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**LIMITED DELEGATION AND FIRM CONTROL:  
A PRINCIPAL-AGENT ACCOUNT OF SOUTHERN  
AFRICAN DEVELOPMENT COMMUNITY (SADC)  
DECISION-MAKING ON ZIMBABWE'S LAND ISSUE**

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**ABSTRACT**

This paper accounts for Southern African Development Community (SADC) decision-making on Zimbabwe's land issue from the year 2000 onwards. Guided by the principal-agent model, this paper argues that the delegation and control dynamics emerging from SADC's principal-agent institutional structure and relationships shaped the regional organisation's (RO's) decisions on Zimbabwe's land issue. This study adopted a qualitative methodology to explore this proposition utilising both primary and secondary sources of data. Primary data were collected through semi-structured key informant interviews and official documents such as SADC communiqués, while

secondary data were gathered from published books, journal articles, newspaper articles and other related materials. Thematic analysis was the method used to analyse the data. The findings revealed that the member states (principal) limited the delegation of decision-making authority to the SADC (agent) and the principal's firm control of the agent were key factors shaping SADC outcomes on Zimbabwe's land issue. These principal-agent dynamics enabled member states to control SADC's decisions on Zimbabwe's land issue. Conversely, there was also opportunistic agent behaviour that resulted in decisions that injured the principal's interests. Such decisions included the Tribunal's fateful ruling on Zimbabwe's land reform programme. Overall, this paper contributes to the existing body of knowledge by re-contextualising the principal-agent model in a new setting, which is SADC decision-making on Zimbabwe's land issue.

**Keywords:** Principal-agent, delegation, decision-making, Southern African Development Community (SADC), Zimbabwe.

## INTRODUCTION

Over the past two decades, the Southern African Development Community (SADC) has found itself in the centre of a storm over its decisions on Zimbabwe's Fast Track Land Reform Programme (FTLRP). One of Africa's most prominent regional organisations (ROs) consisting of 16 Southern African states, SADC has been intensely criticised for what some critics viewed as the RO's desultory and biased decision-making when responding to Zimbabwe's FTLRP (Asmelash, 2017; Matyszak, 2011; Nathan, 2011, 2013; Zimbabwe Democracy and Economic Recovery Amendment Act of 2018). The FTLRP was a Zimbabwean government land reform programme meant to redress Zimbabwe's racially skewed land ownership pattern. The programme aimed to repossess land from the minority whites (5000 families) who owned almost 70 per cent of the fertile land and reallocate it to the landless black majority (Scoones et al., 2011; Thomas, 2003).

Given the politically and racially charged nature of Zimbabwe's land issue, there were mixed reactions to Zimbabwe's FTLRP, domestically and internationally (Masunungure & Badza, 2010; Mlambo, 2006; Muzvidziwa, 2019). While some applauded the programme as noble

and justified, others viewed it as barbaric and thus condemned it as undemocratic and a violation of human rights and private property rights (Moyo, 2011). Interestingly, SADC supported the programme arguing that it was necessary and justified as it redressed the colonial era's racially skewed land-ownership patterns (SADC Heads of State and Government Summit Communiques, 2000–2015). However, SADC's stance on Zimbabwe's FTLRP did not go down well with several critics who expected SADC to condemn or even sanction Zimbabwe for what they termed the illegal seizure of white-owned farms.

Still on the same note, a notable critic of SADC's decision on Zimbabwe's FTLRP was the United States of America (USA) which registered its displeasure with SADC's stance on Zimbabwe's land issue by means of an amendment to one of its statutes. Section 9 of the Zimbabwe Democracy and Economic Recovery Amendment Act of 2018, an Act of the US Congress that imposed sanctions on Zimbabwe, was amended to compel SADC to enforce the Tribunal rulings on Zimbabwe's land reform programme. A regional human rights court, the SADC Tribunal, passed a series of judgements that ordered the reversal of Zimbabwe's FTLRP (Asmelash, 2017). When Zimbabwe refused to comply with these judgements, the Tribunal requested the Summit to take action on Zimbabwe. However, instead of action being taken on Zimbabwe, it was the Tribunal that ended up being disbanded while its judgements on Zimbabwe's FTLRP were nullified by the Summit at the 2010 and 2011 annual meetings (Asmelash, 2017; Nathan, 2011; SADC Heads of State and Government Summit Communiques, 2000–2015).

