader concepts of human rights, democracy, the rule of law, and good governance. Finally, we classify different instruments of governance transfer according to their underlying mechanism of influence, distinguishing between (1) litigation and military force (coercion), (2) sanctions and rewards (incentives), (3) financial and technical assistance (capacity-building), and (4) fora for dialogue and exchange (persuasion and socialization).

The B2 case study reports result from more than two years of continuous cooperation on the topic, including three workshops in Berlin and joint panels at international conferences. The reports follow the same template: They provide background information on the regional organization, present the findings of a systematic mapping of governance transfer, and suggest an explanation for its specific content, form, and timing. They form the basis for a systematic

¹ For detailed information on our analytical framework, please refer to our research guide for case study authors (Börzel et al. 2011).

comparison of governance transfer by these eight regional organizations (for first results, see Börzel, van Hüllen, Lohaus 2013), as well as further joint publications.

We would like to thank the people who have made this cooperation a pleasant and fruitful endeavor and one that we hope to continue: In particular, we would like to thank our regional experts, Francesco Duina, Christof Hartmann, Anja Jetschke, Julia Leininger, Mathis Lohaus, Andrea Ribeiro Hoffmann, Anna van der Vleuten and Merran Hulse for their willingness to share our interest in governance transfer and for their conceptual and empirical input into the project. We are also grateful to Heba Ahmed, Carina Breschke, Mathis Lohaus, Lea Spörcke, Sören Stapel, and Kai Striebinger for their valuable research assistance and other support to our joint B2 project. Special thanks go to Anne Hehn, Anna Jüschke, Clara Jütte, and the entire “Team Z” of the SFB 700, who have unfailingly smoothed the way in all matters concerning administration and publication. Finally, we gratefully acknowledge the financial support from the German Research Foundation (DFG), which made the project possible.

Governance Transfer by the Southern African Development Community

A B2 Case Study Report

Anna van der Vleuten and Merran Hulse

Abstract:

As early as 1992, the Treaty of the Southern African Development Community (SADC) already included a commitment to human rights, democracy, and the rule of law as governance standards in its member states, but it was in 2001 that SADC significantly broadened its efforts at governance transfer. SADC focuses in particular on standards related to gender, (socioeconomic) human rights, and (electoral) democracy, which are promoted and protected through various instruments including military interventions and sanctions in the framework of security cooperation. While the rule of law and good governance have also gained a more prominent place on the agenda since 2001, standards and instruments are less developed. Overall, there is a significant gap between the prescription of standards and policies on the one hand and the implementation of measures on the other. The suspension of the SADC Tribunal in 2010 following its rulings on human rights issues clearly shows the limits of SADC as an active promoter vis-à-vis its member states.

Zusammenfassung:

Schon der Vertrag der Südafrikanischen Entwicklungsgemeinschaft (SADC) von 1992 enthielt ein Bekenntnis zu Menschenrechten, Demokratie und Rechtsstaatlichkeit als Standards für (gutes) Regieren in den Mitgliedstaaten. SADC entwickelte seinen Governance-Transfer jedoch erst 2001 entscheidend weiter. SADC fokussiert dabei auf Standards mit Bezug zu Gender-Fragen, (sozio-ökonomischen) Menschenrechten und (Wahl-)Demokratie. Die Instrumente zum Schutz und zur Förderung dieser Standards umfassen auch militärische Interventionen und Sanktionen im Rahmen von Zusammenarbeit im Sicherheitsbereich. Obwohl SADC 2001 auch Standards mit Bezug zu Rechtsstaatlichkeit und Good Governance gesetzt hat, sind die Instrumente in diesen Bereichen weniger gut entwickelt. Insgesamt gibt es eine deutliche Lücke zwischen der Festschreibung von Standards und Politiken einerseits und der Durchführung von Maßnahmen andererseits. Die Suspendierung des SADC Tribunals in der Folge eines Urteils zu Menschenrechtsfragen zeigt die Grenzen SADCs als aktiver Förderer von Governance-Standards gegenüber den Mitgliedstaaten.

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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 (UN)	Convention on the Elimination of All Forms of Discrimination against Women
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
FDI	Foreign Direct Investment
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	Organ on Politics, Defence and Security
OSISA	Open Society Initiative for Southern Africa
PAP	Pan-African Parliament
PFA	Platform for Action

PPRM	Policy Planning and Resource Mobilization
RENAMO	Resistencia 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	SADC Civilian Police
SADC CNGO	SADC Council of Non-Governmental Organizations
SADC ECF	SADC Electoral Commissions Forum
SADC PF	SADC Parliamentary Forum
SADC SSF	SADC Standby Force
SAPSN	Southern African People's Solidarity Network
SATUCC	Southern African Trade Union Coordination Council
SEOM	SADC Electoral Observer Mission
SGDI	SADC Gender & Development Index
SHD&SP	Social and Human Development and Special Programs
SIPO	Strategic Indicative Plan for the Organ
SNC	SADC National Committee
SSA	Sub-Sahara Africa
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

1. Introduction¹

The Southern African Development Community (SADC) has two primary objectives: economic cooperation in pursuit of the eradication of poverty, and political cooperation to achieve the peace and stability that is conducive to economic development. Its origins can be traced back to the Frontline States (FLS) and the Liberation struggles of the (post)colonial era. They are still visible in the founding treaty of 1992, which contains the norms of nondiscrimination and respect for human rights. However, norm promotion is often hindered by the very same legacy. Because of the experiences of colonialism, civil war, and apartheid, SADC actors highly value the principle of non-interference in the sovereign affairs of nation-states and are loath to violate it. Since an institutional overhaul in 2001, SADC has become a more coherent organization than it was before, yet it still suffers from a lack of human capital and financial resources, which exacerbates problems of implementation.

An analysis of SADC main policy texts shows that the organization is engaged in the promotion of democracy, human rights, good governance, and rule of law to varying extents. The standards reflect continental (AU) and/or global (UN, ILO) norms. SADC tends to frame them in a rather narrow way, although the strength of the SADC gender regime in terms of standard setting and promotion is striking. **Democratic standards** have been a part of SADC policy since 1992, but democracy tends to be equated here with the occurrence of well-organized elections. Since 2004, observer missions have been sent to almost all elections. In most cases, assessments by the SADC reports seem to be confirmed by the reports of other organizations, except for two cases: Swaziland and Zimbabwe, SADC's two least democratic countries. SADC has undertaken some diplomatic and military interventions to "safeguard democracy," but only when political violence threatened the stability and legitimacy of an incumbent government. The democratic character of SADC itself is rather weak, as it has no regional parliament and no parliamentary oversight over its activities. **Human rights standards** appear in almost all key policy documents. They tend to focus on socioeconomic rights more than civil-political rights. The principle of nondiscrimination is prominently present, arguably due to the region's experiences of officially sanctioned racism during colonialism and apartheid. **Principles of rule of law** have emerged since 2001. However, this appears to be mere lip service: the contradictions and tensions resulting from the coexistence of official legal systems (inherited from the colonial era) alongside customary practices are not properly addressed, and the regional court was dissolved after finding Zimbabwean government policy contrary to the rule of law. Finally, the concept of **good governance** also appears from 2001 onward, 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 foreign direct investment.

¹ We gratefully acknowledge research assistance by Annique Claessen, Jody van der Helm, Deborah Lassche and Peter de Jong.

SADC has adopted these standards pushed by:

- (1) Its desire to attract Foreign Direct Investment (FDI) and donor money in order to combat poverty, by signaling its commitment to international standards (e.g., election observer missions; anti-corruption);
- (2) Its need for political stability, which has motivated its interventions (curbing negative externalities);
- (3) Post-apartheid South Africa, which aspires to be a regional and continental hegemon and a global player, pushing for international recognition of a proud, strong, and modern (Southern) Africa that complies with international standards (international legitimacy);
- (4) Domestic and transnational non-state actors (opposition parties, social movements, trade unions) who push for domestic reforms through the regional level.

Because of its dependence on external funding and its desire to attract FDI, SADC is sensitive to external pressure to adopt standards, but because of the organization's roots and mission, member state governments will only adopt measures that satisfy donors without undermining their autonomy. As a result, many principles and measures contained in SADC policy remain chimeras. Even worse, when vaguely formulated principles or freshly created institutions start to unfold, they are ignored or redressed, as was the case with the Tribunal (suspended since 2010).

The mapping and collection of data concerning governance transfer by SADC was no easy task. We were politely but clearly refused access to Organ documents. The SADC library in Gaborone, Botswana, retains only a limited and somewhat arbitrary selection of SADC material. Some documents have been referenced in the media or in other documents, so we know they exist, but we have not been able to track them down. It seems that the institutional reshuffling that began in 2001 may have complicated the archiving and storage of documentation. We were told that the earlier SEOM reports may have been "lost" in this process, but this does not explain why we found no trace of more recent reports. We have gratefully drawn on analyses from scholars in Southern African think tanks and publications such as the Monitoring Regional Integration in Southern Africa Yearbook, and were very appreciative to conduct interviews with key players.

2. The Southern African Development Community (SADC): An Overview

2.1 History of SADC

SADC has long suffered from institutional incoherence, a legacy of its turbulent past. The institutional roots of SADC can be found in the Frontline States (FLS), an organization founded in 1970 by the region's independent states. The FLS aimed to reduce member states' economic reliance on South Africa and promote the liberation of countries under foreign or minority rule. The FLS developed two substructures: one for economic cooperation, which would eventually

become the Southern African Development Coordination Conference (SADCC), and one for cooperation on security, which would eventually develop into the SADC Organ.

The primary objective of SADCC was to increase economic cooperation among members in order to reduce economic dependence on a hostile South Africa and promote equitable development of the region's economies. By the late 1980s, the leaders of the FLS decided that the organization should be formalized "to give it an appropriate legal status" (Actrav 2012). This decision was implemented in 1992, when SADCC was renamed and reorganized as the Southern African Development Community (SADC). South Africa joined SADC in 1994, officially ending the longstanding hostilities between that country and its regional neighbors. In 2001, SADC embarked on a major project of institutional reform with the intention of providing stronger leadership and increasing the capacity to implement policies. An amended Treaty was signed in March 2001.

Regarding cooperation in security matters, in 1975, Mozambique, Tanzania, and Zambia established the Inter-State Defence and Security Committee (ISDSC) as a substructure of the FLS, to coordinate their efforts to aid the liberation of neighboring 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 defense, home affairs/police, and state security/intelligence. With the end of apartheid in South Africa in 1994, the FLS dissolved itself while the ISDSC was retained. Its objectives focused on cooperation in the fields of defense, public security, and state security (the latter including political instability, armed conflict, influx of refugees, religious extremism and other potential threats to the stability of the subregion). In 2001, the ISDSC and its subcommittees were incorporated into the SADC Organ.

The SADC Organ came into being much later than the ISDSC. It was first discussed in 1994 at a workshop on democracy, peace, and security, which sought to set SADC on a course toward formal involvement in security cooperation, conflict mediation, and military cooperation. In January 1996, the ministers of foreign affairs, defense, and security agreed to establish an 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" (SARDC, 2001). However, an ongoing dispute between Zimbabwe, in favor of a parallel flexible and informal approach reminiscent of the FLS, and South Africa, in favor of a legal mechanism under the control of the SADC Summit, prevented the Organ from functioning properly (Francis 2006). The unsatisfactory manner in which the 1998 military interventions in the DRC and Lesotho were decided and conducted resulted in a Summit 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" (SADC 1999a). The Organ has been part of SADC since August 2001, and its functions are laid out in the Protocol on Politics, Defence and Security Cooperation.

2.2 Membership

When the Treaty of 1992 was signed, SADC had 10 member states. The five subsequent members joined between 1994 and 2005 (see Figure 1). Madagascar has been suspended from the Organization since 2009 after a political crisis resulted in an unconstitutional change of government. In 2003, the Seychelles briefly left SADC in a dispute over unpaid membership dues, but it rejoined in 2007 after obtaining a hugely decreased annual membership fee (from approximately US\$2 million to US\$75,000) (SADC Secretariat 2007).

Figure 1: Member states of the SADC



Table 1: Membership in SADC and its forerunners²

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, rejoined 2007
Madagascar			Accession 21 Feb 2006, suspended since 2009

² Source: own compilation.

Membership Criteria

Initially, SADC did not have any formal membership requirements beyond the payment of membership dues. The 1992 Treaty only 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.” In August 1995, the Summit adopted more stringent criteria for membership including a democracy clause (see Table 2).

Table 2: Comparison between 1995 and 2003 membership criteria³

1995 membership criteria	2003 membership criteria
Geographic proximity to SADC region	Geographic proximity to SADC region
Commonality of political, economic, social, and cultural systems of the applicant with the systems of the SADC region.	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.
Must be a democracy, observing the principles of human rights and the rule of law	
Feasibility of cost-effective and efficient coordination of the applicants economic, social, and cultural activities under the SADC framework of cooperation	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
Absence of a record of engagement in subversive and destabilization activities, and territorial ambitions against SADC or any of its member states	Should not be at war, and should not be involved or engaged in subversive and destabilization activities, and have territorial ambitions against SADC, any of its members states or any member state of the African Union
Must share SADC’s ideals and aspirations	Should have levels of macro-economic indicators in line with targets set in the RISDP

The membership conditions changed again in 2003. The reason for this appears to be an attempt by Rwanda to join SADC, submitting an application in 2001 (interview PR). 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 to instate a moratorium on the acceptance of new members (SADC Secretariat 2002). In August 2003, the Summit approved the new membership criteria. With respect to the Rwandan bid, the 2004 Summit merely noted that the country had been informed of the new criteria, “which they

³ Source: own compilation, based on Record of the Meeting of the SADC Council of Ministers, Dar-Es Salaam, Tanzania, August 23–24, 2003 (SADC Secretariat 2003a).

have to meet” (SADC Secretariat 2004). The document did not articulate which criteria Rwanda might have been failing to meet, but the clause barring member states from being “engaged in subversive activities” was likely foremost among the Summit’s concerns. Evidently Rwanda was not deterred by the new criteria, as it submitted 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 Secretariat 2005). In the end, the Rwandan application was rejected outright. Rwanda instead joined the East African Community in 2007.

(Non-)application of the Democracy Clause

SADC’s democracy clause for membership was introduced in 1995 after South Africa joined. All states to join since then have been democratic, with the notable exception of the DRC, which failed to meet at least three of the six membership criteria when it joined in 1998. The change in criteria in 2003 diluted the democracy requirement, from “must be a democracy” to “observance of the principles of democracy” (see Table 2). Perhaps this reflects an ad hoc, after-the-fact legitimization of the DRC’s acceptance into the SADC fold, but whatever the reason, it certainly represents a step backward for the promotion of democratic institutions in existing and potential member states. Added to this is the fact that the member states considered very undemocratic—namely Swaziland, Zimbabwe, Angola, and the DRC—do not experience sanctions by SADC (although in the cases of Zimbabwe and the DRC, there are ongoing, SADC-backed negotiations working toward improved political dialogue; for more details, see section 3.2).

In 2004, SADC considered the application from Madagascar. The Madagascan application seemed to proceed apace, with the Summit noting that the country had “no history of generating conflicts and war with its neighbours and other SADC countries” (SADC Secretariat 2004). 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 and trade union leaders, 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 Secretariat 2004). In response, the delegation explained that the SADC Principles and Guidelines Governing Democratic Elections aimed precisely to foster democracy in member states. Madagascar became a full member of SADC in February 2006, but experienced a constitutional coup in 2009 and has since been suspended from SADC.

2.3 Identity and Mission

SADC is bound together by the common goals and interests expressed in the Treaty (1992; 2001) as well as the two primary policy documents, the Regional Indicative Strategic Development Plan (RISDP) (2003), and the Strategic Indicative Plan for the Organ (SIPO) (2004). “The RISDP

and SIPO are the heartbeats of the Community” (Tanzanian President Jakaya Kikwete, address to the Summit, August 17, 2006); 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.”
(SADC 2001-a: Article 5 and SADC 2003-b: 4)

SADC’s mission essentially consists of twin processes: trade integration (the economic dimension) and the creation of conditions for peace and stability (the political dimension), which are seen as preconditions for sustainable economic development. They are intended to be parallel, but there is more emphasis today on the peace and security aspect than on the trade and (economic) governance aspect (interview GM).

SADC has a regional identity rooted in the Liberation struggles and the principles of solidarity, sovereignty, and postcolonial independence. SADC’s root organizations, the FLS and SADCC, were opposed to colonial and minority rule, and many states provided safe havens for exiled ANC leaders and training camps for guerrilla fighters. The apartheid government retaliated with a policy of regional destabilization toward its neighbors, especially Zimbabwe, Namibia, Angola, and Mozambique. When apartheid finally came to an end, it was generally felt that South Africa owed a great debt to its neighbors for their help in enabling the ANC to achieve majority rule. Considering its previous role as a hostile destabilizer in the region, as well as the “debt” it owed to its neighboring states, democratic South Africa has been reluctant to be seen telling other states what to do or criticizing any figures from the Liberation struggle who are still active in the region’s politics (see Annex 2 for a list of Liberation leaders). 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 Secretariat 2007). 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, October 3, 2002, SADC Secretariat 2002: 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, 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 postcolonial regional identity and has a strong impact 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 a 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 ... [N]ot 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, August 25, 2003, SADC Secretariat 2003a: Annex)

Taken together, these aspects of regional identity make it difficult for SADC member states to criticize each other, since criticism opens them 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 neocolonial 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

With the signing of the Amended Treaty in 2001, there are now eight SADC institutions, namely:

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

The SADC Parliamentary Forum (SADC PF) is an institution linked to SADC but not part of it. Figure 2 visualizes the institutional structure of SADC. We will discuss each institution in turn, including the SADC PF because of its relevance for the topic of this report.

The **Summit** consists of the heads of state of all member states and is the supreme policy-making institution of SADC, responsible for the direction of policy and control of functions.

All decision-making occurs through 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 Summit operates on a troika system, with a current chairperson, an incoming chairperson (or deputy chair), and an outgoing chairperson, who advises the current and deputy chair. Every year the Summit elects an incoming chair from among its ranks. Each position is held for one year.

