
**Mobilising Resources
for Regional Integration
in Southern Africa:
Towards a SADC
Capacity-Building Fund**

**Steven Georgala and
Arne Tostensen**

R 1996: 5

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Summary

Two fundamental problems have been figuring on the agenda of SADC since 190: donor dependency and institutional structure. While not divorcing the broader issue of institutional structure from that of donor dependency, this report is preoccupied with the latter. After reviewing the institutional evolution of SADC from its inception as a 'conference' to a 'community', the report proposes that a Capacity-Building Fund be established as a mechanism for mobilising resources regionally. Its capitalisation is envisaged to emanate from a variety of sources, including voluntary contributions from member states and donors, private sector contributions and levies on transactions within the region. It is proposed that the Fund be set up as a separate legal person to be managed by a Board of Governors, yet linked to SADC as an organisation. A draft constitution of the Fund is included in the report.

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Acknowledgements

This consultancy was commissioned by the SADC Secretariat on the basis of the terms of reference as set out in appendix 2 to this report. In the course of completing the task the consultants have drawn on their previous experiences in Southern Africa and insights garnered from studies of regional affairs as well as legal knowledge related to the establishment and operation of trusts and foundations. In addition, many people and institutions in the region and elsewhere have been consulted (see appendix 1). Sincere gratitude is due to all those who shared their views and generously allotted time when called upon. Finally, SADC Secretariat staff deserve thanks for facilitating the consultants' work on the report and offering comments on a previous draft. It is hoped that the end result as contained in this report does justice to the proposals advanced. However, responsibility for the analysis, conclusions and recommendations rests solely with the authors.

Executive Summary

1. Two fundamental problems have been figuring persistently on the agenda of SADC since its inception as a 'conference' in 1980: donor dependency and institutional structure. Much thought and soul-searching discussion have gone into attempts to grapple with these issues. Yet, the problems remain basically unresolved. This report constitutes yet another attempt at finding a solution, albeit partial, to these twin problems. The question of setting up a capacity-building fund cannot be divorced from the broader issue of institutional structure.

2. When SADCC was formed in 1980 a decentralised institutional structure was adopted with a view to avoiding top-heavy bureaucratisation with high overhead costs; mobilising Member States and ensuring their direct and active involvement in the organisation's affairs by allocating sectoral responsibilities to them; and creating a high profile to promote and maintain visibility throughout the region through the activities of the Sector Coordinating Units (SCUs).

3. The founders of SADCC deliberately opted for consensus in decision-making. The cost of this operational modality, however, has been relative slowness of progress. Faced with the challenges of the 1990's it was increasingly felt that, while the original institutional framework had been appropriate for the 1980's, it would be inadequate for the future. On 17 August 1992 the Summit adopted a Treaty establishing the Southern Africa Development Community intended to transform the organisation from a loose assemblage of like-minded states into a firmer and better instrument for regional integration. The ambitious objectives of the Treaty were not matched by fundamental changes in the institutional framework of the Community to equip the organisation with the necessary instruments to meet the new challenges. The mode of operation of the new SADC was not transformed.

4. The most serious shortcoming of the Treaty in terms of institutional provisions is the glaring omission of reference to the SCUs. As a matter of formality it is correct that the SCUs are strictly speaking not part of the institutional framework of SADC. Formally they are not regional institutions but *national* entities integrated into the state apparatus of the country holding responsibility for the sector concerned. Even though the SCUs are technically national units, they are critical to the functioning of SADC, of which they are a vital part organically, if not legally. The SCUs form the backbone of SADC, without which the decentralised mode of operation would not work. On account of their operational importance it is disturbing that the SCUs were neglected in the Treaty.

5. However, the Treaty laid the basis for continued evolution of the institutional framework, e.g. the upgrading of SCUs to commission status. Nevertheless, in recognition of the likelihood that SCUs would continue to perform important functions for a considerable time to come, a saving provision was included. Pending significant changes in SADC's mode of operation, therefore, the institutional impediments of the past are likely to continue hampering progress. The old framework may have served the organisation well in the first decade but new and tougher challenges of deepening integration will require new and more effective instruments.

6. The problem of inter-organisational rivalry between PTA and SADC has compounded the institutional question for some time. Overlapping mandates and membership have been cause for concern that efforts are being duplicated and meagre resources wasted. The two summits of the respective organisations in August and December 1994 failed to resolve the conflict. The fact that a workable *modus operandi* has not been reached does not allay the concerns of the donor community.

7. The desire to prevent the swelling of SADC's bureaucracy to unmanageable levels has evolved into a *bureaucratic leanness axiom* to the point of creating bottlenecks in the organisation which hamper progress with regard to the new agenda. The policy of keeping bureaucracy (i.e. number of staff) to a bare minimum has been implemented too scrupulously. It may be surmised from various documents that shortage of qualified staff and capacity are factors which seriously impede progress. There is a case for judicious expansion of the bureaucracy of SADC institutions, including both the Secretariat and the SCUs.

8. Expanding the capacity of an institution can be done in three ways: (a) increasing the total working time available to complete the assignments at hand, i.e. increasing the staff complement through new recruitment; (b) enhancing the efficiency of existing staff by various means without increasing the number of staff, i.e. making more economical use of available resources and deploying staff more rationally; and (c) combining staff expansion, i.e. option (a), and taking efficiency measures, i.e. option (b). This would be the most effective option and is the recommended one.

9. The Capacity-Building Fund is intended to have a dual function. First, it is designed to enhance institutional capacities for regional integration by way of a number of interventions and support measures. Second, once capacities have been expanded, the Fund would - for an initial period - provide recurrent expenditure support.

10. The critical hurdle in establishing a capacity-building fund is likely to be its capitalisation. Potential sources include: (a) revenue generated through activities such as football matches, pop concerts, lotteries, hotel bed levy etc.; (b) voluntary

contributions from civil society in Southern Africa; (c) voluntary contributions from SADC Member States; (b) assessed contributions from SADC Member States, either on a flat rate basis or according to a specified formula of differentiation; (d) voluntary contributions from the donor community, both bilateral and multilateral agencies; (e) voluntary contributions from the private sector in Southern Africa, principally from individual companies; (f) voluntary contributions from the private sector in other parts of the world, principally from individual companies; (g) temporary levy on trade transactions within the Southern African Customs Union for a fixed term or up to a targeted volume.

11. Whereas all of the potential sources may be tapped, the most effective and fastest way to capitalise the Fund to the level required would be to impose a small levy on trade transactions within the Southern African Customs Union (SACU). This arrangement would be temporary and last only until the targeted amount has been reached. The greatest attraction of this option is its practicability in that the functioning administrative machinery for collecting the levy is in place. The main reservation is that only a minority of SADC's Member States would thus capitalise the Fund, whereas all of them would benefit from its operations.

12. The report outlines a number of expenditure and management assumptions, on the basis of which an attempt is made at quantifying the resources which will be required to be committed to the Fund in order for it to constitute a viable source of financial support. On the basis of these assumptions the required capital base of the Fund is estimated to be within the range of US\$ 4.4 mill. to US\$ 16.7 mill.

13. It is recognised that there is an absolute need for the Fund to be established within the framework of the Treaty and the existing Protocols to the Treaty. None of the provisions of the Treaty and its Protocols are considered to be adequate to provide for the establishment of a discrete and effective constitution for the Fund without being supplemented by new provisions in the form of a Protocol to the Treaty. It is recommended, therefore, that a new Protocol be adopted which establishes the Fund as an Institution of SADC. The provisions of the Protocol would need to be in harmony with the existing provisions which relate to the management of the resources of SADC.

14. In order to maintain adequate flexibility in the conduct of the affairs of the Fund as these may evolve, it is suggested that the Protocol establishing the Fund should not embody the constitution of the Fund. It is recommended that the Protocol authorise the Council of Ministers to adopt the detailed constitution and that, once adopted, the said constitution be amendable only by the Council. It is recommended that the consultative process which the Secretariat has adopted as the procedure for the formulation of protocols be abbreviated to that which is necessary in order to finalise the draft Protocol and for the Protocol to be submitted directly to the Council of Ministers. This suggestion is motivated by the

understanding that the Protocol in question relates to an administrative matter and is not relevant to a specific area of cooperation.

15. It is proposed that the Fund be managed by a Board of Governors which would comprise up to ten members. Although the Executive Secretary of SADC could, *ex officio*, be a member of the Board of Governors, it is recommended that the members of the Board of Governors be drawn from outside of the SADC Secretariat. The members of the Board of Governors should have sufficient financial acumen and stature in the financial community to ensure that the Fund would be run in accordance with its constitution. The Board of Governors would play a supervisory role.

16. It is proposed further that the Fund be managed by an independent financial institution selected by the Board of Governors pursuant to a tender procedure. This institution should be selected on the basis of its financial acumen and stature in the international investment community. The institution so selected would enter into an investment management agreement with the Fund pursuant to which its services and remuneration would be specified in detail. It is recommended that the Fund appoint a second financial institution, which meets predetermined credit rating requirements, as the custodian of the Fund's assets.

17. The investment manager would be required to invest the assets of the Fund in accordance with the restrictions imposed in the constitution and with a view to achieving the investment objectives set out therein. The investment manager would, furthermore, make quarterly presentations to the Board of Governors and support these presentations by detailed financial reports which would be made available to the SADC Executive Secretary and all Member States.

18. It is proposed that the investment objectives of the Fund be formulated in such a manner as would limit the risk to which the assets are put. The constitution of the Fund should establish detailed investment restrictions which would limit the risk to which the assets of the Fund would be exposed. The constitution of the Fund should prescribe the accounting treatment of the assets of the Fund and specify the nature of the reports which are required to be presented to the supervisory Board of Governors. It is essential that the Fund be subject to audit by independent auditors, and in this regard it is recommended that the auditors be different to those which audit the accounts of SADC. The Fund will have no employees nor should the SADC Secretariat fulfil any functions in relation to the administration of its assets or of its accounting.

19. A draft constitution for the Fund is included in the report.

20. A draft Protocol establishing the Fund as an Institution of SADC is appended.

1. SADC's Institutional Framework

Two fundamental problems have been figuring persistently on the agenda of SADC since its inception as a 'conference' in 1980: donor dependency and institutional structure. Much thought and soul-searching discussion have gone into attempts to grapple with these issues, not only by officials of the organisation but also more broadly by civil society and academic analysts in the region and beyond. A number of studies, reports and memoranda have been produced in search of solutions. Yet, little progress has been made and the problems remain basically unresolved. This report constitutes yet another attempt at finding a solution, albeit partial, to these twin problems. Although a capacity-building fund is meant to address, in some measure, the donor dependency problem through the creation of a vehicle for intra-regional resource mobilisation, donor support for its capitalisation should not be ruled out entirely. Even so, regardless of sources of capitalisation, the principal function of such a fund would be to address the serious problem of institutional capacity. In turn, capacity is related to the institutional set-up of SADC in general, its efficiency and lines of authority. In this sense the establishment of a capacity-building fund goes to the core of SADC's institutional problem. In fact, the question of setting up a capacity-building fund cannot be divorced from the broader issue of institutional structure. Hence the need for an initial discussion of the institutions of SADC.

1.1 A Retrospective Review

When SADCC was formed in 1980 a decentralised institutional structure was adopted, whose underlying rationale may be summarised in three main points.¹

- (a) Avoiding top-heavy bureaucratisation with high overhead costs. The risk of Member States accumulating arrears to cover institutional costs could thus be averted or minimised. In this respect the experiences from the East African Community (EAC) had undoubtedly acted as a deterrent;
- (b) Mobilising Member States and ensuring their direct and active involvement in the organisation's affairs by allocating sectoral responsibilities to them. A highly centralised structure might demobilise or pacify member states in that they might be tempted to refer responsibilities to central bodies which would be seen to be acting on behalf of the entire organisation;

¹ These points emanate from official documents and interviews with SADC(C) officials.

- (c) Creating a high profile to promote and maintain visibility throughout the region through the activities of the Sector Coordinating Units (SCUs). This would be politically important, not least in the initial stages.

It may be said of this approach to regional collaboration that it was singularly 'functionalist' and bottom-up, as opposed to a top-down supra-national mode of operation.² It became the hallmark of the erstwhile SADCC, which has continued to distinguish it from previous and contemporary regional ventures. Consonant with the initial pragmatic and non-bureaucratic spirit, no truly supra-national institutions have been created to date, not even after the transformation of the 'conference' into a community.