Controversial, desultory, and difficult to predict, SADC's decision-making on Zimbabwe's land issue has attracted interest from scholars and analysts (Cawthra, 2010, Chigara, 2017; Dzimiri, 2013, 2017; Nathan, 2011, 2013). The dominant argument in extant literature on the subject has been that SADC's decisions on Zimbabwe's land issue were shaped by the RO's affinity for regional norms of solidarity and disregard for international democratic norms (Cawthra, 2010; Dzimiri, 2013, 2017; Nathan, 2011, 2012, 2013). While the arguments in these previous studies are not necessarily incorrect, they are one-sided, incomplete, and a simplistic account of SADC decision-making on Zimbabwe's land issue.

Moreover, the ostensibly selective focus on just norms has meant that other important factors that shaped SADC decision-making on Zimbabwe's land issue have been missing in the literature on SADC's role in Zimbabwe's land issue. One missing factor is the influence of principal-agent delegation and control dynamics on SADC decision-making in Zimbabwe's land issue. Proponents of the principal-agent approach posit that outcomes of international bureaucracies such as SADC are shaped by dynamics emerging from the delegation of power and authority by principals (member states) to their agents (international organisations [IOs]) and the control that the principals exert on their agents (Hawkins et al., 2006; Pollack, 2017). This proposition appears plausible given SADC's inherent principal-agent structure that is characterised by hierarchical and dyadic relations between the member states (principal) and the RO (agent).

Furthermore, the heterogeneous preferences of the principal and some SADC institutions, such as the Tribunal on Zimbabwe's land issue, points to principal-agent conflict being an important variable in SADC decision-making. Moreover, the fact that SADC's overall stance on Zimbabwe's land issue did not reflect the preferences and interests of any external actor also supports the proposition that internal principal-agent dynamics might have been a key factor. Thus, this paper sheds new light on why external pressure from the USA, opposition political parties, and civil society groups from Zimbabwe and the region had little effect on SADC decision-making in Zimbabwe's land issue. These are all aspects of SADC decision-making on Zimbabwe's land issue that have not been adequately addressed in previous studies.

Therefore, the purpose of this study is to explore whether SADC decision-making on Zimbabwe's land issue can be explained by the principal-agent dynamics in the RO. By applying a principal-agent lens to SADC decision-making on Zimbabwe's land issue, this paper provides an alternative and perhaps more nuanced understanding of the key dynamics shaping SADC's approach to Zimbabwe in the post 2000 era. This paper also contributes to the growing body of literature on the utility of the principal-agent model in accounting for IO decisions and actions in settings outside of the European Union (EU) which is where the model has proven to be useful.

In exploring this study's central argument, this paper discusses the principal-agent theory in the context of IOs. This is then followed

by a brief description of the study's research design. Subsequently, the study's key findings are presented and discussed in the next two sections. The last section provides the conclusion and recommendations of the study.

## **THE PRINCIPAL-AGENT MODEL**

This paper was guided by the principal-agent model which is an analytical “tool that helps to identify the key factors for understanding and explaining the politics of delegation and discretion” (Delreux & Adriaensen 2017, p. 3). A dyadic and hierarchical approach to analysing supranational delegation, the principal-agent model posits that there is a master and a servant in the relationship between states and IOs or, more precisely, a principal and an agent (Pollack, 2017). In this hierarchical relationship, the degree to which the political master or principal (member states) is willing to delegate power and authority to the agent (IO) and subsequently maintain control of that agent is a key determinant of IO outcomes and actions (Hawkins et al., 2006). By delegating power to an agent, the principal benefits from the specialisation of the agent, facilitation of collective decision-making and enhanced credibility, amongst other benefits (Hawkins et al., 2006).

