

Updated 12 February 2024



## THE SADC TRIBUNAL: SADC'S REGIONAL COURT OF LAST RESORT FOR JUSTICE TIMELINE: THE RISE AND FALL OF THE SADC TRIBUNAL



*The SADC Tribunal building in Windhoek, Namibia*

**1992:** 17 August, 1992, the Heads of State or Government of the Southern African Development Community (SADC) concluded the Institutional Treaty of SADC. The SADC Tribunal was established as one of the Institutions in Article 9 (g) of the Treaty.

**2005:** The Summit of Heads of State appointed the Members of the Tribunal during its Summit of Heads of State held in Gaborone on 18 August 2005.

**2005:** The swearing in of the Members took place on 18 November 2005 in Windhoek. The first President of the Tribunal was Justice Dr Luis Mondlane from Mozambique (2005–2008). He was followed by Justice Ariranga Pillay from Mauritius (2008–2011).

With the launch of the SADC Tribunal, described as a “House of Justice for Southern Africa”, individuals had the right to bring cases against their governments before the court when all efforts to achieve justice within their own countries had failed. Such a person did not need to be a citizen of a Member State.

**2007-2010:** During the period that the SADC Tribunal was operational, it adjudicated in 18 disputes. Cases tended to fall within one of three categories:

1. Individuals versus SADC itself (employment disputes);
2. Incorporated companies versus national governments (commercial disputes), and
3. Individuals versus national governments (human rights cases).<sup>i</sup>

The majority of cases involved individuals taking the Zimbabwe Government to court and it lost every single case.

**NOTE:** In resolving cases, the SADC Tribunal looked to common principles of international human rights law, rather than applying one specific human rights treaty.<sup>ii</sup>

The Tribunal did not have a specific human rights jurisdiction, but certain provisions of the SADC Treaty alluded to human rights, which fell under the purview of the Tribunal.<sup>iii</sup>

**2008:** During the landmark Campbell case contesting President Robert Mugabe's farm confiscation programme, when the Zimbabwe government's legal team applied for yet another postponement, Justice Luis Mondlane said: "We are trying to build a house of justice in this region."

**2010:** In August 2010, at the instigation of President Mugabe, the SADC Summit resolved to suspend the Tribunal following Zimbabwe's refusal to honour its rulings on the land grab campaign, and they commissioned an independent review of the Tribunal's functions and terms of reference.

**2010:** In December 2010, the Tribunal ordered the Zimbabwe Government to pay compensation to nine victims of torture who had suffered at the hands of the army and police. This was known as the Gondo case<sup>iv</sup>.

**2011:** On 14 February 2011, an independent review of the SADC Tribunal by WTI Advisors Ltd, Geneva, an affiliate of the World Trade Institute, found that SADC law should be supreme over domestic laws, and all decisions made by the court should be binding and enforceable within all Member States.

**2011:** During early April, drawing on the recommendations, the SADC Committee of Ministers of Justice/Attorneys General met in Namibia and dismissed Zimbabwe's contention that the Tribunal was not legally constituted. The committee recommended finalising "the reappointment and replacement of the Members of the SADC Tribunal".

**2011:** However, the findings of the review were ignored by the SADC Heads of State. On 20 May, at an Extraordinary Summit in Windhoek, Namibia, they illegally suspended the SADC Tribunal and the judges were unilaterally dismissed.

Consequently:

- The Tribunal became defunct and pending cases could not be heard.
- No new cases could be brought by individuals against their governments.

**2011:** On 11 July, in Johannesburg, the former judge president of the SADC Tribunal, Ariranga Pillay, said SADC's bid to replace the Tribunal was illegal and undermined the principles of human rights and access to justice. He said the decision sent "*the worst possible signal to potential investors, donors and the international community...*"

**2011:** On 28 July, a regional legal consultative meeting was held in Johannesburg, co-hosted by the International Commission of Jurists, the SADC Lawyers' Association and the Southern African Litigation Centre, to discuss the suspension of the Tribunal and the way forward.

**2011:** On 17 August, the SADC Council of Ministers' report to the Summit in Luanda, Angola, retained a provision affording the right of individuals to have access to the SADC Tribunal, but recommended that its human rights jurisdiction be put on hold pending the adoption of a separate human rights protocol. The Summit rejected the said proposals and, instead, decided to limit the jurisdiction of the SADC Tribunal to disputes between Member States.