The concept of supra-nationality is equivocal because its usage has not been consistent.³ International organisations between states, i.e. intergovernmental organisations, may be grouped into four broad categories:

- (a) Intergovernmental organisations with purely consultative or advisory functions. They are not mandated to take decisions which are binding on their member states;
- (b) Intergovernmental organisations which may take decisions which are binding on their member states, but only in so far as such decisions are based on consensus or unanimity among the membership. SADC falls into this category;
- (c) Intergovernmental organisations whose supra-national authority is based on the *voluntary* ceding of sovereignty by member states in specified fields as laid down in a formal agreement with proper status in terms of international law. The enforcement of decisions is only considered legitimate if the member states concerned have expressly authorised it beforehand, e.g. in the membership terms, the use of certain means of enforcement;
- (d) Federations which are unions of states in which the control of the external relations of all the member states has been permanently surrendered to a

² The term 'functionalist' refers to one strand of thinking within the theory of integration, espoused particularly by Ernst B. Haas, *Beyond the Nation-State: Functionalism and International Organisations*, (Stanford: Stanford University Press, 1964) and by David Mitrany, 'The Prospects of Integration: Federal or Functional', in *Journal of Common Market Studies*, vol. IV, no. 2, 1963. Its main tenet is that regional integration is more likely to succeed if approached pragmatically in 'functional' areas on a step-by-step basis so as to weave gradually a web of integrative relations between states. The 'bottom-up approach' refers to the way in which project proposals are processed within the organisation, from the national level to the Council of Ministers for approval and inclusion in the Programme of Action. It does not imply that SADC(C) activities have necessarily been generated by popular grassroots initiatives.

³ This section draws on Jon Hovi, 'Overnasjonalitet' ['Supra-nationality'], in *Internasjonal Politikk*, vol. 49, no. 1, 1991, pp. 5-17. See also C. Parry et al. (eds.), *Encyclopedic Dictionary of International Law*, (New York: Oceana Publications, 1986) and B. Sen, *A Diplomat's Handbook of International Law and Practice*, (The Hague: Martinus Nijhoff Publishers, 1979).

central governing body so that the only state which exists for international purposes is the state formed by such a union.

An intergovernmental organisation may thus be called supra-national in the full sense of the term only if it satisfies the following criteria:

- (i) The member states have *ceded sovereignty* in limited and specified fields to a higher organisational body so that authority is conferred on that body to make decisions and implement them on behalf of the constituent member states;
- (ii) The ceding of sovereignty has been made on a *voluntary* basis;
- (iii) The ceding of sovereignty is *irrevocable* in the short term so as to make it impossible for a member state to restore decision-making authority to its own national organs with immediate effect;
- (iv) The ceding of sovereignty is *limited* in the sense that the member states will retain their international status as independent actors in other fields of activity.

If an intergovernmental organisation satisfies the above criteria it will have the following properties in terms of decision-making:

- (i) Authority and capability to make decisions binding on member states;
- (ii) Authority and capability to make decisions binding on members states even against the will of reluctant or resisting member states;
- (iii) Possession of adequate means to enforce decisions even in the face of opposition or reluctance by certain member states;
- (iv) A minimum of financial autonomy as a basis for enforcement of decisions;
- (v) Legal restrictions on immediate withdrawal from the organisation by member states.

The international community has to date not seen a single intergovernmental organisation which satisfies all these criteria as a fully-fledged supra-national entity. But in real international politics it is often a question of degrees. The Security Council of the United Nations appears to conform to most of the criteria, but not all. It falls short in terms of financial autonomy; the veto right of the permanent members also introduces limitations on its authority to function as a supra-national actor. The European Union has also gone some way towards becoming a supra-national body but not yet as far as the Security Council. Controversy still surrounds the Maastricht Treaty and most analysts find its implementation schedule unrealistic.

In an increasingly interdependent world the notion of national sovereignty needs to be re-examined.⁴ The assumption hardly holds true any longer that the nation-state exercises sovereign control over its own fate, subject only to compromises it must make and limits imposed upon it by actors, agencies and forces operating within its territorial boundaries. The dynamics of the world economy, the rapid growth of transnational links and major changes to the nature of international law encroaches in a fundamental way upon the sovereignty of any nation-state. But this applies *a fortiori* to nation-states of the Third World whose vulnerability to global processes are more pronounced. As a result, the question of formal ceding of sovereignty in terms of intergovernmental agreements is reduced in real importance, even though it remains important symbolically.

Notwithstanding the definitions and formalities of supra-national organisations, the real politics of international relations determine, in the last instance, the workability of such organisations. History has shown that supra-national federations have broken up because strains have been allowed to build up over a number of years to a point where one or more sub-federal entities have found it intolerable to remain a member state. Such strains frequently have to do with the allocation of costs and benefits. Some poorer or less endowed member states may perceive that intra-federal exploitation has become built into the decision-making structures to their detriment, whereas richer member states may feel they are not getting their fair share of the cake relative to their contribution. In most cases equity issues have been at the root of disruption and put in question the very legitimacy of the arrangement.

Historically, bureaucratic institutions with some supra-national powers have tended to swell in size and become expensive, and have thus imposed a financial burden on the member states. In the developing world many countries have thus accumulated arrears which, in turn, have constrained the effectiveness and manoeuvrability of the organisation to which they ought to owe allegiance. Such situations may have arisen simply due to the inability to pay membership fees or any other assessment levied on the member states.

But arrears may also have developed by design on the part of certain member states because they feel that their supra-national bodies have become forces in their own right, quasi-independent of the common will of the member states. Accumulation of arrears may in such cases be interpreted in political terms as some form of protest or at least as an indication of unease or waning commitment. Research on institutional behaviour suggests that institutions may develop a self-interest in their own survival and preservation. But no institutions operate in a political and economic vacuum as far as strategic direction is concerned; generally

⁴ See David Held, 'Democracy, the Nation-State and the Global System', in *Economy and Society*, vol. 20, no. 2, 1991, pp. 138-172.

it is the stronger member states of regional organisations which manage to assert their interests through such supra-national bodies not bound by consensus in their decision-making procedures.⁵

In contradistinction to supra-national models the original SADCC opted for consensus in decision-making in its initial phase. A fine distinction may be drawn between *consensus* and *unanimity*. On occasion SADC(C) has pushed ahead by coaxing and cajoling, even when some Member States may have had reservations or apprehensions about the direction in which the organisation was going. In operational terms, i.e. in terms of approval and implementation of projects, which has been the core activity, it would be very difficult for one member state to slow down progress, as long as the countries directly involved were keen, and there was general support for the programme in question. The consensus principle means that every effort is being made to bring all Member States along, even the wavering and reluctant ones. It is not quite the same as unanimity which normally implies that a vote is taken. It would be correct to say, then, that SADC(C) organs have taken decisions to date which have had a variable degree of active support by Member States, although never directly opposed by any of them. Having said that, however, any lack of commitment and enthusiasm on the part of particular Member States would, of course, adversely affect the rate of progress in implementing decisions pertaining to the sector coordinated by the very same Member State.

Flowing from the consensus principle the direction of activities and the tempo of progress has thus been based on the lowest common denominator. In operational terms one may say that the slowest and least willing Member State has had a disproportionate influence on the direction and tempo of the organisation - virtually a veto right, albeit not in a formalised sense. The selection of this option in 1980 was a conscious choice in recognition of the heterogeneity of the Member States. Rather than being an instrument for coalescing disparate interests into a powerful force for rapid change, supra-national institutions have often - unless safeguard mechanisms have been built into their machinery to ensure equity in the distribution of cost and benefits - proved to be developing into the opposite: a divisive mechanism. The founders of SADCC deliberately preferred a consensus model to a vanguard supra-national structure which, by moving too far ahead too fast, might threaten to disrupt the entire cooperative venture. Consequently, relative slowness of progress has been the cost of the operational modality opted for.

⁵ See, *inter alia*, the survey article by Constantine V. Vaitsos, 'Crisis in Regional Economic Cooperation (Integration) among Developing Countries: A Survey', in *World Development*, vol. 6, no. 6, 1978, pp. 719-769.

The benefits of such a decentralised and 'functionalist' approach may be discerned in the achievements under the Programme of Action, and in the fact that SADCC in its 'conference' era was a viable and dynamic organisation. In view of past experiences in regional cooperation elsewhere that is no mean accomplishment. Organisational cohesion today is one of the main benefits of this institutional approach. The middle-of-the-road approach adopted has arguably averted the creation of new or the reinforcement of existing regional disparities. The politics of the organisation has ensured that the reaping of net benefits from regional collaboration has been distributed with reasonable equity among the Member States.

The bulk of the work under SADC auspices takes place in the SCUs (and in the two commissions SATCC and SACCAR) in conjunction with the formulation, amendment and implementation of the Programme of Action. They have responsibility for liaison and consultation with both Member States and the donor community, as well as for providing leadership, policy analysis and technical services to advance the sectoral programme in question. They convene and service the Sectoral Committees, and organise, as required, *ad hoc* sectoral consultative single-purpose meetings with donors. An important task is the preparation of a sectoral strategy to provide guidance for project selection and prioritisation. Moreover, they are actively involved in project identification, screening, appraisal and design in close consultation with the member state(s) where projects are physically located. They may also, on request, assist Member States in negotiations with donors on financing etc.

After a decade's experience with the above institutional framework and faced with the challenges of the 1990's it was increasingly felt that, while the original institutional framework had been appropriate for the 1980's, it would probably be inadequate for the future. After thorough preparation by a formalisation committee of eminent persons and careful deliberation by all decision-making organs of the organisation, it was decided to opt for a community.

1.2 Creating the Southern African Development Community

On 17 August 1992 the Summit meeting of SADCC adopted three important documents intended to transform the organisation from a fairly loose assemblage of like-minded states into a firmer and better instrument for regional integration. These documents include:

- (a) *Towards the Southern African Development Community. A Declaration by the Heads of State or Government of Southern African States;*
- (b) *Treaty of the Southern African Development Community;*
- (c) *Protocol to the Treaty Establishing the Southern African Development Community on Immunities and Privileges.*

This formalisation into a community by way of a Treaty represented no doubt a step in the right direction. But, quite apart from the many merits of formalisation, this fact did not in itself address adequately either the problem of donor dependency or that of institutional structure.

To be true, some mention of donor dependency was made in the Windhoek Declaration. Despite its commitment to regional integration and mobilisation of the region's own resources to that end, the Declaration concedes that "... Southern Africa is still a developing region which will continue to need the support of the international community to realise its plans and aspirations."⁶ Similar sentiments were expressed in the preamble to the Treaty and in its article 5. The major objective of dependency reduction contained in the Lusaka Declaration of 1980 had been dropped.⁷ Anyhow, it was perhaps not to be expected that donor dependence be highlighted in formal documents of this nature.

The Treaty was adopted at a time when the global and regional environments were changing fundamentally. The collapse of the Soviet system had put an end to the cold war, with major consequences for Southern Africa. With the imminent transition to majority rule in South Africa, prospects for regional peace and development were greatly enhanced. Policies of economic and political liberalisation were increasingly taking hold throughout the region, laying a better foundation for cooperation at a higher level.

These changes were reflected in the increasingly ambitious objectives of the Treaty, i.e. regional integration in its fullest sense. However, the new enlarged and ambitious agenda was not matched by fundamental changes in the institutional framework of the Community, equipping the organisation with the necessary instruments to meet the new challenges. The mode of operation of the new SADC was not transformed.

The Tribunal is an institutional novelty, however. The loose nature of SADCC based on consensus decisions across the board did not require a mechanism for adjudication upon conflicts. Such conflicts were unlikely to arise. That situation has since changed. Although the principle of consensus decision-making is still upheld, the very formalisation of the organisation in terms of the Treaty and increased stress on enforcement of *binding* decisions may cause conflicts to emerge with respect to the interpretation of legal provisions and concomitant decisions by organs of the organisation. Hence the need for a Tribunal.

⁶ Southern African Development Community, *Declaration, Treaty and Protocol of the Southern African Development Community*, Gaborone: SADC Secretariat, not dated, p. 10.

⁷ Reduction of dependence on apartheid South Africa is, of course, no longer relevant. But reduction of extra-regional dependence is indeed a serious problem still.

Disputes which cannot be settled amicably may be referred to the Tribunal for adjudication. Evidently the intention is not to set up a standing Tribunal as a permanent institution. It would rather function on an *ad hoc* basis, as and when required. The specifics of its composition, powers, functions and procedures were to be prescribed in a separate protocol adopted by the Summit.

The Summit and the Council may request advisory opinions from the Tribunal.⁸ But the rulings in disputes referred to the Tribunal shall be *final and binding*.⁹ There is no recourse to appeal. The establishment of a Tribunal testifies to the increased preoccupation with enforcement of decisions in furtherance of the goals of the organisation.

Another mechanism of enforcement is contained in Article 33 on sanctions.¹⁰ The inclusion of a provision like this suggests that the signatories do not find it inconceivable that some among them may find binding decisions difficult to comply with, even when they are based on consensus at the outset. The complexity and new agenda of deepening regional integration in post-apartheid Southern Africa underscores the need for compliance. The sanctions mechanism thus represents the 'stick' of the organisation, while its mode of operation is generally informed by consensus and goodwill. A Treaty involves legal obligations, and failure to fulfil them will provoke sanctions by the other members represented in the Summit.

There are two types of failure to meet obligations. One is the case when a Member State is persistently inactive in furthering the cause of the organisation for no acceptable reason, including failure to pay assessed contributions to joint activities. The other one is more serious, i.e. when a member state wilfully implements policies which undermine or run counter to the principles and objectives of the organisation.

The kind of sanctions that may be imposed are not specified in the Treaty. It shall be determined by the Summit on a case-by-case basis. Presumably suspension of membership will be within the range of sanctions that may be applied in extreme cases, though unlikely in the context of the real politics of regional affairs. The political cost would probably be too high.