While principals recognise the benefits of delegating power and authority to a supranational agent such as the SADC, they also understand that such delegation has risks. These risks include the tendency by the agents to pursue their own interests rather than the interests and preferences of the principal, a phenomenon known within the principal-agent literature as agency slack (Hawkins et al., 2006, p. 8). Thus, to offset or limit the risk of agency slack, principals devise several methods to monitor and control the IO. This is done to ensure that the IO does not depart from the principal's interests and preferences and begin to pursue its own interests and preferences.

This inherent conflict between the principal that delegates power and authority but tries to maintain control and the agent that tries to seek greater leeway and autonomy from the principal becomes a key determinant of IO behaviour and outcomes. What can be gleaned from Hawkins et al. (2006) and other proponents of the principal-agent approach is that IO behaviour is significantly shaped by delegation

and control dynamics between member states and the IO. Therefore, this study is premised on this theoretical and analytical perspective.

## **METHODOLOGY**

This study adopted a qualitative exploratory case study research design. The qualitative case study research design suited the purpose of this study which was to explore whether SADC decision-making on Zimbabwe's land issue could be explained from the RO's principal-agent structure and relations. Thus, qualitative methods were used in the collection and analysis of data on the empirical case. Most of the primary data for this study were collected during fieldwork conducted in Zimbabwe, Botswana and South Africa from August to November 2019.

Data from primary sources were collected through semi-structured interviews using an interview guide based on this study's purpose as the data collection instrument. The key informants were mainly current and former government officials of SADC member states, SADC officials, diplomats, politicians and academics. All key informants were purposively selected based on their participation or expertise in SADC decision-making on Zimbabwe's land issue. This study thus benefited immensely from the first-hand accounts of key informants including Simbarashe Mumbengegwi, Zimbabwe's Minister of Foreign Affairs from 2005 to 2017, and Patrick Chinamasa, Zimbabwe's Minister of Justice from 2000 to 2013.

A total of 20 interviews were conducted in Zimbabwe, Botswana and South Africa between August and December 2019. In the interviews that lasted about 60–120 minutes each, key informants were asked for their perspectives of the key dynamics that shaped SADC decision-making on Zimbabwe's land issue. Specifically, the interviewees were asked whether or not principal-agent dynamics were an important factor in SADC decision-making on Zimbabwe's land issue. A list of key informants whose perspectives of SADC decision-making are cited in this paper is provided in an appendix to this paper.

In addition to data from the semi-structured interviews, this study also used data from documents such as official communiqués from SADC summits and meetings where Zimbabwe's land issue was deliberated.

These key SADC documents were obtained through a library search at the SADC Secretariat Library in Gaborone, Botswana, between 11 and 14 November 2019. The data from interviews and official documents were corroborated by secondary data from journal articles, published books and newspaper articles via print and electronic sources.

This study relied on thematic analysis for analysing and interpreting the collected data. Thematic analysis, also known as the constant comparative method of qualitative data analysis, involves the forming of themes based on the key informants' responses and information from existing sources such as official documents (Sule et al., 2020). Precisely, the analysis involved preparing the collected data for analysis by transcribing interviews and then classifying the data depending on sources. The classified data were then read through and coded to elicit themes emerging from the data. The meaning of the themes that emerged from the data was then interpreted.

## **FINDINGS**

As highlighted in the introduction, the purpose of this study was to explore whether SADC decision-making on Zimbabwe's land issue could be explained by the principal-agent dynamics in the RO. The findings of this study suggest that principal-agent dynamics were indeed a critical factor in SADC decision-making on Zimbabwe's land issue. These principal-agent dynamics included the member states' limited delegation of decision-making powers to a relatively weak secretariat. Another aspect of these principal-agent dynamics was the member states' firm control of SADC decision-making. The principal's firm control limited opportunistic behaviour by the agent, thereby ensuring that the principal's preferences were always recognised and reflected in the RO's decisions on Zimbabwe's land issue. On the other hand, it also emerged that despite the member states' (principal's) limited delegation and firm control of SADC (agent), some SADC institutions, such as the Tribunal, still engaged in agency slack resulting in some decisions that damaged the interests of some members of the collective principal.

