



The Law Faculty of the University of Cape Town expresses its dismay and outrage at the recent decision of the summit of heads of state of the Southern African Development Community (SADC) to suspend the SADC Tribunal and replace it with a body which cannot receive complaints from individuals. By this measure, SADC has blocked a potentially effective mechanism for the protection of human rights, because it has removed the last opportunity which individuals in the region had to protect themselves against abuse by their own governments. It has also limited the possibility of linking sub-regional economic integration, democracy, the rule of law and human rights in a judicial context. This decision rejects the global movement towards increased accountability for governments, ignores the advice of a review panel which SADC itself commissioned, undermines the value system of the SADC treaty, and shows a disgraceful contempt towards the citizens of the SADC region.

In the treaty which established the SADC, the governments of the SADC states declared themselves determined 'to ensure ... the progress and well-being of the people of Southern Africa' and acknowledged the central role played by 'democratic rights, observance of human rights and the rule of law'. Member States also undertook in Art 6(1) to 'refrain from taking any measure likely to jeopardise the sustenance of its principles, the achievement of its objectives and the implementation of the provisions of this Treaty'.

The rule of law can be protected only if individuals have access to an independent body, such as a court of law, if their governments infringe their rights. Following the example of the European Union, the SADC Tribunal was established not only to adjudicate disputes concerning economic integration and the relations between states inter se and other actors within the SADC, but also claims brought by individuals alleging violations of the rule of law and human rights by states. All the cases which it heard pertaining to human rights were brought by individuals, and it sometimes made findings that SADC governments were acting outside the law and in breach of their citizens' rights. In the new version of the Tribunal, only member states will be allowed to bring complaints. The practice in international law shows that states rarely take each other before international adjudicatory forums to account for their human rights obligations.

The SADC summit decision has shut down an institution which was designed to hold SADC governments to the principles which they themselves accepted as necessary for the well-being of their own people. By doing so, the SADC summit has demonstrated a set of values at odds with such well-being; a set of values which seems to prioritise the interests of the rulers of each state over those of its people. Such an open retreat from accountability implies that democracy, human rights and the rule of law, including the independence of the judiciary, are not sacred principles for the protection of the citizens, but merely irritating obstacles to the people who govern them.