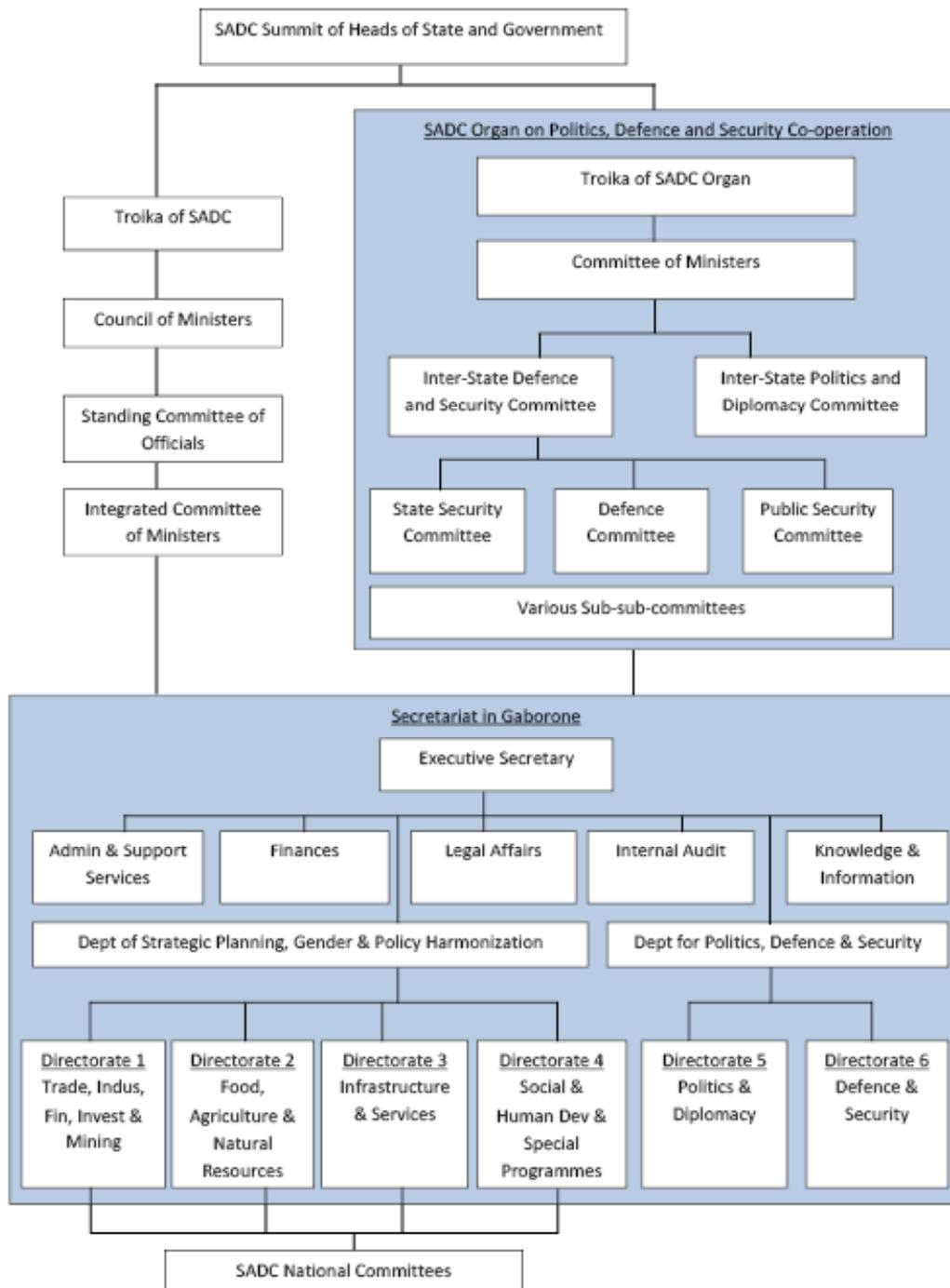
The **Organ** on Politics, Defence and Security is a mechanism for conflict prevention, conflict management, resolution, and peace-building. Its key objectives relate to military and defense issues, crime prevention, intelligence, foreign policy, human rights, and democracy. Like the Summit, the Organ's authority is exercised based on the troika system. The Summit troika and Organ troika consist of different serving heads of state, so at any given time there are six heads of state serving in the "double troika." The Summit elects the chairperson and deputy chairperson of the Organ on a yearly basis. The Organ must obtain approval from the Summit for its actions before carrying them out. This system has been in place since 2001, with the signing of the Protocol on the Organ (prior to this point, Robert Mugabe was the Organ's long-serving chairperson). Decision-making takes place by consensus (Article 8-c). 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 substructure 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 (in which case there may be some overlap with the Organ's Committee of Ministers), Economic Development, Justice, 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. It is chaired by the same country that currently chairs SADC.

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

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

Figure 2: Institutional structure of SADC



SADC National Committees (SNC) are composed of key stakeholders including “government, private sector, civil society, non-governmental organizations; and workers and employers organizations” in the SADC member states (SADC Treaty 2001: Article 16). Their main purpose is to “ensure broad and effective participation” by key stakeholders in policy formulation and implementation (SADC Secretariat 2001). The Committees are also responsible for the initiation, implementation, and monitoring of projects. Technical subcommittees deal with specific matters such as the Employment and Labour Sector (ELS) Committee (see 3.2.4 for further details).

The Tribunal is the judicial arm of SADC. Established in 1992 by Article 9 of the SADC Treaty, it consists 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 should 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 (plaintiff) has exhausted all courts at the national level. The Tribunal was not operational until 2005. It heard its first case in 2007 and has made 18 rulings since. 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)
- Incorporated companies versus member states (commercial issues)

However, the Tribunal's operations have been suspended since May 2010 (see 3.2.3 for further details).

The Secretariat is the principal executive institution of SADC and is responsible for strategic planning, coordination and management of SADC programs, and implementation of the regional strategic plan. It is also mandated with promoting cooperation with external organizations and organizing SADC's diplomatic representation (Adelmann 2009). Aside from the Tribunal (and the SADC PF), it is the only institution of SADC with a permanent institutional structure and administration at a given location. The Executive Secretary (currently Stergomena Lawrence Tax from Tanzania) 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 did not move at the same pace because "depending on the resources that countries would put in those sectors, they would either run with it or walk with it" (interview PR). Inter-sectoral linkages were weak or absent. Second, the Summit found in 2001 that 80 percent of the 470 project proposals had a strong national character, and only a minority could be considered regional projects in line with the strategic goals of SADC (SADC Secretariat 2001). In order to address these concerns, SADC adopted a more centralized approach in 2001, through which the 21 coordinating units were grouped into six Directorates, now located at the Secretariat in Gaborone:

- (1) Trade, Industry, Finance and Investment (TIFI)
- (2) Food, Agriculture and Natural Resources (FANR)

- (3) Infrastructure and Services (I&S)
- (4) Social and Human Development and Special Programmes (SHD&SP)
- (5) Politics and Diplomacy
- (6) Defence and Security

The SHD&SP receives the biggest chunk of the SADC budget (see Table 3). Health and education are seen as central to human development in the region, and most of the Directorate's energy is focused in these two areas.

Table 3: Allocation of SADC budget 2011–2012⁴

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

The **SADC Parliamentary Forum (SADC PF)** was established in 1996 as an autonomous institution. It serves as a regional platform for the national parliaments. The plenary assembly is comprised 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 parliamentarians, however, want to transform the Forum 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 Secretariat 2004). In 2003, it submitted to the Summit a motivation document titled “The Case for a SADC Parliament” along with a “Draft Agreement Amending the Treaty” and a “Draft Protocol on the SADC Parliament.” At its 2004 meeting, the Summit rejected the proposal to establish a SADC Parliament but “encouraged the continuation of the SADC PF” (SADC Secretariat 2004). According to Prega Ramsamy, former Executive Secretary of SADC, SADC did not need a regional parliament at the time, as it was still an intergovernmental organization. The PF could bring its issues to the Pan-African Parliament of the AU. 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).

⁴ Source: own compilation based on data from SADC Media Briefing on Outcome of the Meeting of SADC Council of Ministers, March 2011.

The SADC PF arguably has a vested interest in promoting democratization in the region since it encompasses parliamentarians from all parties, including the opposition. For the same reason, representatives of SADC member states view it with suspicion, hence the tension between the PF and SADC executive (Matlosa 2004). The Summit has stated that “the idea of establishing SADC Parliament may be considered in the distant future” (SADC Secretariat 2004). The topic has since remained off the agenda. In section 3, this paper will discuss the competition and collaboration between the SADC PF and SADC in relation to election monitoring.

2.5 Location and Resources

The SADC Secretariat is located in Gaborone, Botswana, while the Parliamentary Forum and Tribunal are located about 1,000 km away 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 cooperation partners (see Table 4).

Table 4: SADC budget, US \$, millions⁵

	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

Until 2003, member states made equal contributions to SADC institutions. From April 2003 onward, their contributions have taken into account the relative gross domestic products, forming the basis of a more equitable and sustainable system. Funding from development partners consistently makes up more than half of 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 an SADC Development Fund. Since taking over the SADC Chairmanship in August 2011, Angola 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, address to the SADC Summit, August 17, 2011). As of November 2013, progress is being made and the Fund is scheduled to become operational in 2014.

⁵ Source: own compilation, based on data from the SADC Media Briefing on Outcome of the Meeting of SADC Council of Ministers March 2011, as well as allAfrica.com, Lusaka Times, SADC Today, SADC Council and Summit Records.

As of February 2010, SADC staff numbered 213. There were 183 employees at the Secretariat; 13 at the Tribunal (although many have not had their contracts renewed because of the Tribunal's suspension); 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).

3. Mapping Governance Transfer by SADC

3.1 The Framework of Governance Transfer: Prescription and Policy

SADC has three key documents: the Treaty (1992; 2001), the Regional Indicative Strategic Development Plan (RISDP, 2003), and the Strategic Indicative Plan for the Organ (SIPO, 2004). The RISDP and SIPO are the broad strategy documents that cover all policy domains. We have reviewed these documents looking for standards in the realm of good governance.

More specific rules have been elaborated in issue-specific protocols. A SADC Protocol has the same legal force as the Treaty itself; it comes into force 30 days after ratification by two-thirds of SADC member states, and it is binding only for the states that have ratified it. We have reviewed all SADC protocols. Six protocols turned out to contain relevant information: the Protocol against Corruption (SADC 2001-b), the Protocol on Gender and Development (SADC 2008), the Protocol on Finance and Investment (SADC 2006), the Protocol on Mining (SADC 1997-c), the Protocol on Politics, Defence and Security Cooperation (SADC 2001-c), and the Protocol on Tourism (SADC 1998-b).⁶ Finally, we have searched secondary literature and the SADC library (both online and in Gaborone) for references to other documents that potentially include elements of governance transfer. This search has yielded a Charter (SADC 2003-a), a Code (SADC 1997-a), a Declaration (SADC 1997-b) and an Addendum to the Declaration (SADC 1998-a), which we have included in our database. As a result, the following fifteen documents have been identified as sources of governance transfer in SADC and have been scrutinized for standards and provisions related to aspects of human rights, democracy, the rule of law, and good governance (see Table 5). We will discuss the documents in chronological order.

⁶ We could not find relevant references in the protocols on Combating Illicit Drugs; Control of Firearms; Culture, Information and Sport; Education and Training; Energy; Extradition; Facilitation of Movement of Persons; Fisheries; Forestry; Health; Immunities and Privileges; Legal Affairs; Mutual Legal Assistance in Criminal Matters; Shared Watercourse Systems; Trade; Trade in Services; Transport, Communications and Meteorology; Tribunal and Rules of Procedure thereof; Wildlife Conservation and Law Enforcement.

Table 5: Governance transfer by SADC: standards and policies⁷

Year	Title	Human Rights	Democracy	Rule of Law	Good Governance
1992	Treaty of the Southern African Development Community	X	X	X	
1997	Code on HIV/AIDS and Employment in SADC	X			
1997	Protocol on Mining	X			
1997	Declaration on Gender and Development	X	X		
1998	Addendum on the Prevention and Eradication of Violence Against Women and Children	X			
1998	Protocol on Tourism	X			
2001	Agreement Amending the Treaty of SADC	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			
2004	Strategic Indicative Plan for the Organ (SIPO)	X	X	X	X
2004	Principles and Guidelines Governing Democratic Elections	X	X	X	X
2006	Finance and Investment Protocol				X
2008	Protocol on Gender and Development	X	X	X	

1992 Treaty of the Southern African Development Community (SADC)

In 1992, the heads of state and government signed the Treaty establishing the Southern African Development Community (SADC 1992) in Windhoek, Namibia. The Treaty entered into force in September 1993 after ratification by two-thirds of the member states. It defines SADC's main objectives as (1) the alleviation of poverty through development and economic growth and (2) the promotion of peace and security.

⁷ Source: own compilation. In bold, the four key documents.

The Treaty makes no reference to the concept of good governance except for the implicit objective of inclusive governance; SADC shall “encourage the people of the Region and their institutions ... to participate fully in the implementation of the programs and projects of SADC” (Article 5) and “shall seek to involve fully, the people of the Region and non-governmental organizations in the process of regional integration” (Article 23). The rule of law, human rights, and democracy are mentioned as principles that should guide SADC and its member states (Article 4), but there is no further definition of what these principles entail.

Given the roots of SADC in the struggle against colonialism and apartheid, the specific reference to human rights in the context of non-discrimination should not come as a surprise:

“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 1992: Article 6)

Regarding democracy, SADC is “[m]indful 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” (Preamble). Democracy seems to be one of SADC’s implicit objectives, as the organization shall “evolve common political values, systems and institutions” (Article 5) without specifying which political values, systems, or institutions.

In general, the standards formulated in the Treaty remain highly abstract. Member states pledge “to adopt adequate measures to promote the achievement of the objectives of SADC” (SADC 1992: Article 6), but the question of which measures would be adequate is left open. Article 22 stipulates that member states shall conclude a protocol for each area of cooperation, spelling out the objectives and institutional mechanisms for the specific area. Starting in 1992, protocols for several cooperation areas were approved (see above). However, good governance, rule of law, democracy, and human rights were not defined as areas of cooperation; therefore, no protocol was elaborated on the promotion of these principles.

The Treaty establishes a Tribunal to ensure adherence to and proper interpretation of the Treaty’s provisions and to adjudicate upon disputes (Article 16). As such, the Tribunal is an instrument for the interpretation and enforcement of the principles of the rule of law, human rights, and democracy as articulated in the Treaty. A later protocol would determine its composition, powers, functions, and procedures. For more details on the functioning of the Tribunal, see Section 3.2.

The Treaty allows the Summit to impose sanctions against a member state that “persistently fails, without good reason, to fulfill obligations assumed under this Treaty” or “implements policies which undermine the principles and objectives of SADC” (Article 33). It does not specify which type of sanctions, but theoretically enables the Summit to enact sanctions against a member state that persistently violates the principles of human rights, democracy, and the rule of law.

In short, in spite of SADC's roots in the liberation struggles and the democratization of the region, its founding treaty is limited with regard to governance transfer. It does not even include membership conditionality. It should be noted that in 1992, South Africa was not yet a member of SADC. Three months after the first truly national South African elections in April 1994, Mandela-led South Africa joined the organization and started to play a key role in governance transfer.

1997 Code on HIV/AIDS and Employment in SADC

In the 1990s, most SADC member states were severely hit by the AIDS/HIV epidemic, with grave economic and social consequences. In 1994, a group of NGOs and trade unions in South Africa and Zimbabwe started to mobilize and demand the development of a regional code on HIV/AIDS and employment because of the regional nature of the epidemic and the reluctance of national governments to take action for fear of their reputations. The initiative was taken up by the tripartite SADC Employment and Labour Sector (ELS) committee. In 1997, the Council adopted the Code on HIV/AIDS and Employment in SADC as a non-binding document (SADC Council of Ministers 1997). It has become a reference point in national codes and business codes.

The Code frames HIV/AIDS as a major health problem with employment, economic, and human rights implications. It is based on fundamental human rights principles, aiming to protect the rights of employees with HIV/AIDS and related diseases through the principle of non-discrimination between individuals with and without HIV/AIDS, and between HIV/AIDS-infected employees and employees with other life-threatening illnesses. SADC member states should coordinate their policies to combat HIV/AIDS and ensure consistency with the Code's non-discrimination principle. They should collect, share, and disseminate data on HIV/AIDS. Implementation of the Code should be monitored by the ELS and tripartite committees in the member states.

The non-binding Code was the first document in a series of policy initiatives at the regional level. The SADC Protocol on Health (approved by the Summit in 1999) made the policy recommendations contained in the Code binding for all member states. In 2003, the SADC Summit even agreed that combating HIV/AIDS should be one of SADC's main priorities (Maseru Declaration). However, in the framework of governance transfer, these policies are only relevant insofar as they extend the non-discrimination principle to individuals with health problems. For that reason, we will not discuss them further here.

1997 Protocol on Mining

The Summit adopted the Protocol on Mining in 1997 with the aim of ensuring that the exploitation of mineral resources would benefit the Southern African people and contribute to raising their living standards (SADC 1997-b). Given the appalling working conditions in the mining sector, the lack of attention to labor conditions in the protocol is striking. In Article

2, the Protocol stipulates that “Member States shall promote economic empowerment of the historically disadvantaged in the mining sector.” In Article 1, “historically disadvantaged” is defined as disabled people, women, and indigenous people. The Protocol does not contain measures regarding the promotion of this standard.

1997 Declaration on Gender and Development (GAD)

The “rebirth” of SADC in 1992 coincided with preparations for the UN Fourth World Conference on Women in Beijing in 1995. Southern African women’s organizations and women from government gender units set up a regional task force to represent the demands of the region in Beijing. The SADC Secretariat developed a policy document to stipulate how gender issues could be incorporated into regional policies. This SADC Gender Programme was approved by the Council of Ministers. Subsequently, in September 1997, the SADC Summit signed the Gender and Development Declaration (SADC 1997-a) to endorse the Council’s decision on the gender program. The Declaration is a brief, non-binding document.

The Declaration recognizes gender equality as a fundamental human right. It elaborates on Article 6 of the SADC Treaty, the principle of non-discrimination on the basis of gender following the standards set in relevant UN documents.⁸ SADC member states should ensure the “eradication of all gender inequalities in the region” and protect and promote the human rights of women and children. The reproductive and sexual rights of women and girls are considered human rights and should be recognized, protected, and promoted. In 1997, the protection and promotion of sexual rights was a new issue worldwide, and its early acceptance by SADC can be explained as a reaction to the HIV/AIDS epidemic. In Sub-Saharan Africa, women are at a greater risk of HIV infection than men because of their economic and cultural subordination (Klugman 2000: 147). Thus, gender equality in terms of sexual rights is seen as crucial in successfully addressing both poverty and HIV/AIDS.

Member states shall repeal and reform “all laws, constitutions and social practices which still subject women to discrimination” and enact “gender sensitive laws” (Article 8). This is interesting because the Declaration aims to reform not only written sources of discrimination but also discriminatory “social practices.” Moreover, the enactment of gender-sensitive laws is a far-reaching commitment that clearly reflects the Beijing concept of gender mainstreaming, in the sense that gender effects must be taken into account in every domain. The Declaration commits member states to adopt an integrated approach to address the issue of violence against women; to that end, the mass media should “disseminate information and materials in respect of the human rights of women and children” (SADC 1997-a). The Declaration contains a single concrete target, namely for the representation of women in politics and decision-making, setting a minimum of 30 percent by 2005.

⁸ The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Nairobi Forward Looking Strategies, the Africa Platform of Action, the Beijing Declaration, and the Beijing Platform for Action.

As for the promotion of these standards, the Declaration requires a regional institutional framework for mainstreaming gender issues into all SADC activities through the involvement of governmental and non-governmental actors at the regional and national levels. The SADC Secretariat should act as coordinator. To this effect, the Declaration establishes a Gender Unit consisting of two officers in the Secretariat, as well as Gender Focal Points in all sector secretariats (which were still dispersed among all member states until the treaty revision in 2001). Their task is “to ensure that gender is taken into account in all sectoral initiatives, and is placed on the agenda of all ministerial meetings” (SADC 1997-a). The Declaration makes a standing committee of ministers for gender affairs politically responsible for gender issues at the regional level. The ministers shall receive advice from an advisory committee consisting of one representative from government and one member from NGOs in each member state.

1998 The Prevention and Eradication of Violence Against Women and Children. An Addendum to the 1997 Declaration on Gender and Development by SADC Heads of State and Government

After the adoption of the Declaration, a SADC Conference on the prevention of violence against women was convened by the Ministers of Justice, Ministers of Gender/Women’s Affairs and representatives of NGOs. At this conference, a series of specific measures were proposed to tackle the problem of violence against women. The measures were collected in a three-page document that gained approval by the Summit in September 1998 (SADC 1998-a). The Addendum is an integral part of the 1997 Gender and Development Declaration.