### **Limited Delegation**

Rousseau (1973 [1779]), as cited in Brandsma and Adriaensen (2017), contends that the best way to limit losses as a result of opportunistic



agent behaviour or agency slack is to delegate as little as possible. This is a model that SADC member states appear to have adopted in delegating to SADC. As explained by some key informants, SADC member states have maintained firm control of the RO by delegating very little decision-making power and authority to their agent (I. Mandaza, personal communication, September 26, 2019; M. Moshoeshoe, personal communication, November 20, 2019).

Despite promising to delegate more power and authority to the RO in the 1992 SADC Treaty, SADC member states have in practice been very parsimonious with decision-making power and authority. They have ceded the minimal authority possible to make SADC functional (M. Moshoeshoe, personal communication, November 20, 2019). As a result, SADC decision-making on important issues such as politics, defence and security is dominated by member states (The Consolidated Treaty, 2014; Protocol on Politics, Defence and Security Co-operation, 2001). Member states ensured that they dominate the two most powerful decision-making institutions of the SADC - the Summit and the Organ on politics, defence and security co-operation.

Moreover, this study revealed that SADC's structure for decision-making was such that matters to be deliberated were raised by interstate SADC institutions such as the Sectoral and Cluster Ministerial Committees, after which these issues were then forwarded to the Council of Ministers. The Council is composed of foreign ministers from all the SADC member states; Council decides the issues to be deliberated by the Summit and recommends the 'appropriate' decision. Unless there are some very sticky issues, the Summit always endorses the recommendations of the Council (S. Mumbengegwi, personal communication, October 18, 2019; B. H. Mukonoweshuro, personal communication, November 12, 2019). The Council of Ministers then oversees how these decisions are implemented, with the Secretariat acting as a facilitator (S. Mumbengegwi, personal communication, October 18, 2019; B. H. Mukonoweshuro, personal communication, November 12, 2019; The Consolidated Treaty, 2014).

What is critical to note about SADC's structure for decision-making is that the Secretariat and other non-state or independent SADC institutions have very little decision-making power and authority. The Secretariat, for example, merely facilitates meetings and implementation of decisions (B. H. Mukonoweshuro, personal



communication, November 12, 2019; Nagar & Malebang, 2016; Nathan, 2012). One key informant confirmed this by citing former SADC Executive Secretary Khaire Mbuende, who acknowledged that his role as an executive secretary did not involve setting the agenda of meetings or taking any important decisions but was to facilitate the meetings and implement the decisions adopted (C. Williams, personal communication, November 21, 2019).

By dominating the RO's decision-making structure, member states shaped SADC in a way that ensured that their interests and preferences prevailed when it came to deciding on important issues such as Zimbabwe's land issue. This domination enabled the member states to organise out of the agenda any issues whose outcome might be detrimental to their interests, a phenomenon known as nondecision-making or the second face of power (Bachrach & Baratz, 1962, 1963; Lukes, 2005). As highlighted by Dr Christopher Williams, a senior international relations lecturer at the University of the Witwatersrand, that former President of Zimbabwe, Robert Mugabe chaired both the Summit and the Organ on several occasions during the period under study, and there was absolutely no way he was going to allow Zimbabwe's land issue to be discussed in these SADC institutions during his chairmanship (personal communication, November 21, 2019). In corroborating Dr Christopher Williams' argument, Robert Mugabe's brief as the SADC Organ on Politics, Defence and Security Chair at the 2001 SADC Summit Meeting held in Malawi had no details on Zimbabwe's land issue (SADC Heads of State and Government Summit Communiqués, 2000–2015). This was despite the fact that Zimbabwe was a highly topical issue at the time.

By retaining most of the decision-making power and authority rather than delegating it to independent SADC institutions such as the Secretariat, member states could also directly influence the outcome on those issues that made it to the agenda. This perhaps explains why external actors outside of SADC's principal-agent relationship such as the USA and Zimbabwe's European farmers eventually failed to influence SADC's final decision on Zimbabwe's land issue. Moreover, this structure also explains why undesirable SADC decisions on Zimbabwe's land issue came from independent or non-state SADC institutions such as the Tribunal and not from the interstate SADC institutions such as the Summit or the Organ, which are under the total control of the collective principal.

