

Southern African Development Community, African Regional Bodies

## Treaty of the Southern African Development Community

Legislation as at 18 August 2018

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Southern African Development Community

# Treaty of the Southern African Development Community

Published

Commenced

*[This is the version of this document at 18 August 2018.]*

## The Consolidated Treaty

The Consolidated Treaty of the Southern African Development Community is a consolidation of the following texts:

- The Treaty of the Southern African Development Community, 1992
- The Agreement Amending the Treaty, 2001
- The Agreement Amending Article 22 of the Treaty, 2007
- The Agreement Amending the Treaty, 2008
- The Agreement Amending Article 10A of the Treaty, 2009 and
- The Agreement Amending Articles 10 and 14 of the Treaty, 2009

This edition of the Consolidated text of the Treaty replaces the 2011 edition.

Done by the Legal Affairs Unit of the Secretariat.

## Preamble

WE, the Heads of State or Government of:

The Republic of Angola

The Republic of Botswana

The Democratic Republic of Congo

The Kingdom of Lesotho

The Republic of Madagascar

The Republic of Malawi

The Republic of Mauritius

The Republic of Mozambique

The Republic of Namibia

The Republic of Seychelles

The Republic of South Africa

The Kingdom of Swaziland

The United Republic of Tanzania

The Republic of Zambia

The Republic of Zimbabwe

**HAVING REGARD** to the objectives set forth in “Southern Africa: Toward Economic Liberation - A Declaration by the Governments of Independent States of Southern Africa, made at Lusaka, on the 1<sup>st</sup> April, 1980”;











4. The admission of any State to membership of SADC shall be effected by a unanimous decision of the Summit.
5. Membership of SADC shall not be subject to any reservations.

## **Chapter five Institutions**

### **Article 9 – Establishment of institutions**

1. The following institutions are hereby established:
  - (a) the Summit of Heads of State or Government;
  - (b) the Organ on Politics, Defence and Security Co-operation;
  - (c) the Council of Ministers;
  - (d) the Sectoral and Custer Ministerial Committees;
  - (e) the Standing Committee of Officials;
  - (f) the Secretariat;
  - (g) the Tribunal; and
  - (h) SADC National Committees.
2. Other institutions may be established as necessary.

### **Article 9A – Troika**

1. The Troika shall apply with respect to the following institutions:
  - (a) the Summit;
  - (b) the Organ;
  - (c) the Council;
  - (d) the Sectoral and Cluster Ministerial Committees; and
  - (e) the Standing Committee of Officials.
2. The Troika of the Summit shall consist of:
  - (a) the Chairperson of SADC;
  - (b) the Incoming Chairperson of SADC who shall be the Deputy Chairperson of SADC; and
  - (c) the Outgoing Chairperson of SADC.
3. The respective offices of the Troika of the Summit shall be held for a period of one year.
4. The membership and term of office of the Troika of the Council, the Sectoral and Cluster Ministerial Committees and the Standing Committee of Officials shall correspond to the membership and term of office of the Troika of the Summit.
5. The Troika of the Organ shall consist of:
  - (a) the Chairperson of the Organ;

- (b) the Incoming Chairperson of the Organ who shall be the Deputy Chairperson of the Organ; and
  - (c) the Outgoing Chairperson of the Organ.
6. The Troika of each institution shall function as a steering committee of the institution and shall, in between the meetings of the institution, be responsible for:
- (a) decision-making;
  - (b) facilitating the implementation of decisions; and
  - (c) providing policy directions.
7. The Troika of each institution shall have power to create committees on an ad hoc basis.
8. The Troika of each institution shall determine its own rules of procedure.
9. The Troika of each institution may co-opt other members as and when required.

### **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. Subject to Article 22 of this Treaty, 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 Chairperson and a Deputy Chairperson of SADC from among its members for one year on the basis of rotation.
5. The Summit shall meet at least twice a year.
6. The Summit may create committees, other institutions and organs as it may consider necessary.
7. The Summit shall appoint the Executive Secretary and one or more Deputy Executive Secretaries, on the recommendation of the Council.
8. Subject to Article 8 of this Treaty, the Summit shall decide on the admission of new members to SADC.
9. Unless otherwise provided in this Treaty, the decisions of the Summit shall be taken by consensus and shall be binding.

### **Article 10A – Organ on politics, defence and security co-operation**

1. The Summit shall select a Chairperson and a Deputy Chairperson of the Organ on the basis of rotation from among the members of the Summit except that the Chairperson of the Summit shall not simultaneously be the chairperson of the Organ.
2. The term of office of the Chairperson, Incoming Chairperson and the Outgoing Chairperson of the Organ shall be one year respectively.
3. The Chairperson of the Organ shall consult with the Troika of the Summit and report to the Summit.
4. There shall be a Ministerial Committee of the Organ, consisting of the Ministers responsible for:
  - (a) foreign affairs;
  - (b) defence;
  - (c) public security;