Violence against women and children is condemned here as a “serious violation of fundamental human rights.” The Addendum mainly addresses the national level and calls upon the member states to adopt a series of legal, social, economic, cultural, and political measures to provide services (legal aid, health, and statistics) and allocate the necessary resources. SADC activities are broadly defined as an obligation to adopt “policies, programmes and mechanisms to enhance security and empowerment of women and children” and monitor their implementation. SADC is also asked “to give urgent consideration” to the adoption of legally binding SADC instruments on “Prevention of Violence against Women and Children.” Before the end of the year 2000, SADC should convene a regional conference to review progress made in the implementation of the measures by the member states.

In order to make tangible the commitments contained in the Declaration and the Addendum, the SADC Gender Unit submitted a policy framework in 1999, which was then adopted by the SADC ministries responsible for Gender/Women’s Affairs: the SADC Gender Plan of Action.

1998 Protocol on Tourism

In 1998, the member states adopted the Protocol on Tourism, which aims “to use tourism as a vehicle to achieve sustainable social and economic development” (SADC 1998-b: Article 2). The protocol states in Article 3.7 that member states “shall promote a culture of human rights, gender sensitivity and be responsive to the requirements and involvement of people

with disability.” In this article, three disparate concepts have been lumped together without further elaboration. The protocol does not contain any instruments to promote the standards contained in the article or fulfill the more “technical” requirement of ensuring access for people with disabilities. It introduces the novel and potentially far-reaching idea of promoting “gender sensitivity” without exploring what this would entail in the context of tourism (e.g., a ban on sex tourism?), and declines to elaborate on the noble idea of promoting a “culture” of human rights. It does not specify what member states should do.

2001 Agreement Amending the Treaty of SADC

In March 2001, the Council recorded with dismay that more than four years after the decision to create the Organ, SADC was still unable to make it fully operational. This failure was seen as hampering SADC’s abilities to “address the ongoing instability and conflicts in the region in a coordinated and coherent manner” (SADC Secretariat 2001). The Treaty was amended in 2001 mainly to settle the dispute over relations between SADC and the Organ. In addition, the treaty revision process was used as an opportunity for major institutional reform. In order to improve SADC policymaking capacities, the decentralized sectoral units in the different capitals were reorganized into directorates under the SADC Secretariat and all moved to Gaborone. The Agreement Amending the Treaty of SADC was signed by the heads of state and government at an extra-ordinary Summit meeting on August 14, 2001 in Blantyre, Malawi, and entered into force on the same day (SADC 2001-a).

To the original treaty’s rather vague objective that SADC shall aim to “promote common political values, systems and other shared values,” the new agreement adds the modifier, “which are transmitted through institutions which are democratic, legitimate and effective” (Article 5). Also, democracy becomes an explicit objective; SADC shall “consolidate, defend and maintain democracy” (Article 5), though the document does not specify what it means by “democracy” or how SADC will defend it. The idea of more inclusive governance, which was touched upon in the original treaty, gains strength with the establishment of a new institution, the SADC National Committees (SNC). These consist of key stakeholders including government, the private sector, civil society and non-governmental organizations, and workers’ and employers’ organizations, and shall provide input on the formulation of SADC policies and oversee their implementation (Article 16).

2001 Protocol on Politics, Defence and Security Co-operation

Article 9 of the amended treaty established the Organ as one of SADC’s institutions. This Protocol specifies its functions and procedures. Given the history of the Organ, it is no surprise that the Protocol focuses on coordination between the Organ, its chairperson, the troika, and the ministerial committees on the one hand and SADC institutions on the other. The Protocol was approved by the Summit on August 14, 2001 in Blantyre (SADC 2001-c). It became legally binding in the states party to it when Zimbabwe ratified the protocol in 2004 as the ninth

member state. Angola and DRC have signed but not ratified; Madagascar has not signed or ratified.

The general objective of the Organ is to promote peace and security, and in this sense it embodies SADC's second objective next to poverty eradication. This objective includes protecting the people of the region against instability arising from the breakdown of law and order, promoting the development of democratic institutions and practices, and observing universal human rights (Article 2). The standards prescribed primarily center on the strict respect for sovereignty, non-interference, and non-aggression: "Member states shall refrain from the threat or use of force against the territorial integrity or political independence of any state" (Article 11). Regarding human rights standards, the protocol refers to the standards in the Charter and Conventions of the AU and UN (Article 2-g).

The Organ may seek to resolve an intra-state conflict in case of "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" or of "a military coup or other threat to the legitimate authority of a State" (Article 11-2). In Article 11-3, the Protocol outlines the methods and procedures to be utilized in such cases, ranging from preventive diplomacy, negotiations, conciliation, mediation, good offices, and arbitration to adjudication by an international tribunal. In these situations, the Organ shall seek to obtain the consent of the disputant parties to its mediation efforts. If peaceful means are unsuccessful, the Chairperson of the Organ "may recommend to the Summit that enforcement action be taken," but "the Summit shall resort to enforcement action only as a matter of last resort and, in accordance with article 53 of the UN Charter, only with the authorization of the UN Security Council" (Article 11-3).

The Organ was told to establish an early warning system to monitor early signs of conflict and negative socioeconomic developments in the region "in order to facilitate timeous action to prevent the outbreak and escalation of conflict" (Article 11-3-b). A team of experts developed a set of Insecurity and Conflict Indicators, which was approved by the ISDSC in July 2006. The launch of the Regional Early Warning Center (REWC) was delayed for some time by limited human capacity and financial resources, but eventually, in July 2010, Mozambican President Armando Guebuza conducted its official inauguration (Daily News, 14 July 2010). The REWC is linked to the National Focal Points created in all member states with the aim of conveying information to the REWC on developments within each state.

The Protocol does not call for the establishment of the SADC Standby Force (SSF), which formally falls under the African Union's framework of regionally based peace-keeping forces as the building blocks of an African Standby Force. However, the Memorandum of Understanding (MoU) establishing the SADC SSF refers to this protocol and thereby gives it a formal place within SADC structure. The SADC Summit agreed in 2004 to establish a SADC peacekeeping force, predating the AU's initiative by several years (Cilliers and Malan 2005: 12). In 2005, the SADC Council of Ministers decided that the SSF would "consist of a Standby Brigade (SADCBRIG)

comprising of military and a SADC Civilian Police (SADC CIVPOL) as approved by the Organ Troika” (SADC Secretariat 2005). The SSF would 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 SADC BRIG and three for SADC CIVPOL had been fully deployed to the Secretariat (Report on the Activities of the Organ 2005/2006, SADC Secretariat 2006, Annex). As of October 2010, seventeen of eighteen posts had been filled.

The SADC BRIG was officially launched at the SADC Summit meeting on August 17, 2007. Article 5-d of the MoU states that the SADC BRIG should protect human rights. It “shall only be deployed on the authority of the SADC Summit” (Article 7). Hendricks and Musavengana suggest that it would be problematic if the sole authority to deploy force rested with the SADC Summit; since it may be difficult for the Summit to reach a consensus on whether to deploy the SSF, they argue, in the interests of good governance, this authority should reside with the AU Peace and Security Council (2010: 24). Although the Protocol does not actually state it explicitly, previous incidents and the salience of the norm of nonintervention in the region’s political culture suggest that military interventions will only take place at the invitation of a recognized head of state, with the aim of upholding a government. The practice of (non)intervention and the functioning of the Early Warning System will be discussed in section 3.2.

2001 Protocol against Corruption

The SADC Protocol Against Corruption was adopted by the SADC Heads of State at the August 2001 Summit (SADC 2001-b). It was the first sub-continental, anti-corruption treaty in Africa. The Protocol was signed by all fourteen member states (Madagascar was not yet a member). It entered into force on July 6, 2005, thirty days after its ratification by two thirds of the member states, and became binding for all member states that had ratified it (all except Madagascar and the Seychelles).

For the first time, the concept of “good governance” appears in an SADC document. In the Preamble, SADC Heads of State acknowledge that corruption “undermines good governance which includes the principles of accountability and transparency.” Corruption

“includes bribery or any other behaviour in relation to persons entrusted with responsibilities in the public and 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.” (Article 1)

The Protocol’s objective is to eradicate corruption in the public and private sectors. It establishes a regional Committee with state representatives to collect information, organize training programs, provide assistance to member states, and monitor the implementation of the Protocol (Article 11). Implementation itself is a purely national affair, which might be explained by the high level of corruption in SADC member states and their fear of being shamed. Member

states have to develop “standards of conduct for the correct, honourable and proper fulfillment of public functions as well as mechanisms to enforce those standards” (Article 4-a). They must adopt measures ensuring the transparency, equity, and efficiency of systems of government hiring and procurement of goods and services (Article 4-b). The concern with increasing input legitimacy is visible in the commitment by member states “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” (Article 4-i).

2003 Regional Indicative Strategic Development Plan (RISDP)

In the course of reviewing the operations of its institutions, a process that began in 1999, SADC increasingly recognized the necessity of an overall regional strategy. The SADC Secretariat took the lead, seconded by national officials, and several drafts were discussed at regional workshops and by the newly established SADC National Committees. In 2003, the Summit (SADC 2003-b) endorsed the RISDP. The RISDP is not a legally binding agreement, but “it enjoys political legitimacy” (Tralac 2012). It offers a broad framework and indicates the topics for which a protocol should be negotiated among all stakeholders and adopted by the Summit. The RISDP refers to 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 RISDP’s launch in 2004, Benjamin William Mkapa, then president of Tanzania and Chairperson of SADC, outlined how sustainable economic growth alone is not sufficient to reduce poverty. Investment in human capital is needed, including investment in healthcare, education, and gender equality, along with good governance, “which calls for participation, transparency, accountability and predictability, facilitates effective formulation and implementation of policies as well as sound macroeconomic management” (SADC Secretariat 2004). Good governance is considered instrumental for the effective functioning of SADC and the goal of poverty reduction. The 163-page document makes many references to “good governance” as one of the “key integration and development enablers.” Business comes into focus as well, since “good political, economic and corporate governance are prerequisites for sustainable socio-economic development” (SADC 2003-b: 4-5). The RISDP also defines bad governance, including unequal distribution of political power, corruption, lack of transparency and accountability, and inefficient bureaucracies (SADC 2003-b: 17). Upholding the rule of law (a “transparent legal system”) also stands out as a necessary condition to attract investments (SADC 2003-b: 78). Public resource management should become more accountable and transparent in order to attract investment (SADC 2003-b: 75). The RISDP asks member states to implement NEPAD standards in accounting and auditing—issues that are further elaborated in the 2006 Protocol on Finance and Investment.

Regarding human rights, the RISDP pays extensive attention to women’s rights, repeating the aims of the 1997 Declaration on Gender. Gender equality is predominately presented as instrumental to achieving economic development and poverty eradication. SADC calls upon

member states to integrate a gender perspective into all national policies, programs, and activities (gender mainstreaming), and to adopt specific measures to address the constraints that women face (affirmative action). The RISDP itself applies gender mainstreaming, as gender issues pop up in all policy areas including mining, energy, trade, fisheries, and water management, to name a few.

Democracy is highlighted in this document as an essential part of the region's "promising future." Effective, legitimate, and democratic institutions are considered necessary to promote shared values and enable integration and development (RISDP 2003: 4-5). In the RISDP, the promotion of democracy does not center on elections (a domain of the Organ) but rather on the participation of stakeholders in decision-making and the involvement of civil society in "community building at both regional and national levels" (SADC 2003-b: 6; 56). 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." (SADC 2003-b, Acknowledgements)

One drawback to this participatory approach is that the classic checks and balances between the legislative and the executive are distorted, as parliaments must remain at a distance. National parliaments have no 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 should take place through a multilayered participatory approach. The RISDP provides the broad framework; the stakeholders will draw up detailed implementation plans for each program, "clearly spelling out issues such as who the different actors are, implementation and management roles, benchmarks, and sustainability" (SADC 2003-b: 84), as well as targets and timeframes. The Secretariat will coordinate and monitor implementation at the regional level, while the SADC National Committees (SNCs) will take charge at the national level. These committees are tasked with ensuring broad and inclusive consultations and achieving consensus on SADC policies. The RISDP explicitly addresses the private sector and NGOs as stakeholders (SADC 2003-b: 88). At the regional level, the Summit and the Council of Ministers—through the Integrated Committee of Ministers—will monitor the process using the progress reports from the Secretariat, and provide political and strategic guidance.

With respect to the actual adoption of measures, the RISDP expresses concern at the lack of enforcement mechanisms, benchmarks, and concrete targets at the regional level, but it does

not propose the introduction of new ones. 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” (SADC Secretariat 2003-b: 102). In the final version, this fear is not voiced. Instead, there is disappointment in the lack of progress so far and a concern about the weakness of good intentions without clear implementation measures.

2003 Charter on Fundamental Social Rights in SADC

Article 5-2-a of the 1992 SADC Treaty states that SADC “shall harmonise political and socio-economic policies and plans of Member States” in order to enhance the standard of living for the Southern African people. The Employment and Labour Sector (ELS)⁹ should elaborate the necessary policy measures to be enshrined at a later date in a new Protocol. The SADC Protocol on Trade (1996) did not deal with employment and labor issues, despite its obvious links to the subject. The powerful Congress of South African Trade Unions (COSATU) expressed its disappointment at this omission (Interview AC). The ELS then opted for a charter modeled on the European Social Charter (which was approved by the Council of Europe in 1961) instead of a protocol (Nkowane 2007: 44). A protocol is legally binding, but a charter is not and does not require ratification by member states. The Charter was the outcome of a drafting process that included experts from the ILO and representatives from trade unions, employers, and governments. It was formally adopted at the Summit in 2003 and entered into force on the same day (SADC 2003-a; Nkowane 2007: 43). Angola, Botswana and Madagascar have not signed it. Employment and Labour is the only SADC sector with a Charter instead of a protocol. In order to get it on the same “wavelength” as the other sectors, there is pressure to change the Charter’s status into a Protocol (Interview AC).

The regional codification of social and labor rights became necessary because an awareness had developed that low labor standards have a negative impact on economic productivity and efficiency; one of the Charter’s key terms is “(increased) productivity” (Interview AC). Also, the Charter should prevent the weakening of workers’ rights. Due to the competition to attract foreign investment, a race to the bottom of social rights has emerged, “beggar-thy-neighbour investment incentive competition” as Zampini calls it (2008: 94).¹⁰ COSATU warned against eroding the “gains that we made in South Africa” if companies relocated to Lesotho, Mozambique, or Swaziland to avoid progressive, South African labor laws (COSATU 2003). 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,

⁹ The ELS is the tripartite forum where labor ministers, employers, and trade unions meet to discuss the harmonization of labor standards and map out common strategies to be used in international forums such as the International Labour Organisation (ILO).

¹⁰ In the Namibia Ramatex case (1995–2008), SADC member states were competing with each other for foreign investment and lost thousands of jobs (for details, see Zampini 2008: 99).

the Philadelphia Declaration and other relevant international instruments. ... Member States undertake to observe the basic rights referred to in this Charter.” (Article 3)

Listing the standards laid out in ILO Conventions, the Charter specifies social and economic rights for specific groups of workers, such as women (Article 6), children (Article 7), workers who have reached retirement age (Article 8), and people with disabilities (Article 9). 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 11-c, “the conditions of employment for every worker in the Region shall be stipulated in national law, a collective agreement or a contract of employment.” Regarding classic socioeconomic rights, “freedom of association, the right to organise and collective bargaining” (Article 4) should be guaranteed, and industrial and workplace democracy should be promoted by the member states (Article 13). Interestingly, these rights “shall apply to all areas, including export processing zones” (Article 4), although if implemented, this could reduce the attractiveness of the region to foreign investment.

The Charter does not contain deadlines or targets. SADC does not plan to develop its own standards or EU-style framework directives to harmonize occupational health and safety regulations. An often recurring formula in the Charter reads: “Member States shall create an enabling environment so that ...” This provision is vague, not calling for specific measures or instruments. However, the Charter is not completely devoid of meaning; it creates ongoing regional and national tripartite consultation processes on policy formulation and implementation. Based on consensus among all stakeholders, the process is mainly driven by workers’ representatives (Interview AC) through the Southern African Trade Union Coordination Council (SATUCC) in Gaborone, near SADC Headquarters. In addition, the ILO and the SADC Secretariat cooperate intensively (Zampini 2008). Responsibility for the implementation of the Charter lies with the national tripartite institutions and regional structures (Article 16-1). They shall “prevent non-implementation” and “submit regular progress reports to the Secretariat” (Article 16-2). Their effectiveness depends, of course, on the strength of the employers’ and workers’ organizations, as evidenced in the contrast between weak unionism in some countries (Lesotho, Zambia) and strong unionism in others (South Africa, Zimbabwe) (ILO 2008).

The Charter instructs member states to “take appropriate action to ratify and implement” the ILO conventions that they have already decided to prioritize. Every year, the ELS produces a table highlighting conventions not yet ratified and uses peer pressure to motivate the laggard states (Interview AC). The next step should 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 (Article 5). So far, no uniform instrument exists to assess member states’ performances, but the ELS has established a committee in charge of its development. A mechanism of this kind will enable the ELS to “know what is happening in the member states.” It will also help the member states “to support each other at the ILO

level” and avoid harassment at the annual ILO conferences because of non-compliance with the ILO standards (Interview AC). If the instrument is approved, it will facilitate yearly assessment. For the time being, no comprehensive monitoring occurs, but the ELS does contribute to the SADC progress report every year.

The main challenges 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. Working together, the ILO and the SADC Secretariat organize training sessions for the tripartite partners at the ILO Training Centre in Italy.

2004 Strategic Indicative Plan for the Organ

Not long after the Protocol on Politics, Defence and Security Co-operation was signed in 2001, a working group convened to draw up a plan to implement the Protocol’s objectives. The Strategic Indicative Plan for the Organ (SIPO), a non-binding 50-page document, was endorsed by the Summit in August 2003 (SADC 2004-b). Its core goal is “to create a peaceful and stable political and security environment through which the region will endeavour to realize its socio-economic objectives” (SADC 2004-b: 6). The SIPO aims 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).

The SIPO specifies the actions to be taken (without specifying by whom) to realize the objectives formulated in the Protocol. In the area of politics, Objective 2 “to promote ... the evolution of common political values and institutions” translates into strategies such as the promotion of public debates and awareness activities vis-à-vis the achievements of SADC, the introduction of SADC-related topics into school curricula, and the promotion of cultural and sporting events. The Hashim Mbita Project (see section 2), which records the liberation struggles of the region, is an example of one such activity. Regarding Objective 4, “to promote the development of democratic institutions and practices by State Parties and encourage the observance of universal human rights,” SIPO calls for the establishment of common electoral standards throughout the region, including a code of electoral conduct, and the establishment of an SADC Electoral Commission. These requests have resulted in the Principles and Guidelines Governing Democratic Elections (SADC 2004-a), including a code of conduct (see below).

In the State Security Sector, Objective 1 “to protect the people and safeguard the Region against instability arising from the breakdown of law and order” translates into the very broad strategy “to promote the observance of human rights in security related issues.” In the Public Security Sector, SIPO also mentions combating human trafficking and combating and preventing rape, abuse, and violence against women and children. SIPO recommends developing a “culture of observance of the existing international provisions on Human Rights” (SADC 2004-b: 40). SIPO also proposes establishing a Regional Commission for the promotion of and respect for human rights, but this recommendation has not been followed, probably because of its potential overlap with the AU HR Commission. SIPO expresses misgiving about the activities of law enforcers—a

reasonable concern given the 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 become the norm. Defense forces should be professionalized through training programs, and civilian–military relations should be improved (although SIPO does not elaborate exactly how they might be improved).

