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Supreme in Letter, Supreme in Spirit, Supreme in Deed: An Exposition of the SADC Summit's Overarching Powers in the SADC Regional Integration Project*

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Abstract

While literature exists on the institutions of the Southern African Development Community (SADC), there still lacks – especially from an international institutional law perspective – a detailed and critical analysis of SADC's institutional design, focusing on the powers of the various SADC institutions and inter-institutional relations. The Treaty of the Southern African Development Community (SADC Treaty) gives the Summit of Heads of States or Government (the Summit) overarching powers in the SADC integration project. There is no framework for policy bargaining in SADC as the other institutions play a largely subservient and supporting role to the Summit. As if the powers of the Summit given to it by the letter of the SADC Treaty are not overarching enough, the Summit, buoyed by the spirit of its supremacy guaranteed in the SADC Treaty, has at times acted even beyond its already outsized powers as evidenced by the suspension and disbandment of the SADC Tribunal. The powers of the Summit in the two selected areas of treaty amendment and budget adoption are used in this article to illustrate the dominance of the Summit in the SADC project. With no framework of checks and balances in the general policymaking arena and no judicial oversight, the SADC institutional framework not only belies the normative values of democracy and the rule of law which the SADC Treaty seeks to promote and protect, but is furthermore at odds with the current trend in the institutional design of regional economic communities.

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1 INTRODUCTION

Article 9(1) of the Treaty establishing the Southern African Development Community (the SADC Treaty) establishes what may be referred to as the main or primary institutions of the Southern African Development Community (SADC). These are the Summit of Heads of State and/or Government (the Summit), the Council of Ministers (CoM), the Sectoral and Cluster Ministerial Committees (SCMCs), the Standing Committee of Officials (SCO), the Organ on Politics and Defence Cooperation (OPDS), the SADC National Committees (SNCs), the Secretariat, and the SADC Tribunal (the Tribunal).

Only six of these institutions are currently active while the remaining two – the SNCs and the Tribunal – are either non-functional or moribund. Literature on SNCs paints a bleak picture of non-functionality, a lack of technical capacity, resource constraints and coordination challenges.[1] This is an institution that should operate at the domestic level in each SADC Member State. It is meant to be a stakeholder-based institution comprising government, the private sector, civil society, non-governmental organisations (NGOs) and workers' and employers' organisations,[2] with a mandate to, among other things, provide input at the national level in the formulation of SADC policies, strategies and programmes of action as well as coordinate and oversee – also at the national level – the implementation of SADC's programmes of action.[3]

The Tribunal was suspended and disbanded by the Summit and a new protocol was adopted which will, if it is eventually ratified by the requisite number of Member States, establish a lame-duck judicial institution with restricted access and limited jurisdictional powers.[4]

Only a few scholars have offered a detailed and critical analysis of the institutions of SADC.[5] Those that have attempted to do so have provided a largely historical account as well as a narration of the current institutions' work. These studies have mainly focused on examining SADC's socio-political and economic challenges and prospects, anchored in the assumption that the institutional design of SADC is "suitable for the job at hand."[6] Similar to this view on the adequacy of SADC's institutional framework is the conclusion that this framework is in fact too advanced for an organisation like SADC and that it should rather limit itself to trade-facilitation matters and security arrangements that are "primarily intergovernmental, with a minimum of supranational aspirations."[7] The latter is seemingly based on the assumption that sub-regional groupings in Africa, including SADC, are nothing but copycats of the European regional integration model, specifically the European Union (the EU). This model is seen by

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* This article was developed from the relevant sections of the author's doctoral thesis, Nyathi *Exploring Shared Governance as an Alternative Institutional Model for the Southern African Development Community* (LLD-thesis, University of Pretoria, 2015).

1 See for example Tjønneland "Making SADC Work? Revisiting Institutional Reform" in Hansohm et al (eds) *Monitoring Regional Integration in Southern Africa Yearbook* (2005) 166 171; Nzewi and Zakwe "Democratising Regional Integration in Southern Africa: SADC National Committees as Platforms for Participatory Policy Making" 2009 (Research Report 122) *Centre for Policy Studies*, Johannesburg 9; Giuffrida and Müller-Godde "Strengthening SADC Institutional Capacity Development is the Key to SADC Secretariat's Effectiveness" in Bösil et al (eds) *Monitoring Regional Integration in Southern Africa Yearbook* (2008) ch 6 http://www.kas.de/upload/auslandshomepages/namibia/MRI2008/MRI2008_06_Giuffrida.pdf (accessed 08-05-2014); Zondi "Governance and Social Policy in the SADC Region: An Issues Analysis" 2009 (Working Paper Series No. 2) *Planning Division, Development Bank of Southern Africa* 19.

2 Article 16A(1) as read with Art 16A(13)(a)-(e).

3 See Art 16A(4) (a)-(d) for the complete functions of the SNCs.

4 The SADC Tribunal has received a lot of academic attention in recent years. See for example, De Wet "The Rise and Fall of the Tribunal of the Southern African Development Community: Implications for Dispute Settlement in Southern Africa" 2013 *ICSID Review* 45; Ebobrah "Human Rights Developments in African Sub-Regional Economic Communities during 2011" 2012 *African Human Rights LJ* 216; Ebobrah "Human Rights Developments in African Sub-Regional Economic Communities during 2012" 2013 *African Human Rights LJ* 178; Nkhata "The Role of Regional Economic Communities in Protecting and Promoting Human Rights in Africa: Reflecting on the Human Rights Mandate of the Tribunal of the Southern African Development Community" 2012 *African J of Intl and Comp L* 87; Nyathi *Exploring Shared Governance* particularly ch 3; Saurombe "An Analysis and Exposition of Dispute Settlement Forum Shopping for SADC Member States in the Light of the Suspension of the SADC Tribunal" 2011 *SA Merc LJ* 392.

5 One author who has written at length on SADC is Oosthuizen 2006 *The Southern African Development Community: The Organization, its Policies and Prospects*, Institute for Global Dialogue.

6 *Ibid.* 320.