The findings of this study suggest that the SADC member states' limited delegation and domination of decision-making evidently thwarted agent autonomy and discretion in the case under study. Moreover, limited delegation constrained the influence that external actors outside of SADC had on the RO's decisions in Zimbabwe's land issue. This observation is consistent with the prescriptions of the principal-agent approach, which posits that "strategic, forward-looking states intentionally adopt and design international institutions in pursuit of their goals" (Hawkins et al., 2006, p. 5). Such *intentional* institutional designs include limiting the degree of power and authority that principals delegate to agents.

### **Member States' Firm Control**

This study observed that strict monitoring and control of SADC by the member states was a key factor in SADC's solidarity stance on Zimbabwe's land issue. Conversely, laxity in member states' control of the agent also often resulted in agency slack and SADC decisions that were contrary to the preferences of the member states or collective principal. Thus, to ensure that their preferences carried the day in SADC decision-making on Zimbabwe's land issue or any other important matter, member states utilised both manifest and latent control mechanisms. According to Kroll (2017, p. 162), "Manifest or 'active political' control exists when the principal actively vetoes the decision of the agent." A distinctive example was the Summit's decision to suspend the Tribunal's rulings on Zimbabwe's land reform programme.

Latent control, on the other hand, occurs when the principal subtly or indirectly controls the agent. It takes place when an agent selects a decision that is not its preferred position but one that they anticipate that the principal would not veto (Kroll, 2017). According to Kroll (2017), latent control arises from the knowledge that the principal has the mechanisms and is capable of exerting manifest control. Therefore, latent control can be understood as a product of manifest control that makes the actual practice of manifest control by the principal unnecessary. In the case of SADC decision-making on Zimbabwe's land issue, the fact that non-state SADC institutions such as the Secretariat and the Tribunal exhibited opportunistic behaviour only when they felt that such behaviour would be unquestioned and unpunished by the principal suggested that latent control was a

constraint to them. As Kroll (2017, p. 174) asserted, notwithstanding its abstract nature, latent control was a very effective weapon that principals used to limit agency slack.

### ***Agency Slack***

As discussed in previous sections, delegation does not only entail benefits for the principal but also agency losses that come as a result of agency slack. Despite instituting various control measures to limit opportunistic behaviour by the agent, such behaviour is an ever-present danger. The case of SADC decision-making on Zimbabwe's land issue was no exception.

### ***Opportunistic Behaviour by the Secretariat***

The interviews revealed that SADC's inhibitive decision rules and tight control mechanisms did not stop the Secretariat from exhibiting opportunistic behaviour that was damaging to the interests of some of the members of the collective principal. Such opportunistic behaviour included what former Zimbabwe Minister of Justice, Patrick Chinamasa, termed "the Secretariat's smuggling in of the Protocol on the Tribunal into the SADC Treaty" (Personal Communication, October 30, 2019).

Essentially, the Secretariat was able to enter the Protocol on the Tribunal into force without having to go through the process for a protocol to enter into force as cited in Article 22 paragraph 4 of the SADC Treaty (P. Chinamasa, personal communication, October 30, 2019; S. Mumbengegwi, personal communication, October 18, 2019). Article 22, Paragraph 4 of the SADC Treaty requires two-thirds majority ratification by member states for any protocol to enter into force (P. Chinamasa, personal communication, October 30, 2019, The Consolidated Treaty, 2014). This procedure was not followed in the case of the Protocol on the Tribunal.

The effect of the Secretariat's opportunistic behaviour was that it fast-tracked the establishment of the Tribunal, whose ultimate objective was to reverse land reform in Zimbabwe and delay or block land reform in South Africa and Namibia (S. Mumbengegwi, personal communication, October 18, 2019; A. H. Mtetwa, personal communication, October 24, 2019; P. Chinamasa, personal

communication, October 30, 2019; B. H. Mukonoweshuro, personal communication, November 12, 2019). The Secretariat thus, facilitated one of the most damaging decisions on Zimbabwe's land issue - the Tribunal rulings on the FTLRP.