Finally, regular reporting should occur, including a review of implementation and provision of information to stakeholders on a regular basis (SADC 2004-b: 45–46).

2004 Principles and Guidelines Governing Democratic Elections

It is often observed that after the political transitions of the 1990s, SADC countries adopted the formal attributes of democracy without realizing substantive democracy. The danger of “electoralism,” where democracy is equated with the holding of elections, lurked in the background (Matlosa 2004). New steps were necessary for the consolidation of democracy, which SADC pursues both as a goal in itself (political participation as such is considered a good) and for instrumental reasons (a stable democratic order is seen as a prerequisite for sustainable economic growth) (SADC 2003-b). However, the causal relationship between democracy and economic growth has been reversed by research showing that a higher level of economic development in 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 countries¹¹ often seem to exacerbate conflicts and political instability (Breytenbach 2002). Therefore, it is SADC’s role to “anticipate these [post-election] conflicts and put in place effective institutional mechanisms for constructively managing them” (Matlosa 2004: 10).

Against this backdrop, the Summit adopted the SADC Principles and Guidelines Governing Democratic Elections (Principles, SADC 2004-a) in 2004. The document reflects the SIPO’s (SADC 2004-b) commitment to establishing common electoral standards in the region. The document is not binding and has not required ratification by the member states.

Strikingly, in the years preceding the adoption of the Principles, two similar sets of electoral standards had already been produced in the region: the SADC Parliamentary Forum’s Norms and Standards for Elections in the SADC Region (2001) and the Electoral Institute for Sustainable Democracy in Africa (EISA) and Electoral Commissions Forum’s Principles for Election Management, Monitoring and Observation in SADC (2003). EISA is a not-for-profit

¹¹ Angola, DRC, 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, while the other countries (Botswana, Mauritius, Namibia, and Zimbabwe) are multi-ethnic with one group as the majority (Breytenbach 2002).

organization established in 1996.¹² The Electoral Commissions Forum of SADC (SADC-ECF) is an independent entity that facilitates cooperation among the electoral authorities of the SADC member states. It was launched in July 1998 and is governed by a Constitution that 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). The EISA/ECF principles were a joint initiative by the civil society organizations and the electoral commissions.

The SADC PF document seems to have directly motivated SADC to produce its own document (Interview PR). There are no major contradictions between the three documents, but they have not been combined in a single document because they have different constituencies. Given 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 at the regional level (Matlosa 2004). On election observation, the SADC Principles are less comprehensive than the SADC PF document, and on the technical issue of elections management, they are less comprehensive than the EISA/ECF document. The main value of the SADC Principles is that they represent the first time SADC heads of state and government have committed themselves to these principles. In spite of its title, the document elaborates more thoroughly on elections observation than elections management. Unfortunately, the Principles do not address institutional aspects of elections, such as the relative merits of first-past-the-post (FPTP) and proportional representation (PR) systems. This is unfortunate because in deeply divided societies, the aim of political stability would warrant promoting the PR system, where opposition parties are ensured participation. In FPTP systems, legitimate opposition is “sidelined not by unfree elections, but by less representative electoral procedures” (Breytenbach 2002: 90).

The Principles are broadly aligned with those articulated in the African Union Declaration on the Principles Governing Democratic Elections in Africa, adopted by the 2002 AU Summit. The first component of the SADC Principles deals with the conduct of elections. It contains ten principles aimed at ensuring equal opportunities for all stakeholders, whether for political parties before and during the elections (freedom of association, transparent funding, access to media, impartiality of the judiciary, and electoral commissions) or 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 address the situation after the elections (acceptance of election results proclaimed free and fair by all parties, possibility of challenging results). Key to defending these rights is the independence of the judiciary and the impartiality of the electoral institutions. Member states holding elections are responsible for ensuring the peace and security of all.

¹² Financially supported by local, regional, and international funding organizations (homepage EISA, <http://www.eisa.org.za/EISA/donors.htm>).

To enforce the observance of these principles, SADC Election Observer Missions (SEOMs) should be deployed. According to Article 3-1,

“In the event a Member State deems it necessary to invite SADC to observe its 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 body responsible for organizing observer missions. Upon request by the member state, the chairperson of the Organ officially constitutes the Mission (Article 3-2). The mission should be deployed two weeks before the elections. The Principles include a code of conduct for SADC election observers, along with a list of their rights and responsibilities (accept no gifts or favors, strict impartiality, produce a report within thirty days). Member states should establish impartial, national electoral bodies and competent legal entities including effective constitutional courts to arbitrate in the event of disputes (Article 7-3). The Principles do not indicate what to do when elections are deemed unfair. The next section of this paper discusses the actual conduct and outcomes of SEOMs.

2006 Finance and Investment Protocol (FIP)

SADC aims to achieve economic development through the establishment of a regional common market, which implies a harmonization of policies in the crucial domains of finance and investment. The Protocol was subject to lengthy negotiations between 1998 and 2006, when it was finally signed by all member states (SADC 2006). It entered into force on April 16, 2010 after nine member states had ratified. The comprehensive protocol (112 pages including annexes) is only relevant to the topic of this report because it mentions in Annex 2 (on macro-economic convergence) that the signatories are “DEDICATED to good governance, accountable and transparent public resource management” (Protocol, Annex 2, 37). The Annex does not further specify standards or policies related to this topic.

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

In 2005, for the tenth anniversary of the Beijing World Conference on Women, the Gender Unit of the SADC Secretariat conducted a “Gender Audit” to measure progress in implementing the Gender and Development Declaration (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” (Gender Links 2008). It also called for new binding instruments. If adopted, a protocol would oblige member states to amend their laws in order to ensure equal rights for women across a wide range of issues. Following the Gender Audit, the Council approved upgrading the GAD into a Protocol, but the “Summit decided it was not as yet an opportune time” to do so (SADC Secretariat 2006). Nonetheless, Magdaline Mathiba-Madibela, head of the Gender Unit, started developing a Draft Protocol in collaboration with member states and other key

stakeholders such as legal and gender experts. Sixteen regional and national NGOs¹³ working to promote women's rights in the region established 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. At the Summit in August 2008, the heads of state and government of thirteen member states (except Botswana and Mauritius) signed the Protocol (SADC 2008). In October 2011, South Africa ratified the protocol as the ninth member state, providing the two-thirds majority needed for it to enter into force.

The substantive content of the Protocol is not new. It reiterates women's rights as they stand 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), and the previous SADC Declaration on Gender and Development. 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 with regard to paternity leave, and they are presented not only as perpetrators but also as victims of rights violations. The Protocol again (see GAD 1997) defines sexual and reproductive rights as a fundamental human right. It warns that "traditional norms, including social, economic, cultural and political practices which legitimise and exacerbate the persistence and tolerance of gender based violence" must be eliminated (Article 21). Reflecting UN Resolution 1325, the Protocol addresses human rights abuses 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" (Article 28).

New here is the number of time-bound commitments to achieving key objectives. The Protocol contains fourteen targets to be met by 2015. The position of women in decision-making is one of the key areas. In relation to political decision-making, the 30 percent quota is replaced by a demand that "States Parties shall, by 2015, ensure equal participation of women and men in policy formulation and implementation of economic policies" (Article 15). 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" (Article 13). Referring to UN Resolution 1325, "States Parties shall endeavour to put in place measures to ensure that women have equal representation and participation in key decision-making positions" in conflict resolution and peace-building processes by 2015 (Article 28).

The link between gender equality and poverty eradication emerges in Article 18, which dictates 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; Article 19 also touches on this connection in its treatment of discrimination in wage employment. Each state is obliged to institute a legislative framework to promote gender equality and amend or repeal discriminatory laws (Article 34). They should institute dispute resolution and adjudication facilities to enforce gender equality and exercise sanctions against discrimination.

¹³ At present, there are forty member organizations.

Gender equality and equity shall be included in the constitutions of the member states (Article 4). Legislation and other measures should be adopted to ensure equal 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 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.

Regarding mechanisms for implementation, in addition to the strict deadlines set in many articles, the Protocol advocates affirmative action measures to attain the 50 percent target in decision-making positions in the public and private sectors by 2015 (Article 12), as well as time-use studies to map the multiple tasks of women (Article 16) and public awareness campaigns (Article 12). Implementation of the Protocol is closely monitored by the Gender Alliance. There are no incentives for member states to comply except the risk of being shamed in the annual SADC Gender Protocol Barometer, which contains the SADC Gender and Development Index (SGDI) and the Citizen Score Card (CSC), where citizens rate their government.

Summary: the SADC framework for Governance Transfer

From its early days in 1992, SADC has engaged in governance transfer because of its roots in the struggle for majority rule. In the founding documents, democracy, rule of law, and human rights are cited as fundamental principles. Democracy becomes a tangible standard in the 2001 revised treaty, and its promotion gains traction in 2004 with the adoption of the SIPO and the ensuing principles and code of conduct for election observation. The rule of law is referred to but not actively promoted, arguably because it is seen as falling under the domain of the sovereign state. Non-discrimination and protection of human rights are consistently integrated into all documents from the beginning. SADC pays special attention to discrimination on grounds of gender and HIV status. The concept of good governance surfaces for the first time in 2001. It seems to be the least embedded and most “alien” principle, mainly linked to financial and development issues where the interests of the donor and business communities have to be satisfied.

Policies promoting the fundamental principles are cast in instrumental terms that highlight their importance for achieving a reduction in poverty (women’s rights, economic and social rights, position of people with HIV/AIDS, reduction of corruption), attractiveness of the region for foreign investment (good governance, accountability), and an increase in political stability (democracy, rule of law). Quantifiable targets have only been formulated in terms of gender equality, mainly linked to UN reporting requirements. There is no enforcement mechanism except for naming and shaming. When it comes to socioeconomic rights, SADC has opted for delegation of implementation to a multilevel system of tripartite committees, including representatives from governments, employers, employees, and other stakeholders (NGOs). These committees produce monitoring reports and formulate new policy documents in cases

where they find implementation to be lacking. There are no enforcement mechanisms other than the exchange of best practices. The SADC Secretariat plays a central role in this multi-level system. When it comes to political rights, different mechanisms have been developed, including an early warning system, diplomatic and even military interventions (as a matter of last resort and only with the authorization of the UN Security Council), and a dispute settlement mechanism (the Tribunal). The Organ plays a key role in this last area. The next section will further discuss the effectiveness of these instruments.

3.2 Measures of Governance Transfer: Adoption and Application

Compared to the ambitious frameworks for governance transfer developed by SADC, the actual adoption and application of measures have been disappointing. The greatest success so far has been in the area of election monitoring (3.2.1). Of the different types of instruments identified by Börzel et al. (2011), SADC employs coercive measures such as diplomatic and military interventions (3.2.2) and litigation (3.2.3). Diplomatic interventions are sometimes accompanied by the threat of sanctions, although this measure is not consistently employed. Instruments for capacity-building, persuasion, and socialization have been grouped together (3.2.4). We find little evidence of financial or technical assistance from SADC; most regional projects related to governance transfer are funded and often staffed by external donors. However, SADC does provide fora for dialogue and exchange of best practices.

3.2.1 Electoral Observer Missions

SADC has conducted Election Observer Missions (SEOMs) since 2004, when the Protocol on Politics, Defence and Security Cooperation became legally binding after ratification by nine member states and the provisions for conducting SEOMs came into effect. Appendix 3, Table 1 offers an overview of the elections for which data was available and the type of statement or report that was released. Between April 2004 and March 2012, 28 elections took place across the SADC region. SADC appears to have observed all of these. In half of the cases we were able to locate a report by the SEOM;¹⁴ however, they are all “preliminary reports” issued immediately after the election. SADC never makes these available on its website, but they are sometimes published by newspapers or civil society groups.¹⁵ We were unable to locate reports for 14 cases. Six of these were from the early days of SADC election observation and perhaps indicate certain teething problems in the effective functioning of missions. Indeed, SADC records indicate that the first two missions, to South Africa and Malawi in 2004, essentially served as pilot missions (SADC Secretariat 2004). It is possible that no report was actually produced in these cases. In the other eight cases without a report, it was suggested to us that reports may have been “lost” during the processes of institutional overhaul and relocation to the new headquarters in 2009 (official at SADC Secretariat, personal communication). However, this seems an unlikely explanation for

¹⁴ When approached, the SADC Organ supplied us with a few but not all of the missing preliminary reports.

¹⁵ We found no trace of the final reports, which according to the Principles and Guidelines should be produced within thirty days of the election. It is likely that these are never actually drafted (EISA official, personal communication).

the more recent cases, especially the November 2011 elections in the DRC, for which the absence of a report more likely derives from political reasons than administrative error.

SADC endorsed all elections for which we found reports except for the highly disputed elections in Zimbabwe in June 2008 (see below). Irregularities and shortcomings are observed in all reports, 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” (SEOM Botswana 2009). We have examined the reports in several ways: first, by holding them up to the SADC Principles and Guidelines to see whether observers actually use the principles as a yardstick; second, by viewing the reports together over time, to see whether the focal points change; and third, by comparing the reports to standard democracy scores and reports by other regional election observer missions.

Referral to the SADC Principles and Guidelines (2004)

The SADC document formulates nine criteria (Article 4) upon which the evaluation must be based:

- (1) Constitutional and legal guarantees of freedom and rights of the citizens
- (2) Environment conducive to free, fair, and peaceful elections
- (3) Non-discrimination in voter registration
- (4) Existence of updated and accessible voters’ roll
- (5) Timely 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) Votes counted at polling stations
- (9) Establishment of the mechanism to assist the planning and deployment of electoral observation missions

There seems to have been a shift in the way that SEOMs refer to the Principles and Guidelines. Up until 2009, the SEOMs used the Principles as their base of reference, but they do so in general terms. For example, during the 2005 elections in the DRC, the preliminary report mentioned the voter registration process as an area that required improvement, but it made no reference to the specific SADC principle at hand (SEOM DRC 2006). The mission’s statement on the 2009 elections in Malawi contains the first explicit reference to the SADC Principles by declaring that the Malawi elections complied with them (SEOM Malawi 2009). The following year, the preliminary report from the 2010 Tanzania elections explicitly formulated the criteria on which the SEOM based its evaluation. In the statement on the Seychelles elections in May 2011,

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.” (SEOM Seychelles 2011)

Thus, we conclude that the Principles serve increasingly as specific standards to guide (future) behavior rather than a general background document that provides reference only when convenient.

Focal Points and “Best Practices”

Starting with the first SEOM reports, negative comments have been voiced time and again concerning media bias, inadequate voter education, lack of funding, inability to verify the voters’ roll, or the ruling party’s use of public resources for campaign funding. (Un)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 by applauding the gender equity in the electoral management and electorate (SEOM Zimbabwe 2005; SEOM Zanzibar 2005; SEOM DRC 2006). This positive counterweight to concerns falls under the section, “best democratic practices and lessons learnt,” transforming into a new instrument for governance transfer (SEOM Lesotho 2007). In this context, the reports highlight and commend practices such as using transparent ballot boxes (Malawi, Namibia, Tanzania, Mauritius), providing voting materials to those with special needs (Malawi, Botswana, Namibia, Tanzania, Seychelles), changing the age for voter registration (from 21 to 18 in Botswana), providing medical emergency services at some polling stations (Malawi, Mozambique), granting prisoners the right to vote (Lesotho 2007, Namibia), and using environmentally friendly campaign material (Mauritius). Strikingly, regarding Lesotho, the Mixed Member Proportional (MMP) electoral model is presented as a best practice for the SADC region. This does not reflect the Principles and contradicts the rule that SADC does not discuss the electoral systems of its member states. However, the approach might be understood as a post hoc legitimization of SADC involvement in transforming Lesotho’s electoral system after the much-criticized military intervention of 1998 (further details below).

Starting with the SEOM to the Malawi elections in 2009, consultation with national stakeholders and discussion of the issues and concerns that they express has become a new topic addressed in the evaluations and reports. It reflects a practice developed by SADC PF and SADC ECF election observer missions to increase their own legitimacy.

Reliability of SADC Reports

The 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 might expect a relatively high score on democracy in the region, or at least an increase over time. However, Hadenius and Teorell's index on political democracy, which combines Freedom House and Polity IV scores into a single index, indicates that SADC remains at the same level of just 6.34 out of 10 in 2008 (1995: 6.27). 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 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), did not show any improvement between 2004 and 2009 (Lohaus and van Hüllen, 2011).

There seems to be no clear connection between the level of democracy in a country and the SEOM's assessment of elections. Whether scores are a high 8 or a low 1, SEOMs tend to condemn minor incidents while declaring elections to be free and fair overall. Recommendations are framed in very diplomatic language. Since this could indicate a lenient attitude on the part of SADC, we have compared the available reports from official missions mandated by the Organ with available reports by the SADC PF, SADC Electoral Commissions (coordinated by EISA), EU, and Commonwealth (see Appendix 3, Table 2). The reports indicate that the various observer missions consult with each other and discuss their findings, and this practice of caucusing to share observation findings has been consistently encouraged by EISA and other international NGOs with a long-standing involvement in election observation. Given the scarcity of resources, a certain division of labor has developed, wherein the SADC PF arrives in the target country at an earlier stage of the election process, and the SEOM then draws on its expertise and feedback (interview PR). This does not automatically result in a common stance, but there is a tendency for broad consensus to emerge from consultations. In some cases, the same concerns (for instance, media coverage and campaign funding) take on slightly different weight. Only two cases run contrary to the overall picture, where all missions generally agree on the quality of the elections observed: Swaziland (2008) and Zimbabwe (2005, 2008).

Contested: Swaziland (2008)

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 perfection as they embark on their gradual and challenging road for the entrenchment of democracy" (SEOM Swaziland 2008).

It seems odd that these elections were declared free and fair. In fact, Swaziland is not an electoral democracy but an absolute monarchy. King Mswati III wields total authority over the cabinet, legislature, and judiciary. Political parties are illegal. In the lower house of parliament, fifty-

five members are elected by popular vote according to the *tinkhundla* system, in which local chiefs control the elections and vet all candidates. The king appoints the other ten members. He also appoints twenty members of the thirty-seat Senate, with the remainder selected by the lower house (Freedom House 2011). Pro-democracy groups boycotted the 2008 parliamentary elections. COSATU, the influential South African trade union, accused SADC of employing double standards since “the SADC observer mission accepted an electoral outcome conducted in an environment of banned political parties and arrests of political activists” (COSATU 2008). The Commonwealth election report also disagrees with the SEOM’s positive assessment, arguing that Swaziland’s constitutional provisions are incompatible with international standards in terms of respect for freedom of association and assembly, separation of powers, and the rule of law. It concludes by stating 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, September 24, 2008).

Contested: Zimbabwe (2005, 2008)

Regarding Zimbabwe, we have found 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 of representatives from the South African Council of Churches and Southern African NGOs came to the conclusion that there were serious flaws in the election process, which did not adhere to the SADC Principles and Guidelines (Solidarity Peace Trust 2005). Election observers from COSATU, the SADC PF, and EISA were not admitted at all. The opposition party complained of pre-electoral gerrymandering, flawed registration, unequal access to media, and restrictions on freedom of assembly (Kersting 2007). As a result, there is reason enough to doubt the SEOM’s positive conclusions.

A similar scenario seemed probable in 2008. After the first round, on March 30, 2008, 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” (SEOM Zimbabwe 2008a). However, the elections clearly did not abide by some of the principles, and once again several organizations—including the SADC PF—were denied accreditation to observe them. After the second round, on June 29, the SEOM changed its tune. It released a statement highlighting the unstable and violent period leading up to the run-off and the failure of the security forces to stop the violence or arrest the perpetrators of violence. The SEOM concluded 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” and “the prevailing environment impinged on the credibility of the electoral process” (SEOM Zimbabwe 2008b).

