

APPENDIX A

Declaration, Treaty and Protocol of the Southern African Development Community

APPENDIX A.1: SADC OBJECTIVES

Regional economic development and integration	Political, defence and security co-operation
Achievement of development and economic growth	Evolution of common political values, systems and institutions
Alleviation of poverty	Promotion and defence of peace and security
Enhancement of the standard and quality of life	
Support for the socially disadvantaged through regional integration	

Source: Malan and Cilliers, 1997, p 2

APPENDIX A.2: SADC TREATY

PREAMBLE

We, the Heads of State or Government of:

The People's Republic of Angola
The Republic of Botswana
The Kingdom of Lesotho
The Republic of Malawi
The Republic of Mozambique
The Republic of Namibia

The Kingdom of Swaziland
The United Republic of Tanzania
The Republic of Zambia
The Republic of Zimbabwe

HAVING REGARD to the objective set forth in 'SOUTHERN AFRICA: TOWARD ECONOMIC LIBERATION – A Declaration by the Governments of independent States of Southern Africa, made at Lusaka, on the 1st April, 1980':

IN PURSUANCE of the principles of 'TOWARDS A SOUTHERN AFRICAN DEVELOPMENT COMMUNITY – a Declaration made by the Heads of State or Government of Southern Africa at Windhoek, in August, 1992', which affirms our commitment to establish a Development Community in the Region;

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

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

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

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

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

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

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

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

HAVE DECIDED TO ESTABLISH AN INTERNATIONAL ORGANISATION TO BE KNOWN AS THE **SOUTHERN AFRICAN DEVELOPMENT COMMUNITY (SADC)**, AND HEREBY AGREE AS FOLLOWS:

CHAPTER ONE

ARTICLE 1 DEFINITIONS

In this Treaty, unless the context otherwise requires:

1. "Treaty" means this Treaty establishing SADC;
2. "Protocol" means an instrument of implementation of this Treaty, having the same legal force as this Treaty;
3. "Community" means the organisation for economic integration established by Article 2 of this Treaty.
4. "Region" means the geographical area of the Member States of SADC;
5. "Member State" means a member of SADC;
6. "Summit" means the Summit of the Heads of State or Government of SADC established by Article 9 of this Treaty;
7. "High Contracting Parties" means States, herein represented by Heads of State or Government or their duly authorised representatives for purposes of the establishment of the Community;

8. “Council” means the Council of Ministers of SADC established by Article 9 of this Treaty;
9. “Secretariat: means the Secretariat of SADC established by Article 9 of this Treaty;
10. “Executive Secretary” means the chief executive officer of SADC appointed under Article 10(7) of this Treaty;
11. “Commission” means a commission of SADC established by Article 9 of this Treaty;
12. “Tribunal” means the tribunal of the Community established by Article 9 of this Treaty;
13. “Sectoral Committee” means a committee referred to in Article 38 of this Treaty;
14. “Sectoral Coordinating Unit” means a unit referred to in Article 38 of this Treaty;
15. “Standing Committee” means the Standing Committee of Officials established by Article 9 of this Treaty;
16. “Fund” means resources available at any given time for application to programmes, projects and activities of SADC as provided by Article 26 of this Treaty.

CHAPTER TWO

ARTICLE 2 ESTABLISHMENT

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

ARTICLE 3 LEGAL STATUS

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

CHAPTER THREE

ARTICLE 4 PRINCIPLES

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

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

ARTICLE 5 OBJECTIVES

1. The objectives of SADC shall be to:
 - a) achieve development and economic growth, alleviate poverty, enhance the standard and quality of life of the peoples of Southern Africa and support the socially disadvantaged through regional integration;
 - b) evolve common political values, systems and institutions;
 - c) promote and defend peace and security;

- d) promote self-sustaining development on the basis of collective self-reliance, and the interdependence of Member States;
 - e) achieve complementarity between national and regional strategies and programmes;
 - f) promote and maximise productive employment and utilisation of resources of the environment;
 - g) achieve sustainable utilisation of natural resources and effective protection of the environment;
 - h) strengthen and consolidate the long standing historical, social and cultural affinities and links among the peoples of the Region.
2. In order to achieve the objectives set out in paragraph 1 of this Article, SADC shall:
- a) harmonise political and socio-economic policies and plans of Member States;
 - b) encourage the peoples of the Region and their institutions to take initiatives to develop economic, social and cultural ties across the Region, and to participate fully in the implementation of the programmes and projects of SADC;
 - c) create appropriate institutions and mechanisms for the mobilisation of requisite resources for the implementation of programmes and operations of SADC and its Institutions;
 - d) develop policies aimed at the progressive elimination of obstacles to the free movement of capital and labour, goods and services, and of the peoples of the Region generally, among Member States;
 - e) promote the development of human resources;
 - f) promote the development, transfer and mastery of technology;
 - g) improve economic management and performance through regional cooperation;

- h) promote the coordination and harmonisation of the international relations of Member States;
- i) secure international understanding, cooperation and support, and mobilise the inflow of public and private resources into the Region;
- j) develop such other activities as Member States may decide in furtherance of the objectives of this Treaty.