The most serious shortcoming of the Treaty in terms of institutional provisions is the glaring omission of reference to the SCUs.¹¹ As a matter of formality it is correct, of course, that the SCUs are strictly speaking not part of the institutional

⁸ Article 16, subsection 4 of the Treaty, p. 16.

⁹ Article 16, subsection 5 of the Treaty, p. 16.

¹⁰ Article 33 of the Treaty, p. 24.

¹¹ Article 9 of the Treaty, p. 10.

framework of SADC. Formally the SCUs are not regional institutions but *national* entities integrated into the state apparatus of the country holding responsibility for the sector concerned. The Member State designates a coordinator for a functional area or sector and is responsible for the staffing and running of the SCUs in question, including funding. General assessment is not imposed on the member states to defray the cost of the SCUs, but additional funding and technical assistance may be sought from extra-regional sources. But, even though the SCUs are technically national units, they are critical to the functioning of SADC as an organisation, of which they are a vital part organically, if not legally. The SCUs may be said to form the backbone of SADC, without which the decentralised mode of operation would not work. In practice they correspond to the sectoral commissions and perform basically the same functions but do not have the same legal status.

Against the backdrop that the weakness of the SCUs to date has been an acknowledged problem of major proportions for the progress of the organisation, it is surprising that the Treaty failed to address this problem adequately. On account of their operational importance it is disturbing that the SCUs were neglected in the Treaty. As a matter of fact, it is the work of the SCUs which in practice will determine the success or failure of SADC.

Yet, the Treaty did lay the basis for continued evolution of the institutional framework, e.g. the upgrading of SCUs to commission status. It appears that the omission of SCUs in the listing of SADC institutions¹² was made on the assumption that existing SCUs would be replaced by commissions in due course. However, in recognition of the likelihood that SCUs would continue to perform important functions for a considerable time to come, a saving provision¹³ was included, but no transitional clause. Pending significant changes in SADC's mode of operation, therefore, the institutional impediments of the past are likely to continue hampering progress.

The authority accorded the Secretariat was not strengthened by the Treaty. The Secretariat was not given discretionary powers to take initiatives on its own with concomitant authority to direct the organisation's total activities. This comes out most clearly in the relationship between the Secretariat and the SCUs. The adopted articles are phrased cautiously as exemplified by the following on the functions of the Executive Secretary:¹⁴

¹² Article 9 of the Treaty, p. 10.

¹³ Article 38 of the Treaty, p. 27.

¹⁴ Article 15, subsection 2 of the Treaty, p. 16.

The Executive Secretary shall liaise closely with Commissions, and other institutions, and guide, support and monitor the performance of SADC in the various sectors to ensure conformity and harmony with agreed policies, strategies, programmes and projects.

The above institutions of SADC proper are charged with implementation of decisions in tandem with national institutions of the individual member states, i.e. SCUs and a plethora of others. Consequently, the appropriateness and efficiency of the institutional framework is critical to progress being made. For outsiders it is indeed astounding that the largely old institutional framework of the former 'conference' was considered adequate to handle the new objectives, heightened ambitions and broadened agenda of the Community towards deeper integration. The old framework may have served the organisation well in the first decade of its existence, but new and tougher challenges of deepening integration would appear to require new and more effective instruments.

Evidently, SADC openly questions its own institutions on the very same basis as borne out by the telling quotation below:¹⁵

The new mission envisaged for SADC in the Treaty is more complex than SADC's coordination agenda. This raises major questions about whether the organisation and management systems inherited from SADCC are capable of delivering the new and more complex agenda. If SADC is to deliver on its mission, fundamental changes will be essential throughout the organisation. The challenge is whether the institutions created to facilitate coordination can be transformed into instruments of effective equitable economic integration. The transformation will require a substantial reorientation of the Organisation's culture, formal structures, management systems and procedures to firmly focus on all these on delivering results.

Legal instruments notwithstanding, it is the real world of practical day-to-day operations which matters. Indications are that all the decision-making organs and the Secretariat staff have become increasingly aware that the present institutional structure, legally a Community or not, is incommensurate with the tasks at hand. But no definitive solution has crystallised as yet.

The problem of inter-organisational rivalry between PTA and SADC has compounded the institutional question for quite some time. Overlapping mandates and membership have been cause for concern that efforts are being duplicated and meagre resources wasted. Attempts have been mounted to harmonise, rationalise and coordinate the activities of the two organisations. A Joint Committee of Ministers with six members, three from each organisation, was appointed with a view to finding a workable solution. In mid-1994 a joint PTA/SADC study was

¹⁵ SADC, *A Framework and Strategy for Building the Community*, Gaborone: SADC Secretariat, not dated, p. 22.

commissioned towards that end.¹⁶ A number of options were considered and a way appeared to have been found out of the impasse. The Joint Committee of Ministers recommended the option which seemed to command broadest support: a *status quo*, allowing both organisations to continue to co-exist with dual membership, with the proviso that a Consultative Committee comprising the chairmen of the respective Councils of Ministers of the two organisation be established to ensure harmonisation, coordination and rationalisation of activities.

On 29 August 1994 the SADC Summit, after having reviewed the study report and deliberated on its recommendations and that of the Joint Committee of Ministers, rejected the latter. Instead, the Summit:¹⁷

adopted option 4 recommended by the Consultants, which provides for splitting of the Region covered by the PTA into two regions, i.e. PTA-North and PTA-South comprising the eleven SADC member States. SADC member States which are also members of the PTA would have to exercise their sovereign right in withdrawing from the latter in order to allow for emergence of two separate organisations which would work together for the promotion of the AEC. (...) The Summit agreed to give SADC member States time to implement this decision.

For its part, three months later, at its meeting on 8-9 December 1994, the Summit of the COMESA Authority:¹⁸

endorsed the report and recommendations of the Joint Ministerial Committee that a Consultative Committee comprising the Chairmen of the respective Council of Ministers of the two groupings should be established to pursue on a regular basis, the issues of harmonisation, coordination and rationalisation of the activities of the COMESA and SADC;

However, cognizant of the decision by the SADC Summit only three months previously, the COMESA Summit also:¹⁹

agreed that in order to enhance the spirit of cooperation, COMESA and SADC Member States should consult on modalities of convening a joint extra-ordinary COMESA/SADC Summit of Heads of State and Government to be held in the near future to take a common decision that fully takes into account the mutual interests of the two organisations.

¹⁶ See Ibbo Mandaza, Gilbert Mudenda and Chinyamata Chipeta, *Joint Study on Harmonisation, Rationalisation and Coordination of the Activities of the Preferential Trade Area for Eastern and Southern African States (PTA) and the Southern African Development Community (SADC)*, PTA/SADC, July 1994, mimeo.

¹⁷ Minutes of the SADC Summit, 29 August 1994, paras. 5.13 and 5.15 on p. 16. The acronym AEC stands for the continental African Economic Community as envisaged in the Abuja Treaty of 1991.

¹⁸ Final communiqué of the COMESA Summit, 8-9 December 1994, para. 67.

¹⁹ Final communiqué of the COMESA Summit, 8-9 December 1994, para. 69.

The two Summits of the respective organisations in August and December 1994 failed to resolve the conflict as evidenced by the above quotations. Nor has a joint extraordinary COMESA/SADC Summit taken place to date in order to sort things out. Thus, it would appear that the situation is far from satisfactory. A solution may emerge if SADC Member States follow up the Summit decision of 29 August 1994 by withdrawing from PTA/COMESA. But it is not reassuring that the same governments apparently have made self-contradictory decisions in the supreme decision-making bodies of the two organisations.

Donor pressures have been brought to bear on both parties but the fact that a workable *modus operandi* has not been reached as yet does not allay the concerns of the donor community.

1.3 Towards Community-Building Structures

The desire to prevent the swelling of SADC's bureaucracy to unmanageable levels is fully appreciated. But it is pertinent to ask whether or not this view has evolved into a *bureaucratic leanness axiom* to the point of creating bottlenecks in the organisation which hampers progress with regard to the new agenda. It is the considered opinion of the present consultants that it has.

Bureaucracy *per se* is not necessarily inimical to SADC. Bureaucracy is a *neutral* term which denotes an administrative machinery for the management of an organisation towards a specific end. It has come to acquire, however, an odious connotation because bureaucracies have in actual practice tended to be inefficient, or so they have been perceived. But there is nothing inherently inefficient about bureaucracy. A distinction must be drawn between concept and observable reality. Even if many bureaucracies have been observed to be inefficient, the way to counteract such tendencies is not to dispense with bureaucracies altogether. A certain level of bureaucratisation is necessary - even indispensable - to manage properly and efficiently the activities and tasks SADC has taken upon itself. But one should, of course, take measures to ensure that efficiency is maintained at a high level.

The policy of SADC to keep bureaucracy (i.e. number of staff) to a bare minimum has been implemented too scrupulously. It may be surmised from various documents that shortage of qualified staff and capacity are factors which seriously impede progress.²⁰ Inadequate staffing of SCUs in terms of number and quality appears to be one of the most acute bottlenecks of SADC today. The SCUs appear

²⁰ See e.g. the 1995 Theme Document, *SADC: Resources, Institutions and Capacity for Integration*, mimeo, 1994, and the memorandum entitled *Management of Regional Cooperation*, prepared by the SADC Secretariat for the Council of Ministers (SADC/CM/I/94/4.1.3), January 1994.

to be hampered in their effectiveness by the current institutional and operational environment which has largely remained unchanged despite the increase in size and complexity of the tasks.²¹ Clearly there is a case for judicious expansion of the bureaucracy of SADC institutions, including both the Secretariat and the SCUs. Whether the current number of staff is excessive or not must be judged against the magnitude of the tasks at hand.²² There has been no indication in recent years that ambitions have been dampened. On the contrary, new tasks have been taken on board. SADC decision-making organs may shortly be compelled to decide whether to lower the ambitions of the organisation and slow down the tempo of progress, or allow an expansion of its bureaucracy to make it commensurate in size and quality with the tasks ahead. The rationale underlying the bureaucratic leanness axiom should, therefore, be revisited.

It is recognised that proposing a new institutional structure for SADC is clearly beyond the terms of reference of this consultancy. But the consultants' task has been made all that more difficult to undertake due to the state of flux in which SADC's institutions find themselves pending a definitive resolution to the institutional problem. To suggest options for a capacity-building fund to strengthen SADC's structures is putting the cart before the horse as long as it is not known what those structures are going to be. The logical sequence would rather have been to decide on the structures first and only then to design a fund to enhance their capacities.

Given the indeterminate institutional situation the present consultants have been compelled to engage in some speculation as to the future framework in order to create a benchmark from which a capacity-building fund could be constructed, particularly when it comes to the capital requirement of the fund. It is also deemed useful to highlight some of SADC's general problems of an institutional nature because institutional capacity and functionality are related to the interrelationship of units in a larger institutional structure, e.g. lines of communication, reporting and authority.

Debates have been going on for quite some time now on the adequacy of SADC's institutional framework. Basically, there are two strands of thought. One is biased towards a tighter community structure with adequate autonomy and resources to move ahead on the new and challenging agenda. This implies a greater degree of supra-nationality, leaving less scope for institutions at the national level. A corollary in concrete terms would be to upgrade all or some SCUs on a selective basis to commission status. Moving to such a new status would enable regional

²¹ Coopers & Lybrand Associates Ltd., *SADCC Programme Review and Performance Audit*. Stage IV: Audit of Performance of the SADCC Programme of Action, para. 7.3, p. 38.

²² The current staff complement of the SADC Secretariat is about 40, of whom only 10 are professionals.

recruitment of staff purely on merit at more competitive remuneration levels; the terms and conditions of employment as set out in the Protocol to the Treaty on Immunities and Privileges would apply. Commissions are formally an integral part of SADC's institutional structure and are answerable to the Council of Ministers. By contrast the SCUs report to the relevant ministry in the country charged with that particular sectoral responsibility. Admittedly, SCUs also report to Sectoral Committees of SADC ministers, but this is a weaker link to SADC than direct reporting to the Council of Ministers. Moving towards such a structure would clarify and rationalise lines of communication and authority, and presumably enhance the efficiency of the entire organisation. A number of SCUs have argued in favour of such a move.

The main argument against upgrading SCUs has to do with the cost implications. For the individual SCU, its staff and the government financing the operation this option appears very attractive. All costs would then be covered over SADC's global budget. If, on the other hand, all SCUs were to be upgraded, which is not unlikely, the contributions to be made by the Member States to balance SADC's budget would have to be increased substantially. The direct overall costs to each Member State would probably exceed present levels. Would the Member States be willing to accept these cost implications?

The other strand of thought is more cautious and rather favours the status quo - for two reasons. First, the cost implications of generalising the commission structure to all sectors are intolerable given the current state of most economies in the region. Second, the justification for keeping the SCUs as national entities in order to secure the active involvement by the members states still holds; a commission structure across the board might, on the contrary, have a demobilising effect on the Member States and potentially have a disruptive impact if arrears were to accumulate.