Our hunch is that two reasons can explain the apparent U-turn on the part of SADC election observers. First, politically motivated violence and intimidation had intensified so severely that it became difficult to endorse the elections without seriously damaging SADC EOM credibility among SADC member states, especially those who had 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” (SEOM Zimbabwe 2008b). If Mugabe could not even guarantee the safety of SADC observers who had largely legitimized his practices thus far, why continue protecting him? The June 2008 run-off marked a watershed in SADC’s attitude toward the Zimbabwean problem, as we will discuss under the heading “Interventions.”

Assessing the practice of electoral observer missions since 2004, we can conclude that member states now routinely invite SADC observers and that all missions are conducted according to the SADC Principles. The mission reports are based on observations by the SEOM as well as by other missions. In most cases, their conclusions find confirmation in the other reports, which voice similar concerns. We found two exceptions, Swaziland (2008) and Zimbabwe (2005; 2008), where the situation seemed to warrant an SADC intervention; to what extent such interventions have occurred will be discussed in the following section.

3.2.2 Interventions (Military/Diplomatic) and Non-interventions

Based on the Protocol on Politics, Defence and Security-Cooperation,

“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.” (Article 11-2-b).

All enforcement actions should be taken in consultation with the AU and UN, and with the authorization of the UN Security Council. As per Article 11 of the Protocol, the SADC Regional Early Warning Centre (REWC) was inaugurated in July 2010. In theory it should generate information to provide a basis for intervention by SADC. However, whether by design or default, little is currently known to outside scholars about the REWC. We were unable to find traces of any REWC reports. Moreover, the Centre’s failure to issue a warning over political unrest in Swaziland in 2011 has led some to question its efficacy and objectivity (Motsamai, 2011). Table 3.2 offers an overview of SADC interventions, which will be discussed in more detail below.

Table 6: Summary of SADC interventions/non-interventions¹⁶

Case	Situation	SADC intervention	Measures (key actors)
Lesotho 1998	Military mutiny/ attempted coup	Yes	Military intervention (South Africa, Botswana)
DRC 1998	Third-party aggression (Rwanda, Uganda, militia groups)	Yes	Military intervention (Zimbabwe, Angola, Namibia)
Angola 1992– 2002	Civil war	No	Rhetorical support to Angolan government (Summit)
Zimbabwe 2000–2007	General violence, state repression	Sort of	“Quiet diplomacy” (South Africa)
DRC 2004	Attempted coup	No	Planned assessment mission not deployed
DRC 2006	1st democratic elections	Yes	Military Liaison Officers deployed
DRC 2007	Post-election	Yes	Two assessment missions deployed
Zimbabwe 2007	Mounting violence	Sort of	Diplomatic intervention: SADC-bro- kered talks between parties (South Africa)
Lesotho 2007	Post-election violence	Yes	Diplomatic intervention: SADC- brokered dialogue resulting in changes to constitution and electoral law (SADC Organ Troika)
DRC 2008	Renewed violence in eastern DRC	Yes	Fact-finding mission deployed
Zimbabwe 2008–present	Intensified electoral violence	Yes	Diplomatic intervention: power- sharing deal, drafting of new constitution prior to fresh elections (South Africa)
Madagascar 2009–present	Constitutional coup	Yes	Sanctions: suspension of membership. Diplomatic: SADC-brokered roadmap, power-sharing government until fresh elections
Swaziland 2011	Violent crackdown on protests	No	None

¹⁶ Source: own compilation.

Interventions

SADC has intervened militarily twice, in Lesotho and DRC. Both interventions took place in 1998, before the Protocol on Politics, Defence and Security Cooperation, the REWC, or the SSF were in place. Both interventions were heavily contested by some SADC member states. In both cases, SADC was invited to intervene by the government of the country. Since the signing of the Protocol, SADC has intervened through diplomacy and mediation in Zimbabwe, Madagascar, and Lesotho.

Military Intervention: Lesotho (1998)

Elections were held in Lesotho in March 1998, and 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 produced by a coalition of various election monitoring missions noted some potentially serious irregularities in the conduct of the election, but it could not say conclusively that the result did not reflect the will of the people (Southall and Fox 1999). The report's ambiguity 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 September 22, South African troops entered Lesotho, joined by a small number of Botswana troops the following day. Lesotho was occupied for seven months, and the government was upheld. As Chair of SADC at the time, South Africa justified the decision to enter Lesotho by claiming to have intervened on behalf of SADC after being invited by a legitimate government (Likoti 2007).

There has been some debate as to whether the intervention was actually an SADC mission or rather a unilateral military action by South Africa and Botswana, who claimed the SADC mantle 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 the Organ's role, so this avenue of SADC decision-making was for all intents and purposes closed down. Furthermore, SADC had no official policy at that time to deal with interventions, but the serious nature of such an operation would generally require endorsement from the Summit. And in Lesotho, 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 international bodies such as the UN or the AU. Whether the intervention aimed to uphold democracy, human rights, and the rule of law, or simply represented a South African operation to maintain secure access to water supplies, as alleged by Fako Johnson Likoti, is not clear (Likoti 2007). It is clear, however, that if the Protocol on the Organ had been in force in 1998, the intervention would have been illegitimate under SADC's own standards because it lacked a resolution from the Summit or the UN Security Council.

Military Intervention: 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). After an initial disagreement between South Africa (opposed) and Zimbabwe (in favor) about whether to intervene, Angola, Namibia, and Zimbabwe had committed troops to a SADC mission to support the DRC government by early September 1998 and subsequently found themselves embroiled in a protracted five-year war in the DRC. As was the case during the Lesotho intervention, SADC had no official policy pertaining to rules and procedures for intervention in 1998. The mission was justified on the grounds of external aggression from Rwanda and Uganda. However, the decision to intervene was taken without full consultation with or consensus by the SADC Summit. Nor did the mission have the backing of the UN Security Council. All things considered, SADC did not appear to have a legal mandate for its intervention in the DRC.

SADC spent much of the 2000s struggling to calm the situation in the DRC. In 2002, the Summit expressed concern about 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 formulating a strategy to speed 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. However, this mission did not take place because “the relevant authorities in the DRC were not available to receive the mission” (SADC Secretariat 2004, Annex, 6th MCO on PDSC). 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 Secretariat 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 and a group of Military Liaison Officers. After the elections, won by Joseph Kabila, two assessment missions arrived in 2007: first the SADC Secretariat Assessment Mission, then a Senior Officials Mission. The latter produced a report recommending a two-pronged approach to handling the DRC situation. On the one hand it proposed a “Diplomacy of Peace,” which included the establishment of an SADC Mission Office in the DRC to coordinate the SADC Plan of Action for the DRC (this was indeed established). On the other hand, the report promoted a “Diplomacy of Development,” advocating for SADC to seek 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 team of military experts to assess the situation

and would dispatch the SADC Military Monitoring Commission to monitor the border between DRC, Rwanda, Burundi, and Uganda (SADC Secretariat, 2008). The Summit also declared that SADC would not stand by and witness acts of violence by armed groups against the people of the DRC, and would, if necessary, send peacekeeping forces to the DRC under UN mandate. SADC did indeed send military officials on a fact-finding mission to the North Kivu area in late November, aiming “to evaluate the conditions of the displaced in the region so as to have an intervention plan in their favour” (congoplanet.com, November 24, 2008). However, despite continued fighting in the region, SADC did not send peacekeeping troops. Mindful of its limited capacity to carry out armed interventions, as well as the poor outcomes of its previous military missions, it seems that 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, November 12, 2008).

On November 28, 2011, presidential elections took place. SADC launched its largest ever SEOM, consisting of almost two hundred observers (SADC Media Release, November 12, 2011). The elections were marred by violence, logistical problems, allegations of fraud, and delays in counting the vote, with widespread fears of a return to violence (The Guardian, December 6, 2011). SADC made the unprecedented move of issuing a joint declaration on the elections with election observation groups from the AU, the Economic Community of the Central African States, the International Conference on the Great Lakes Region, and COMESA, which “welcomed the successful holding of the elections despite numerous challenges.” We were unable to find any trace of the SADC EOM report.

Although SADC refers to DRC as a different country than it was in 2006, when the first elections took place, armed groups in Eastern Congo – including members of the national army – continue to commit numerous crimes, among them mass rape. This does not seem to have been criticized by the Organ, despite Article 11 of the Protocol, which states that the Organ may seek to resolve any conflict that 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 2001-c). Although the situation in the DRC was and still is of a greater scale and severity than that in Zimbabwe, the latter has received much more of SADC’s attention.

Diplomacy: Zimbabwe (2000–Present)

The political situation in Zimbabwe has been the long-running saga of Southern Africa and the issue over which SADC attracts the most criticism. In 2000, Robert Mugabe’s government lost a referendum on changes to the constitution, which would have allowed Mugabe to prolong his term of office, grant members of the government and security forces immunity from prosecution for offences committed during their terms in office, and enable compulsory land acquisition by the state (Nathan, 2012: 64). Threatened by the emergence of a strong opposition party (the MDC), and under pressure from civil war veterans who had long been promised land in exchange for fighting, the government nevertheless went ahead with its land reform program

by issuing compulsory purchase orders to white landowners. The government refused to pay 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, which had ended the war in 1980. The decision to ignore the outcome of the referendum and go ahead with the land reform program, initiating a frequently violent process of farmland seizure, 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 Secretariat 2000). One 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 Secretariat 2001).

In 2002, Mugabe was reelected 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 acknowledging that there was a real breakdown in the rule of law as well as systematic human rights abuses in the country. 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. The Summit implied in most diplomatic terms that Zimbabwe was falling short in a number of areas, notably protecting the right to freedom of opinion, association, and peaceful assembly; investigating political violence; ensuring the independence of the judiciary; and maintaining press freedom (SADC Secretariat 2003a). In 2003, the SADC Council of Ministers noted that Zimbabwean officials were being excluded from donor-funded regional projects. USAID was refusing to fund the participation of Zimbabwean nationals, which had the effect of “undermining the solidarity of SADC.” SADC decided that no meetings would be convened that necessarily excluded Zimbabwe, whereupon “Zimbabwe expressed its profound gratitude to SADC Member States for the solidarity and support they have provided ... in the face of pressure from sections of the international community” (SADC Secretariat 2003a). Meanwhile, the situation inside Zimbabwe remained unstable. Parliamentary elections were held in March 2005 in which ZANU-PF (Mugabe’s party) won two-thirds of the vote. The SADC election observation mission expressed some concerns but declared the election largely peaceful and credible (see section 3.2.1).

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 and promised to engage the US, UK, and IMF in an attempt to ease sanctions and release funds that could help temper Zimbabwe’s spiraling economic problems (Graham 2006). This approach was roundly criticized from both domestic and international actors as a “non-policy” at best or appeasement of a despot at worst, threatening 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 meeting instead resulted in a continuation of quiet diplomacy, with Mbeki appointed as SADC's chief mediator. The major outcome was a decision that Mbeki would facilitate a dialogue between ZANU-PF and the opposition party.

The presidential and parliamentary elections of 2008 brought matters to a crisis point (see also section 3.2.1). The opposition party was likely the winner of the first round, but the Zimbabwe Electoral Commission withheld the results for an unprecedented amount of time. The Summit met to try to resolve Zimbabwe's electoral stalemate, which was fuelling an increase in violence throughout the country. When finally announced, the results precipitated a run-off between Mugabe and opposition leader Morgan Tsvangirai, 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. By now, SADC was hopelessly split on the issue, with Botswana, Malawi, Mauritius, and Tanzania convinced that Mugabe had to go. Angola, the DRC, Mozambique, Namibia, and South Africa continued to protect Mugabe (Nathan 2012: 73). In the aftermath of the election and with SADC's backing, Mbeki brokered a power-sharing deal, the Global Political Agreement (GPA), between Mugabe's Zanu-PF and the opposition party. Tsvangirai would become Prime Minister while Mugabe would remain President, and control of the various ministries would be divided between the parties. At a SADC Council meeting in February 2009, the ministers present acknowledged that the situation in Zimbabwe was very bad but framed it almost entirely in terms of economic problems such as hyperinflation and deindustrialization. Although the ministers did note the importance of Zimbabwe complying with the GPA, they saw the solution to Zimbabwe's problems in "stabilizing the macro-economic climate," and this was hampered by Western-imposed sanctions. The Council called on SADC member states to support the Economic Recovery Plan for Zimbabwe and work toward normalizing Zimbabwe's status with international financial institutions. The SADC Secretariat also set up a Humanitarian and Development Assistance Framework for Zimbabwe, providing a mechanism through which to distribute assistance from other member states.

In May 2009, Jacob Zuma assumed the presidency of South Africa. During his power struggle with Mbeki for leadership of the ANC, Zuma had indicated that he was prepared to take a tougher stance toward 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 in March 2011, 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.” (SADC Communiqué of the Summit of the Organ Troika, March 31, 2011)

This certainly seemed like a positive development, but it would be optimistic to suggest that it indicated the emergence of determined action by SADC. A few weeks after this statement was made, it was decided that the operations of the SADC Tribunal should be suspended, due in large part to politically inconvenient rulings the court had made against the Zimbabwean government.

SADC’s response toward the 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 country best in a position to challenge Zimbabwe (i.e., South Africa) is reluctant to openly do so. In light of the politically sensitive land reform issue, quiet diplomacy has appeared to be the only politically expedient option to deal with Mugabe. To the outside world, it seems that SADC has done little to resolve the crisis 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 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).

Diplomacy: Lesotho (2007–2011)

After the elections of February 2007, Lesotho plunged into a state of emergency. The main opposition party refused to accept the election results, alleging gerrymandering by the government. There was also the threat of a coup by certain factions of the army (allAfrica.com,

July 11, 2007). In response, Southern African heads of state assembled a team of negotiators comprising the heads of Basotho churches and SADC Organ facilitators. The president of Botswana, Ketumile Masire, was appointed leader of the team. Its task was to facilitate a dialogue between the Independent Electoral Commission of Lesotho, the ruling party, the opposition parties, and the government (SANF, February 2012). The SADC-brokered talks concluded in April 2011, resulting in amendments to the Constitution (6th Amendment) and electoral law (National Assembly Electoral Bill 2011) of Lesotho. The elections in May 2012 brought the country's first opposition-led coalition government to power.

Diplomacy and Sanctions: Madagascar (2009–Present)

In contrast to the DRC and Zimbabwe, Madagascar used to be considered one of the stable, middle-range democracies in SADC (Lohaus and van Hüllen, 2011). However, beginning in January 2009, Madagascar experienced violent protests against the allegedly autocratic governance of President Marc Ravalomanana, led by the former mayor of Antananarivo, Andry Rajoelina. Having lost the support of the military, Ravalomanana was forced to cede power, and Rajoelina declared himself acting President on March 21, 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. As of November 2013, the suspension is still in place.

In an effort to “return the country to constitutional normalcy,” the SADC spent US\$900,000 on political mediation in the second quarter of 2009 (SADC Extraordinary Summit Communiqué, March 2009). 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 its terms, leaving Madagascar in an ongoing situation of crisis (Cawthra 2010). After protracted negotiations, SADC's mediation efforts contributed in September 2011 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 consensus among all stakeholders, and the creation of an independent electoral commission. In January 2012, the High Constitutional Court of Madagascar “adopted the SADC roadmap as a Malagasy legal instrument, giving its provisions and timetables the power of Malagasy law ... [This] effectively made Rajoelina's government subject to SADC authority” (Southern African Report, 2012). However, the implementation of the roadmap ran into difficulties. Under the mediation of Tanzanian President Kikwete a new deal was brokered in late 2012 (Massey and Baker, 2013). Both Rajoelina and Ravalomanana agreed to withdraw from participating in the upcoming presidential elections, of which the first round took place on October 25, 2013. Since the first round failed to produce a winner, candidates Richard Jean-Louis Robinson of Ravalomanana's Avanu party and Hery Martial Rokotoarimanana Rajaonarimampianina, Rajoelina's Minister of Finance, will rerun in December 2013 (Hoke, 2013). Notwithstanding these positive developments, Madagascar's political stability remains

fragile. SADC has indicated that it will only lift Madagascar's suspension once its constitutional order will be restored (ANGOP, 2013).

SADC's swift intervention in Madagascar contrasts with the organization's reluctant attitude on Zimbabwe but can be explained by political and economic differences. Rajoelina and Ravalomanana are not heroes of the Liberation struggles. Also, SADC countries have no direct economic or geopolitical interests in the island state, as opposed to their interests in Zimbabwe. And finally, SADC tends to intervene to defend incumbent governments rather than democracy in general.

Non-intervention

We have identified two cases where diplomatic or even military action by SADC would have been (Angola) or would be (Swaziland) appropriate according to the organization's own principles.

Angola (1992–2008)

Angola, one of SADC's founding members, was torn by civil war starting immediately after Portuguese decolonization in 1975. The warring factions were the Marxist-Leninist MPLA (supported by Cuba, USSR, Vietnam, Mozambique, Algeria, and Libya), and the anti-Communist UNITA (supported by apartheid-era South Africa, the US, Israel, and Zaire). The MPLA won the country's first post-independence elections in 1992. However, the leader of UNITA, Jonas Savimbi, refused to recognize the outcome of the elections and returned to armed conflict. After the end of the Cold War and apartheid, UNITA realized that its foreign support network was disappearing. SADC supported 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 did not appear to make concrete interventions into the Angolan war as it did in the DRC. Although other sources reported that "serious human rights abuses, including torture, abduction, rape, sexual slavery, and extrajudicial execution" continued to be perpetrated by both the government forces and UNITA (Freedom House 2003), SADC persisted in lending rhetorical and diplomatic support to the government. Fighting continued 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 society organizations criticized the delay, accusing the MPLA of imposing a "permanent *coup d'état*" (Bauer & Taylor 2005: 160). The SADC Summit remained silent on the issue. The elections finally took place in 2008. They were criticized by Human Rights Watch, which claimed to have evidence "suggest[ing] the polls did not meet the SADC Principles and Guidelines in key areas" (Human Rights Watch, September 15, 2008a). SADC's own assessment of the election is not known: although there is evidence (in news reports) that it sent a SEOM, we have not been able to obtain a copy of the report.

Swaziland (2011)

Swaziland is one of the last absolute monarchies remaining in the world. Organized demonstrations in September 2011 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, May 27, 2011). Various groups within the region, including COSATU and the Open Society Initiative for Southern Africa (OSISA), a democracy and governance watchdog, 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 rewarded him with prominent positions within the Organ (Swaziland Solidarity Network press release, March 29, 2011).

It is worth noting that in 2004, the SADC Summit attempted to pressure Swaziland into making reforms in the areas of democratization and human rights by issuing a communiqué noting shortcomings in Swazi governance standards (SADC Summit Final Communiqué, August 17, 2004), but little came of it. South Africa has unilaterally applied pressure on Swaziland through financial measures in an attempt to engender political change—a strategy that South Africa is well-placed to implement, since Swaziland depends on earnings from the Southern African Customs Union for more than half of its national revenue, and South Africa controls its collection and distribution. However, King Mswati remains defiant and resistant to change.

Why Swaziland remains unchallenged by SADC is not immediately clear. The Swazi royal family certainly does not have the same cachet as Liberation-era leaders (the Swazi government occasionally collaborated with the apartheid government), nor is Swaziland particularly powerful or influential in the region. It seems that SADC’s support for incumbents in power trumps the defense of democracy.

