



**SOUTHERN AFRICA
LITIGATION CENTRE**



Joint Statement of the International Commission of Jurists (ICJ), SADC Lawyers Association (SADC LA) and Southern Africa Litigation Centre (SALC) at the conclusion of the 32nd SADC Summit

The ICJ, SADC LA and SALC express their deepest disappointment at the decision taken by the SADC Summit of Heads of State and Government on the SADC Tribunal.

The Summit's Final Communiqué explains that the region's leaders had "resolved that a new protocol on the Tribunal should be negotiated and that its mandate should be confined to interpretation of the SADC Treaty and Protocols relating to disputes between member states". That decision effectively destroys an integral SADC organ – the currently established Tribunal – and denies the SADC people the right to approach the court for justice.

It is, as Archbishop Emeritus Desmond Tutu observes, "a tragedy. It is a blow against accountable government and individual rights."

In particular, the decision represents:

A Violation of the SADC Peoples' Right to Access Justice and Obtain Remedies

Access to justice is recognised as a fundamental human right in SADC states' domestic constitutions, as well as in regional and international instruments. Underlying the concept of access to justice are fundamental principles of human rights including notions of equal treatment by the law, fairness and the right to have one's cause heard. Access to justice is a key component of good governance and adherence to the rule of law and promotes development, responsible investment, economic and social reform and safeguards the protection of human and peoples' rights as guaranteed in the African Charter on Human and Peoples Rights and other regional and international instruments. The creation of strong, independent and accessible courts that enable participation by citizens is key to economic growth and poverty reduction.

A Violation of the SADC Peoples' "Acquired Rights"

The decision by the SADC Heads of State purports to revoke the acquired rights of SADC citizens to access the SADC Tribunal. This right is guaranteed in the SADC Tribunal Protocol and SADC Treaty. SADC Heads of State have no power under the SADC Treaty to revoke an acquired right vested in the persons enjoying that right. The doctrine of "protection of acquired rights", which means that a person cannot be unlawfully or unreasonably deprived of his acquired rights, is a well-established general principle of both international and domestic law.

A Violation of Judicial Independence

The decision by SADC leaders to dissolve the SADC Tribunal is an attempt to reject and reverse the judgments of its principal regional judicial body. This is a blatant violation of judicial independence. The executive arm of government has no right to interfere with the functions and decisions of the judiciary. By rejecting decisions of the SADC Tribunal and seeking to dismantle the institution, the SADC Heads of State have demonstrated their lack of respect for the rule of law in general and judicial independence in particular.

A Negation of Human Rights Protection in the Region

The inability of SADC peoples to approach either the SADC Tribunal or the African Court means that after exhausting domestic remedies there is no recourse at the sub-regional or continental level for victims of human rights violations. The only regional institution now available to SADC citizens is the African Commission on Human and Peoples' Rights (African Commission). Regrettably the African Commission has also been weakened by non-compliance with its decisions by most SADC states. By dissolving the SADC Tribunal and failing to cooperate with the African Court and African Commission, SADC's leaders have ensured that there is no human rights protection for SADC citizens at the regional level.

An Unlawful, Arbitrary and Unreasonable Decision

The SADC Summit decision disregards the recommendations and legal advice provided by SADC's own legal advisors. SADC Ministers of Justice and Attorneys General recommended the immediate reinstatement of the Tribunal, and proposed amendments that would enhance judicial independence and allow for the establishment of an appellate division within the Tribunal. These were ignored. Independent legal consultants, appointed to carry out the Tribunal review process, determined that the Tribunal had been lawfully established and could not be impugned and that its decisions were valid and binding on all SADC Member States. Their recommendations have also been ignored.

A Set-back for Regional Integration

Meaningful regional integration and cooperation requires observance of common norms and standards. Rules-based governance, allowing for predictability, transparency and accountability is a necessary pre-requisite for the emergence of an integrated regional community. A much diminished Tribunal – the desired outcome of the SADC Summit – puts in doubt SADC leaders' commitment to the regional integration project.

We call upon SADC Heads of State and Government to:

- 1. Reverse their 18 August decision to dissolve the current SADC Tribunal and negotiate a new protocol.**
- 2. To heed the advice of their Ministers of Justice and Attorneys General to immediately reinstate an accessible regional court.**
- 3. Ensure that the SADC Tribunal has an explicit human rights protection mandate.**
- 4. Allow the SADC Tribunal to operate whilst amendments to the protocol are being effected.**
- 5. To comply with decisions adopted by the SADC Tribunal since it became operational in 2005.**

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