7 Draper "Why Africa Needs Another Model of Regional Integration" 2012 *The International Spectator: Italian J of International Affairs* 67 82.

some scholars as formal and institutionally intensive and demanding of better capacity than SADC has to offer.[8] A closer, and careful comparative analysis of SADC's institutional framework to that of the EU, however, reveals very marked differences in institutional designs. In addition, the meaning of the so-called capacity that is apparently in abundance in Europe, yet lacking in Africa, is unclear.[9]

An international organisation can only be as good as its institutions. The powers of an organisation's institutions and inter-institutional relations within an organisation are thus important matters that require critical analysis, especially from the perspective of international institutional law. This article seeks to assess SADC's institutional design with a particular focus on the formal powers of the Summit given to it by the SADC Treaty in relation to those of the other institutions, both active and inactive.

In section two, the powers and functions of SADC's institutions are set out, starting with those of the Summit. The section is largely descriptive, focusing on the SADC Treaty. Section three provides an analysis of the Summit's powers in relation to the other institutions. The Summit's powers are also juxtaposed with those of similar institutions in selected regional economic communities (RECs) – the East African Community (EAC), the Economic Community of West African States (ECOWAS) and the EU.[10] The conclusion is provided in section four.

2 SADC INSTITUTIONS AND THEIR TREATY POWERS AND FUNCTIONS[11]

2 1 The Summit

At the apex of the SADC institutional hierarchy is the Summit. The Summit is the highest decision-making body of SADC. In fact, Article 10(1) of the SADC Treaty describes the Summit in rather grandiose terms – it is the "supreme policymaking Institution of SADC." The Summit consists of the Heads of State or Government of all SADC Member States.[12] The Summit is responsible for overall policy direction and control of the functions of SADC and the adoption of legal instruments for the implementation of the Treaty's provisions.[13] More specifically, the Summit approves the budget of SADC,[14] appoints the Executive Secretary and the Deputy Executive Secretaries as well as the members of the SADC Tribunal[15] and determines admission of new members into SADC.[16]

Another area in which the Summit has the ultimate say is in the amendment of the SADC Treaty. In terms of Article 36(1) of the SADC Treaty, three-quarters of the Summit's members are needed to pass an amendment. The SADC Treaty does not provide for the ratification of amendments by Member States. The only procedural requirement provided in Article 36 is that a proposal for the amendment of the Treaty may be made to the Executive Secretary by any Member State for preliminary consideration by the CoM, provided that the proposed amendment shall not be submitted to the CoM for preliminary consideration until all Member States have been duly notified of it, and a period of three months has elapsed after such notification.

8 *Ibid.* For other scholars who assume likewise see Nathan "Solidarity Triumphs over Democracy –The Dissolution of the SADC Tribunal" 2011 *Development Dialogue* 123 134; and generally Saurombe "The European Union as a Model for Regional Integration in the Southern African Development Community: A Selective Institutional Comparative Analysis" 2013 *Law Democracy and Development* 457.

9 For a detailed analysis of the major institutions of these two organisations, including from a comparative perspective, see Nyathi *Exploring Shared Governance* particularly chs 2, 3, 5 and 6.

10 The importance of comparative analysis is well recognised in international institutional law. Comparative analysis is not only important in cases where the organisations being compared have some similarities, but also where there are marked differences between the comparators, since it is from the differences that lessons can be learnt. See Schermers and Blokker *International Institutional Law: Unity within Diversity* (2011) vi. See also Klabbers *An Introduction to International Institutional Law* (2009) 13.

11 The OPDS, with its slightly autonomous powers in the area of peace, defence and security cooperation is not included in this section as the focus falls on those institutions with powers of a general nature that cut across the whole SADC integration framework.

12 Article 10(1) of the SADC Treaty.

13 Articles 10(2) and 10(3) of the SADC Treaty.

14 Article 28(3) of the SADC Treaty.

15 The members of the Tribunal are appointed by the Summit upon recommendation of the CoM. This is not provided for in the Treaty itself, but rather in Art 4(4) of the 2000 Protocol on Tribunal and Rules of Procedure Thereof, discussed in detail in sub-section 2.7 below.

16 Article 10(8) of the SADC Treaty.

2 2 The Council of Ministers

The CoM reports to and is responsible to the Summit.[17] The CoM consists "of one Minister from each Member State, preferably a Minister responsible for Foreign or External Affairs."[18] Article 10(3) of the SADC Treaty grants the Summit the power to delegate its authority to adopt instruments for the implementation of the Treaty's provisions "to the Council or any other institution of SADC as the Summit may deem appropriate." This is quite a broad and general authority to delegate. However, this is not a delegation of the Summit's primary powers as set out in the SADC Treaty, but rather relates to secondary powers for the Treaty's implementation.

Article 10(3) thus clearly gives the CoM (and any other institution of SADC) secondary law-making/norm-setting powers, but only if so delegated by the Summit. What is implicit in this provision is that not only are the powers of the Summit confined to those of primary norm-setting as set out in the SADC Treaty, but they also extend to the adoption of implementation frameworks.

In addition to the exercise of authority delegated to it by the Summit, Article 11 of the SADC Treaty confers the CoM with its own primary responsibilities. These responsibilities include: overseeing SADC's functioning and development, managing the implementation of SADC's policies and the proper execution of its programmes, advising the Summit on matters of overall policy and efficient and harmonious functioning and development of SADC, approving SADC's policies, strategies and work programmes, directing, coordinating and supervising the operations of the SADC institutions subordinate to it, recommending to the Summit persons for appointment to the Executive Secretary and Deputy Executive Secretaries posts, and determining the terms and conditions of service of the staff of SADC institutions.

While the number of these largely operational responsibilities of the CoM gives an appearance of an institution with a lot of work to do, a closer analysis shows that there are a lot of similarities and overlaps in the literal framing of some of these responsibilities. For example, the functions of overseeing SADC's functioning and development and managing the implementation of SADC's policies and proper execution of its programmes are similar responsibilities that can be streamlined and reduced without compromising the CoM's overall substantive responsibilities.

While the SADC Treaty enjoins the Summit to act on the CoM's recommendations in the exercise of some of its powers, for example in the appointment of the Executive Secretary and the Deputy Executive Secretaries,[19] the Treaty does not provide a framework for inter-institutional bargaining in those significant policy areas. In fact, acting on the CoM's recommendations is not something that is cast in peremptory terms. The Summit can thus ignore the CoM's recommendations since, not only is it not obligated to take its decisions on the basis of such recommendations, but it also has no legal obligation to state reasons for doing so. The CoM thus largely plays a subservient and supporting role to the Summit.