It is difficult to conclude that the interventions prior to the signing of the SADC Protocol on PDSC in 2001 were motivated by governance transfer. However, in one case, Lesotho 1998, the intervention did at least serve the purposes of governance transfer, since it put in place a new electoral system in hopes of avoiding future incidents of electoral violence. Evidently this hope was misguided; Lesotho once again experienced post-election violence in 2007, when SADC intervened once more, this time diplomatically, again resulting in changes to the electoral system. Interestingly, compared to similar diplomatic interventions related to post-electoral violence, Lesotho is the only country that has been encouraged to alter its electoral system. Zimbabwe and Madagascar were encouraged to reform their constitution, but the electoral systems have not been challenged. A contrast to these three cases is that of the DRC, where SADC has made numerous interventions. The focus there has been on shoring up the regime and quelling unrest (hence the rather militaristic tinge to the diplomatic missions) rather than reforming the country’s governance institutions. Perhaps this reflects the influence of Zimbabwe and Angola, the DRC’s key allies within SADC, whose experience with long years of

civil war, Liberation-era leadership, and passing acquaintance with democracy predispose them to militaristic crisis solutions.

3.2.3 The SADC Tribunal (Litigation)

Established in 1992, in accordance with Articles 9 and 16 of the 1992 Treaty, 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)

In addition, the SADC 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. The Tribunal is not a court of appeal; however, in cases where a member state is in conformity to its own laws, but those laws contradict SADC law, a decision by the Tribunal may end up overturning that of a domestic court. The Tribunal considers SADC law and international law to be its standards. The Tribunal notes that it is not a human rights court per se, but because the SADC Treaty cites the observance of human rights, democracy, and rule of law as a core SADC principle, the Tribunal ruled in 2007 that it does have jurisdiction over such matters.

The decisions of the Tribunal are final and legally binding for the parties involved. Decisions should be enforced in member states in accordance with the member states’ laws and rules of civil procedure for the enforcement of foreign judgments. When there is refusal to abide by the decision, the aggrieved party can approach the Tribunal again. If the Tribunal believes that the other party does not intend to comply with the decision, it must report the matter to the Summit, where the latter has a legal duty to take “appropriate action” against the recalcitrant party—although “appropriate action” is never defined. The Tribunal’s capacity is also limited by the fact that its decisions are always referred to the Summit (which must reach consensus) for enforcement action.

The Tribunal is composed of ten judges, who are referred to as “members.” Five of these are regular members, meaning the members who ordinarily preside over the Tribunal, while the other five constitute a reserve pool. A full bench at the Tribunal is five members, but ordinarily the court sits with three members present. The members are nominated by their country. The SADC Council of Ministers vets and recommends them to the Summit, which then appoints

them to the Tribunal (SADC Tribunal website). Although the Tribunal was officially established in 1992, it did not begin to operate until August 2005, when the Summit appointed Tribunal members. The first case was lodged in August 2007.

Table 7 lists all eighteen decisions made by the Tribunal. The commercial and employment cases (seven cases) are not relevant here, so they have been excluded from the analysis. One case, the *United People's Party of Zimbabwe v SADC & Others*, dealt with electoral issues. It concerned 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 Zimbabwe's 2008 elections. The Tribunal decided that the mandate only referred to political parties that had gained seats in the national parliament. Since the United People's Party did not win any seats in the March 2008 elections, and since the elections had been declared free and fair, the party was justifiably excluded from the power-sharing process, and the Tribunal dismissed its complaint.

Table 7: Tribunal rulings¹⁷

Year	Case	Issue	Relevance for governance transfer
2007	Ernest Francis Mtingwi v SADC Secretariat	Employment rights	None
	Campbell v Republic of Zimbabwe Interim Ruling	Human rights/ rule of law/ democracy	Yes – Tribunal has jurisdiction over matters of human rights, democracy, rule of law
	Campbell v Republic of Zimbabwe (Main Decision)	Human rights/ rule of law	Yes – ruled that Zimbabwe had denied the applicants (plaintiffs) proper access to national courts (Law/HR), had racially discriminated against them (HR), and failed to compensate for land already confiscated (Law)
2008	Gideon Stephanus Theron and 7 Others v Zimbabwe (application to intervene in Campbell case)	Human rights/ rule of law	Yes – more landowners join Campbell case
	Gondo and Others v Republic of Zimbabwe	Rule of law	Yes – government must pay previously agreed compensation to applicants, and must take into account effects of hyperinflation (“ensuring effective remedies”)
	Luke Tembani v Republic of Zimbabwe	Rule of law/ human rights	Yes – applicant was denied access to national courts, which infringed upon his human rights and the principles of rule of law

¹⁷ Source: own compilation, based on information from Tribunal website: www.sadc-tribunal.org.

Year	Case	Issue	Relevance for governance transfer
2008	Albert Fungai Mutize & Others v Campbell & Others	Human rights	None – case dismissed (dispute between individuals)
	Nixon Chirinda & Others v Mike Campbell & Others	Human rights	None – case dismissed (dispute between individuals)
	Campbell v Zimbabwe Contempt of Court	Rule of law	Yes – Zimbabwe failing to comply with previous rulings, referred to Summit for action
	United People’s Party of Zimbabwe v SADC & Others	Electoral issues	Yes – confirmed SADC Summit decision on mandate based on election outcome; case dismissed
	Bach’s Transport (PTY) LTD v Democratic Republic of Congo	Commercial issues	None
2009	The United Republic of Tanzania v Cimexpan (Mauritius) LTD & Others	Commercial issues	None
	Bookie Monica Kethusegile-Juru v SADC Parliamentary Forum	Employment issues	None
	Campbell v Republic of Zimbabwe (Contempt of Court Ruling)	Human rights/ rule of law	Yes – Government failing to protect applicants from intimidation and farm invasions (HR), and willfully ignoring the Tribunal’s rulings (Law). Referred to Summit for action.
	Swissbourgh Diamond Mines & Others v The Kingdom of Lesotho	Commercial issues	None
	Clement Kanyama v SADC Secretariat	Employment rights	None
	Angelo Mondlane v SADC Secretariat	Employment rights	None
2010	Fick & Others v Republic of Zimbabwe (contempt of Court)	Rule of law	Yes – Zimbabwe continues to ignore Tribunal rulings (Law), order for costs against the government, and referral to Summit

The Tribunal first ruled that it had jurisdiction over human rights, democracy and rule of law matters in 2007, in its second decision ever, the interim ruling in the Mike Campbell versus Zimbabwe case. The Campbell case used human rights and the rule of law to challenge the legality of the Zimbabwean government’s acquisition of agricultural land. In establishing its jurisdiction over the case, the Tribunal cited the Protocol on the Tribunal, Articles 14

(jurisdiction in all disputes related to the interpretation and application of the SADC Treaty) and 15 (jurisdiction over disputes between natural and legal persons and member states), and the SADC Treaty, Article 4 (respect for human rights, democracy, rule of law). The Republic of Zimbabwe argued that there should first be a Protocol on Human Rights and/or Agrarian Reform to give effect to the principles in the SADC Treaty. Only then would the Tribunal have jurisdiction over 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). Since 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 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 legal obligation to respect, protect and promote the fundamental rights listed in Article 4. As a result, the Tribunal argued:

“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 the court. As the Zimbabwean Amendment No. 17 on land acquisition had negated the jurisdiction of the courts on these matters, this right had been violated and the landowners were entitled to bring the 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 of the Treaty.” (SADC (T) Case 02/2007, 41)

Subsequently the Tribunal had to decide on the crucial question of whether the land reform program was discriminatory. It ruled that this was indeed a case of indirect discrimination on the basis of race, thereby violating Article 6 of the Treaty. the Tribunal ordered the Zimbabwean 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 who brought the matter to 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 ... for 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 the SADC Treaty exempts the Tribunal from the requirement that all protocols be ratified by a two-thirds majority of 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 August 17, 2007, and stated that the Protocol entered into force with the adoption of the amended and consolidated Treaty in 2001. But as Hager writes, “under international law, the Treaty should trump an underlying Protocol; getting that in writing is a different story” (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” (SADC Secretariat 2009). As a result, the ministers of justice commissioned an independent, six-month review of the Tribunal,¹⁸ during which time the court ceased to take on new cases or make rulings in existing cases. The independent review concluded that the Tribunal was properly established in accordance with international law. According to the founding affidavit in the case that will be brought against the SADC Summit at the African Court on Human and Peoples’ Rights (see below), the ministers of justice “unanimously accepted by clear implication the expert report, and confined their recommendations to proposed amendments to the Treaty and Protocol. Nowhere did they propound perpetuating the paralysis of the Tribunal, or doubt the correctness of the report” (African Commission, 2011). This would indicate that the decision to suspend the Tribunal rests solely with the Summit.

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 hamper 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 Tribunal members 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 an extensive interview, Judge Ariranga Pillay, former President of the Tribunal and one of the

¹⁸ 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.

authors of the letter, supposed the Summit felt that it 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 off 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, August 19, 2011)

The suspension of the Tribunal was obviously convenient for Zimbabwe. It was also convenient for the government of Lesotho, which was facing a multimillion-dollar lawsuit for breach of contract from Swissbourgh Diamond Mines Ltd, and for Botswana, which was facing a potential lawsuit over the forced removal of indigenous San people from their traditional lands in the Kalahari Desert. These countries all had interest in limiting individual access to the regional court, while none of the other SADC member states raised objections to dismantling 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 dismantling 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, June 10, 2011).

It is not difficult to see that the suspension of the Tribunal and the plans to bar individual access to a regional court when national recourse has failed represent a great step backward in the respect for human rights and the rule of law within the SADC region. However, this is unlikely to be the end of the story. Although Mike Campbell died in 2011 as a result of injuries sustained during detention by Zimbabwean security forces, his son-in-law, Ben Freeth, has joined forces with the Zimbabwean Human Rights NGO Forum and Luke Tembani, a plaintiff in another case against Zimbabwe at the SADC Tribunal, to take the case to the African Court on Human and Peoples’ Rights. The AU Commission agreed in March 2012 that the Court should consider the case. It will mark the first time in legal history that a group of heads of state (the entire SADC Summit) is cited by individuals as the defendants in an application to an international court.

In short, the Tribunal declared itself to be an institution of governance transfer without the explicit acquiescence of the Summit, but the tactic backfired.

3.2.4 Technical and Financial Assistance, Fora for Exchange and Dialogue

To our knowledge, SADC is not able to offer much in the way of financial or technical assistance to its member states. The majority of projects are funded by external donors, thus we cannot say that SADC assists in the area of governance transfer.

Both the RISDP and the SIPO call for the establishment of fora for exchange and dialogue but do not specify who should participate. Some Protocols make more specific provisions for regular meetings and/or committees, but in many cases these have not materialize. For example, there is no evidence to suggest that the proposed committee to oversee the implementation of the Protocol on Corruption was ever operationalized. However, some fora have been established; these are discussed below.

SADC National Committees (SNCs)

The 2001 Treaty (Article 16-A) called for the establishment of SADC National Committees in each member state. These Committees are tasked with providing input from the national level into regional policy, as well as overseeing the implementation of regional policy at the national level. Thus they have both a “bottom-up” and a “top-down” function in the relationship between SADC and its members states. Each member state is asked to create a secretariat to facilitate the operations of the SNC (Article 16-A-9). Each SNC is supposed to meet at least four times a year (Article 16-A-12) and submit annual reports to the SADC Secretariat (Article 16-A-10). The SNCs are also mandated to meet with each other annually, to share information and best practices in the RISDP’s implementation (SADC Secretariat, 2003). Thus, they can be considered a regular forum responsible for input, implementation, and monitoring of SADC policy.

Annual SNC meetings have taken place since 2003 with the help of funding from International Cooperating Partners. By 2007, all SADC member states had established an SNC of some sort, with the exception of the DRC. However, not all SNCs had been submitting annual reports as required, a result of the fact that some SNCs were still in their infancy. For this reason it was considered important to continue the annual forum, since the exchange of best practices would increase the capacities of underdeveloped SNCs (Record of 5th Regional Meeting of SNCs, Zanzibar, May 10–11, 2007). SNCs themselves reported a number of problems limiting their effective functioning, including a lack of qualified and experienced staff and 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 regarding the role of the SNC in relation to the SADC Secretariat and the local level, as well as a lack of commitment from the members in the subcommittees and weak coordination and information flow between the SADC Secretariat, the SNCs, and the member state level (Record of 5th Regional Meeting of SNCs, Zanzibar, May 10–11, 2007). Independent research has also indicated some problems with public participation in the SNCs. Research by the Namibian Economic Policy Research Unit found that although civil society groups may have been members of the SNCs on paper, in practice they often did not receive invitations to participate in meetings, and were thus excluded

from giving input into regional policy (Deen-Swarray and Schade, 2006). Another study on SNCs in five SADC member states (Malawi, Mozambique, Zambia, Botswana, South Africa) found that although all countries had entities called SNCs in place, only the South African example was fully functional according to the standards set in the 2001 Treaty and 2003 Guidelines on SNCs (Nwezi and Zakwe, 2011: 38).

In sum, it seems that although all member states can claim to have an SNC in place, in most cases these are wholly inadequate structures, often consisting of a single staff member instead of the secretariat structure required by the Treaty. As a result, the SNCs are largely unable to perform the functions envisaged.

SADC Council of Non-Governmental Organizations

Linked to the SADC National Committees is a region-wide forum for civil society groups operating in SADC Member States: the SADC Council of Non-Governmental Organizations (SADC-CNGO). This is not part of the structure of SADC proper, but does work frequently with SADC on various projects. The SADC-CNGO was established in 1998 and became operational in 2004. It has signed a Memorandum of Understanding with the SADC Secretariat “for the purposes of promoting constructive dialogue and engagement with civil society.” The SADC-CNGO states that it will “promote the re-activation and further strengthening of the SADC National Committees, noting that these structures are in most cases not fully established, and are functioning less effectively.” Clearly it sees the SNCs as a key avenue to influence the SADC agenda at the national level, but that role is hampered by their limited capacity.

3.2.5 Conclusion

Our analysis of the adoption and application of measures suggests that SADC does not live up to its own standards. In many cases, measures foreseen are never implemented and thus exist only on paper, a shortcoming most glaring in relation to good governance (see Table 8).

Table 8: Intensity of SADC governance transfer: framework and instruments¹⁹

	Framework	Instruments					Total instruments
	Prescription & Policy	EOM	Military intervention	Diplomatic intervention, sanctions	Capacity-building	Judicial protection	
Human Rights	+++	-	+	+	-	(+)	++(+)
Democracy	+++	++	+	+	-	(+)	++++(+)
Rule of Law	++	-	-	+	-	(+)	+(+)
Good Governance	++	-	-	-	-	(+)	(+)

¹⁹ Source: own compilation.

Respect for human rights and non-discrimination consistently appear in all SADC documents with a special focus on socio-economic rights and gender equality, but there is no binding instrument in this field. In the domain of gender equality, targets and deadlines are formulated, but monitoring has been delegated to civil society, and no sanctions are available. When Campbell took his case concerning property rights and race discrimination to the Tribunal, it extended its jurisdiction to include matters such as human rights. However, the Tribunal could not develop into a human rights court because the Summit decided to suspend it; since then, individuals lack protection against human rights abuses by their own governments beyond the protection offered by domestic courts. For that reason, Table 8 shows “judicial protection” in parentheses, as a potential instrument that was nipped in the bud.

Democracy has been the most prominent area of governance transfer in SADC. There is no democratic conditionality for SADC membership, but clear standards have been formulated for democratic elections at the national level, and these seem to become ever more relevant to all member states. Although we may question the conclusions SADC reaches regarding the fairness of elections, at least it is sending SEOMs to all elections. SADC has diplomatic and military means at its disposal, including sanctions. It also has applied them in some instances of election-related violence, post-election violence, and constitutional coup, but the application of measures tends to be uneven and seemingly motivated by concerns other than a genuine desire to reform governance institutions. Interventions only seem to take place if instability threatens to spill over into other countries, or if the (ideological or material) cost of intervening is low, as in the case of Madagascar.

Rule of law and good governance are less entrenched and even less consistently upheld than human rights and democracy. SADC did adopt a binding instrument on corruption but never established the supervisory committee. In this case, as in other cases, a chronic lack of financial means and qualified staff hinders the development of monitoring mechanisms.

4. Explaining Governance Transfer by SADC

After discussing the standards proposed by SADC and the adoption and application of measures to promote and protect these standards, it is important to seek explanations to account for continuity and change in the different dimensions of governance transfer. We distinguish here between the international, regional, and national level.

4.1 The International Level

Examining the international level, we should distinguish between the international level as a normative reference model on the one hand and the promotion of a “global script” by actors situated at the international level on the other.

Regarding the former, standards contained in SADC documents reflect previously agreed-upon standards from both UN and continental African documents. Preambles refer to these

documents more specifically. The notion that African concepts and standards are different from those agreed upon internationally surfaces in academic work (Cobbah 1987; Mapaure 2011) and speeches by politicians (Benjamin Mkapa, Thabo Mbeki, and Robert Mugabe) but is generally not reflected by standards in SADC documents. SADC documents on gender generally acknowledge the existence of regional standards that differ from the “global” gender equity standard—not so much as a justification for non-implementation but rather to note the reality of co-existing norms. The global norm is still framed as the preferred standard. In SADC states, customary laws, religious laws and “living law”²⁰ coexist with state law. These “other” laws sometimes reflect specific principles concerning gender and race and clash with the “global” non-discrimination clause. Nevertheless, at least in principle SADC documents recognize the prevalence of global standards with respect to non-discrimination (Banda 2006).

Regarding the “global script,” the Cold War had a strong, negative influence on the promotion of good governance in Southern Africa. Particularly for the United States and the United Kingdom, Marxist-inspired political movements and governments were cause for concern, leading them to support repressive, anti-communist governments or counter-revolutionaries²¹ who often undermined the rule of law and had destabilizing effects 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 probably contributes to Southern Africa’s eastward turn;²² Chinese investment and trade with Southern Africa has grown exponentially in the past decade and provides SADC states with an alternative to the political conditionality attached to Western investment and trade.

Since the end of the Cold War, the United States has somewhat neglected Southern Africa (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 that has been excluded from AGOA from the very start because of its poor governance record. Madagascar was removed from the AGOA list of

²⁰ Living law is an informal, flexible “law” reflecting people’s day-to-day practices (Banda 2006: 14).

²¹ Particularly Mobutu Sese Seko in Zaire, the apartheid government in South Africa, UNITA in Angola, and RENAMO in Mozambique.

²² With the exception of Swaziland, which recognizes Taiwan instead of the PRC.

beneficiaries following the coup in 2009, and the DRC was removed in January 2011 because of its lack of progress on the criteria. These three countries continue to receive humanitarian assistance such as food aid from the United States. Although AGOA conditionality is potentially 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 just a few of AGOA's eligibility criteria. According to the data presented in the Appendices, Angola and Swaziland probably deserve to be removed from the list as well. Arbitrary application fuels anti-Western sentiments in some SADC countries.

Other states also engage in the promotion of governance standards, especially Japan, 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, and women's rights. Germany in particular prefers to fund SADC projects rather than donate to individual states, and German development funds and foundations²³ were especially influential in the operationalization and development of the Tribunal.²⁴

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

United Nations

The founding documents of SADC often refer to the UN framework, particularly the Universal Declaration of Human Rights (1948) and the Millennium Development Goals (MDG), which were set out in 2000 with the aim of ending 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. Concerning the SADC's relatively strong standards on gender, the 1995 World Conference on Women in Beijing and its follow-up stocktaking exercises were a major mobilizing factor, and UN documents provide a normative model for SADC documents and institutionalization in the field of gender equality. The desire to strengthen international legitimacy plays a role in the adoption of these standards as well.