## Article 14 – The Secretariat

1. The Secretariat shall be the principal executive institution of SADC, and shall be responsible for:
  - (a) strategic planning and management of the programmes of SADC;
  - (b) implementation of decisions of the Summit, Troika of the Summit, Organ on Politics, Defence and Security Co-operation, Troika of the Organ on Politics, Defence and Security Co-operation, Council, Troika of the Council, Sectoral and Cluster Ministerial Committees and Troika of the Sectoral and Cluster Ministerial Committees;
  - (c) organisation and management of SADC meetings;
  - (d) financial and general administration;
  - (e) representation and promotion of SADC;
  - (f) coordination and harmonisation of the policies and strategies of Member States;
  - (g) gender mainstreaming in all SADC programmes and activities;
  - (h) submission of harmonized policies and programmes to the Council for consideration and approval;
  - (i) monitoring and evaluating the implementation of regional policies and programmes;
  - (j) collation and dissemination of information on the Community and maintenance of a reliable database;
  - (k) development of capacity, infrastructure and maintenance of intra-regional information communication technology;
  - (l) mobilization of resources, co-ordination and harmonization of programmes and projects with cooperating partners;
  - (m) devising appropriate strategies for self financing and income generating activities and investment;
  - (n) management of special programmes and projects;
  - (o) undertaking research on Community building and the integration process; and
  - (p) preparation and submission to the Council, for approval, administrative regulations, standing orders and rules for management of the affairs of SADC.
2. The Secretariat shall be headed by the Executive Secretary who shall be assisted by one or more Deputy Executive Secretaries as the Summit may decide from time to time.
3. *[repealed]*
- 3A. *[repealed]*
4. The Secretariat shall have such other staff as may be determined by the Council from time to time.
5. Except as otherwise provided in this Treaty, the structures of the Secretariat and specifications, descriptions and grading of jobs of the staff of the Secretariat shall be as determined from time to time by the Council.

## Article 15 – The Executive Secretary

1. The Executive Secretary shall be responsible to the Council for the following:
  - (a) consultation and coordination with the Governments and other institutions of Member States;











## **Chapter nine Resources, funds and assets**

### **Article 25 – Resources**

1. SADC shall be responsible for the mobilisation of its own and other resources required for the implementation of its programmes and projects.
2. SADC shall create such institutions as may be necessary for the effective mobilisation and efficient application of resources for regional development.
3. Resources acquired by SADC by way of contributions, loans, grants or gifts, shall be the property of SADC.
4. The resources of SADC may be made available to Member States in pursuance of the objectives of this Treaty, on terms and conditions mutually agreed between SADC and the Member States involved.
5. Resources of SADC shall be utilised in the most efficient and equitable manner.

### **Article 26 – Funds**

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

### **Article 26A – Regional Development Fund**

1. There is hereby established a special fund of SADC to be known as the Regional Development Fund in which shall be accounted receipts and expenditure of SADC relating to the development of SADC.
2. The Regional Development Fund shall, subject to this Treaty, consist of contributions of Member States and receipts from regional and non-regional sources, including the private sector, civil society, non-governmental organisations and workers and employers organisations.
3. The Council shall determine the modalities for the institutionalization, operation and management of the Regional Development Fund.
4. The Regional Development Fund shall be governed in terms of financial regulations made in accordance with Article 30 of this Treaty.

### **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 financial 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 based upon a formula agreed upon by the Summit.
3. The Executive Secretary shall cause to be prepared, estimates of revenue and expenditure for the Secretariat, 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 submit them to the Council for approval.

### **Article 30 – Financial regulations**

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

## **Chapter eleven Immunities and privileges**

### **Article 31 – Immunities and privileges**

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, the interpretation, application or validity of Protocols or other subsidiary instruments made under 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 fulfil obligations assumed under this Treaty;
  - (b) implements policies which undermine the principles and objectives of SADC; or
  - (c) is in arrears 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 Summit shall determine on a case-by-case basis sanctions to be imposed under subparagraphs a) and b) of paragraph 1 of this Article.
3. Subject to subparagraph c) of paragraph 1 of this Article, sanctions against a Member State which is in arrears shall be imposed as follow:
  - (a) when in arrears for one year, suspension of the Member State's right to speak and receive documentation at meetings of SADC;
  - (b) when in arrears for two years, suspension:
    - (i) of the Member State's right to speak and receive documentation at meetings of SADC; and
    - (ii) by SADC of recruitment, and renewal of contracts of employment, of personnel from the Member State;
  - (c) when in arrears for three years, suspension:
    - (i) of the Member State's right to speak and receive documentation at meetings of SADC;
    - (ii) by SADC of recruitment, and renewal of contracts of employment, of personnel from the Member State; and
    - (iii) of provision by SADC of funds for new projects in the Member State; and
  - (d) when in arrears for four or more years, suspension:
    - (i) of the Member State's right to speak and receive documentation at meetings of SADC;
    - (ii) by SADC of recruitment, and renewal of contracts of employment, of personnel from the Member State; and
    - (iii) of provision by SADC of funds for new projects in the Member State; and
    - (iv) of cooperation, between SADC and the Member State, in the areas of cooperation spelt out in Article 21 of this Treaty.
4. The sanctions referred to in paragraph 3 of this Article shall be applied by the Secretariat without reference to the Summit or Council except that the application of the sanctions shall be subject to the Secretariat notifying:
  - (a) prior to any meeting of SADC, Member States in default; and
  - (b) Member States at the beginning of any meeting of SADC.



## **Chapter sixteen**

### **Savings provisions and transitional provisions**

#### **Article 38 – Savings provisions**

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

## **Chapter seventeen**

### **Signature, ratification, entry into force, accession and depositary**

#### **Article 39 – Signature**

This Treaty shall be signed by the High Contracting Parties.

#### **Article 40 – Ratification**

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

#### **Article 41 – Entry into force**

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

#### **Article 42 – Accession**

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

#### **Article 43 – Depositary**

1. The original texts of this Treaty and 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 Secretariat of the United Nations Organisation and the Commission of the African Union.

## **Chapter eighteen**

### **Termination of the Memorandum of Understanding**

#### **Article 44 – Termination of the Memorandum of Understanding**

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

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