17 Article 11(5) of the SADC Treaty.

18 Article 11(1) of the SADC Treaty. Under the old Treaty, a similarly worded provision (Art 11(1)) gave preference to ministers responsible for economic planning or finance. In the current practice of the CoM, there is no limit as to the number of ministers who can attend CoM meetings. Member States usually send between two and five ministers. However, with the majority of the Member States, the head of delegation is usually a minister of foreign affairs, while delegations from Botswana, Lesotho and Angola are usually led by ministers responsible for finance and/or economic affairs. When the Executive Secretary sends out a notice of meeting and the agenda, she/he directs these to each Member State's SADC National Contact Point (on SADC National Contact Points, see section 2.4 below on the SCO) and Member States can decide who to send to the meeting in question. For example, in the case of an extraordinary Summit meeting dealing with a specific integration area or theme, it is not unheard of that heads of delegation in the CoM meeting preceding that of the Summit are ministers in charge of the relevant national ministerial portfolio. For insight into this practice, the author is indebted to the former Executive Secretary of SADC, Dr. Tomaz Salomão who availed his time to meet with the author (University of the Witwatersrand School of Governance, Johannesburg, 23 March 2015) and shared his knowledge and experience on the internal workings of SADC.

19 Article 10(7) of the SADC Treaty.

2 3 The Sectoral and Cluster Ministerial Committees

The SCMC is another ministerial institution established by the SADC Treaty. The SCMCs consist "of ministers from each Member State."[20] Article 12(2) of the Treaty lists the responsibilities of the SCMCs, which include: overseeing the activities of the core areas of integration, monitoring and controlling the implementation of the Regional Indicative Strategic Development Plan in the areas of their respective competences, and providing policy advice to the CoM.

SCMCs are also endowed with decision-making powers to "ensure rapid implementation of programmes approved by the Council."[21] These powers should not be confused with the power to adopt instruments for the implementation of the Treaty's provisions as is the case with the Summit's power to delegate such powers to the CoM or any other SADC institution. Had the framers of the Treaty so intended, they would have used similar language. The implementation powers of the SCMCs are thus clearly those of a second-tier administrative, rather than law-making nature.

In terms of the SADC institutional ranking order, the SCMCs are subordinate to the CoM since they provide policy advice to CoM and are obligated to make decisions to ensure rapid implementation of programmes approved by the CoM. Also, the SADC Treaty explicitly provides that the SCMCs report and are answerable to the CoM.[22] However, in terms of the letter of the SADC Treaty, there is not much of a distinction between the responsibilities or powers of the CoM and those of the SCMCs.[23] In other words, there is nothing that the SCMCs are empowered to do that the CoM cannot do within its broad (and overlapping) powers.[24]

2 4 The Standing Committee of Officials

The SCO consists of one permanent secretary or an official of equivalent rank from each Member State.[25] Such a permanent secretary or official must be from the Ministry that serves as the SADC National Contact Point.[26] The SCO is said to be a technical advisory committee to the CoM and reports to the CoM.[27]

2 5 The Executive Secretariat

The Secretariat, described as the "principal executive" institution of SADC, per Article 14(1) of the SADC Treaty, has a number of responsibilities including: strategic planning and management of the SADC's programmes, implementation of decisions of the Summit, Troika of the Summit, OPDS, CoM, the SCMCs, organising and managing SADC meetings, financial

20 Article 5(1) of the Agreement Amending the Treaty of SADC, 17 August 2008 [available in the SADC library, Gaborone; copy on file with author].

21 Article 12(3) of the SADC Treaty as further amended on 17 August 2008. See n 20 above. This amendment substituted the SCMCs for the Integrated Committee of Ministers.

22 Article 12(6) of the SADC Treaty as further amended on 17 August 2008.

23 A similar observation is made by Ng'ongo'la in "The Framework for Regional Integration in the Southern African Development Community" 2008 *University of Botswana LJ* 3 25.

24 For a detailed analysis of the relationship between the CoM and the SCMCs as well as suggestions for the reform of the SADC institutional architecture in general, see Nyathi *Exploring Shared Governance*, specifically chs 2 and 6.

25 Article 13(1) of the SADC Treaty. In South Africa, for example the equivalent of a permanent secretary is a director-general.

26 Article 13(1) of the SADC Treaty. This is an institution that is not expressly defined in the SADC Treaty. However, according to Art 13(1) of the Treaty, it is clearly the ministry whose minister sits on the CoM, although in practice it is a desk within such ministries. In South Africa, the SADC National Contact (Focal) Point is situated within the Department of International Relations and Cooperation. See http://www.sadc.int/member-states/south-africa/ (accessed 06-08-2014). See also Tjønneland "Making SADC Work" 171.

27 Articles 13(2) and 13(4) of the SADC Treaty. In practice, especially with regards to the core areas of integration, it would appear that policy formulation is usually initiated by the Secretariat. The relevant Directorate in the Secretariat usually prepares a background/issues paper and sends this to Member States which would be expected to arrange consultative meetings with relevant stakeholders. Resources and time allowing, officials from the Secretariat may attend such meetings to gather information. After these consultative meetings the Secretariat then prepares a consultative paper (it would appear that this could be a draft protocol as well) which it sends to the SCO. From there the matter goes to the SCMC and then to the CoM before finally being taken to the Summit where it can either be adopted or sent back for revision. For this insight, the author is indebted to Salomão.

and general administration, and coordination and harmonisation of the policies and strategies of Member States.[28]

The Secretariat also initiates the budgetary process by preparing the budget,[29] although ultimately the Summit approves the SADC budget. The head of the Secretariat is the Executive Secretary and there is provision for the appointment of Deputy Executive Secretaries, who are responsible for assisting the Executive Secretary in the discharge of his or her duties.[30] The Executive Secretary is responsible to the CoM for the duties listed in the previous paragraph.[31]

As currently constituted, the Secretariat is an administrative organ of SADC's political institutions – comprising executives of SADC Member States – whose decisions it should implement. The Treaty does not give the Secretariat any powers with regards to policy formulation. The only exception, to some extent, is in the area of budget initiation. This does not mean, however, that the Secretariat does not play an effective role in policy formulation. In the core areas of integration, it is, for example ordinarily the Secretariat that initiates the process.[32] However, in the absence of clearly set out treaty powers, the involvement of the Secretariat in SADC policymaking is, and will remain, tenuous.