Tension between these two strands has plagued the organisation for some time. It is an exceedingly difficult trade-off to make. Vacillation has resulted. Thus far the decision-making organs of SADC have been trying to straddle both options, seeking to strike a balance between them. Whatever that balance may have been in the past, it is increasingly being acknowledged that it has not been optimal. Institutional bottlenecks have developed. There is now a case for reconsideration. Movement in the direction of more commissions is called for, but not necessarily transforming *all* SCUs into commissions at one go. A few sectors could be selected initially on the basis of criteria of importance in terms of revitalisation of the economies of the region. If so, certain sectors would suggest themselves, e.g. mining, energy, manufacturing.

An alternative approach would be to rearrange the allocation of sectoral responsibilities and perhaps combine some sectors the way they are delineated today. The Treaty refers to seven 'areas of cooperation' rather than sectors, of

which there are 17 today. SADC would be well advised to take a fresh look at the way sectors have been delineated and allocated. Drawing on experiences over the past 15 years the underlying rationale may be seen in a different light now so many years hence. If this were done a streamlined sectoral structure might give rise to a need for fewer but somewhat more comprehensive commissions.

2. What is Capacity-Building?

The capacity of an institution can only be measured in terms of its ability to accomplish its mission in general terms, which may, in turn, be broken down into a series of composite tasks and assignments. If the set objectives are achieved the institution may be said to have adequate capacity. In other words, it has been effective in producing a specific result. However, these statements must be qualified. First, the desired result may have been achieved at a later date than originally anticipated, the delay having been caused by capacity problems *en route*. Second, the desired output, even if actually brought about, may have resulted from activities involving exorbitant input costs - financially or otherwise. This means that efficiency has been low, even if the objectives have somehow been achieved. Clearly, this is unsatisfactory. Perhaps the institution in question could have accomplished an even more ambitious mission by better husbandry of available resources. The point to underscore here is that capacity or capacity-building must link effectiveness (i.e. producing a given output per se) to the inputs expended in the process, i.e. efficiency.

Building capacity is a complex and arduous undertaking, which should be seen in conjunction with the broader goal of institution-building. Consequently, the time horizon must be considerable - 10 years or more. It has many inter-related elements. Embarking on capacity-building takes as its point of departure an acknowledgement that existing capacity is inadequate relative to the task and workload at hand. Expanding the capacity of an institution can be done in three ways:

- (a) Increasing the total working time available to complete the assignments at hand, i.e. increasing the staff complement through new recruitment. This is the option most commonly resorted to because it is straightforward and apparently an obvious way out, albeit also expensive.

In relation to SADC's current needs this option might involve expansion of staff at various levels and in various units (e.g. Secretariat, Commissions and SCUs) by increasing the total number of employees or by requiring all staff to be employed on a full time basis. The same would apply to private sector associations.

- (b) Enhancing the efficiency of existing staff by various means without increasing the number of staff, i.e. making more economical use of available resources and deploying staff more rationally. Such steps would involve rationalising rules, routines, procedures and practices, as well as improving

management systems. This option is more attractive in terms of cost effectiveness, but more complex to apply because it presupposes a detailed assessment of how a reorganisation may produce the desired effect, i.e. how wastage can be reduced to a minimum.

This option is also more likely to meet with resistance from staff because it tends to be perceived to increase workload and pressure on existing personnel. It is also sometimes interpreted by staff - often erroneously so - to imply a certain measure of distrust, slack discipline and a poor work ethic on the part of staff. Whereas the latter may be true in some cases, the inefficient organisation of an institution in the aggregate can generally not be blamed on the individuals constituting that institution. Hence, selecting this option requires careful consultation with staff to allay unfounded fears in the reorganisation process. Directing attention to positive measures will help in that regard. A disinterested bird's eye is needed to see where there is scope for improvement.

Such positive steps include improving incentive structures through job satisfaction and better remuneration, acquisition of efficiency-enhancing equipment, and staff development through further training to develop new skills or updating old ones. This would invariably involve financial outlays, but they should be seen as investments which will yield returns in terms of enhanced overall efficiency. This course of action would entail, in turn, a review of existing salary scales, emoluments and fringe benefits with a view to determining their competitiveness vis-à-vis other institutions in the region and elsewhere. It would also call for an appraisal of equipment demands and a review of training needs in terms of substance, level and duration.

Poor remuneration tends to have adverse effects in two ways. First, it may serve as a source of disgruntlement and undermine staff morale. Second, it may produce high staff turnover rates and failure to recruit personnel of the calibre required. What the appropriate level of remuneration should be is always a matter of judgement and must ultimately be balanced against the institution's ability to pay. But there is no escaping from the trade-off to be made.

In terms of institutional continuity and sustainable capacity a competitive level of remuneration is of paramount importance in retaining the qualified staff recruited. Although remuneration is not the only retention factor it certainly ranks very high. But it should be complemented by job satisfaction. Particular attention should be devoted to the factors militating against staff turnover lest capacity-building and institution-building evolve into a never-ending Sisyphus task.

- (c) Combining staff expansion, i.e. option (a), and taking efficiency measures, i.e. option (b). This would probably be the most effective option and is the recommended one. However, in combining the two options above, relatively more weight should be assigned to (b).

Institutions cannot be regarded and developed in isolation from their environment. Institutions are organisms interacting with their surroundings - affecting external actors and being affected by external factors. The external environment may be the larger institutional framework within which smaller institutions operate or of which they form an integral part. Or, the external environment may be the broader setting within a given territory. In the case of SADC the external environment of a SCU may be the totality of SADC's institutional framework, and/or the general circumstances of the country concerned, e.g. the civil service, the labour market etc. Pressures are exerted in various ways by these environments on the institutional units under consideration. The critical factor for SADC's institutions with respect to capacity-building and their relationship to external milieux is their ability to retain high calibre staff and thus secure institutional continuity and stability. Institutions are made up of people, individuals who are incumbents in an establishment of positions. The staff are the principal asset of any institution. Hence, the key to institutional development and capacity-building lies in looking after, taking care of and nurturing these people.

One should be aware of the fact that e.g. training staff members and providing them with work experience in a good working environment will boost their demand on the labour market, nationally, regionally or internationally. Poaching of staff may result if terms and conditions of employment are not competitive. This is the dilemma of capacity-building, which reinforces the importance of retention mechanisms and incentives.

Admittedly, SADC's loss of valuable staff members would not necessarily mean that they would be lost to the region. As long as they do not leave the region altogether it can be argued that other institutions will be making use of their qualifications, and contribute in other and indirect ways to the goals of SADC. Still, from the vantage point of SADC's institutions it would remain a problem and hamper progress, particularly if the phenomenon were widespread and sizable.

In the most general sense enhanced capacity, be it in SADC's institutions or in private sector associations, should be used, of course, to facilitate and promote regional integration in Southern Africa. Hitherto, SADC has been preoccupied with implementation of a wide range of concrete projects under the Programme of Action as the core activity of regional coordination. Even though the Programme of Action has by no means been discarded, the organisation has increasingly moved into a number of additional areas of activity where policy issues are at the forefront rather than implementation of projects. This means that SADC will need to apply much of its capacity to policy analysis in years ahead. Accordingly,

efforts to build capacity should be geared particularly towards enhancing the capacity for policy analysis in all sectors.

Effective policy analysis depends on the ability to identify and measure the impact of various policy options, to assess trade-offs, and to present well thought-out choices in a well prepared manner to policy-makers and managers. Policy researchers and analysts need special abilities to analyse and synthesise; to weigh various alternatives for solving complex problems under conditions of uncertainty, inadequate data, competing interests, and limited time; to explain persuasively and clearly to policy managers the strengths and weaknesses of various options; and to recommend a specific course of action in keeping with the economic and socio-political realities of the region. Persuasive policy advice must be founded on technical competence, but also requires insights into and sensitivity to political and bureaucratic conditions, creativity and imagination, as well as effective communicative skills. The counterpart of effective policy formulation based on sound policy analysis is well managed implementation. But the skills of a manager differs somewhat from that of a policy analyst. The former needs more than the latter political sensitivity and skills in public administration, oral and written communication, task management, personnel selection, time management, consensus-building and negotiating techniques.²³

²³ See *The African Capacity Building Initiative. Toward Improved Policy Analysis and Development Management in Sub-Saharan Africa*, World Bank, Washington D.C., 1991.

3. Towards a Capacity-Building Fund

Notwithstanding the nature of SADC's institutional structure in the future the organisation will still need funds to ensure that it operates efficiently and secures as much autonomy from donors as possible so as not to be affected unduly by the agendas of extra-regional forces. Only then can the objective of collective self-reliance be translated into something more than mere rhetoric. This report is not primarily addressing SADC's general recurrent cost problem, which is apparently not serious at present. Nonetheless, it is dealt with, if only by implication, in that the needs of an improved future institutional structure commensurate with the task at hand are being addressed. The Capacity-Building Fund is intended to have a dual function. First, it is designed to enhance institutional capacities for regional integration by way of a number of interventions and support measures. Second, once capacities have been expanded, the Fund would - for an initial period - provide recurrent expenditure support. However, the proposed Capacity-Building Fund shall principally be geared towards the former function, i.e. building capacity, rather than providing recurrent revenue to established institutions. In the latter case the Fund would evolve into a general management fund for the running of the entire organisation, and possibly obviate the need for annual assessment of the member states to balance budgets. To the extent that the Fund would defray recurrent costs, it should be for a stipulated fixed term only.

3.1 Justification

Large and small funds for various purposes abound, including that of capacity-building. What is the justification for establishing yet another one? Could SADC not continue to tap a variety of other sources for the purpose of building capacity within its own ranks? Why a separate fund? These questions are highly relevant and should be answered with seriousness.

While there may be other funds in existence for purposes of institutional capacity-building in general, a SADC Fund would be tailor-made for the needs of SADC's institutions and attendant institutions in the private sector involved in promoting regional integration. Its overriding goal would be to strengthen institutions to facilitate regional integration, but its objectives would be specific and much more carefully defined (see draft constitution of the Fund). This would set it apart from e.g. the African Capacity-Building Foundation (ACBF), and other major multi-purpose foundations such as Ford, Rockefeller, Pew, Friedrich Ebert, Konrad Adenauer, Friedrich Naumann, Hanns Seidel, Heinrich Böll etc.

To the extent that other foundations are available as sources of funding for capacity-building purposes, SADC would, at the end of the day, be at their mercy. In effect, the dependency syndrome would thus be perpetuated. Independence, self-reliance and autonomy may be measured not only in terms of the ultimate outcome of a capacity-building process, but as much in controlling that process itself. Relying on donors or external foundations for financial support would not afford SADC the necessary autonomy in the very steering of the process towards greater autonomy. The end result might very well be different.

3.2 Capitalisation: Sources

The critical hurdle in establishing a capacity-building fund is likely to be its capitalisation. The whole feasibility question centres around this challenge. A range of potential sources has been contemplated, some of which are clearly not realistic or too risky, whereas others present themselves as safer bets. A distinction may be drawn between 'traditional' sources, i.e. contributions by Member States and donors, and 'non-traditional' sources which in the past have not formed an important element in the financial base of SADC. The feasibility of capitalising the proposed Fund hinges on mobilisation of 'non-traditional' sources. Potential sources include:

- (a) Revenue generated through activities such as football matches, pop concerts, lotteries, hotel bed levy etc.;
- (b) Voluntary contributions from civil society in Southern Africa;
- (c) Voluntary contributions from SADC Member States;
- (b) Assessed contributions from SADC Member States, either on a flat rate basis or according to a specified formula of differentiation;
- (d) Voluntary contributions from the donor community, both bilateral and multilateral agencies;
- (e) Voluntary contributions from the private sector in Southern Africa, principally from individual companies;
- (f) Voluntary contributions from the private sector in other parts of the world, principally from individual companies;
- (g) Temporary levy on trade transactions within the Southern African Customs Union for a fixed term or up to a targeted volume.

In order to assess the realism of expectations with respect to the above potential sources, views have been solicited from a range of institutions and interested parties in selected Southern African countries, i.e. Mozambique, Namibia, South Africa, Tanzania, Zambia and Zimbabwe. The pattern which emerges is fairly uniform throughout the region, with some minor variations.

First, there is strong scepticism, if not a totally dismissive attitude, about the feasibility of organising events of popular culture (e.g. sporting events and

concerts) as vehicles of revenue generation. It would require much work input and investment up-front, various impresarios would demand a share of the proceeds, and the risk would be so high that such efforts might instead turn into loss-making ventures. This view is shared by the present consultants.

Second, voluntary contributions from civil society in the region, other than the business community, are highly improbable because most civil society organisations, i.e. NGOs, are themselves dependent on external funding.

Third, voluntary contributions by member states, over and above the normal contribution towards SADC's regular budget might be a realistic option. As long as contributions are voluntary it is likely that some Member States will not contribute at all, others will contribute variable sums according to their economic strength and commitment to SADC. The extent to which this method of capitalisation will be effective, will also depend on the design of the fund, its objectives and mode of operation. The accountability question will no doubt be an important element in Member States' decisions whether to contribute or not.