The UN also offers technical and financial assistance. 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 this framework, the UN has been working with SADC on mediating 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 peacekeeping missions to conflict areas. This has been especially

²³ The Friedrich Ebert Stiftung has an office in Gaborone, Botswana; the Konrad Adenauer Stiftung has an office in Windhoek, Namibia and edits the SADC Law Journal.

²⁴ After its suspension in May 2011, judges from the SADC Tribunal were invited to Germany for an exchange of views with all German political foundations (<http://www.kas.de/wf/de/33.23058/>).

relevant in cases such as Angola, where civil war was destabilizing the region, but regional leaders were unwilling or unable to intervene.

African Union

Even more so than the UN, the African Union framework is central to SADC. The Preamble of the 1992 SADC Treaty takes into account the Lagos Plan of Action (1980), the Final Act of Lagos (1980), and the African Economic Community Treaty (also known as the Abuja Treaty, 1991). These documents primarily focus on 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 refers to notions of human rights or rule of law (anything related to democracy is conspicuously 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 that 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 drafting legislation (good governance). It seems that SADC cites the Lagos Plan and the Final Act mainly to support the idea of African states working together in order to become more economically self-reliant. The amended SADC Treaty of 2001 includes a reference to the Constitutive Act of the African Union (aka the Togo Treaty, 2000). Importantly, and in marked contrast to the Lagos Plan and Abuja Treaty, the Togo Treaty 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,” taking into account the UN Charter, the Universal Declaration of Human Rights, and the African Charter on Human and Peoples’ Rights (Preamble).

The turn of the millennium was a turning point in the promotion of governance norms at both the continental and the regional level, and the creation of the New Partnership for Africa’s Development (NEPAD) played an instrumental role. NEPAD was initiated by the leaders of South Africa (Thabo Mbeki), Nigeria (Olusegun Obasanjo), Algeria (Abdelaziz Bouteflika), and Senegal (Abdoulay Wade). It aimed to eradicate poverty, encourage sustainable growth, integrate Africa into the global economy, and promote the empowerment of women. Democracy and good economic, political, and corporate governance are assumed here to be preconditions for sustainable development. NEPAD was adopted by the AU in July 2001 as its economic development plan. Since the AU is essentially an umbrella organization of the Regional Economic Communities (including SADC), NEPAD has filtered down to the regional level and influenced the promotion of democratic and governance norms. For SADC, this is reflected in the Amended Treaty of 2001 and the RISDP and SIPO, which place a renewed emphasis on the same norms that are part of NEPAD. In addition, Council and Summit records indicate that SADC is keen to align its regional programs with NEPAD initiatives.

As a new instrument of governance promotion, the AU and NEPAD have introduced an African Peer Review Mechanism, which enables a review of states’ progress in matters of governance. The key benchmarks include democracy, respect for human rights, and sound economic policies. It

is a voluntary scheme that lacks coercive elements, and it is funded primarily by the UK, Canada, and the UNDP. African states may opt out or withdraw from the program. A majority of SADC member states have signed up.²⁵ Given the limitations inherent to the mechanism, critics have raised serious doubts about its potential to induce reforms in unwilling states (Akopari 2004).

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 there at some point in history, leaving traces in the electoral, legal, and administrative systems as well as a problematic heritage, exemplified by the land reform programs.

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 a number of times. From 1993 to 2003, the EU imposed an arms embargo and travel restrictions against the government of the DRC, adding financial sanctions to the list in 2003. The EU cited a lack of respect for democracy as its justification 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, actually strengthening SADC’s insistence on unity and solidarity, particularly when it comes to Zimbabwe (Van der Vleuten and Ribeiro Hoffmann 2010). This undoubtedly results from 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 of a Liberation leader like Mugabe and cannot convince the other leaders to take a similar stance on 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 the relationship was formalized in 1986 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 into a more encompassing policy framework after the European Parliament requested that aid be linked to minimum conditions of human rights protection (Smith 1998). In Lomé IV (1990–2000), emphasis was placed for the first time on the promotion of human rights, democracy, good governance, strengthening the position of women, and increasing regional cooperation. However Lomé 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 upon good governance. The Cotonou Agreement is now being implemented on a

²⁵ Botswana, Madagascar, Namibia, Seychelles, Swaziland, and Zimbabwe have not signed up.

region-to-region basis via 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, good governance, and the integration of the SADC states into the world economy. The EU has stated 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 considers acceptable standards of governance. It is also worth noting that the SADC Secretariat is heavily reliant on European funding; if funding were to be withdrawn, the Secretariat would probably have to close, since 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 and trade policies and the huge power asymmetry; yet critics have noted that the EU can be inconsistent, even outwardly 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, nominally engages in governance transfer as well, 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, and individual liberty. 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 criticize human rights abuses in member states (Borger 2010).

4.2 The Region

Factors at the regional level play a significant role in explaining progress (or lack thereof) in governance transfer. Transnational actors such as trade unions and civil society organization play an important role, but the region's heterogeneity and the constraints imposed on the regional hegemon hamper a more progressive approach.

Disunity, Instability, and Heterogeneity

Behind the show of unity that SADC insists on presenting to the outside world lies a fundamental disunity between what we might term the “old guard” and the “vanguard” of SADC. The vanguard states—the more progressive, democratic states—have a vested interest in locking in reforms in their own governance institutions and pressuring laggard neighbors into making similar reforms via regional policy. This can go some way to explaining the relative success of SADC's election observation missions, and it is certainly possible that the newer members of SADC have found membership beneficial in terms of locking in democracy. However, this effect could be undermined if, as we suspect, “undesirable” EOM reports are swept under the carpet in the service of political expediency. The old guard states, largely represented by the more

authoritarian regimes, are reluctant to implement governance reforms for fear that they will challenge the government's authority, but they are nonetheless susceptible to pressure from their more progressive neighbors. The struggle between these two camps has influenced the reform and institutionalization of certain SADC bodies and instruments. The reform of the Organ in 2001 was intended to wrest control of SADC's security apparatus away from Mugabe, thus reducing his influence and preventing gung-ho interventions under the SADC banner such as the one in the DRC in 1998. The vanguard, led by South Africa, could arguably do more to push the old guard toward reform. As we have argued elsewhere, however, it is difficult for the country to do so.

Political stability is the objective with unwritten priority in SADC, which is understandable given the turbulence of the past and current threats to stability. SADC has tended to ascribe a lack of stability to external factors such as colonialism and Western interference. At present, five SADC member states²⁶ have a negative score on the World Bank's "political stability and absence of violence" index, which describes "the likelihood that the government will be destabilized or overthrown by unconstitutional or violent means including domestic violence or terrorism" (World Bank 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 ranks low on democracy but is considered politically stable.

Appendix 1 presents comparative data for all SADC member states. The countries are similar to each other compared to other world regions because of their low GDP/capita, high HIV/AIDS rates, and low Human Development Index (HDI). But compared to each other there is a considerable degree of heterogeneity. Regarding GDP/capita, the Seychelles, Botswana, Mauritius, and South Africa are relatively well off, whereas other countries, particularly the DRC and Zimbabwe, are extremely poor. In terms of HIV/AIDS, South Africa, Botswana, Swaziland, and Lesotho are hard hit compared to the DRC, Angola, and the island states. Regarding democracy, we can classify the countries into three categories: consolidated democracies, a middle group of unconsolidated democracies, and nominal democracies. Angola, Swaziland, and Zimbabwe fall into the third category, while Botswana, Lesotho, Mauritius, and South Africa fall into the first. The other member states have democratic institutions, but they are vulnerable and unstable. With respect to the state's capacity to implement policies, SADC includes fragile states still in the process of state-building after years of protracted civil war (Angola, DRC), as well as modestly well-functioning states. Finally, the colonial heritage of Southern African states has contributed to the region's heterogeneity in terms of language (English, Portuguese, French), legal systems, electoral systems, and administrative systems.

These diverse characteristics influence the functioning of SADC and its capabilities to prescribe and promote governance standards in several ways. First, the overall low GDP means that SADC member states—as well as the SADC Secretariat—struggle with very limited financial and institutional capabilities. Second, the priority given to political stability means that SADC

²⁶ Angola (but improving), DRC, Madagascar, Malawi (only slightly negative), and Zimbabwe.

supports incumbent governments even if they violate standards of good governance. Third, the heterogeneity tends to produce lowest-common-denominator outcomes for standards and policies and hampers the active promotion of good governance.

Transnational Actors

Transnational actors play an important role for governance transfer in SADC. They have been involved in standard setting as well as in monitoring and implementation. Strong national and regional advocacy networks, rooted in the liberation struggles and financially and technically supported by the donor community, have been very successful in this respect.

This report has discussed the role of EISA in developing standards on election management (section 3.1, Principles and Guidelines Governing Democratic Elections). The Open Society Initiative for Southern Africa is an active watchdog for democracy. COSATU has been influential in pushing for the codification of labor rights at the regional level (see section 3.1, Charter on Fundamental Social Rights). It has also taken a strong position on Zimbabwe and democracy-related topics in general, frequently issuing statements lambasting both SADC and the South African government for failing to take suitable action in relation to Mugabe, Lesotho, and Swaziland. NGOs and trade unions have played an agenda-setting role concerning the rights of workers with HIV/AIDS. Coordinating the efforts of over 40 women's groups, the Southern Africa Gender Protocol Alliance played a key role in drafting the Gender Protocol and is a crucial player when it comes to monitoring the Protocol's implementation (see section 3.1, SADC Gender Protocol). Churches in the region are organized in the Fellowship of Christian Councils in Southern Africa (FOCCISA), which aims to promote respect for human rights and democracy in the region. Several initiatives have brought together NGOs region-wide, such as the SADC People's Summits, organized by the Southern Africa Peoples' Solidarity Network (SAPSN). Three apex organizations, the Southern African Trade Union Coordination Council (SATUCC, which includes COSATU), the SADC-CNGO, and FOCCISA, have stepped up their collaboration. They regularly issue joint statements reminding SADC or individual governments (e.g., Zimbabwe, Madagascar, Swaziland) of their pledges to democracy and the spirit of the SADC treaties (Pambazuka News 2008).

The Regional Hegemon

South Africa—or more specifically, what we might call the “Mandela-Mbeki doctrine” (Landsberg 2000)—was central to the shift from the “old” model of African cooperation, as represented by the Lagos Plan and the Abuja Treaty, to the “new” model, as represented by NEPAD and the reconstituted AU and SADC, with their emphasis on good governance, democracy, and human rights as the foundations of sustainable development. In the optimism of a post-Cold War, pre-9/11 world, 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 center (Nathan 2005).

During his term in office, Mbeki popularized the idea of the twenty-first 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 this vision throughout the continent. Mbeki was the primary actor in the development of NEPAD and the attendant change of the OAU into the AU.²⁷ 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).

The African Renaissance and NEPAD are one dimension of the Mandela-Mbeki doctrine. The other is a particular approach to conflict resolution, which has subsequently become the manner in which SADC approaches conflict and political crisis. 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, it is not in South Africa’s interest to force its will upon its neighbors, even though the country’s hegemonic position would make it easy. It can, however, offer its resources and leadership to bring rival groups to the negotiating table and keep the calm (usually through a government of national unity) until a free and fair election can safely be held. SADC’s post-1998 interventions have generally followed this approach, favoring negotiated settlements and power-sharing deals over the kind of approach taken by ECOWAS in Cote d’Ivoire. Critics maintain that this strategy merely legitimates leaders such as Mugabe and allows them to stay in power.

South African hegemony within the region is vulnerable and easily contested, as we have laid out above. As a result, South Africa cannot act freely as teacher and paymaster for the promotion of good governance standards in the region—at least, not to the extent that it might like—fearing accusations of being neo-imperialist and a puppet of the West (Van der Vleuten and Ribeiro Hoffmann 2010). However, South Africa does try to influence its neighbors (e.g., its efforts vis-à-vis Swaziland and Zimbabwe), although it prefers to do so “quietly” in order to avoid such accusations. A second constraining factor is the issue of land reform. This is a very sensitive political issue in South Africa and other SADC states with significant white settler populations. Land reform was one of the ANC’s promises when it came to power in 1994, rendering the South African government unwilling or unable to condemn the Zimbabwean government’s actions in this area. Doing so could cost the party votes in poor, rural areas that would benefit from land reform.

4.3 Summary

When it comes to governance transfer to and by SADC, it is useful to distinguish between demand and supply factors. Both sets of factors have a rational and a normative dimension. These four categories are summarized in Table 4.1.

²⁷ Mbeki was the first chairperson of the AU when it was inaugurated in Pretoria in 2002.

Table 9: Demand and supply of governance transfer ²⁸

	Rational	Normative
Demand	Lock-in of democratic reforms, curbing negative externalities, signaling	International legitimacy
Supply	Active: regional hegemon, donors, and external powers	Active: promotion of global script Passive: normative reference model

Regarding the rational dimension, we have seen that SADC member states have engaged in governance transfer to lock in democratic reforms domestically as well as in neighboring states and to avoid spillovers of political instability and political violence. As the regional hegemon, South Africa is central to the prescription and adoption of governance standards by SADC, although its hegemony is also vulnerable and contested. Donors are usually referred to as International Cooperating Partners (ICPs). They play a crucial role in financial and technical assistance, going beyond mere facilitation to provide direct input into the policy process and strengthen the capacities of civil society groups.

For the normative dimension, it is 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. Summits look good to an international and domestic audience and also serve as useful forums to solve regional problems on a flexible and politically expedient basis while giving the impression that a process exists to deal with problems. Like its predecessors, SADCC and the FLS, SADC insists on formulating "African solutions to African problems," although the standards adopted consistently reflect "global" standards. The "normative supply" comes from organizations such as 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 hope to attract much-needed funding but at the same time do not want outsiders to dictate their plans of action. An agenda like the RISDP, which contains 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). This is one potential reason why policy frequently relies on vague formulations (i.e., the membership criteria), and, when it is challenged or yields inconvenient results, it is clarified ad hoc or scrapped altogether if governments realize they have created something they can no longer control (i.e., the Tribunal). This helps explain why on paper, at the prescriptive level, SADC harbors grand ambitions of governance transfer, but when it comes to application, the reality does not live up to the aspiration.

²⁸ Source: Börzel, van Hüllen, and Lohaus 2013: 23

5. Conclusion

From its early days in 1992, SADC has engaged in governance transfer due to its roots in the struggle for majority rule. The organization's founding documents cite democracy, rule of law, and human rights as its fundamental principles. SADC has two main objectives that have become inextricably linked since the Organ became part of SADC in 2001: the eradication of poverty, a necessary but not sufficient condition for political stability, and political stability, a necessary but not sufficient condition for the eradication of poverty. Standards of good governance are valuable to SADC governments insofar as they contribute to these two objectives. As a result, policies promoting governance standards are cast in instrumental terms that highlight their importance in achieving a reduction in poverty (women's rights, economic and social rights, position of people with HIV/AIDS, reduction of corruption), attractiveness of the region for foreign investment (good governance, accountability), and an increase in political stability (democracy, rule of law).

Democracy has been the most prominent area of governance transfer in SADC. Democracy became a tangible standard in the 2001 revised treaty, and its promotion was enabled in 2004 with the adoption of the SIPO and the ensuing principles and code of conduct for election observation. Regarding democratic conditionality, however, SADC weakened rather than strengthened its criteria. Non-discrimination and protection of human rights have been consistently integrated into all SADC documents from the beginning. Special attention is given to socioeconomic rights including the non-discrimination of workers based on gender or HIV/AIDS status. Rule of law and good governance are less entrenched than human rights and democracy. In 2001, SADC was the first African regional organization to adopt a binding instrument against corruption, but it never established the committee in charge of monitoring the standards. The rule of law is referred to in SADC documents but not actively promoted, arguably because it is seen as belonging to the domain of the sovereign state. The concept of good governance surfaced for the first time in 2001. It seems to be the principle least embedded and most "alien" to SADC, mainly linked to financial and development issues where the interests of the donor and business community have to be satisfied.

Regarding the adoption of instruments and their actual application to ensure that standards are respected, SADC's record is mixed. In spite of the organization's systematic attention to human rights issues, it has not established any binding instrument in this field. In the domain of gender equality, targets and deadlines are regularly formulated, but monitoring has been delegated to civil society and no sanctions are available. The Summit did not allow the Tribunal to develop into a human rights court. There is no democratic conditionality for candidate member states. However, elections in SADC member states are systematically monitored: since 2004, SEOMs have been sent to all elections. Despite the culture of state autonomy and non-intervention, SADC has diplomatic and military means at its disposal for intervention in its member states in case of, *inter alia*, gross violations of human rights or a threat to the state's legitimate authority. SADC has applied these instruments in some instances of election-related violence, post-election violence, and constitutional coup, but the application of measures

tends to be uneven. It seems motivated chiefly by concerns about the spillover of instability or the defense of the incumbent government. Regarding the rule of law and good governance, a chronic lack of financial means and qualified staff hinders the development of monitoring mechanisms.

We have identified four conditions that would have to be fulfilled in order for SADC to successfully engage in governance transfer. First, governance transfer must be, in some minimal sense, in the interest of South Africa as the dominant regional power. Much as the EU requires the leadership of France and Germany for anything to happen, the SADC requires the participation and leadership of South Africa, even if that country'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 capable of "shaming" 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 governance standards. In large part, this explains the relative success of gender mainstreaming in SADC: there is both international pressure and demand from highly active civil society groups in the region. The fourth condition for successful governance transfer in SADC is that it must not be perceived as a potential threat to state sovereignty. As the Tribunal's suspension and the SADC's refusal to allow the Parliamentary Forum to transform into a legislative body illustrate, SADC member states are unwilling to endow any regional body or policy with the power to override national law and politics.

It is evident that SADC remains very much a forum of states. Despite the strength of civil society in Southern Africa, it only plays a nominal role, and parliaments and opposition parties are not involved at all. Governments and heads of state occupy the driver's seat and determine SADC's course of action. SADC's divide, with progressive states on one side and the conservative guard harking back to Liberation struggles on the other, often renders the organization unable to reach consensus on serious issues (e.g., the Zimbabwe crisis, the 1998 DRC intervention), which has the effect of undermining SADC's credibility.

Finally, we would like to highlight the problem of "silences": this report has analyzed what is said, written, and institutionalized, rather than what remains unsaid, unwritten, and un-institutionalized. Let us name just two "silences." First, SADC stresses time and again the importance of political stability and human rights, but nowhere does it deal with the rights of refugees (their human rights, economic and political rights, citizenship status), who constitute a vulnerable group and are both a consequence and cause of political instability and conflict in the region. Second, SADC repeatedly states its commitment to human rights standards and non-discrimination, but nowhere in its Protocols does it address the rights of lesbian, gay, bisexual, and transsexual/transgender (LGBT) people or the issue of violence and discrimination against LGBT persons and communities, which is a significant problem in many SADC member states. Also, despite references to human rights in many documents, there is no SADC institution specifically mandated to deal with human rights issues, no sector at the Secretariat specifically entrusted with human rights protection, and 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.

