

Revisiting Dispute Resolution Mechanisms in the Southern African Development Community: A Proposal for Synchronization

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Abstract : Dispute resolution is the plinth of regional integration initiatives anchored on the rule of law and compliance with obligations. Without effective and reliable dispute resolution mechanisms, it may be difficult to foster deeper integration. Within the Southern African Development Community (SADC) legal and institutional framework exists an apparent recognition that dispute resolution is an integral part of the regional integration. Almost all legal instruments of SADC include some provision for dispute resolution. Institutionally, the somewhat now defunct SADC Tribunal is meant to be the fulcrum for resolving disputes that arise under SADC instruments. However, after a closer analysis of the substance of these legal provisions and the attendant procedural mechanisms for addressing disputes, an argument can be made that dispute resolution in SADC is somewhat scant, fragmented and neglected. In most instruments, the common provision on dispute resolution appears to be a 'mid-night clause'. In other instruments which have specialised provisions and procedures, questions of practicality and genius cannot be avoided. Worse still there now appears to be a lack of magnanimity between the substantive provisions in various instruments and the role of the transformed Tribunal. This scant, fragmented and neglected dispute resolution system may have an impact on the observance of the rule of law and compliance with obligations in the rules-based SADC system. This all, in turn, has an effect on the common agenda for deeper regional integration. This article seeks to expose this scant, fragmented and neglected SADC dispute resolution system and to propose a harmonised system that addresses these challenges. A 'one stop shop' system under a strengthened SADC tribunal is proposed as a responsive solution.

Keywords : regional integration, harmonisation, SADC tribunal, dispute resolution

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