As argued by Zimbabwe when challenging the Tribunal's legality, the Protocol on the Tribunal had been un-procedurally tabled. This was because contrary to SADC decision rules which specifically state that amendments to the Treaty shall be raised by member states, the amendment that made the Protocol on the Tribunal part of the SADC Treaty had been sponsored by the Executive Secretary of SADC (P. Chinamasa, personal communication, October 30, 2019). According to Patrick Chinamasa, the Tribunal's un-procedural establishment could not have happened without some collusion by the Secretariat at the time. It was, therefore, highly likely that the Secretariat was aware that their actions would eventually be detrimental to the interests of their principal.

In fact, Simbarashe Mumbengegwi and Patrick Chinamasa concurred that the Secretariat at the time might have been subverted by some external actors (S. Mumbengegwi, personal communication, October 18, 2019; P. Chinamasa, personal communication, October 30, 2019). These external actors included Western powers, Western-funded non-governmental organisations and civil society, and regional civil society groups that opposed Zimbabwe's FTLRP such as Zimbabwe's white farmers and South African Afrikaner pressure group, Afri-Forum. The proposition that external actors might have subverted the Secretariat at the time was quite plausible given the Secretariat's willingness and desire to advance the interests of external actors while damaging those of their principal's interests on Zimbabwe's land issue.

### ***Tribunal Autonomy and the Fateful Ruling on Zimbabwe's Land Issue***

Through limited delegation and strict control of SADC decision-making, the member states hoped to leave as very little room for agent autonomy as was functionally possible. Defined as the "range of potential independent action available to an agent after the principal has established mechanisms of control" (Hawkins et al. 2006, p. 8), autonomy is inevitable where there are delegation and control oversights by the principal. This appeared to be the case with the Tribunal's decisions and judgements on Zimbabwe's land issue.

The Tribunal's ruling on the land reform demonstrated the oversight that is sometimes present when states delegate to an agent. According to Ambassador Dr Andrew Mtetwa, former Zimbabwe permanent representative to the African Union (AU) (2002–2014), Zimbabwe and the other SADC member states were uncharacteristically unwatchful when delegating to the Tribunal (personal communication, October 24, 2019). This was because Zimbabwe did not realise that the Tribunal was created with the sole purpose of reversing the country's land reform programme. Hence, Zimbabwe and other member states did not place any limitations on the court's decision-making powers and authority. In delegating to the Tribunal, the member states equally did not put in place control mechanisms to curb opportunistic behaviours by the court. This left the court with excessive autonomy, which it used to undermine some of the members of the collective principal, most notably Zimbabwe.

The effect of this delegation oversight by Zimbabwe and other member states was that it became an avenue for reversing land reform in Zimbabwe and blocking the same land reform in other SADC member states with pending land issues such as Namibia and South Africa (S. Mumbengegwi, personal communication, October 18, 2019; A. H. Mtetwa, personal communication, October 24, 2019; P. Chinamasa, personal communication, October 30, 2019). As highlighted by Simbarashe Mumbengegwi, Zimbabwe and other member states could have avoided the losses had they conducted due diligence before delegating to the Tribunal (personal communication, October 18, 2019). This observation corresponded with Lyne et al. (2006), who argued that states sometimes suffered agency losses due to mistakes they made when selecting an agent to delegate to. The case of Zimbabwe and the SADC Tribunal was an empirical example of agency losses that could accrue to a principal as a result of delegation mistake.

### ***Rectifying Delegation Oversight and Sanctioning Errant Agent Behaviour***

The opportunistic behaviour exhibited by both the Secretariat and the Tribunal convinced the member states that there was some delegation oversight and lax monitoring that had permitted agency slack. Hence, the principal decided to take measures to rectify the delegation oversight and lax monitoring. These measures included limiting

foreign funding and punishing the agent for opportunistic behaviour contrary to the interests and preferences of all or some member states.

### ***Limiting Agency Slack and Foreign Influence Through Self-Financing***

As explained by Patrick Chinamasa, it is possible that the Secretariat might not have been financially sustained by the member states' contributions (personal communication, October 30, 2019). This limited funding by the principal and loopholes in SADC financing structures that allowed external actors to fund key SADC institutions such as the Secretariat might have made these institutions vulnerable to subversive external actors. Thus, to limit foreign influence on SADC decision-making, SADC member states resolved not to allow external funding of the Secretariat and Organ. Moreover, they also agreed to increase their financial contributions so that these institutions were financed strictly from the member states' contributions (P. Chinamasa, personal communication, October 30, 2019).