Appendix 1: Data SADC Member States

	Population (thousands) ¹	GDP (US\$, billions) ²	GDP/ capita (PPP, US\$) ³	Human Development Index ⁴	Democracy ⁵	Gender Gap ⁶	HIV/AIDS prevalence rate in adults aged 15- 49 ⁷
Most recent year for which data was available	2010	2011	2011	2012	2008	2012	2012
Angola	19,549	104,116	5,306	.508	3.25	.6659	2.3
Botswana	1,969	15,334	7,550	.634	8.67	.6752	23.0
DRC	62,191	15,751	217	.304	4.58	-	1.1
Lesotho	2,009	2,526	1,332	.461	8.25	.7530	23.1
Madagascar	21,000	9,901	453	.483	7.17	.7016	0.5
Malawi	15,014	5,614	347	.418	6.50	.7139	10.8
Mauritius	1,231	11,244	8,725	.737	9.58	.6599	1.2
Mozambique	23,967	12,572	571	.327	7.33	.7349	11.1
Namibia	2,179	12,794	5,883	.608	8.17	.7094	13.3
Seychelles	91	1,060	11,670	.806	6.90	-	-
South Africa	51,452	402,248	7,972	.629	8.92	.7510	17.9
Swaziland	1,193	3,974	3,725	.536	1.08	-	26.5
Tanzania	44,973	23,851	544	.476	5.17	.6928	5.1
Zambia	13,217	19,204	1,408	.448	7.58	.6312	12.7
Zimbabwe	13,077	8,865	689	.397	1.92	-	14.7
SADC	273,192	649,054	3,766	.518	6.34	.6990	11.7
World	6,916,183			.694	5.46		0.8

¹ United Nations, *World Population Prospects: the 2012 Revision*

² International Monetary Fund, *World Economic Outlook Database*, October 2013

³ *Ibid.*

⁴ UN Development Programme, *2013 Human Development Report*

⁵ Lokas, M./ Van Hüllen, V., 2011

⁶ World Economic Forum, *The Global Gender Gap Report 2013*

⁷ UNAIDS, *Global Report*, 2013

Appendix 2: Overview Liberation Movements and Heads of State in SADC Member States since Independence

State	Movement (ideology)	Type of Liberation	Current status of movement	Heads of State [period active in politics] ¹⁰⁰
Angola	MPLA (Marxist-Leninist, later social democratic)	Armed struggle against Portuguese colonialism 1961-74 Civil war 1975-2002	Ruling party 1975-present	Agostinho Neto (1975-79, died in office) José Eduardo dos Santos (1979-present)
Botswana	BDP (Conservative, center-right)	Peaceful transition	Ruling party 1966-present	Seretse Khama (1966-80, died in office) Ketumile Masire (1980-98, retired) Festus Mogae (1998-2008, retired) Ian Khama (2008-present)
DRC	MNC (nationalist)	Non-violent campaign to end colonialism 1955-60	Split, both factions still active but not so influential	Joseph Kasavubu (1960-65, deposed by coup) Mobutu Sese Seko ¹⁰¹ (1965-97, overthrown) Laurent Kabila (1997-2001, assassinated) Joseph Kabila (2001-present)
Lesotho	No single strong movement British protectorate until 1966 (monarchy)	Peaceful transition	n/a	Lesbia Jonathan (1966-86, deposed by coup) Justin Lekhanya ¹⁰² (1986-91, deposed by coup) Elias Ramoena ¹⁰³ (1991-93, handed power to democratically elected government) Metsu Mokhehle (April 93-Aug 94) Hae Phisofole ¹⁰⁴ (Aug 94-Sept 94) Metsu Mokhehle (Sept 94-96) Pakalitha Mosisi (1998-present)
Madagascar	No single strong movement	Failed uprising 1947; Non-violent transition to independence 1960	n/a	Philibert Tsiranana (1960-72, resigned and handed power to military) Gabriel Ramanantsoa ¹⁰⁵ (1972-75, resigned) Richard Ratsimandrana ¹⁰⁶ (5 Feb 1975-11 Feb 1975, assassinated) Gilles Andriamahazo ¹⁰⁷ (Chairman of military committee, Feb 1975-June 75) Didier Ratsiraka ¹⁰⁸ (June 1975-Dec 1993) Albert Zafy (1993-96, resigned) Norbert Ratsirahonana (acting president, Sept 1996-Feb 97) Didier Ratsiraka (1997-2002) Marc Ravalomanana (2002-2009, deposed by coup) Andry Rajoelina (2009-present)
Malawi	MCP (?)	Non-violent movement	Influential political party	Hastings Banda (1966-94, retired) Babili Muluzi (1994-2004, retired) Bingu wa Mutharika (2004-2012, died in office) Joyce Banda (2012-present)
Mauritius	No single strong movement	Peaceful transition	n/a	Seewoosagar Ramgoolam (1968-82, retired) Anerood Jugnauth (1982-95) Navin Ramgoolam (1995-2000) Anerood Jugnauth (2000-03) Paul Berenger (2003-05) Navin Ramgoolam (2005-present)

State	Movement (ideology)	Type of Liberation	Current status of movement	Heads of State (period active in politics) ^{***}
Mozambique	FRELIMO (Marxist-Leninist, later social democratic)	Armed struggle against Portuguese colonialism 1964-74 Civil war 1977-1992	Ruling party 1975-present	Samora Machel (1975-1986, died in office) FRELIMO Politburo (Oct 1986-Nov 1986) Joaquim Chissano (Nov 1986-2005, retired) Armando Guebuza (2005-present)
Namibia	SWAPO (social democratic)	Armed struggle against South African occupation 1966-88	Ruling party 1990-present	Sam Nujoma (1990-2005, retired) Hilke-Punye Poljanec (2005-present)
Seychelles	SPPF and SDP	Peaceful transition	SPPF in power since 1977	James Mancham (1976-77, deposed by coup) France-Albert René (1977-2004, stepped down) James Michel (2004-present)
South Africa	ANC (social democratic)	Mixture of violent/non-violent resistance and civil disobedience against minority-rule 1912-94	Ruling party 1994-present	Nelson Mandela (1994-99, retired) Thabo Mbeki (1999-2008, retired) Kgalema Motlanthe (acting president, Sept 2008-May 2009) Jacob Zuma (2009-present)
Swaziland	No single strong movement British protectorate until 1968 (monarchy)	Peaceful transition	n/a political parties banned	King Sobhuza II (1968-1982, died in office) King Mswati III (1986-present)
Tanzania	TANU (ujamaa, socialism)	Peaceful transition	defunct since 1980s	Julius Nyerere (1962-85, retired) Ali Hassan Mwinyi (1985-95, retired) Benjamin Mkapa (1995-2005, retired) Jakaya Kikwete (2005-present)
Zambia	UNIP	Civil disobedience 1961	Governing party 1964-1991, no longer influential	Kenneth Kaunda (1964-91, retired) Frederick Chiluba (1991-2002, retired) Levy Mwanuzasa (2002-08, died in office) Rupiah Banda (2008-2011, retired) Michael Sata (2011-present)
Zimbabwe	ZANU-PF (Marxist-Leninist, later social democratic)	Civil war/armed struggle against minority-rule 1964-1979	Ruling party since 1980	Carson Banana (1980-1987, forced out) Robert Mugabe (1987-present)

[†] Designates military rule

^{***} Individuals in bold are those considered the 'founding fathers' of FLS/SADCC/SADC and are generally former leaders in the military arm of liberation movements, spent time in prison for their activities, spent time in exile abroad, or provided substantial support and/or resistance

Appendix 3: Election Observer Missions

Table 1: Overview of missions

Country, Date of elections	Type of elections	SEOM sent Y/N	SEOM details (source: allAfrica.com)	SEOM report found Y/N	SADC-PF	SADC ECF	Commonwealth and EU
South Africa 14-04-2004	Presidential, parliamentary	Y	Head of Mission: Veda Balloomoot (MAU)	N		Observer Mission Report	No EU EOM
Madagascar 20-05-2004	Presidential, parliamentary	Y	-	M	Interim statement (7-05-2004)	Observer Mission Report	
Botswana 30-10-2004	Presidential and parliamentary	Y	-	N	Y	Observer Mission Report	
Mozambique 15/16-11-2004	Presidential and parliamentary	Y	'the reason why few countries formed part of the observer mission was due to budgetary constraints as there have been quite a number of SADC countries holding elections this year'	M	Report (19-11-2004)	Observer Mission Report	
Mozambique 1/2-12-2004	Presidential and parliamentary	Y	-	N		Observer Mission Report	
Malawi 3-07-2005	Presidential, parliamentary	Y	-	M		Observer Mission Report	
Zimbabwe 31-03-2005	Parliamentary	Y	55 observers deployed 2 weeks prior to election. Head of Mission: Phumzile Mlambo- Ngcuka (SA)	Preliminary Statement (03-04-2005)	Access refused to SADC-PF*	No mission sent	Access refused to Commonwealth and EU
Zambia 30-10-2005	Presidential, parliamentary, Councilors	Y	Started on October 22, but scaled down activities on mainland and focused on Zambia, following death of the presidential candidate's running mate, Jumbo Rajala, on October 27 2005	Preliminary Statement (??-12-2005)		Observer Mission Report	Commonwealth report

Country, Date of elections	Type of elections	SEDM sent Y/N	SEDM details (source: allAfrica.com)	SEDM report found Y/N	SADC-PF	SADC ECF	Commonwealth and EU
Tanzania 14-12-2005	Presidential, Parliamentary, Local	SADC Secretariat	Head of Mission: John Pandeni (NAM)	N	Interim Statement (17-12-2005)	Observer Mission Report	Commonwealth and EU were invited
Seychelles 28/29/30-07-2006	Presidential	Y		N	N (non-member of SADC-PF)		Commonwealth
DRC 30-07-2006	Presidential and Parliamentary	Y	Mission launched 26 June 2006. 200 observers sent. Military and civilian components. Head of mission: John Pandeni (NAM)	Preliminary Statement (01-08-2006)	Interim Statement (03-08-2006)	(according to EISA mission was sent, but no report found)	EU EOM final report
Zambia 28-09-2006	Presidential, Parliamentary, Local	Y	483 observers deployed 1 week prior to election. Head of mission: Philip Mearns (TAM)	N	Interim Statement (02-10-2006)	(according to EISA mission was sent, but no report found)	EU EOM interim statement; Commonwealth
Madagascar 03-12-2006	Presidential	Y	Mission launched 1 week prior to election. Head of mission: Ngombale-Mwiru	N	Interim Statement (07-12-2006)	Observer Mission Report	
Lesotho 17-02-2007	Parliamentary King dissolved parliament	Y		Preliminary Statement (18-02-2007)	Interim Statement (20-02-2007)	Interim Statement	EU statement; Commonwealth
Zimbabwe 27-03-2008	Harmonized	Y	120 observers Head of Mission: Joao Miranda (ANG)	Preliminary Statement (30-03-2008)	Access refused to SADC-PF	Observation Statement	Access refused to Commonwealth and EU
Zimbabwe 27-06-2008	Presidential, Parliamentary	Y		Preliminary Statement (29-06-2008)	Access refused to SADC-PF*	Observation Statement	Access refused to Commonwealth and EU

Country, Date of elections	Type of elections	SEOM sent Y/N	SEOM details (source: AfricaTeam)	SEOM report found Y/N	SADC-PF	SADC ECF	Commonwealth and EU
Angola 05-09-2008	Legislative	Y	100-200 observers sent. Technical team sent in August to determine how many observers required. SADC delegation sent in 2007 to assist with voter registration. Head of mission: Minister (SW)	N		Observation Statement	EU EOM final report
Swaziland 18-09-2008	National Assembly	Y	30 observers deployed 1 week prior to election. Head of Mission: Francisco Madeira (MOZ)	Interim Statement (20-09-2008)		Observation Statement	Commonwealth
Zambia 30-10-2008	Presidential unscheduled; death of President Mwanamasa	Y	Approx. 100 observers. First group of observers arrived 2 weeks prior to election. Head of mission: John Kunene (SW)	N		Observation Statement	EU EEM report
South Africa 22-04-2009	National and Provincial	Y	50-300 observers sent. Head of mission: Clement Ohumina (SW)	N	Interim Statement	Observer Mission Report	EU EEM report; Commonwealth
Malawi 19-05-2009	Presidential and Parliamentary	Y	-	Preliminary Report (21-05-2009)	Interim Mission Statement	Observer Mission Report	EU EOM report; Commonwealth
Botswana 16-10-2009	General Elections	Y	80 observers. Head of Mission: Francisco Madeira (MOZ)	Preliminary Report (18-10-2009)	Interim Statement (19-10-2009)	Observation Statement (18-10-2009)	
Mozambique 28-10-2009	Presidential, Parliamentary and Provincial	Y	98 observers. Head of mission: Eustarkio Kazonga (ZAM)	Preliminary Report (30-10-2009)	(according to EISA mission was sent, but no report)	Interim Statement	EU EOM prelim statement; Commonwealth
Namibia 27/28-11-2009	Presidential and National Assembly	Y	120 observers. Head of Mission: Francisco Madeira (MOZ)	Preliminary Statement (30-11-2009)	Interim Statement	(according to EISA mission was sent, but no report found)	EU EOM

Country, Date of elections	Type of elections	SEDM sent Y/N	SEDM details (source: africa.com)	SEDM report found Y/N	SADC-PF	SADC ECF	Commonwealth and EU
Mauritius 05-05-2010	Parliamentary	Y	-	Launch Statement (25-04-2010), Preliminary Statement (07-05-2010)	Interim Statement (07-05-2010)	Observation Statement	
Tanzania 31-10-2010	General elections	Y	97 observers sent	Preliminary report (02-11-2010)	Interim Statement	Preliminary Statement	EU EDM prelim statement; Commonwealth interim statement
Seychelles 19/20/21-05-2011	Presidential	Y	-	Statement (22-05-2011)		Preliminary Statement	Commonwealth expert team report
ZIMC 28-11-2011	Presidential and Parliamentary	Y	Mission began 17 days prior to election. 198 observers deployed. Zuma, chairperson of Organ, communicated via telephone with all 3 presidential candidates to discuss situation 1 week after election. Head of mission: Muzivwe Mupfema-Majabula (SA)	M	M (non-member of SADC-PF)	Y, but can't find report	EU EDM final statement

Table 2: Democracy scores,* SEOMI assessments, and other assessments

Country	Democracy score year prior to elections [-]	Democracy score year of elections [-]	Democracy score year after [-]	SEOMI assessment	Other assessments
Angola	3,25 [2007] [-]	3,25 [2008]	[2008]	[no report found]	SAMC ECF: free & fair EU EDM: concerns re. media, transparency Human Rights Watch: elections did not comply with SAMC Principles & Guidelines
Botswana	8,67 [2003]	8,67 [2004]	8,67 [2005]	[no report found]	SAMC ECF: slow but free & fair
	8,67 [2008]	[2008]	[2010]	Minor concerns re. impartiality of electoral commission and media bias. Not significant enough to affect credibility of results	SAMC PF: uneven media coverage and funding, imbalanced gender representation
CNC	4,33 [2005]	5,00 [2008]	5,00 [2007]	Demanded for conducting acceptable elections considering difficult circumstances	SAMC PF: similar to SEDM
	[2010]	[2011]	[2012]	[no report found]	EU EDM: concerns, 46 recommendations EU EDM: inadequately controlled process, lack of transparency and irregularities in the collection, compilation and publication of the results
Lesotho	8,25 [2008]	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	SAMC PF: free & fair but concern re. gender equity Commonwealth: positive (successful intervention by electoral commission to curb media bias) EU EDM: positive
	7,50 [2003]	7,17 [2008]	7,17 [2007]	[no report found]	SAMC PF: significant improvement, free & fair
Malawi	6,67 [2003]	6,50 [2004]	6,50 [2005]	[no report found]	SAMC ECF: similar concerns
	6,50 [2008]	[2008]	[2010]	Concerns re. unpreparedness and lack of independence of electoral commission, use of ethnicity as campaigning tool, media. Overall credible, peaceful, and free.	SAMC PF: peaceful & free, commended for gender equity; concerns re. funding, media Commonwealth: same concerns but considered to create a markedly unbalanced playing field and to mishandle the democratic character EU EDM: same concerns Both EU and Commonwealth criticize UNDP technical assistance (inter-national personnel instead of capacity-building national staff)

Country	Democracy score year prior to elections [–]	Democracy score year of elections [–]	Democracy score year after [–]	SEDM assessment	Other assessments
Mauritius	10,0 (2004) [–]	10,0 (2005) [–]	9,56 (2006) [2011]	Two report found 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/EDF: concerns re. gender, ethnicity, elections credible and peaceful
	6,92 (2003) [2008]	6,92 (2004) [2009]	6,92 (2005) [2010]	Two report found Concerns re. publication and verification of voters roll, voter education. Commented provision of security by law enforcement agencies at polling stations.	– SADC/EDF: shared notes with SEDM EU EOM: similar concerns; a lot funding; commented for gender quota Demmerwealth: id.
Namibia	7,75 (2003) [2008]	7,75 (2004) [2009]	8,17 (2005) [2012]	Two report found 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 commented for progress gender equity, elections free, transparent and credible
	6,98 (2003) [2008]	6,98 (2004) [2009]	6,98 (2005) [2011]	Two report found Minor concerns but credible and free elections	Demmerwealth: free & fair SADC/EDF: met with SEDM; minor concerns but credible and free elections
South Africa	9,33 (2003) [2008]	9,33 (2004) [2009]	9,33 (2005) [2010]	Two report found Two report found	SADC/EDF: free & fair EU EOM: credible, transparent SADC/PF: free & transparent, commented for gender equality
	1,08 (2007) [2008]	1,08 (2008) [2009]	1,08 (2009) [2010]	Elections competently managed. Reconnal improving electoral system, exp. security of the ballot and usage of transparent ballot boxes.	Commented for: 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) [2008]	5,17 (2005) [2009]	5,17 (2006) [2011]	Zanzibar – commented for peace, tolerance, political vigour, and gender equity in election management. Minor concerns re. voters roll. Tanzania: free and peaceful. Few incidents; commented for gender equity; open transparent, free and fair	Demmerwealth: serious concerns, but improvement compared to previous elections SADC/PF: concerns, also re. gender equity but overall free & fair SADC/EDF: shared notes with SEDM and EU EOM, minor concerns EU EOM: concerns re. transparency, gender equity Demmerwealth: minor concerns

Country	Democracy score year prior to elections [-]	Democracy score year of elections [-]	Democracy score year after [-]	SEOM assessment	Other assessments
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 ²⁰	1,92 (2004)	1,92 (2005)	1,92 (2006)	Condemned for well-managed and transparent elections and for gender equity. Minor criticism re. voter's registration process.	Constitution 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, observed free and fair. 2nd round: serious political unbalanced violence. Many deliberately spoiled ballots. Elections did not reflect will of the people.	SADC ECF: 1st round partly free but violating re. fairness because of lack of transparency SADC PF, EU EOM: refusal access

²⁰ Scale ranges from 0-10 where 0 is least democratic and 10 most democratic. Source: Freedom House and Polity IV, data combined by Lofthus and Van Hüllen (2011), see Appendix 1.

²¹ In bold: clearly diverging views in different reports re. the elections.

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Governance has become a central theme in social science research. The Collaborative Research Center (SFB) 700 *Governance in Areas of Limited Statehood* investigates governance in areas of limited statehood, i.e. developing countries, failing and failed states, as well as, in historical perspective, different types of colonies. How and under what conditions can governance deliver legitimate authority, security, and welfare, and what problems are likely to emerge? Operating since 2006 and financed by the German Research Foundation (DFG), the Research Center involves the Freie Universität Berlin, the University of Potsdam, the European University Institute, the Hertie School of Governance, the German Institute for International and Security Affairs (SWP), and the Social Science Research Center Berlin (WZB).

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