2 6 The SADC National Committees

The SADC Treaty mandates each Member State to create an SNC.[33] It is worth noting that the pre-2001 SADC Treaty regime had an institution that was located at national level: the Sector Coordinating Units. Some scholars have observed that with the ending of the decentralised sectoral approach and the jettisoning of the Sector Coordinating Units, the SNCs were formed to fill the vacuum created by the former's demise. The new institution was meant to be an avenue for broader participation by SADC citizens at national level in the organisation's decision-making processes.[34]

The SNCs are supposed to consist of "key" stakeholders who are identified as government, the private sector, civil society, NGOs, and workers' and employers' organisations.[35] No framework is provided in the Treaty on the modalities of the constitution of the SNCs, including procedures and the number of participants per stakeholder, save for the broad provision that the composition of each SNC shall reflect the core areas of integration and coordination referred to in the Treaty.[36]

The responsibilities of the SNCs include: to provide input at the national level in the formulation of SADC policies, strategies and programmes of action and to coordinate and oversee, again at the national level, implementation of SADC programmes of action.[37] However, currently the SNC is merely a paper institution with no noticeable contribution to the SADC integration project.[38]

The SADC Treaty seemingly does not envisage real norm-setting on the part of the SNCs, but rather the making of inputs (from the outside) into norm-setting by the relevant institutions. A holistic reading of the Treaty provisions on the functions and composition of SNCs, alongside the provisions on the institutions discussed above, reveal an intention to create no more than a consultative forum for both policy formulation and implementation issues, and arguably also a 'soft' oversight role over implementation, rather than a norm-setting institution.

28 The responsibilities of the Secretariat are carried in sub-paras (a)–(p) of Art 14(1) of the SADC Treaty.
29 However, if the letter of the SADC Treaty is to be strictly followed, the responsibility for the preparation of the budget and audited accounts for submission to CoM falls specifically on the Executive Secretary, not generally on the Secretariat. This is in terms of Art 15(1)(i) of the SADC Treaty.
30 Article 14(2) of the SADC Treaty.
31 Article 15(1) of the SADC Treaty.
32 See n 27 above.
33 Article 16A(1) of the SADC Treaty.
34 Nzewi and Zakwe "Democratising Regional Integration" 7.
35 Article 16A(1) as read with Art 16A(13)(a)–(e) of the SADC Treaty.
36 Article 16A(3) of the SADC Treaty.
37 See Art 16A(4) (a)–(d) of the SAC Treaty for the complete list of the SNCs' functions.
38 See Tjønneland "Making SADC Work? Revisiting Institutional Reform"; Nzewi and Zakwe "Democratising Regional Integration in Southern Africa"; Giuffrida and Müller-Godde "Strengthening SADC Institutional Capacity Development is the Key to SADC Secretariat's Effectiveness; Zondi "Governance and Social Policy in the SADC Region".

2 7 The Tribunal

The Tribunal, established by the SADC Treaty but with its composition and jurisdictional functions provided for in a protocol – the Protocol on Tribunal and the Rules of Procedure Thereof – that was adopted by the Summit on 7 August 2000 (the 2000 Tribunal Protocol)[39] is, as indicated below, currently *de facto* non-existent as a SADC institution.

In terms of Article 14 of the 2000 Tribunal Protocol, the Tribunal had jurisdiction over all disputes referred to it in terms of the Treaty and the Tribunal Protocol relating to the interpretation and application of the Treaty, the interpretation, application and validity of the protocols, all subsidiary instruments adopted within the framework of the Community,[40] acts of the institutions of the Community, and all matters specifically provided for in any other agreements that Member States may have concluded among themselves or within the Community and which conferred jurisdiction on the Tribunal.

The scope of the Tribunal's jurisdiction was set out in Article 15 and included jurisdiction over disputes between Member States, and between natural or legal persons and Member States. The jurisdiction over natural or legal persons was limited in that no such persons could bring an action against a Member State unless they had exhausted all available remedies, or they were unable to proceed under their domestic jurisdiction.[41] It is important to note that the Tribunal's jurisdiction was not consent-based. Where a dispute was referred to the Tribunal by any party, the consent of other party or parties to the dispute was not required.[42]

As a direct response to the Tribunal's human rights jurisprudence, especially its judgments against the government of Zimbabwe,[43] the Summit initially suspended[44] the Tribunal in August 2010 and effectively disbanded it in August 2012.[45] On 18 August 2014, the SADC Summit adopted a new protocol for the SADC Tribunal – the Protocol on the Tribunal in the Southern African Development Community (the new Tribunal Protocol).[46] If this protocol does come into force, the Tribunal would be reduced to an interstate dispute resolution forum for contentious matters, with no access to individuals.[47] As acknowledged by the then Tribunal Registrar, the new Tribunal is likely to be a white elephant since Member States tend to refrain from taking each other to court.[48] Indeed, in practice exclusive use of regional judicial bodies

39 http://www.sadc.int/documents-publications/show/Protocol_on_the_Tribunal_and_Rules_thereof2000.pdf (accessed 15-12-2017).

40 It should be noted that in terms of the Agreement Amending the Protocol of the Tribunal adopted at Lusaka, Zambia on 17 August 2007, the Tribunal's jurisdiction was "extended" to include the determination of appeals arising from the decisions of panels constituted in terms of the Protocol on Trade. See Ng'ongo'la 2008 *Univ of Botswana LJ* 28, who refers to Art 5 of the Agreement Amending the Protocol of the Tribunal, inserting a new Art 20A in the Tribunal Protocol. It can be argued that Art 14 of the Tribunal Protocol is broad enough and would have bestowed such appellate jurisdiction on the Tribunal anyway. However, the 2007 amendment could be defended on the basis that an explicit conferment of appellate jurisdiction in trade matters in the Tribunal Protocol itself was necessary for purposes of clarity, especially on the exact nature of the Tribunal's jurisdiction.

41 Article 15(2) of the SADC Tribunal Protocol.

42 Article 15(3) of the SADC Tribunal Protocol.

43 For detailed analyses of the Tribunal's jurisprudence, see De Wet 2013 *ICSID Review*; Ebobrah 2012 *African Human Rights LJ*; Ebobrah 2013 *African Human Rights LJ*; Nkhata 2012 *African J of Intl and Comp L*; Nyathi *Exploring Shared Governance*; Saurombe 2011 *SA Merc LJ*.