**2011 – 2012:** Between May 2011 and August 2012, the SADC Ministers of Justice made a concerted effort to redesign the Tribunal Protocol, despite serious differences of opinion among their ranks. At the same time, President Mugabe was tactically lobbying other Heads of State, pointing out the negative implications the Tribunal might have for them if it were allowed to continue operating.

Also during this time, eleven of the fifteen Justice Ministers met with groups of legal experts lobbying against the Tribunal's suspension. The Justice Ministers agreed to a large extent with the lobby groups and included most of their recommendations in their own report to the Council and Summit. ***However, they acknowledged that the issue was no longer a legal one, but a political one.***

**2012:** August 17-18: The redraft the Justice Ministers presented to the SADC Summit of Heads of State in Maputo, Mozambique, in August maintained the right of individual access, but with any jurisdiction in human rights deferred until such time as a separate human rights Protocol were to be adopted. However, the Summit rejected the redraft compiled by its own Justice Ministers.

**2012:** The Summit's final communiqué of 18 August 2012 explained that SADC leaders had *“resolved that a new Protocol on the Tribunal should be negotiated and its mandate confined to interpretation of the SADC Treaty and Protocols relating to disputes between Member States”*.<sup>v</sup>

As a result, individuals would no longer be able to access the court, preventing them from seeking justice, and consequently undermining the rule of law.

**2013:** August 17-18: The SADC Summit in Lilongwe, Malawi refined the terms of reference given to the Committee, instructing it to fast-track the negotiation of a new Protocol that would:

- Confine the Tribunal to the interpretation of the SADC Treaty and Protocols relating to disputes between Member States, and
- Specify that the Protocol would only enter into force once ratified by two-thirds of Member States.

**2014:** August: At the 34th SADC Summit in Victoria Falls, the SADC leaders received a report from the Committee of Ministers of Justice/Attorneys General relating to progress on negotiating a new Protocol on the SADC Tribunal. The SADC Heads of State agreed to adopt a new Protocol to pave the way for another regional tribunal. The new Protocol would change the original jurisdiction of the Tribunal by removing its mandate to hear cases filed by individuals against States, and would only allow it to hear cases brought by SADC Member States against each other, also called inter-state disputes.

**The new Protocol was signed by nine of the 15 SADC countries.** These were:

Democratic Republic of Congo, Kingdom of Lesotho, Republic of Malawi, Republic of Mozambique, Republic of Namibia, Republic of South Africa, United Republic of Tanzania, Republic of Zambia and Republic of Zimbabwe.

**The six countries that did not sign the Protocol were:**

Republic of Angola, Republic of Botswana, Republic of Swaziland, Republic of Madagascar, Republic of Mauritius and Republic of Seychelles.

This meant that the Protocol did not receive sufficient signatures or ratifications to enter into force.

**2015:** On 21 April, the Law Society of South Africa launched an application to declare the actions of South African President Jacob Zuma, as well as the country's Minister of Justice and the Minister of International Relations and Co-operation, unconstitutional in relation to the suspension of the Tribunal in 2011 and the adoption of the new Protocol in 2014.

**2015:** On 24 July, four dispossessed Zimbabwean commercial farmers and two Zimbabwean agricultural companies applied to join the Law Society case. They were represented by South African civil rights group AfriForum. The farmers had been denied the right to seek justice in their own country through policies and measures that deprived them of their property rights and failed to uphold their human rights – and those of their workers – during the illegal and violent farm invasions. All four had successfully participated in various court cases before the SADC Tribunal and, in all cases, the Tribunal had ruled against the Zimbabwe government.

**2016:** On 17 August, the Coalition for an Effective SADC Tribunal issued a statement ahead of the 36<sup>th</sup> SADC Summit in Swaziland on 30/31 August and called on Member States to refrain from ratifying the revised Protocol, stating that it violated and ran counter to the spirit and principles of the SADC Treaty. These included the protection of human rights, rule of law, democracy and public participation.