Fourth, whether assessed contributions by Member States is a viable option will depend on the Council of Ministers and the Summit. In view of the fact that some Member States are currently in arrears with regard to regular contributions to SADC and the two commissions, there is likely to be reluctance. On the other hand, if the Member States are serious about removing bottlenecks in the organisation one would expect a certain willingness to make contributions towards that end. Contributions could either be made on a flat rate basis as is the case with the regular contributions to SADC's budget, or differentiated according to a specified formula whereby larger and richer Member States would contribute comparatively more than the smaller and poorer ones. Admittedly, introducing a differentiation formula departs from the previous practice of paying an equal amount regardless of parameters of size and GDP. Even so, it would decidedly be worth considering in light of the new membership structure, ranging from economically dominant South Africa to tiny Lesotho.

Fifth, voluntary contributions by donors might be realistic, be they bilateral, multilateral or from foundations of various types. Even if one of the main purposes of setting up a fund is to reduce donor dependency, in a pragmatic spirit, it would not hurt that donor contributions account for a certain share as long as they do not predominate. However, one should be aware of donor fatigue and the inclination of donors to scrutinise more carefully than before the projects and schemes they support.

On principle some donors would be averse or reluctant to contribute capital to an endowment fund which they do not control as this may be perceived as an abdication of their privilege as donors to determine the final application of the funds. Support would be likely to be made conditional on a certain design of the

fund, its management, its objectives and accountability procedures. Provided the objectives, as specified, are broadly acceptable to donors, they are likely to be more preoccupied with accountability and management practices. This should not be a problem to accommodate through the issuance of periodic reports on the financial position of the Fund and the application of its resources.

Donors may be persuaded by the interim need for a substantial capital contribution to the Fund occasioned by the transition to a Community. It may not, however, be possible to persuade them about the need for the perpetuity of the Fund after these interim objectives have been met. This concern may be overcome by providing in the constitution of the Fund for the modality of its dissolution.

Sixth, the willingness of the private sector business community in the region to contribute appears to be limited. Throughout the region the virtually unanimous claim emerges that SADC does not have a private sector programme, indeed not even an agenda. There is only rhetoric about the importance of the private sector in engendering economic growth and about the merits of economic liberalisation, but very little action has been seen. Whatever the validity of such claims, the fact remains that they are being made repeatedly and emphatically, reflecting a pervasive *perception* of reality by the private sector. And, whether one likes it or not, it is that perception which will be the basis of action and willingness to contribute, not an 'objective' assessment of reality, if that can be established at all.

This underscores SADC's serious credibility problem vis-à-vis the private sector and the need to rectify this state of affairs. However, that will demand meticulous work and take time. There are indications, however, that the predominantly negative perception by the business community may be changing. SADC's recognition of the private sector as the engine of economic growth in the region, its role in creating an enabling environment through various measures such as harmonisation of investment codes, organisation of buyer-seller meetings and promotion of regional markets, is slowly beginning to be appreciated. SADC has recently started a public relations programme designed to project an image of SADC as an organisation with a new and expanded mission. It is particularly noteworthy that business attitudes appear to be more favourable in SADC's 11th Member State - South Africa. With the anti-apartheid South Africa stance long gone, the business community tend to see a great potential in the region. The historical legacy of the 'old' SADC may still be a factor to be reckoned with in the rest of the region, but not to the same extent in South Africa. Having made this somewhat more optimistic assessment of future prospects for the private sector within SADC, it should not be underestimated that the business community will only change its views fundamentally when tangible results materialise. Good intentions are not enough.

In the short term, however, the private sector is not to be entirely written off as a potential contributor. It is not unlikely that a number of large companies with

a regional outlook may see their interest furthered by a contribution. Some may do so to create publicity, much in the same way advertising serves to boost company image. Others may see tangible benefits accruing to them from the activities of the Fund. In the latter case contributions may be earmarked for specific purposes or sectors. For instance, a large mining company may want to contribute to the Fund only if it is reassured that activities are directed towards strengthening policy work and coordination in the mining sector.

Another rationale for private sector contributions might be activities under the Fund's auspices to strengthen business associations of various kinds, be they chambers of commerce, trade associations, confederations of industry and the like. In that case the objective of strengthening such associations must be written into the design of the Fund, in addition to capacity building for the benefit of SADC structures. To take on board this objective as well would have the added advantage of building long-term credibility for SADC vis-à-vis the private sector. Again, private sector contributors may want to earmark their contributions to such activities.

A further inducement vis-à-vis the private sector would be to invite representatives of that sector onto the Board of Governors of the Fund. This would serve to give private sector contributors some influence over the operations of the Fund and reassure them that benefits would, at least in part, accrue to the private sector as well as public entities of SADC.

Seventh, the same dismissive attitude as is found among private sector representatives in the region applies to the private sector elsewhere. Regrettably, SADC has little credibility or goodwill to bank on in this respect. To the extent Northern companies take an interest in Southern Africa they are inclined to prefer dealing directly with partners. Likewise, business associations with dealings in Southern Africa have a preference for bilateral relations with their counterparts in the region without making a detour via a multilateral mechanism like the proposed Fund. But again, the private sector of the North should not be dismissed outright. For the same reasons as those articulated by companies in the region, individual companies may be willing to contribute. A practical, down to earth approach is likely to be insisted upon, perhaps with foci on specific sectors such as mining, manufacturing, energy or general infrastructure. This might mean earmarking contributions. Also, beyond earmarking funds, prospective contributors may wish to have direct influence through a place on the Board of Governors.

Eighth, the most effective and fastest way to capitalise the Fund to the level required, would be to impose a small levy on trade transactions within the Southern African Customs Union (SACU). This arrangement would be temporary and last only until the targeted amount has been reached. The greatest attraction of this option is its practicability in that the functioning administrative machinery for collecting the levy is in place; it could simply be tacked onto the system as it

operates today. The main reservation that may be encountered is that only a minority of SADC's Member States would thus capitalise the Fund, whereas all of them would benefit from its operations. On the other hand, the point may be made that most members of SACU are among the better off in the region; it would not be unreasonable to ask them to make an extra contribution. In effect, this arrangement would entail a form of differentiated assessment of SADC Member States. In the judgement of the present consultants it would not be feasible to apply such a levy to all intra-SADC trade, simply because the administrative machinery for its collection does not exist. Nor would it be feasible to apply the principle to other forms of taxation, e.g. hotel bed levy, because the tax collection systems are too weak to ensure efficiency.

3.3 Capitalisation: Volume

For the purposes of this report a number of assumptions have been made regarding the financial demands which will be expected to be met from the Fund. This has been done with a view to quantifying the resources which will be required to be committed to the Fund to make it a viable source of financial support. In the absence of specific information the assumptions made are the following:

1. The annual expenses of the Secretariat are estimated to be US\$ 2,400,000;
2. These are expected to grow at a rate of 10 per cent compounded each year;
3. The additional expenses which will be incurred in the administration of an enhanced Secretariat will ultimately be equal to the level required to conduct the present services;
4. That only the additional expenses referred to in the preceding paragraph will need to be borne by the Fund and that all these expenses will be borne by the Fund;
5. That the Fund is intended to be a full endowment fund which will seek to preserve the real (inflation-adjusted) value of the capital base. This assumption is modified in the numeric models in order to illustrate the effect it has on the required magnitude of the Fund;
6. That the expenses to be borne by the Fund will grow to their full potential over a number of years. Standard basic assumptions of growth have been applied in the numeric models in order to illustrate the effect of a progressive increase in demand for funds. These assumptions are not based on any real expectations of expenditure.

7. That the expenses of administering the Fund will be a constant 1 per cent of the capital. These expenses will include those associated with the Governors, the investment management and the custodian.
8. That the Fund will be sufficiently capitalised immediately on commencement and that such additional capital will be injected at the rate required to meet the growth of expenses;
9. That the realistic net investment return (after administration expenses) that can be obtained on the assets of the Fund is a positive return above inflation of 3 per cent per annum. A basic and standard rate of inflation is assumed at 3 per cent per annum.

On the basis of these assumptions the total capital base of the Fund on commencement would need to be at the levels set out below in the context of the various strategies which may be adopted. The method of determination of these figures is set out in the numeric models contained in the tables below. These models apply the assumptions set out above except where specifically indicated:

- a) If the additional expenses of the SADC Secretariat are to be US\$500,000 in year one and only the net return after adjustment for inflation is available for the funding of these expenses, then the starting capital requirement of the Fund is US\$16,666,667.
- b) If the additional expenses of the SADC Secretariat are to be US\$500,000 in year one and the gross return (without any adjustment for inflation) is available for the funding of these expenses, then the starting capital requirement of the Fund is US\$8,333,333.
- c) If the additional expenses of the SADC secretariat are to be US\$500,000 in year one and the gross return (without any adjustment for inflation) is available for the funding of these expenses and half of the total expenses is funded by applying some of the capital available at the commencement of the period, then the starting capital requirement of the Fund is US\$4,416,667.

It can be concluded from these relatively basic models that there is a significant variance in the capital requirement generated by the administrative policy employed in the management of the Fund. It is recommended that the Fund adopt a policy which would reduce to a minimum the capital requirement. In the context of the three possibilities contemplated below the third is clearly preferable even though it does not preserve the capital of the Fund and is dependent on constant regeneration of the Fund's capital from external sources. It has the further potential advantage of being more attractive to donors which, as has been stated above, may be reluctant to contribute to an endowment fund over which they have no effective control.

3.4 The Legal Framework for the Fund

It is recognised that there is an absolute need for the Fund to be established within the framework of the Treaty and the existing Protocols to the Treaty. This aspect was universally endorsed by the respondents interviewed by the present consultants, and the basis of this requirement is to ensure that the Fund and its management are accountable solely to SADC and to its constitution. Therefore, the Treaty and its Protocols have been examined with a view to determining which of the existing provisions would be helpful in the establishment of a discrete and effective constitution for the Fund without imposing a requirement for new legislation in the form of a Protocol or other amendment to the Treaty to be adopted.

The following provisions of the Treaty and the Protocols thereto confer powers on SADC which could have a direct bearing on the manner in which the Fund is established or administered:

(a) Article 9 of the Treaty entitled "Establishment of Institutions"

"1. The following institutions are hereby established:

- A. The Summit of Heads of State or Government;
- B. The Council of Ministers;
- C. Commissions;
- D. Standing Committee of Officials;
- E. The Secretariat; and
- F. The Tribunal.

2. Other institutions may be established as necessary"

The Treaty does not specify by what manner such other institutions may be established. It has been concluded that the only means of achieving the establishment of an appropriate institution in another form than that which is already provided for, would be by amendment of Article 9.1 of the Treaty quoted above.

(b) The Protocol of 17 August 1992 provides in its Article 2 entitled "Funds":

"Without being restricted by financial controls, regulations or moratoria of any kind:

- (i) SADC and its institutions, where applicable, may hold funds or currency of any kind and operate accounts in any currency;

- (ii) SADC and its institutions shall be free to transfer their funds or currency from one country to another or within any country and to convert any currency held by them into any other currency.”
- (c) Article 26 of the Treaty, entitled: **The Fund** provides:

“The Fund of SADC shall consist of contributions of member states, income from SADC enterprises and receipts from regional and non-regional sources.”

The Terms of Reference of this consultancy make it clear that the proposed Capacity-Building Fund is to be differentiated from the “Fund” defined in Article 26. It should be considered whether the formulation of Article 26 which provides that the Fund consists of “receipts from regional and non-regional sources” imposes an obligation on SADC and its Secretariat to contribute to the Fund all of such receipts. If this interpretation is correct then Article 26 would require amendments in order to enable the establishment of the Capacity-Building Fund.

- (d) Article 25 - Resources
 - (i) SADC shall be responsible for the mobilisation of its own and other resources required for the implementation of its programmes and projects.
 - (ii) SADC shall create such institutions as may be necessary for the effective mobilisation and efficient application of resources for regional development.
 - (iii) Resources acquired by SADC by way of contributions, loans, grants or gifts shall be the property of SADC or the resources of SADC may be made available to member states pursuant to the objectives of this Treaty under terms and conditions which will be agreed between SADC and the members states involved.
 - (iv) Resources of SADC will be utilised in the most efficient and equitable manner.

Again, these provisions would seem to indicate that there is a necessity to amend the substance of the Treaty in order to accommodate the establishment of the Capacity-Building Fund and to allow for the conduct of its management in a way which would be clearly legislated for. It is considered to be beyond the scope of the terms of reference to propose detailed amendments to the Treaty in order to accommodate the establishment of the Capacity-Building Fund. However, it would seem to be appropriate that the minimum amendments which may be considered would

be the inclusion under the institutions of a new institution, the Capacity-Building Fund, and the modification of Chapter Nine in order to conform the Articles contained therein with the existence of the Capacity-Building Fund.

If the Capacity-Building Fund is to be established as a separate institution, pursuant to the provisions of Article 20, it could be authorised to establish its own rules of procedure. This would enable it to adopt a detailed constitution which would regulate the conduct of its affairs in as detailed a manner as is necessary.