44 The actual decision was not worded as a suspension, although the impact was in effect the same. The Summit decided not to reappoint judges whose term of office would expire in August 2010 pending the review of the role, responsibilities and terms of reference of the Tribunal by the Committee of Ministers of Justice/Attorneys-General as mandated by the Summit. It also decided that the Members of the Tribunal would remain in office pending the said review, but that the Tribunal should not entertain new cases until such time that an extraordinary meeting of the Summit would have decided on the legal status and roles and responsibilities of the Tribunal.

45 Of the Summit's series of decisions on the Tribunal beginning August 2010, the last and most decisive was undoubtedly the one taken at the August 2012 Maputo Summit where the Summit, per para 24 of its resolutions, "considered the Report of Ministers of Justice/Attorneys General and the observations by the Council of Ministers and 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 related to disputes between Member States." See http://www.afdb.org/fileadmin/uploads/afdb/Documents/Generic-Documents/Communique_32nd_Summit_of_Heads_of_States.pdf (accessed 26-04-2016).

46 See https://www.tralac.org/publications/article/6900-the-new-protocol-for-the-sadc-tribunal-jurisdictional-changes-and-implications-for-sadc-community-law.html (accessed 15-12-2017).

47 Article 33 of the new Tribunal Protocol.

48 Mankhambira Mkandawire, presenting at a stakeholder roundtable discussion on the SADC Tribunal (Centre for Human Rights, University of Pretoria, 28–29 August 2014).

by individuals appears to be prevalent in the case of the other African RECs discussed in this article – the EAC and ECOWAS.[49] To compound matters, when it comes to non-contentious jurisdiction, specifically advisory opinions, only the Summit and the CoM will have the competence to seek an advisory opinion.[50] All other institutions, including the Secretariat, are excluded from this process. A clear implication of the advisory opinion procedure is that it leaves the interpretation of the SADC Treaty and subsidiary instruments at the mercy of the Summit and the CoM. No matter how compelling the interpretation by another institution may be, this may not matter if the Summit and the CoM decide not to refer the matter to the Tribunal.

The other difference brought about by the new protocol is that the Tribunal Protocol is no longer an integral part of the SADC Treaty subject to the same amendment procedures as the Treaty. The new protocol is now like any other protocol: it is subject to ratification and will come into force after deposit of instruments of ratification by two-thirds of Member States.[51] Also, only state parties to the new Protocol would participate in its amendment.[52] Thus, before the deposit of instruments of ratification by two-thirds of the Member States, it is likely that in practice there will continue to be a judicial vacuum in SADC. Although in terms of Article 48 of the new protocol, the "old" Tribunal Protocol shall remain in force until the entry into force of the of the new Tribunal Protocol, in reality, there is currently no Tribunal.

The law to be applied by the Tribunal would now be limited to "the SADC Treaty and the applicable SADC Protocol."[53] This is a significant departure from the previous dispensation in which the SADC Tribunal was allowed to interpret the SADC Treaty, the SADC Protocols, and all subsidiary instruments adopted by the Summit, the CoM or by any other institution or organ of the Community pursuant to the Treaty; and was furthermore allowed 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 laws of Member States.[54] Needless to say, this reduction in the sources of the law to be applied by the Tribunal is clearly meant to arrest the growth of Community jurisprudence since it was through the expansive interpretation of the SADC Treaty and the SADC Tribunal's broad and liberal jurisdictional powers that the old Tribunal was able to develop its progressive jurisprudence.

By way of an ordinary resolution instead of a treaty amendment, the Summit has since established a separate SADC Administrative Tribunal (SADCAT) which has limited jurisdiction over employment disputes between SADC and its employees.[55] Needless to say, SADCAT is not intended to form part of the primary institutions of SADC. In any case, being a creature of an ordinary resolution, it would be far easier and would raise fewer legal questions were the Summit to dissolve SADCAT, than was the case when it suspended and disbanded the Tribunal, which actions were overwhelmingly held to have been illegal by a number of legal scholars.[56]

3 AN ANALYSIS OF THE SUMMIT'S POWERS IN RELATION TO THE OTHER INSTITUTIONS

In this section, two specific powers of the Summit have been chosen to illustrate its overarching powers in the SADC integration project. These are the powers with regard to treaty amendment and budget adoption.

49 Yusuf Danmadami, Senior Recorder at the ECOWAS Court of Justice; and Professor John Ruhangisa, Registrar at the East African Court of Justice respectively, at the SADC Tribunal stakeholder roundtable discussion (Centre for Human Rights, UP, 28–29 August 2014).

50 Article 34 of the new Tribunal Protocol.

51 Articles 52 and 53 of the new Tribunal Protocol.

52 It should be noted that this is not provided for in the new Protocol, but is provided for in terms of the SADC Treaty amendment of 17 August 2007.

53 Article 35 of the new Tribunal Protocol.

54 Article 21(b) of the 2000 Tribunal Protocol.

55 See para 27 of the communiqué of the 35th Summit of SADC Heads of State and Government (Gaborone, 17-18 August 2015) https://www.sadc.int/files/7814/3997/3204/Final_35th_Summit_Communique_as_on_August_18_2015.pdf (accessed 08-04-2016).

56 See the conclusions reached by De Wet 2013 *ICSID Review*; Ebobrah 2012 *African Human Rights LJ*; Ebobrah 2013 *African Human Rights LJ*; Nkhata 2012 *African J of Intl and Comp L*; Nyathi *Exploring Shared Governance*; Saurombe 2011 *SA Merc LJ*.

These are by no means the only powers that the Summit exercises without much control or bargaining. There are many others, including the appointment of the Executive Secretary and his/her deputies.[57]

3 1 Treaty Amendment

There is probably no part of the SADC Treaty that better illustrates the dominance of the Summit in the SADC integration project than the provisions on treaty amendment. The legal, and indeed political reality is that SADC Treaty amendment is a matter for the Summit as a collective of Heads of State or Government at the regional level and Summit members in their respective countries. The requirement that proposals for treaty amendment may be made by any Member State for preliminary consideration by the CoM after due notice has been given to all Member States,[58] gives no more than an illusion of broader stakeholder involvement in the treaty amendment process. In reality, it is the same individuals who constitute the Summit that have the primary, if not the only say when it comes to making proposals for treaty amendments or the consideration of amendment proposals at the domestic level in Member States.