**2018:** February: The long-delayed hearing of the court case against South African President Jacob Zuma and his African National Congress (ANC) government for their role in the closure of the SADC Tribunal in 2012 was set down for 5-7 February 2018 at the High Court in Pretoria.

**2018:** On 5 February, arguments were heard before three High Court Judges, including the Judge President. It was argued that President Zuma, by signing the Protocol which took away the rights of SADC citizens to go to the SADC Tribunal on human rights issues, was not acting consistently with his constitutional duties.

**2018:** On 1 March, the Pretoria High Court in South Africa ruled that Former President Jacob Zuma had acted "*unlawfully, irrationally and unconstitutionally*" when he supported and took part in a resolution suspending the operations of the SADC Tribunal.<sup>vi</sup>

**2018:** On 30 August, the South African Constitutional Court heard an appeal by the State in which it sought to overturn the High Court ruling that declared former President Jacob Zuma's participation in the suspension of the operations of the SADC Tribunal "*unlawful, irrational and unconstitutional*".

**2018:** On 11 December, in its judgment in the case of *Law Society of South Africa v President of South Africa* (the SADC Tribunal judgment), the Constitutional Court decided that the participation of the South African President in stripping away the powers of the SADC Tribunal to hear individual claims was unconstitutional.

**2019:** On 4 June, the High Court of Tanzania found that Tanzania was bound under the SADC Treaty to give it effect in good faith. Three judges found serious legal problems with the country's involvement in effectively killing off the SADC Tribunal, a key regional human rights court.

**2019:** August 17-18: President Cyril Ramaphosa withdrew South Africa's signature from the 2012 decision at the 39<sup>th</sup> SADC Summit in Dar es Salaam, Tanzania.

**2019:** August 17-18: Also at the 39<sup>th</sup> SADC Summit in Dar es Salaam, President Emmerson Mnangagwa of Zimbabwe was appointed incoming Chairperson of the SADC Organ on Politics, Defence and Security Cooperation.

**2020:** August: In the run-up to the SADC Heads of State’s 40<sup>th</sup> annual Summit from 10-17 August, SADC leaders faced a barrage of criticism over their inaction regarding the region’s problems, notably crises such as those in Zimbabwe, Mozambique and the Democratic Republic of the Congo (DRC).

**2020:** On 7 October, the SADC Administrative Tribunal in Gaborone, Botswana, ordered that a former SADC Tribunal judge, Justice Charles Mkandawire, should be compensated after his contract was wrongfully terminated by the SADC Secretariat. The award amount was US\$380 184.71 less his cumulative earnings in Malawi from the time of the termination of his contract up to 30 November 2016.

**2023:** Lawyers and civil society in Mozambique worked with regional partners to oppose the extradition of the former minister of finance Manuel Chang – who is accused of involvement in the stealing of more than US\$2-billion from the national treasury – from South Africa to Mozambique. After several years of legal process this resulted in his being finally extradited to the U.S. instead.

As [Arnold Tsunga](#), former Africa Director of the International Commission of Jurists (ICJ), noted in an [opinion piece in July 2023](#): *“The lesson for the SADC Heads of State is that the earlier they re-establish a sub-regional court, with human rights jurisdiction and individual access [as was the case with the SADC Tribunal], the better for everyone. This would mean that SADC citizens are not left with the option of seeking justice in jurisdictions outside our continent.”*

**2024:** President Mnangagwa is expected to take over as SADC chairperson when Zimbabwe hosts SADC’s 44<sup>th</sup> Ordinary Summit in August. The current chairperson is Angolan President João Lourenço.

---

<sup>i</sup> [Silencing a supranational court: The Rise and Fall of the SADC Tribunal](#), Merran Hulse, 25 October 2012

<sup>ii</sup> [Southern African Development Community Tribunal](#), International Justice Resource Center

<sup>iii</sup> [SADC Tribunal – General Explanation](#), Institute for Human Rights and Development in Africa (IHRDA)

<sup>iv</sup> [Landmark torture ruling](#), ZimOnline, 16 January 2011

<sup>v</sup> [SADC leaders deal fatal blow to SADC Tribunal](#), Southern Africa Litigation Centre, 20 August 2012

<sup>vi</sup> [Zuma's role in dismantling SADC Tribunal slammed by court](#), Independent Online, 1 March 2018