3.5 Mode of Establishing the Fund

A review of the legal provisions outlined above invites the conclusion that in order to establish the new institution pursuant to the provisions of Article 9(2), it is necessary to adopt a Protocol to that effect.²⁴ This conclusion is arrived at by accepting that the lack of directions for the establishment of new institutions was intentional in order to reserve that function to the supreme authority of the Member States.²⁵

It is considered to be beyond the terms of reference of this consultancy to propose a detailed draft Protocol establishing the Fund. However, in order to illustrate the proposal a discussion draft is appended as Appendix 3.

In order to maintain adequate flexibility in the conduct of the affairs of the Fund as these may evolve, it is suggested that the Protocol establishing the Fund should not embody the constitution of the Fund. Rather, it is recommended that the Protocol authorise the Council of Ministers to adopt the detailed constitution and that once adopted, that it be amendable only by the Council.

3.6 Mode of Operation

3.6.1 Foreign Exchange or Investment Restrictions

SADC is able to manage its assets in a manner which is entirely free from any restrictions on foreign exchange. Accordingly, SADC may hold its assets in any

²⁴ Article 22(1) of the Treaty authorises the adoption of Protocols "as may be necessary in each area of cooperation". While the Fund is recognised not to be an area of cooperation, it is thought that the provisions of this article are capable of being interpreted to allow a Protocol establishing the Fund.

²⁵ Article 31 of the Vienna Convention on the Law of Treaties (1969) sets out some general rules of interpretation of international conventions. None of the Member States of SADC are signatories to this Convention. Nevertheless, it is generally regarded as containing useful exposition of the general principles applicable to the interpretation of Treaties. This conclusion is supported by the application of these interpretation rules.

currency.²⁶ Neither the Treaty nor the Protocol impose any restrictions on the manner in which the assets of SADC may be invested.

3.6.2 Taxation

SADC is exempt from all taxes including taxes on investment income arising in any of the Member States.²⁷ This tax exempt status may disqualify SADC from benefitting from existing Double Tax Treaty exemptions for which it might otherwise have qualified.²⁸ If there is any likelihood that the Fund would benefit from withholding tax reductions on income from investments, then it may be appropriate to situate the registered office of the Fund in that member state which has the most favourable treaty arrangements in relation to the proposed investments.

3.6.3 Existing Powers of the Executive Secretary in Financial Matters

The following provisions of the Treaty confer powers on the Executive Secretary which could have a direct bearing on the manner in which the Fund is established or administered:

- (a) Pursuant to the direction of the Council or Summit or on his own initiative to undertake measures aimed at promoting the objectives of SADC and enhancing its performance (Article 15(1)(b));
- (b) To act as custodian of the assets of SADC (Article 15(1)(e));
- (c) To attend to the administration and finances of the Secretariat (Article 15(1)(g));
- (d) To prepare the Budget and Audited Accounts of SADC for submission to the Council (Article 15(1)(i));
- (e) To cause to be prepared and audited annual statements of accounts for the Secretariat and Commissions (Article 29(2));²⁹

²⁶ Article 2 of the Protocol of August 1992.

²⁷ Article 3 of the Protocol of August 1992.

²⁸ It is uncertain whether an inter-governmental body like SADC could qualify for treaty relief under any of the treaties of any one of the Member States even if the investment activity were to be conducted from within that Member State.

²⁹ It is assumed that this obligation extends to the accounts of other institutions of SADC.

- (f) To prepare and submit to the Council for approval financial regulations, standing orders and rules for the management of the affairs of SADC (Article 30).

3.7 Structural Considerations

The considerations which are outlined below are regarded by the present consultants to represent essential components of an adequately regulated investment management structure. For the purposes of this analysis it has been assumed that the appropriate amendments to the Treaty (through the adoption of a Protocol) would be achievable in order to ensure the constitutional accountability of the management of the Fund as well as to afford the Fund the full benefit of being a SADC institution, not least of which would be the tax advantages.

3.7.1 Legal Form

If the Treaty can be amended so as to provide for the Capacity-Building Fund to have the status of an Institution under the Treaty, then the Treaty will define the legal form of the Fund. It is proposed that the Capacity-Building Fund in the form of an Institution should adopt a detailed constitution on its inception which would set out the specific provisions relating to its management structure, investment restrictions, accounting treatment for assets and disbursement procedures. (See chapter 3.8 below for an outline proposal of such a constitution).

3.7.2 Management Structure

- (a) It is proposed that the Fund be managed by a Board of Governors which would comprise up to ten members. Although it is conceivable that the Executive Secretary of SADC would, *ex officio*, be a member of the Board of Governors, it is recommended that the Board of Governors should consist of members drawn from outside the SADC Executive. It is essential that the members of the Board of Governors have sufficient financial acumen and stature in the financial community to ensure that the Fund would be run in accordance with its constitution. It is recommended that the candidates for appointment as Governors of the Fund be drawn from the Central Banks in the region as well as the international private sector financial community.
- (b) The Board of Governors will play a role which is essentially supervisory and would be expected to meet on a quarterly basis to review reports prepared in accordance with its Constitution by the investment manager.
- (c) It is proposed further that the Fund be managed by an independent financial institution selected by the Board of Governors pursuant to a tender procedure. This institution will be selected on the basis of its financial

acumen and stature in the international investment community. The institution so selected would enter into an investment Management Agreement with the Fund pursuant to which its services and remuneration would be specified in detail. The specified services would include all required accounting services and reporting facilities. It should be expected that the cost of such a service would be between 0.5 and 1.0 per cent per annum of the total net value of assets at the beginning of the year.

- (d) It is recommended that the Fund appoint a second financial institution as the custodian of the assets. This recommendation extends to suggesting that only those financial institutions which have a AAA rating by at least one of Moodys or Standard & Poors be considered as candidates for the custodian function.
- (e) The investment manager would be required to invest the assets of the Fund in accordance with the restrictions imposed in the Constitution and with a view to achieving the investment objectives set out therein. The investment manager would, furthermore, make quarterly presentations to the Board of Governors and would support these presentations by detailed financial reports which would be made available to the SADC Executive as well as to the Members States.
- (f) All disbursements from the Fund will be made on a quarterly basis pursuant to requisitions prepared by the Secretariat and approved by the Board of Governors.
- (g) It is not proposed that the Fund should have any employee or that the Secretariat should fulfil any functions in relation to the administration of its assets or of its accounting. The role of the Secretariat would be limited to requisitioning payments from the Fund on a quarterly basis as described above.

3.7.3 Investment Objectives

It is proposed that the investment objectives of the Fund be formulated in such a manner as would limit the risk to which the assets are put. In practice, this would mean that the anticipated return to be earned on the Fund would not be spectacular. In the light of the conservative nature of the proposed investment strategy and the assumption that the Fund is to be constituted as a permanent endowment fund which will retain its value in real (inflation adjusted) terms it is proposed that the Fund pursue a relatively modest investment objective which is formulated in terms of the real return over US dollar inflation. Just what can be expected by way of real return would have to be determined in conjunction with the investment manager in due course.

3.7.4 Investment Restrictions

The constitution of the Fund should establish detailed investment restrictions which would limit the risk to which the assets of the Fund would be exposed. A range of appropriate investment restrictions are contained in the draft constitution in chapter 3.8 below.

3.7.5 Accounting Procedures and Independent Review

The constitution should provide for a detailed accounting treatment of the assets of the Fund and specify the nature of the reports which are required to be presented to the supervisory Board of Governors. It is essential that the Fund should be subject to audit by independent auditors, and in this regard it is recommended that the auditors be different to those which audit the accounts of SADC.

3.8 A Draft Constitution for the Fund

Article 1: Definitions

1. In this Constitution the following words and expressions shall, where not inconsistent with the context, have the following meanings:
 - 1.1 **"the Board"** means the Board of Governors of the Fund;
 - 1.2 **"the Capacity-Building Fund"** or **"the Fund"** means the Capacity-Building Fund established pursuant to a Protocol to the Treaty establishing the Southern African Development Community.
 - 1.3 **"the Council"** means Council of Ministers of SADC established by Article 9 of the Treaty.
 - 1.4 **"Registered Office"** means the registered office of the Fund established pursuant to the provisions of Article 5.
 - 1.5 **"Register of Shareholders"** means the register maintained pursuant to the provisions of Article 8.
 - 1.6 **"The Treaty"** means the Treaty of the Southern African Development Community.
 - 1.7 **"Valuation Date"** means those dates on which valuations are done pursuant to Article 25.

Article 2: The Fund

2. There exists pursuant to the Treaty an institution named "The Capacity-Building Fund".

Article 3: Duration

3. The Fund is established for an indefinite duration.

Article 4: Exclusive Object

4. The exclusive object of the Fund is to place the monies available to it in one or more portfolios of securities of all types with the purpose of spreading investment risk

The Fund may take any measures and carry out any operation which it may deem useful in the accomplishment and development of its purpose to the full extent permitted by the Treaty.

Article 5: Registered Office

5. The Registered Office of the Fund is established in Gaborone, Botswana. Branches or other offices may be established abroad by resolution of the Board.

In the event that the Board determines that extraordinary political, economic or social developments have occurred, or are imminent, that would interfere with the normal activities of the Fund at its Registered Office, or with the ease of communication between such office and persons abroad, the Registered Office may be temporarily transferred abroad until the complete cessation of these abnormal circumstances.

Article 6: Funds

6. The Board shall establish a portfolio comprising the assets of the Fund.

Article 7: Powers of the Council

7. Any regularly constituted meeting of the Council shall be empowered to adopt resolutions in relation to any aspect of the Management of the Fund or the conduct of its business. This should not be construed to mean that the Council would have any responsibility for the day-to-day management of the Capacity-Building Fund, which rests entirely with its Board of Governors.

Article 8: Board of Governors

8. The Fund shall be managed by a Board of Governors composed of not less than six members.

Each Governor shall be elected by the Council for a period of five years, provided, however, that a Governor may be removed with or without cause and/or replaced at any time by resolution adopted by the Council.

No more than one Governor shall be an employee or officer of the Secretariat.

In the event that there should be a vacancy in the office of Governor the remaining Governors may meet and may elect, by majority vote, a Governor whose term of office shall expire at the next meeting of the Council.

Article 9: Proceedings of the Board

9. The chairman and one or more vice-chairmen of the Board shall be appointed by the Council of Ministers. The Board must choose a secretary, who need not be a Governor and who shall be responsible for keeping the minutes of the meetings of the Board. Meetings of the Board may be convened by the chairman and must be convened upon the request of any two Governors. The Board shall meet at the Registered Office or such other place as may be indicated in the notice of meeting.

The chairman shall preside at all meetings of the Board, but in his absence the Board may appoint any director as chairman pro tempore by vote of the majority of the Governors present at any such meeting.

Written notice of any meeting of the Board shall be given to all Governors at least twenty-one days in advance of the date set for such meeting, except in circumstances of emergency, in which case the nature of such circumstances shall be set forth in the notice of meeting. This notice may be waived by the consent of each director given in writing or by cable or telegram or telex or facsimile message. Separate notice shall not be required for individual meetings held at times and places prescribed in a schedule previously adopted by resolution of the Board.

Any Governor may act at any meeting of the Board by appointing in writing or by cable or telegram or telex or facsimile message another Governor as his proxy. In case of urgency Governors may also cast their vote in writing or by cable, facsimile message, telegram or telex and may participate in meetings and vote thereat by means of conference telephone.

The Governors may only act at duly convened meetings of the Board. Governors may not bind the Fund by their individual acts, except as specifically permitted by resolution of the Board or by this Constitution.

The Board can deliberate or act validly only if at least two-thirds of the Governors are present or represented at a meeting of the Board. Decisions shall be taken by a simple majority of the votes of the Governors present or represented at such meeting. In the event that in any meeting the number of votes for and against a resolution shall be equal, the chairman of the meeting shall have a casting vote.

Resolutions of the Board may also be passed in the form of one or several declarations in writing signed by all the Governors.

The Board may delegate its powers to conduct the daily management and affairs of the Fund and its powers to carry out acts in furtherance of the policy and purpose, to natural persons or corporate entities which need not be members of the Board.

Article 10: Minutes of Board Meetings

10. The minutes of any meeting of the Board shall be signed by the chairman for the time being who presided at such meeting.

Copies or extracts of such minutes which may be produced in judicial proceedings or otherwise shall be signed by such chairman, or by the secretary, or by two Governors.

Article 11: Remuneration of Governors

11. The Council may from time to time determine and allot to the Governors remuneration in the form of fixed emoluments. The Governors may also be paid all travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the Board or any committee of the Board or in connection with the business of the Fund.

Article 12: Determination of Investment Policies

12. The Board shall have the power to do all things on behalf of the Fund which are not expressly reserved to the shareholders in general meeting by this Constitution and shall, without limiting the generality of the foregoing, have power to determine the corporate and investment policy for the investments of the Fund based upon the principle of spreading of risks, subject to such investment restrictions as may be imposed by the Treaty or regulation or as may be determined by the Board.

In the determination and implementation of the investment policy the Board may cause 35 per cent or more of the assets of the Fund to be invested in transferable securities issued or guaranteed by any Member State of SADC, any member of the OECD or any public international body of which at least one Member State of SADC is a member.