ARTICLE 6 GENERAL UNDERTAKINGS

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

CHAPTER FOUR

ARTICLE 7 MEMBERSHIP

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

ARTICLE 8
ADMISSION OF NEW MEMBERS

1. Any state not listed in the Preamble to this Treaty may become a member of SADC upon being admitted by the existing members and acceding to this Treaty.
2. The admission of any such state to membership of SADC shall be affected by a unanimous decision of the Summit.
3. The Summit shall determine the procedures for the admission of new members and for the accession to this Treaty by such members.
4. Membership of SADC shall not be subject to any reservations.

CHAPTER FIVE

ARTICLE 9
ESTABLISHMENT OF INSTITUTIONS

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

ARTICLE 10
THE SUMMIT

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

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

ARTICLE 11 THE COUNCIL

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

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

ARTICLE 12 COMMISSIONS

1. Commissions shall be constituted to guide and coordinate cooperation and integration policies and programmes in designated sectoral areas.
2. The composition, powers, functions, procedures and other matters related to each Commission shall be prescribed by an appropriate protocol by the Summit.

3. The Commission shall work closely with the Secretariat.
4. Commissions shall be responsible and report to the Council.

ARTICLE 13 THE STANDING COMMITTEE OF OFFICIALS

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

ARTICLE 14 THE SECRETARIAT

1. The Secretariat shall be the principle executive Institution of the SADC, and shall be responsible for:
 - a) strategic planning and management of the programmes of SADC;
 - b) implementation of decisions of the Summit and of the Council;
 - c) organisation and management of SADC meetings;
 - d) financial and general administration;
 - e) representation and promotion of SADC; and
 - f) coordination and harmonisation of the policies and strategies of Member States.

2. The Secretariat shall be headed by the Executive Secretary.
3. The Secretariat shall have such other staff as may be determined by the Council from time to time.

ARTICLE 15 THE EXECUTIVE SECRETARY

1. The Executive Secretary shall be responsible to the Council for the following:
 - a) consultation and coordination with the Government and other institutions of Member States;
 - b) pursuant to the direction of Council or Summit, or on his/her own initiative, undertaking measures aimed at promoting the objectives of SADC and enhancing its performance;
 - c) promotion of cooperation with other organisations for the furtherance of the objectives of SADC;
 - d) organising and servicing meetings of the Summit, the Council, the Standing Committee and any other meetings convened on the direction of the Summit or the Council;
 - e) custodianship of the property of SADC;
 - f) appointment of the staff of the Secretariat, in accordance with procedures, and under Terms and Conditions of Service determined by the Council;
 - g) administration and finances of the Secretariat;
 - h) preparation of Annual Reports on the activities of SADC and its institutions;
 - i) preparation of the Budget and Audited Accounts of SADC for submission to the Council;
 - j) diplomatic and other representation of SADC;

- k) public relations and promotion of SADC;
 - l) such other functions as may, from time to time, be determined by the Summit and Council.
2. The Executive Secretary shall liaise closely with Commissions, and other institutions, guide, support and monitor the performance of SADC in the various sectors to ensure conformity and harmony with agreed policies, strategies, programmes and projects.
 3. The Executive Secretary shall be appointed for four years, and be eligible for appointment for another period not exceeding four years.

ARTICLE 16 THE TRIBUNAL

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

ARTICLE 17 SPECIFIC UNDERTAKINGS

1. Member States shall respect the international character and responsibilities of SADC, the Executive Secretary and other staff of SADC, and shall not seek to influence them in the discharge of their functions.

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

CHAPTER SIX

MEETINGS

ARTICLE 18 QUORUM

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

ARTICLE 19 DECISIONS

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

ARTICLE 20 PROCEDURE

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

CHAPTER SEVEN

COOPERATION

ARTICLE 21 AREAS OF COOPERATION

1. Members States shall cooperate in all areas necessary to foster regional development and integration on the basis of balance, equity and mutual benefit.

2. Member States shall, through appropriate institutions of SADC, coordinate, rationalise and harmonise their overall macro-economic and sectoral policies and strategies, programmes and projects in the areas of cooperation.
3. In accordance with the provisions of this Treaty, Member States agree to cooperate in the areas of:
 - a) food security, land and agriculture;
 - b) infrastructure and services;
 - c) industry, trade, investment and finance;
 - d) human resources development, science and technology;
 - e) natural resources and environment;
 - f) social welfare, information and culture; and
 - g) politics, diplomacy, international relations, peace and security.
4. Additional areas of cooperation may be decided upon by the Council.

ARTICLE 22 PROTOCOLS

1. Member States shall conclude such Protocols as may be necessary in each area of cooperation, which shall spell out the objectives and scope of, and institutional mechanism for, cooperation and integration.
2. Each Protocol shall be approved by the Summit on the recommendation of the Council, and shall thereafter become an integral part of this Treaty.
3. Each Protocol shall be subject to signature and ratification by the parties thereto.