It should be noted that the term 'Member State', defined in Article 1 of the SADC Treaty as meaning "a member of SADC", has no new definition in the context of treaty amendment. The practical implication of this is that proposals for the amendment of the SADC Treaty are received by the executives of Member States and decided upon by them without involving the Member States' legislatures, let alone the domestic populations of SADC Member States. The letter of the SADC Treaty therefore does not provide for, nor does its spirit envisage, the involvement of the whole domestic constitutional machinery in SADC Member States in the amendment of the SADC Treaty, but instead vests this critical process in the executive arms of the Member States' governments, invariably personified by the Heads of State or Government.

Members of the Summit thus not only have the last say at the national level on their respective Member State's input into the amendment process, but also have the ultimate say on the adoption of the amendments at the regional level as Summit, with the only measure of control being the three-quarters majority needed. The procedure for the amendment of the SADC Treaty thus clearly puts the destiny of SADC in the Summit's hands to the exclusion of other institutions and stakeholders, including those at the domestic level in SADC Member States.

The procedure for the amendment of the SADC Treaty is different from the amendment of the Treaty Establishing the East African Community (EAC Treaty). The EAC Treaty has a more detailed amendment procedure (set out in Article 150) including that an amendment shall enter into force only when ratified by all the Partner States. Similar provisions apply to the amendment of the Treaty of ECOWAS (Articles 89 and 90), which provide for ratification by all Member States in accordance with their respective constitutional procedures. However, in ECOWAS, amendments come into force upon ratification not by all the ECOWAS Member States,[59] but by at least nine of the signatory states.[60] Even assuming the predominance of the executive arm in treaty ratification processes at the domestic level in some jurisdictions, a treaty provision that clearly predicates entry into force of a treaty on ratification by Member States might be read to imply a more inclusive process at the domestic level, involving not just the legislative arm of government, but also other stakeholders such as the regional citizenry and civil society organisations, especially where their participation in the regional integration project is provided for in the treaty, even in general terms.[61]

In the EU, the revision of the Treaties of the EU – the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) – is an intricate process, involving a number of stakeholders. This process includes the right of any government of any Member State, the European Parliament (EP) or the Commission making revision proposals, consultation between the European Council (the equivalent of the SADC Summit) and the EP

57 For a detailed discussion of the SADC institutional framework and suggestions for reform, see Nyathi *Exploring Shared Governance*.
58 See Art 36 of the SADC Treaty.
59 ECOWAS had fifteen Member States at the time of the finalisation of this article.
60 http://www.ecowas.int/about-ecowas/basic-information/ (accessed 25-01-2016).
61 See the reasoning of the East African Court of Justice (EACJ) in *East African Law Society v Attorney General of the Republic of Kenya* (Reference 3 of 2007 on 1 September 2008).

and the Commission, the convening of a Convention (composed of representatives of national Parliaments, Heads of State or Government of Member States, the EP and the Commission), and a conference of representatives of the governments of Member States after which the amendments, if they have been determined by common accord by the conference, are subjected to ratification by all the Member States in accordance with their respective constitutional requirements.[62]

3 2 Budget Adoption

The budget adoption process is also a relatively closed matter in SADC with the Summit playing the ultimate approval role. Other than the Summit, only two institutions are involved in the budgetary process: the CoM and the Secretariat. The role of these institutions is at best, with regards to the Secretariat, technical preparation while that of the CoM is that of recommending the budget to the Summit for ultimate adoption. No inter-institutional bargaining is envisaged and there is no provision in the SADC Treaty that prevents the Summit from refusing to adopt the CoM's recommendations.

In the EAC, there are many autonomous voices in the budget adoption process. The Secretariat prepares and submits the budget to the Council of the EAC (the equivalent of the CoM) for the latter's consideration. The budget is then sent to the East African legislative Assembly for debate and approval.[63] In ECOWAS, the budget of the Community is prepared by the ECOWAS Commission, with the Council of Ministers having the power to approve it.[64]

With the recent adoption of a Supplementary Act on the Enhancement of Powers of the Parliament by the ECOWAS Authority, the ECOWAS Parliament will, once the Supplementary Act comes into effect, exercise co-decision powers with the Council of Ministers over the budget.[65]

The most elaborate treaty-based budget adoption process is probably that of the EU. This is provided for in Article 314 of the TFEU.[66] Each EU institution (with the exception of the European Central Bank) draws up, before a prescribed date, estimates of its expenditure for the following year. The Commission then consolidates these various estimates into a draft budget which may contain different estimates, after which it submits a proposal containing the draft budget, with estimates of revenue and expenditure, to the EP and the Council by a prescribed date.[67] The Council should adopt its position on the draft budget and send it, together with full supporting reasons, to the EP, by a predetermined date. At that stage, the EP may approve the position of Council. In the event of disagreements between the EP and the Council, there are a number of intricate procedures to be followed, including the convening of Conciliation Committee comprising members of the Council or their representatives and an equal number of members representing the EP, with the Commission taking part in the proceedings and playing a conciliatory role. The Conciliation Committee has its own dense web of procedures. Article 314(9) bestows the President of the EP with the power to declare that the budget has been definitively adopted after the Article 314 procedure has been completed.

62 See Art 48 of the consolidated version of the Treaty on European Union http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2012.326.01.0001.01.ENG#C_2012326EN.01001301 (accessed 07-08-2014).

63 For the powers of the EAC Secretariat, the EAC Council and EALA, see Arts 71, 14 and 49 of the EAC Treaty.

64 See Arts 10(3)(g) and 19(3)(d) of the Revised Treaty of ECOWAS http://www.ecowas.int/wp-content/uploads/2015/01/Revised-treaty.pdf (accessed 28-04-2016) as read with the new Art 19, in particular Art 19(3) of ECOWAS Supplementary Protocol A/SP.1/06/06 Amending the Revised Treaty 2006 http://documentation.ecowas.int/download/en/legal_documents/protocols/Supplementary%20Protocol%20Amending%20the%20Revised%20ECOWAS%20Treaty.pdf (accessed 28-04-2016).