Article 13: Investment Restrictions

13. The Fund may invest only in:
- 13.1 transferable securities admitted to official listing on a stock exchange in an Eligible State, and/or
 - 13.2 transferable securities dealt in on any other Regulated Market in an OECD member state, and/or
 - 13.3 recently issued transferable securities, provided that the terms of issue include an undertaking that application will be made for admission to an official listing on an Eligible Market and such admission is achieved within a year of the issue, (all such securities under (i), (ii) and (iii) above being hereby defined as “Eligible Transferable Securities”); EXCEPT THAT the Fund may also invest in transferable securities other than Eligible Transferable Securities or in debt instruments such as money market instruments which are traded regularly and have a remaining maturity exceeding 12 months (which are treated because of their characteristics as equivalent to transferable securities and which are inter alia, transferable, liquid and have a value which can be accurately determined on each Weekly Dealing Day).
 - 13.4 The Fund shall invest no more than 10 per cent of the net assets of any Fund in transferable securities issued by the same issuing body.
 - (a) The limit of 10 per cent laid down in sub-paragraph 13.4 above will be increased to a maximum of 35 per cent in respect of transferable securities which are issued or guaranteed by a member of the European Union, by its local authorities, by another Eligible State or by public international bodies of which one or more EU member states are members. The limit of 10 per cent set forth hereinabove may be of a maximum of 25 per cent for certain debt securities if they are issued by a credit institution whose registered office is situated in an EU Member State and which is subject, by virtue of law, to particular public supervision for the purpose of protecting the holders of such debt securities, in particular, the amounts resulting from the issue of such debt securities must be invested pursuant to the law in assets, which sufficiently cover, the liabilities arising therefrom and which are

assigned to the preferential repayment of capital and accrued interest in the case of default by the issuer. If Fund invests more than 5 per cent of its assets in such debt securities as referred to in this paragraph and issued by the same issuer, the total value of such investments may not exceed 80 per cent of the value of Fund's assets.

13.5 The Fund shall not:

- (a) Own more than 10 per cent of the outstanding securities of any class of any one issuer; or
- (b) Acquire shares carrying voting rights which would enable the Fund to take legal or management control or to exercise significant influence over the management of the issuing body; or
- (c) Acquire more than 20 per cent of the shares of another collective investment undertaking; or
- (d) Make investments in, or enter into transactions involving precious metals, or certificates representing such precious metals; or
- (e) Purchase or sell real estate or any option, right or interest therein, except that the Fund may invest in securities secured by real estate or interests therein or issued by companies which invest in real estate or interests therein; or
- (f) Purchase any securities on margin (except that the Fund may obtain such short-term credit as may be necessary for the clearance of purchases and sales of securities) or make short sales of securities or maintain a short position; or
- (g) Make loans to or act as a guarantor for, other persons, or assume, endorse or otherwise become directly or contingently liable for, or in connection with, any obligation or indebtedness of any person in respect of borrowed monies, provided that for the purpose of this restriction the acquisition of Eligible Transferable Securities in partly paid form shall not be deemed to constitute the making of a loan or be prohibited by this clause.

Article 14: Governors' Interests

14. No contract or other transaction shall be entered into between the Fund and any other company or firm in which one or more of the Governors or officers of the Fund is interested in, or is a director, associate, officer or employee.

Article 15: Auditor

15. The accounting information given in the annual report must be audited by an independent auditor, chartered in one of the member states of SADC, who shall not be an auditor otherwise engaged by SADC. The auditor is appointed by the Board.

The report must at least state that the accounting information given in the annual report gives a true and fair view.

The auditor shall conduct the audit in the manner required by the Treaty and generally accepted accounting practice in Botswana.

The auditor shall be remunerated by the Fund.

Article 16: Indemnity

16. The Fund may indemnify any Governor or officer, and his heirs, executors and administrators, against expenses reasonably incurred by him in connection with any action, suit or proceeding to which he may be made a party by reason of his being or having been a Governor or officer of the Fund or, at its request, of any other company of which the Fund is a shareholder or creditor and from which he is not entitled to be indemnified. Such person shall be so indemnified in all circumstances except in relation to matters on which he shall be finally adjudged in such action, suit or proceeding to be liable for gross negligence or misconduct; in the event of a settlement, indemnification shall be provided only in connection with such matters covered by the settlement on which the Fund is advised by counsel that the person to be indemnified did not commit such a breach of duty. The foregoing right of indemnification shall not exclude other rights to which he may be entitled.

Article 17: Administration

17. The Fund will be bound by the joint signature of any two Governors.

Article 18: Determination of Net Asset Value

18. The Net Asset Value of shares of each class of shares in the Fund shall be expressed in United States dollars and shall be determined in respect of any Valuation Date.

If after any valuation has been made the Board is of the view that events have occurred which materially affect such valuation, the Board may cancel the affected valuation and carry out another.

The valuation of the Net Asset Value of each Fund shall be made in the following manner:

18.1 The assets of the Fund shall be deemed to include those assets listed below:

- (a) all cash in hand or on deposit or receivable, including any interest accrued thereon;
- (b) all bills and demand notes and accounts receivable (including proceeds of securities sold but not delivered), except those receivable from a subsidiary of the Fund;
- (c) all bonds, time notes, shares, stock, debenture stocks, subscription rights, warrants, options and other investments and securities owned or contracted for by the Fund;
- (d) all stock, stock dividends, cash dividends and cash distributions receivable by the Fund to the extent information thereon is reasonably available to the Fund (provided that the Fund may make adjustments with regard to fluctuations in the market value of securities caused by trading ex-dividends, ex-rights, or by similar practices);
- (e) all interest accrued on any interest-bearing securities owned by the Fund except to the extent that the same is included or reflected in the principal amount of such security; and
- (f) all other assets of every kind and nature, including prepaid expenses.

18.2 The liabilities of each Fund corresponding to different classes of shares of the Fund shall be deemed to include that proportion of each of the items listed below as is attributable to that particular Fund:

- (a) all loans, bills and accounts payable;
- (b) all accrued or payable administrative expenses (including investment advisory fee, custodian fee, corporate agents' fees, administration fee and renewal commissions);
- (c) all known liabilities, present and future, including all matured contractual obligations for payments of money or property, including the amount of any unpaid dividends declared by the Fund where the Valuation Date falls on the record date for determination of the person entitled thereto or is subsequent thereto;

- (d) an appropriate provision for future taxes as determined from time to time by the Board, and other reserves, if any, authorised and approved by the Board; and
- (e) all other liabilities of the Fund of whatsoever kind and nature. In determining the amount of such liabilities the Fund may calculate administrative and other expenses of a regular or recurring nature on an estimated figure for yearly or other periods in advance, and may accrue the same in equal proportions over any such period.

18.3 For the purposes of this Article:

- (a) Except in the circumstances contemplated in (e) below the value of the assets of the Fund shall be determined as follows:
 - (i) The value of any cash in hand or on deposit, bills and demand notes and accounts receivable, prepaid expenses, cash dividends and interest declared or accrued as aforesaid and not yet received shall be deemed to be the full amount thereof, unless in any case the same is unlikely to be paid or received in full, in which case the value thereof shall be arrived at after making such discount as the Board may consider appropriate in such case to reflect the true value thereof;
 - (ii) The value of securities which are quoted or dealt in on any stock exchange will be based on the quoted middle market price as at 9 a.m. on the relevant Valuation Date or the previous closing middle market price if applicable;
 - (iii) The value of securities dealt in on other organised markets will be based on the last available middle market price applicable to the relevant Valuation Date;
 - (iv) The value of securities which are not quoted or dealt in on any stock exchange or other organised market as determined by the Board or its authorised agent, will be based on the reasonably foreseeable sales price determined prudently and in good faith;
 - (v) In circumstances where the Board is of the view that the value of any securities quoted or dealt in on any stock exchange or dealt in on any other organised market as determined in (ii) and (iii) above is not a fair reflection of the value of such assets the Board may by other means determine the value thereof.

- (b) All investments, cash balances and other assets of the Fund expressed in currencies other than the United States dollar shall be valued after taking into account the market rate or rates of exchange in force on the Valuation Date.

Article 19: Custodian

19. The Board shall appoint a Custodian which shall be a bank having a credit rating awarded by an internationally recognised credit rating agency of at least AAA or its equivalent. The Custodian shall:-
- 19.1 hold the assets of the Fund either directly or through the agency of a sub-custodian and in whose name or in the name of which sub-custodian the same shall be registered in the case of registered securities and who shall ensure that Investments made and expenses incurred in pursuance of this Constitution are made and incurred in accordance therewith and shall perform such other duties upon such terms as may be provided for in this Constitution or as the Board may from time to time (with the agreement of the Custodian) determine. All moneys, bills and notes belonging to the Fund shall be paid to or to the order of or deposited with or to the order of the Custodian to an account to be opened in the name of the Fund. In the event of the Custodian desiring to retire, the Board shall use their best endeavours to find a corporation having the said qualifications to act as Custodian and upon doing so the Board shall appoint such corporation to be Custodian in place of the retiring Custodian. The Board shall not remove the Custodian unless and until a successor corporation shall have been appointed in accordance with this Article to act in the place thereof. The powers of the Board under this Article shall include a power to appoint joint custodians and/or sub-custodians; and
- 19.2 The Custodian shall be entitled at any time at its entire discretion and without assigning any reason to give notice to the Manager that it is not prepared to accept any property which in the opinion of the Custodian infringes the terms of this Constitution and the Custodian shall be entitled to require the Manager to replace any such property with other property not infringing the terms of this Constitution.

Article 20: Valuations

20. The Net Asset Value of the Fund shall be determined by the Fund from time to time, but in no instance less than once each calendar quarter, as the Board by regulation may direct.

Article 21: Withdrawals from the Fund

21. The Board of Governors may authorise the withdrawal of capital and income from the Fund upon written request made by the Executive Secretary of SADC. The Board shall satisfy itself that any such request for withdrawal is properly made in the pursuit of the objective of the Fund as determined by the Protocol establishing the Fund.

Article 22: Financial Year

22. The accounting year of the Fund shall begin on the first day of April in each year and shall terminate on the thirty-first day of March in the following year. The accounts of the Fund shall be expressed in [United States dollars]. Where there are different classes of shares each class representing a Fund, and if the accounts within such Funds are expressed in different currencies, such accounts shall be converted into [United States dollars] at the relevant middle market exchange rate at the close of business on the last day of the financial year and added together for the purpose of the determination of the accounts of the Fund.

Article 23: Distribution upon Liquidation

23. In the event of a dissolution of the Fund liquidation shall be carried out by one or several liquidators (who may be natural persons or legal entities) named by the Council who shall determine their powers and their compensation.

The assets available for distribution shall be distributed to the Member States in accordance with the provisions of the Treaty.

Article 24: Amendment

24. This Constitution may be amended from time to time by a resolution of the Council on the advice of the Board.

Article 25: General

25. All matters not governed by this Constitution shall be determined in accordance with the Treaty.

3.9 Tentative Timetable for Establishing the Fund

Activity	Date
Acceptance of final report by Secretariat	June 1995
Preparation of draft Protocol to Treaty and draft Constitution of Fund	June 1995
Review of report by Council of Ministers	August 1995
Finalisation of strategy for capitalisation	September 1995
Adoption of Protocol establishing the Fund	November 1995
Appointment of Board of Governors	November 1995
Appointment of Custodian	November 1995
Commencement of fund-raising programme	January 1996
Commencement of tender process for selection of investment manager	January 1996
Conclude contract with Investment Manager and detailed account opening and operation procedures established	March 1996
Fund-raising completed	
Capacity-Building Fund is operational	

Appendix 1

People and Institutions Consulted

Barron, Richard, De Beers Centenary AG, Johannesburg, South Africa
Blumberg, Leora, Webber Wentzel Bowens, Johannesburg, South Africa
Buckland, Roger, Food Security Technical and Administrative Unit, Harare, Zimbabwe
Chabwera, G.G., Zambia Chamber of Commerce and Industry, Lusaka, Zambia
Chetse, Silibaziso Rumbidzayi, SADC Press Trust, Harare, Zimbabwe
Chilwesa, Margree S., Small Scale Industries Association of Zambia, Lusaka, Zambia
Edoh, Koffi O., African Capacity-Building Foundation, Harare, Zimbabwe
Galloway, Steve, Acting Director, Investment Division, Department of Trade and Industry, Windhoek, Namibia
Hedebro, Göran, SAREC, Harare, Zimbabwe
Humpfrey, Mike, ZimTrade, Harare, Zimbabwe
Ismael, Faisel, Department of Trade, Pretoria, South Africa
Jafaar, A., Governor, Reserve Bank of Namibia, Windhoek, Namibia
Kamanga, Irene, SADC National Contact Point, Lusaka, Zambia
Kaombwe, Smak, SATCC, Maputo, Mozambique
Kassaja, M.J., SITCD, Dar es Salaam, Tanzania
Kembo, Hellen G., SITCD, Dar es Salaam, Tanzania
Kumwenda, B.S., Mining Sector Coordinating Unit, Lusaka, Zambia
Luckham, Yaa Yeboah, African Capacity-Building Foundation, Harare, Zimbabwe
Mabuiangue, Arlindo, Mozambique Chamber of Commerce, Maputo, Mozambique
Machiri, Shiela T., Food Security Technical and Administrative Unit, Harare, Zimbabwe
Malate, Belmiro, SADC National Contact Point, Maputo, Mozambique
Mangoaela, Percy M., SATCC, Maputo, Mozambique
Mangwane, Cephas, SADC National Contact Point, Harare, Zimbabwe
Maveneka, Leonard, SADC Press Trust, Harare, Zimbabwe
Mhina, John S.K., SITCD, Dar es Salaam, Tanzania
Mohammed, E.A., PTA Secretariat, Lusaka, Zambia
Mulamula, Liberata, Ministry of Foreign Affairs, Dar es Salaam, Tanzania
Mussá, Yolanda Justino, Sector Coordinating Unit for Culture and Information, Maputo, Mozambique
Mwakijungu, A.B., PTA Secretariat, Lusaka, Zambia
Norton, Stephen, USAID, Harare, Zimbabwe