ARTICLE 23 NON-GOVERNMENTAL ORGANISATIONS

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

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

CHAPTER EIGHT

RELATIONS WITH OTHER STATES, REGIONAL AND INTERNATIONAL ORGANISATIONS

ARTICLE 24

1. Subject to the provisions of Article 6(1), Member States and SADC shall maintain good working relations and other forms of cooperation, and may enter into agreements with other states, regional and international organisations, whose objectives are compatible with the objectives of SADC and the provisions of this Treaty.
2. Conferences and other meetings may be held between Member States and other Governments and organisations associated with the development efforts of SADC to review policies and strategies, and evaluate the performance of SADC in the implementation of its programmes and projects, identify and agree on future plans of cooperation.

CHAPTER NINE

RESOURCES, FUND AND ASSETS

ARTICLE 25

RESOURCES

1. SADC shall be responsible for the mobilisation of its own and other resources required for the implementation of its programmes and projects.
2. SADC shall create such institutions as may be necessary for the effective mobilisation and efficient application of resources for regional development.

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

ARTICLE 26 FUND

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

ARTICLE 27 ASSETS

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

CHAPTER TEN FINANCIAL PROVISIONS

ARTICLE 28 THE BUDGET

1. The budget of SADC shall be funded by contributions made by Member States, and such other sources as may be determined by the council.

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

ARTICLE 29 EXTERNAL AUDIT

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

ARTICLE 30 FINANCIAL REGULATIONS

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

CHAPTER ELEVEN

IMMUNITIES AND PRIVILEGES

ARTICLE 31

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

be similar to those accorded to comparable international organisations.

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

CHAPTER TWELVE

SETTLEMENT OF DISPUTES

ARTICLE 32

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

CHAPTER THIRTEEN

SANCTIONS, WITHDRAWAL AND DISSOLUTION

ARTICLE 33 SANCTIONS

1. Sanctions may be imposed against any Member State that:
 - a) persistently fails, without good reason, to fulfill obligations assumed under this Treaty;
 - b) implements policies which undermine the principles and objectives of SADC; or
 - c) is in arrears for more than one year in the payment of contributions to SADC, for reasons other than those caused by natural calamity or exceptional circumstances that gravely affect its economy, and has not secured the dispensation of the Summit.
2. The sanctions shall be determined by the Summit on a case-by-case basis.

ARTICLE 34 WITHDRAWAL

1. A Member State wishing to withdraw from SADC shall serve notice of its intention in writing, a year in advance, to the Chairman of SADC, who shall inform other Member States accordingly.
2. At the expiration of the period of notice, the Member State shall, unless the notice is withdrawn, cease to be a member of SADC.
3. During the one year period of notice referred to in paragraph 1 of this Article, the Member State wishing to withdraw from SADC shall comply with the provisions of this Treaty, and shall continue to be bound by its obligations.
4. A Member State which has withdrawn shall not be entitled to claim any property or rights until the dissolution of SADC.
5. Assets of SADC situated in the territory of a Member State which has withdrawn, shall continue to be the property of SADC and be available for its use.
6. The obligations assumed by Member States under this Treaty shall, to the extent necessary to fulfill such obligations, survive the termination of membership by any State.

ARTICLE 35 DISSOLUTION

1. The Summit may decide by a resolution supported by three-quarters of all members to dissolve SADC or any of its Institutions, and determine the terms and conditions of dealing with its liabilities and disposal of its assets.
2. A proposal for the dissolution of SADC may be made to the Council by any Member State, for preliminary consideration, provided, however, that such a proposal shall not be submitted for the decision of the Summit until all Member States have been duly notified of it and a period of twelve months has elapsed after the submission to the Council.

CHAPTER FOURTEEN

AMENDMENT OF THE TREATY

ARTICLE 36

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

CHAPTER FIFTEEN

LANGUAGE

ARTICLE 37

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

CHAPTER SIXTEEN

SAVING PROVISIONS

ARTICLE 38

A Sectoral Committee, Sector Coordinating Unit or any other institution, obligation or arrangement of the Southern African Development Coordination Conference which exists immediately before the coming into force of this Treaty, shall to the extent that it is not inconsistent with the provisions of this Treaty, continue to subsist, operate or bind Member States or SADC as if it were established or undertaken under this Treaty, until the Council or Summit determined otherwise.

CHAPTER SEVENTEEN**SIGNATURE, RATIFICATION, ENTRY INTO FORCE,
ACCESSION AND DEPOSITARY****ARTICLE 39
SIGNATURE**

This Treaty shall be signed by the High Contracting Parties.

**ARTICLE 40
RATIFICATION**

This Treaty shall be ratified by the signatory States in accordance with their constitutional procedures.

**ARTICLE 41
ENTRY INTO FORCE**

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

**ARTICLE 42
ACCESSION**

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

**ARTICLE 43
DEPOSITARY**

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

CHAPTER EIGHTEEN

TERMINATION OF THE MEMORANDUM OF
UNDERSTANDING

ARTICLE 44

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