### ***Disbanding and Re-Contracting the Tribunal***

The principal-agent theory postulates that agents that threaten the interests of their principals, risk punishment which can be as drastic as mortality. As aptly noted by Dr David Mandiyanike (personal communication, November 14, 2019) the Tribunal failed to realise that it was created by a political principal and this principal could also facilitate its mortality. Therefore, it could not expect to continually threaten or injure the principal's interests the way it did with the judgements on Zimbabwe's FTLRP and not expect some backlash. By making these judgements, the Tribunal had become more powerful than the member states. It was not respecting the views of the member states and was not in the spirit of pursuing the interests of the membership (P. Chinamasa, personal communication, October 30, 2019). Thus, Zimbabwe and the other member states decided to go for the root and disband the Tribunal (S. Mumbengegwi, personal communication, October 18, 2019). Former Tanzanian president Jikaya Kikwete summed up the situation concerning the Tribunal by remarking that "We had created a monster that was going to devour us all" (Matyszak, 2011, p. 1).

As highlighted by one political scientist, issues to do with land are not necessarily judicial but political (D. Mandiyanike, personal

communication, November 14, 2019). As such, international courts ought to be careful when deciding on such matters as they usually involve other contextual realities that are not necessarily legalistic. Thus, in the words of one key informant, the Tribunal proved its worthlessness to its principal by passing a judgement divorced from the political and social reality of the region (M. Moshoeshoe, personal communication, November 20, 2019). This was the reality of the brutal and forceful dispossession of African land by Europeans during the colonial era. These observations were consistent with Chigara (2017), who argued that the Tribunal's legal formalist arguments were ill-suited for SADC's land issue as they ignored the historical context of colonialism and the forcible expropriation of native titles without compensation. This was, however, a fact that the Tribunal obviously failed to take heed of and paid the ultimate price of disbandment and re-contracting by the principal.

The principal-agent theory posits that states can maintain control of international courts such as the SADC Tribunal through short judicial terms for judges and sanctions that include rewriting the courts' mandates, reversing the court's ruling and non-compliance (Alter, 2006, p. 312). Garrett and Weingast (1993) as cited in Alter, (2006), argue that this fear of being re-contracted has shaped the decisions of the European Court of Justice (ECJ). Hence, they observe that the ECJ decisions are selected from "a range of outcomes the most powerful states implicitly want" (Garrett & Weingast, 1993, p. 201 as cited in Alter, 2006, p. 313). This was another fact that the Tribunal ignored in passing a judgment contrary to the interests of Zimbabwe, one of the most powerful members of the Tribunal's collective principal. As such, re-contracting was employed by the member states to whip the court into line.

### **Preference Heterogeneity amongst SADC Member States**

This study established that contrary to popular belief, SADC, both as an RO and as member states, was initially not supportive of Zimbabwe's FTLRP. According to Simbarashe Mumbengegwi (personal communication, October 18, 2019), former President Thabo Mbeki of South Africa publicly admitted that he wrote to former President, Robert Mugabe on three occasions urging him to reconsider the decision to take over land, but Robert Mugabe would not budge. However, South Africa and indeed SADC eventually supported



Zimbabwe's FTLRP (S. Mumbengegwi, personal communication, October 18, 2019). This corroborated Gastinger's (2017) suggestion that preference heterogeneity among members of a collective principal was more likely during the early stages of decision-making when preferences were still being formed and aggregated than in later stages.

This phenomenon of preference heterogeneity was also observable in SADC decision-making on the Tribunal after the court's fateful decisions on Zimbabwe's land issue. Some key informants indicated that most member states had initially opposed Zimbabwe's proposal to disband the Tribunal (S. Mumbengegwi, personal communication, October 18, 2019; P. Chinamasa, personal communication, October 30, 2019). When Zimbabwe's then Minister of Justice, Patrick Chinamasa, tabled the proposal to reform the Tribunal at SADC's Ministerial Committee on Justice, he faced intense opposition from virtually all 14 other member states (S. Mumbengegwi, personal communication, October 18, 2019).