Pallangyo, Abraham T., SITCD, Dar es Salaam, Tanzania
Phiri, J.K., Ministry of Mines and Minerals Development, Lusaka, Zambia
Rixen, Jan, NORساد Agency, Lusaka, Zambia
Rweyemamu, N.M., SITCD, Dar es Salaam, Tanzania
Rwiza, Charles B., Tanzania Chamber of Commerce, Industry and Agriculture, Dar
es Salaam, Tanzania
Samuels, Joel, African Capacity-Building Foundation, Harare, Zimbabwe
Saungweme, J.M.D., Zimbabwe National Chamber of Commerce, Harare,
Zimbabwe
Shipoke, P., SADC National Contact Point, Windhoek, Namibia
Simwela, E.P.A., SITCD, Dar es Salaam, Tanzania
Sweta, Willie, Mining Sector Coordinating Unit, Lusaka, Zambia
Thoahlane, Abel L., African Capacity-Building Foundation, Harare, Zimbabwe
van Rensberg, E. Ben, SADC National Contact Point, Pretoria, South Africa
Wani, Ibrahim J., African Capacity-Building Foundation, Harare, Zimbabwe
Wapakwenda, Stephen, Mining Sector Coordinating Unit, Lusaka, Zambia
Wilson, Ken, Ford Foundation, Harare, Zimbabwe

Appendix 2

Terms of Reference

1. Background

- 1.1 One of the founding objectives of SADC the "Conference", was to "mobilise resources to promote the implementation of national, interstate and regional policies". In this respect, a SADCC Development Fund was enunciated as a possible regional mechanism for resource mobilisation. However, a quick review of SADCC's short history of almost 14 years clearly shows that resource mobilisation has been one of the weakest points of the organisation's attempt at regional economic cooperation. Hence, the Organisation remains heavily dependent on external funding and technical assistance for the implementation of its sectoral programmes and projects. Fortunately for SADC the International Cooperating Partners have largely been forthcoming in this regard.
- 1.2 With the collapse of the Eastern bloc and the end of the Cold War, there has been a notable decline in Official Development Assistance (ODA) to developing countries in general, and Africa in particular. Apart from donor fatigue, this has largely been due to increased competition for resources from the developed West among the developing countries and the former Eastern bloc. So far, Russia and the East European countries seem to attract greater world attention and resources than Africa and other developing countries. It is time, therefore, that SADC thought seriously about mobilising resources internally for the implementation of its regional programmes and projects. This is, but, only one aspect of the problem.
- 1.3 At the launching of the Southern African Development Community during the Consultative Conference in Harare, in January 1993, Council affirmed that it would be necessary for the Organisation to evolve approaches which would ensure, *inter alia* that a framework and mechanisms are established for the mobilisation of resources, particularly non-public resources, both human and financial, to sustain the integration process. To this end, the approved theme for the 1995 Consultative Conference is *SADC: Resource, Institution and Capacity for Integration*.

2. *The Issues*

- 2.1 The transformation of SADCC the "Conference" into SADC, the "Community" in August 1992 requires the Organisation to substantially strengthen its organisation and management systems. However, this goal cannot be attained in the short and medium term without, first of all, having to strengthen the institutional capacity of SADC to manage its affairs effectively and in the most efficient manner. In other words, SADC must develop the capacity to become an efficient and successful regional Organisation. To this end, there is a need to evolve mechanisms and institutions capable of mobilising and directing resources into priority areas of regional cooperation and integration.
- 2.2 Since 1980 when SADCC was founded, member States' political commitment to mobilising regional resources to sustain their common institutions, namely, the Secretariat, the Southern African Centre for Cooperation in Agricultural Research (SACCAR) and the South African Transport and communications Commission (SATCC) has never been doubted. Currently, member States make their contributions in two main ways, namely:
 - (i) direct annual contributions to the three common institutions; and
 - (ii) direct financial and human support to the Sector Coordinating Units
- 2.3 With regard to direct annual contributions, available statistics indicate that the total annual budget for the three common institutions has risen from a figure of about US\$ 1.2 million to approximately US\$ 11.9 million within the last five years, that is, an increase of nearly ten times. To date, member States contributions have been regular and no major difficulties have been experienced.
- 2.4 In addition to making direct contributions, member States support SADC's overheads by paying for their public officers and Ministers who attend SADC meetings. This form of support is also extended to the work of National and Sectoral Contact Points in the respective countries. Thus, when taken together, the amount of resources spent by member States on SADC activities and programmes can be quite significant.
- 2.5 However, much of the support rendered by member States, be it financial or human, is not easily quantifiable, as little systematic information is kept concerning expenditures on Sector Coordinating Units and other SADC-related activities. Consequently, it is rather difficult to determine the level of resources directed towards SADC programmes by member States. This is, therefore, one area where improvements are undoubtedly required in order to enhance the flow of information.

- 2.6 With the ratification of the Treaty establishing the Southern African Development Community in September, 1993 there is need to set up strong and self-sustaining Community institutions to implement the new and complex regional integration agenda of SADC. In this regard, Council has mandated the Secretariat to explore ways and means of mobilising resources for SADC institutions, in order to strengthen their capacity to operate more effectively and efficiently.
- 2.7 One way this could be achieved would be to establish a Capacity-Building Fund. The Fund would be a permanent institutional structure to be used primarily to mobilise resources for institutional capacity building. This would enable SADC, as a regional institution in its own right, to make financial contributions to all SADC organs and functionaries, without necessarily having to depend solely on member States' contributions. In this way, the Fund would serve as a more stable and reliable source of financing for SADC's institutions, unlike the case at the moment.
- 2.8 Possible sources of capitalising the Fund could be from the civil society (e.g. individual contributions or taxed income), the governments, public corporations and the private sector. Initially, SADC could launch a public appeal to interest potential contributors, nationally, regionally, and internationally. All contributions would go to a common pool, the Capacity-Building Fund. Part of the resources so mobilised would be invested or placed in high-yielding interest bank accounts. A current account would also be maintained to support the operational and/or administrative costs of SADC institutions in accordance with approved Council regulations and procedures.
- 2.9 It is important to distinguish between the proposed Capacity-Building Fund and the SADC Fund stipulated in Article 26 of the Treaty. As discussed above, the former will serve as a special Fund for capacity building and strengthening of SADC institutions and meeting operational costs. The SADC Fund on the other hand, will be a form of a Development Fund to which member States, SADC enterprises and International Cooperating Partners will be requested to contribute to support programme and project implementation.

3. Objective

- 3.1 The main objective of the consultancy would be to undertake a study to determine the feasibility and viability of the proposed SADC Capacity-Building Fund. The consultants would be required to undertake, *inter alia*, the following tasks.

- (a) Define the concept of a Capacity-Building Fund in concrete terms.
- (b) Determine the mechanisms and modalities for the operationalisation of the proposed Capacity-Building Fund.
- (c) Identify the various potential sources of finance for capitalising the Fund, and propose ways and means for effective mobilisation of such resources.
- (d) Propose an appropriate organisation and structure of the proposed Capacity-Building Fund. This should include, *inter alia*, the Fund's objectives, organisations, management, staffing, and the necessary legal instruments and provisions.
- (e) Propose strategies that will ensure successful establishment, effective operation and future sustainability of the Fund.
- (f) Draw up a realistic time-frame for establishing the Fund.

4. Study Team

- 4.1 This study team will consist of two experts, one of whom will be hired from within the region. A Masters Degree in Financial Management or equivalent is the required minimum qualifications. In addition, the candidates will be expected to have vast experience in resource mobilisation and/or fund management.
- 4.2 The experts will be required to work in close consultation with the SADC Secretariat.

5. Workplan

- 5.1 The duration of the study is estimated to take approximately 6 weeks or 42 days, distributed as follows:

Briefing meeting at Secretariat	2 days
Consultations with relevant regional institutions (4 days x 5 countries)	21 days
Report writing	12 days
Discussion of Draft Report at Secretariat	2 days
Final Report	<u>5 days</u>
Total	<u>42 days</u>

Appendix 3

Draft Protocol Establishing the Capacity-Building Fund

**PROTOCOL
TO
THE TREATY
ESTABLISHING
THE SOUTHERN AFRICAN DEVELOPMENT COMMUNITY
ON
THE CAPACITY-BUILDING FUND**

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PREAMBLE

The Heads of State or Government of the Southern African Development Community (hereinafter referred to as SADC), signatories to the Treaty establishing SADC (hereinafter referred to as the Treaty);

CONSIDERING Article 9(2) of the Treaty which provides that SADC may establish such additional Institutions as are necessary, and Article 25 of the Treaty relevant to the mobilisation of resources and the creation of Institutions to this effect;

HAVE AGREED as follows:

ARTICLE 1

THE CAPACITY-BUILDING FUND

An additional Institution to be called the Capacity-Building Fund is hereby established.

ARTICLE 2

OBJECTIVE

1. The objective of the Capacity-Building Fund is to mobilise resources in order to build the capacity of SADC and to co-ordinate the management of such resources.
2. Both the capital and the income earned on the capital may be applied towards meeting the objective of the Capacity-Building Fund.
3. The capital of the Capacity-Building Fund shall be made up out of contributions from Member States and such other sources as the management of the Capacity-Building Fund the Secretariat are able to mobilise.
4. Property acquired by or in the name of the Capacity-Building Fund shall be managed in accordance with its constitution and shall remain distinct from the other assets of SADC.
5. The authority of the Executive Secretary to act as the custodian of the assets of SADC shall not apply to the assets of the Capacity-Building

Fund, which shall appoint an independent custodian which shall be a Bank having such minimum credit rating as the Council may determine.

ARTICLE 3

CONSTITUTION

The constitution of the Capacity-Building Fund shall be drawn up by the Council and it shall determine the powers, functions, procedures and other matters related to the operations of the Capacity-Building Fund. The constitution of the Capacity-Building Fund, once adopted by the Council, may only be amended by the Council.

ARTICLE 4

MANAGEMENT

The Capacity-Building Fund shall be managed by a Board of Governors consisting of ten Governors who shall be appointed by the Council of Ministers and who shall hold office at the pleasure of the Council.

ARTICLE 5

AMENDMENTS

1. An amendment to this Protocol shall be adopted by a decision of three-quarters of all the members of the Summit.
2. A proposal for the amendment of this Protocol may be made to the Executive Secretary by any Member State for preliminary consideration by the Council, provided, however, that the proposed amendment shall not be submitted to the Council for preliminary consideration until all Member States have been duly notified of it, and a period of three months has elapsed after such notification.

ARTICLE 6

SIGNATURE

This Protocol shall be signed by duly authorised representatives of Member States.

ARTICLE 7

RATIFICATION

This Protocol shall be ratified by the signatory Member States in accordance with their constitutional procedures.

ARTICLE 8

ENTRY INTO FORCE

This Protocol shall enter into force thirty (30) days after the deposit of the instruments of ratification by two-thirds of the Member States.

ARTICLE 9

ACCESSION

This Protocol shall remain open for accession by any state subject to Article 8 of the Treaty.

ARTICLE 10

DEPOSITARY

The original texts of this Protocol and all instruments of ratification and accession shall be deposited with the Executive Secretary, who shall transmit certified copies to all Member States.

IN WITNESS WHEREOF, WE, the Heads of State or Government of SADC Member States have signed this Protocol.

DONE at [venue], this [date] day of [month] [year] in two (2) original texts in the English and Portuguese languages, both texts being equally authentic.

.....
PEOPLE'S REPUBLIC OF ANGOLA

.....
REPUBLIC OF BOTSWANA

.....
KINGDOM OF LESOTHO

.....
REPUBLIC OF MALAWI

.....
REPUBLIC OF MOZAMBIQUE

.....
REPUBLIC OF NAMIBIA

.....
REPUBLIC OF SOUTH AFRICA

.....
KINGDOM OF SWAZILAND

.....
UNITED REPUBLIC OF TANZANIA

.....
REPUBLIC OF ZAMBIA

.....
REPUBLIC OF ZIMBABWE