65 See Odei-Mensah "Constituents Relations and Outreach: Experience of the ECOWAS Parliament under Reduced Mandate and Transition to Legislative Powers" Parliamentary Exchange Workshop on the Institutional Strengthening of International Parliamentary Bodies (presentation by 4th Deputy Speaker of ECOWAS Parliament, Arusha, Tanzania 10–11 February 2015) http://www.awepa.org/wp-content/uploads/2015/03/Hon-Osei-Mensah_ECOWAS-P-Outreach-and-Representation1.pdf (accessed 07-10-2015). See also Boré and Henkel "Disturbing a Cosy Balance?: The ECOWAS Parliament's Rocky Road to Co-decision" 2015 *International Policy Analysis* 3, http://library.fes.de/pdf-files/iez/11185.pdf (accessed 16-04-2016).

66 Paragraphs 1–8 of Art 314 of the TFEU http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT (accessed 28-04-2016).

67 It should be noted that in terms of Art 314(2), the Commission may amend the draft budget during the procedure until the appointment of the Conciliation Committee in the event of disagreement between the EP and the Council.

Article 315 deals with allowable expenditure in the event that the budget has not been definitively adopted.

This article does not seek to suggest that the EU budget adoption process should be emulated wholesale in SADC. Indeed, a less cumbersome, yet sufficiently collaborative, framework may be preferred. What is important to note with regards to the EU budget adoption process is the need for robust inter-institutional conversation and bargaining involving a broad spectrum of autonomous EU institutions. There is no doubt that a multitude of interests are considered and accommodated, which brings legitimacy to the budget adoption process. It is also important to note that the European Council (the equivalent of the SADC Summit) is not involved in this process. It is concerned with the much more important role of "[providing] the Union with the necessary impetus for its development … and [defining] [its] general political direction and priorities."[68] In fact, the European Council is specifically prohibited from exercising any legislative functions.[69] Needless to say, where regional leaders concentrate on providing broad political direction for integration and leave technical details to other institutions better suited for such tasks, the full capacity of their leadership gets unlocked and unconstrained by the need to attend to a lot of mundane and technical matters that may be beyond their individual and collective capacities. Regarding SADC however, the opposite appears to be true. As aptly remarked by one scholar

> The last round of reforms and the restructuring (meaning the 2001 amendments to the SADC Treaty and the subsequent streamlining of the Secretariat's operations) have not succeeded in distancing the political governors of the region from the mundane technical aspects of integration. This creates the challenge of securing political commitment at the highest level for technical aspects of integration that at any particular moment might not be in political vogue.[70]

3 3 Beyond the Letter and Spirit of the SADC Treaty

There is no mechanism in the SADC Treaty that provides for checks and balances in the arena of norm-setting and decision-making. Regarding final decisions in the areas discussed above, the Summit acts alone, since the CoM can only make recommendations. As has been illustrated above, other RECs have established cooperative frameworks whereby decisions on significant matters are not left to the discretion of a single institution.

The unbridled formal powers of the Summit given to it by the SADC Treaty have been used (and even overstepped) in practice. The Summit's suspension and eventual dissolution of the SADC Tribunal is a good example of the democratic deficit inherent in the SADC governance framework. While the Summit acted outside its treaty powers in the SADC Tribunal matter, it did so within the context of a SADC Treaty that gives it extensive powers in policy-crafting and decision-making. In a way, it was the overall spirit of Summit supremacy bred by the SADC Treaty framework that buoyed the Summit in its actions against the Tribunal. With the demise of the SADC Tribunal, the institutional integrity of the SADC integration project has been seriously compromised, as it is now a framework effectively without an adjudicator and thus free from enforceable legal constraints.[71] Currently, the Summit is the overall law- and policymaker, implementer and adjudicator in SADC. Crudely put, the Summit is SADC and SADC is the Summit.

So pervasive and overarching is the Summit's role in SADC affairs that some scholars are in such despair that they see the creation of a democratic institutional framework at the regional level in SADC as, at least in the current state of affairs, impossible. According to Nathan, writing in the context of the Summit's actions in relation to the SADC Tribunal "[t]he crux of the matter is that the SADC states [read heads of state or government] will not relinquish sovereignty to

68 Article 15(1) of TEU (Consolidated Version).
69 *Ibid.*
70 Ng'ongo'la 2008 *Univ of Botswana LJ* 32.
71 The observation by Kumm that "[a]n international community that makes do without the resource of a well-developed legal system in which the authority of law is generally recognised is impoverished" seems to be very appropriate in the context of the current state of affairs in SADC. See Kumm "The Legitimacy of International Law: A Constitutionalist Framework of Analysis" 2004 *EJIL* 907 918.

regional institutions."[72] He goes on to state, in an equally categorical fashion

> The Summit demonstrated unequivocally that it is not subordinate to the Treaty. In an international system in which state sovereignty is a paramount factor, the Summit and its member states [sic] are constrained only if, and to the extent that, they consent to be constrained. Such consent has not been given in Southern Africa and will not be forthcoming for the foreseeable future.[73]

To argue that power is centralised in the Summit is not the same as saying that the other institutions of SADC do not actively get involved in the formulation of SADC policies in practice.[74] The point is simply that it is ultimately the decision of the Summit that matters. Also, the general attitude (or rather, general political position) of the Summit on any issue would likely influence the decision of the subordinate political institutions that are supposed to make recommendations to it.[75]

The dominance of Heads of State or Government in regional cooperation affairs has always been an enduring preoccupation of the political leaders in the SADC region. Indeed, the overarching role of the Summit in SADC affairs can be traced to the days of the Southern African Development Coordination Commission (SADCC), the predecessor of SADC. During that era, the Heads of States or Government were ultimately in charge of the affairs of that organisation and were apparently reluctant to share their policymaking roles with other institutions. The mood was that of anti-institutionalism. As remarked by the then president of Mozambique, Samora Machel, on the day of the formation of SADCC:

> It is not through the creation of institutions that we will develop multilateral co-operation. Some of us have experience of the inefficiency of creation of heavy and expensive structures which contribute little or nothing to the main objectives that were achieved [sic]. The institutions should appear in order to respond to the objective needs and not conceived as an end in themselves.[76]

Similar sentiments were expressed by the then President of Botswana, Seretse Khama, who criticised "grandiose schemes" and "massive bureaucratic institutions" and instead favoured an approach focusing on common projects and specific programmes.[77] Needless to say, it is difficult to see how common projects and specific programmes cannot be effectively pursued by bureaucratic institutions. Also, bureaucratisation does not necessarily translate to a large number of people and expensive structures. The attitude of the founders of SADCC seems to have been that of charting the course of regional integration on their own, as it were, under the guise of efficiency. This thinking is clearly reflected in SADC's current institutional design.

In addition to the Summit being the ultimate institution in SADC's decision-making processes, it does so within a treaty framework that does not provide for internal constraints even within the Summit itself, save for the requirements of consensus or unanimity, and a three-quarters majority in the case of the amendment of the SADC Treaty, which on their own

72 Nathan "The Disbanding of the SADC Tribunal: A Cautionary Tale" 2013 *Human Rights Quarterly* 870 872.

73 *Ibid*. 891–892.

74 Also, as Nathan has observed with regards to protocols, it is the SADC Secretariat, working with relevant technical and legal experts, that comes up with the initial drafts which are then subjected to hierarchical considerations and negotiations by the other institutions until they are finally adopted by the Summit (subject to ratification by the Member States). See Nathan 2013 *Human Rights Quarterly* 872.

75 This is best illustrated by Nathan 2013 *Human Rights Quarterly* 881, in the context of what he views as the tension between sovereignty and supranationalism in SADC (based on an unpublished document in his possession), in reference to the 1996 far-reaching proposed terms of reference developed by the Secretariat which would have given the OPDS power to monitor SADC Member States' compliance with democracy, human rights and the rule of law. According to Nathan, this proposal was rejected at ministerial level since it was viewed as an attack on Member States' sovereignty, with ministers instead proposing a watered-down version which would have given the OPDS the power to monitor not compliance by Member States, but instead the latter's ratifications of international human rights instruments. Interestingly, even this watered-down version did not make it into the OPDS Protocol that was subsequently adopted in 2000. The Protocol instead carries (in Art 2(2)(g) a provision which simply provides that the OPDS should encourage Member States to observe universal rights enshrined in the United Nations and the Organisation of African Unity (now African Union) instruments.

76 Mvungi *Constitutional Questions in the Regional Integration Process: The Case of the Southern African Development Community with Reference to the European Union* (Doctoral-thesis, Hamburg University, 1994) 87.

77 *Ibid*.

are not enough to guarantee transparency and accountability.[78] This is more so in the absence of judicial-review mechanisms underpinned by the right of access to information which is now recognised in several international organisations.[79]

While states may, by way of treaties, design institutions of the organisations they create as they deem fit, there are some normative values, such as the principle of separation of powers, that are now so pervasive when it comes to international institutional law, particularly in the institutional design of RECs, that they may as well be regarded as, for lack of a more appropriate term, 'customary' principles of REC governance. Also reflected in good measure in REC institutional design is the desire at the very least to reflect the rule of law as one of the core organisational normative values.[80] One would expect that an organisation such as SADC, that has as part of its principles and objectives the promotion and protection of the values of democracy and the rule of law,[81] would have an institutional framework that at the very least accommodates these values in its institutional design.

The words of Ike Ekweremadu, former speaker of the ECOWAS Parliament, commenting on the adoption of the Supplementary Act on the Enhancement of Powers of the Parliament in his valedictory speech, are probably worth quoting

> [T]rue democratic governance rests on the tripod of the Executive, Legislature, and Judiciary. The enhancement of powers is not for competition, but for the good governance of ECOWAS. It is to build strong institutions necessary for running a balanced and transparent ECOWAS.[82]

4 CONCLUSION

The reference to the Summit's supremacy in the SADC Treaty is not just a matter of illustrating the hierarchical order of policymaking in the SADC integration project. The statement is intended to convey and emphasise the overarching specific powers of the Summit as given to it in the various provisions of the SADC Treaty. But in addition to the formal treaty powers of the Summit, the overall design of the other SADC institutions leaves no doubt that the spirit of the SADC Treaty is that of centralisation of power in a single political oligarchy – the Summit. In this article, only two areas illustrative of this centralisation of power are given as examples – treaty amendment and budget adoption. The Summit, being aware not only of its formal powers, but also of the fact that there is no meaningful framework for the control of the manner in which it exercises its powers, even went beyond the letter and spirit of the SADC Treaty when it suspended, disbanded and subsequently redesigned SADC's judicial body, the now jurisdictionally emaciated and inaccessible (if the new protocol will come into force, that is) SADC Tribunal. The Summit's powers in the SADC integration project are therefore not just supreme in letter and spirit, but also in deed, whether exercised legally or otherwise. This calls for a holistic reconsideration of the SADC institutional design to make it not just democratic and subject to the rule of law but, through the unlocking of the capacity of all the SADC institutions including the Summit itself, efficient as well.

78 According to Art 10(9) the decisions of the Summit shall be by consensus, unless there is provision to the contrary in the Treaty. For example, as indicated above, a three-quarters majority is needed for passing an amendment to the SADC Treaty. Also, regarding the admission of new members to SADC, Art 8(4) provides that such decisions should be by unanimity. It may be important to explain here what consensus decision-making entails. Taking decisions by consensus is not the same as adopting decisions by unanimity. Where a decision has to be taken by unanimity, all those participating would have to be in positive agreement. On the other hand, a consensus decision-making procedure implies not an agreement, but rather that none of the parties is seriously opposed to the proposed decision. Taking decisions by consensus has been linked to the conclusion of package deals, that is, 'buying off' those not in agreement by giving in to the latter's other demands. For a detailed discussion of consensus decision-making and its implications, see Klabbers *An Introduction to International Institutional Law* (2009) 207–209. For a different view of what consensus entails, see Osode "The Southern African Development Community in Legal Historical Perspective" 2003 *Journal for Juridical Science* 1 7. According to Osode, the practical effect of a consensus decision-making procedure is that it gives a veto power to a member state, enabling it to block a decision that it does not agree with. This latter view is erroneous and is in fact descriptive of a unanimity procedure.

79 See Nyathi *Exploring Shared Governance* ch 6, sec 6.10.

80 See Nyathi *Exploring Shared Governance* for a more sustained illustration of this argument. It should be noted though that Nyathi uses just three RECs to illustrate this point – the EAC, ECOWAS and the EU.

81 See Arts 4(c), 5(1)(b) and 6(1) of the SADC Treaty.

82 http://theadvocatengr.com/2016/02/ecowas-parliament-adoption-of-supplementary-act-our-greatest-achievement-ekweremadu/ (accessed 16-04-2016).