Simbarashe Mumbengegwi further expounded that the situation was not any different when the matter reached the Council of Ministers, as most member states also opposed the proposal to disband the Tribunal. However, Simbarashe Mumbengegwi (personal communication, October 18, 2019) explained that despite the initial resistance, he eventually won over the other foreign ministers. This paved way for the Summit's decision to disband the Tribunal and suspend all its judgements on Zimbabwe's FTLRP during the 2012 SADC Summit Meeting in Maputo. Zimbabwe's ability to convince other members of the collective principal to support her preferred stance on the Tribunal issue highlighted another very important point about IOs/ROs on leadership (Mohamed Pero & Ahmad Apandi, 2018). By rallying the other member states behind her cause, Zimbabwe demonstrated that it was a leader within SADC's collective principal.

## **DISCUSSION**

The findings suggest that principal-agent dynamics is critical in shaping SADC decisions on Zimbabwe's land issue in the post-year 2000 period. These are dynamics that until now had been largely disregarded in previous studies on SADC decision-making in

Zimbabwe's land issue (Asmelash, 2017; Deleglise, 2021; Dzimiri, 2013, 2017; Nathan, 2011, 2012, 2013). These studies argue that SADC maintained solidarity with Zimbabwe on the land issue because SADC decision-making is shaped by the RO's affinity for regional norms of solidarity, non-interference and disregard for the rule of law (Asmelash, 2017; Dzimiri, 2013, 2017; Nathan, 2012, 2013). Yet as this study has demonstrated, SADC decision-making on Zimbabwe's land issue is shaped by more than just SADC's preference or disregard for one set of norms over another.

Clearly, SADC decision-making on Zimbabwe's land issue involves more than one SADC institution. These institutions include interstate bodies such as the Summit, the Organ (and their Troikas), the Council, the Ministerial Committees, and non-state SADC bodies such as the Tribunal and the Secretariat. Moreover, some of these institutions have divergent positions on the Zimbabwe issue. The inter-state institutions such as the Summit and the Organ prefer a noncommittal approach, while some non-state institutions such as the Tribunal prefer a confrontational and punitive approach. As explained in previous sections, the influence of external actors on non-state SADC institutions such as the Tribunal is a possible reason for these institutions' confrontational and punitive approach to Zimbabwe.

Moreover, these institutions also have divergent preferences. Even the member states' preferences which are alleged to be influenced by a disregard for the rule of law have also shifted from being anti-land reform to pro-land reform. Therefore, the suggestion that SADC decision-making on Zimbabwe's land issue was shaped by the RO's affinity for norms of solidarity and disregard for democratic norms are misleading and dangerously oversimplifies SADC decision-making on Zimbabwe's land issue.

Similarly, the fact that SADC member states vehemently opposed the disbandment of the Tribunal when Zimbabwe first mooted the matter is a clear indication that SADC decision-making is not fixated on the norms of solidarity, non-interference and disregard for the rule of law as suggested by some. Rather, SADC's decision to support Zimbabwe's land reform programme as well the decision to disband the Tribunal appear to be influenced by available facts and pragmatism. These facts are the justified need for Zimbabwe to redress racial disparities in land ownership and the need to curtail an agent that had gone berserk.

This demonstrated that SADC decision-making on Zimbabwe's land reform was more complex than many would admit.

It involved genuine contextual realities that SADC could not simply ignore. These contextual case realities include the fact that Zimbabwe's land issue was the product of brutal and violent dispossession of African land by Europeans. SADC appears to have taken note of these genuine contextual case realities resulting in their more than pragmatic decisions on Zimbabwe's land issue. Therefore, it is quite plausible that SADC decision-making on Zimbabwe's land issue is not just shaped by the RO's blind solidarity with Zimbabwe as some previous studies have alleged (Dzimiri, 2013, 2017, Nathan, 2012, 2013).

Given the foregoing, the intense SADC criticism over its stance on Zimbabwe's land issue becomes a bit difficult to justify. Equally, SADC's vilification over its decision to re-align one of its agents, the Tribunal, is another issue that is difficult to understand. Surely, no one has the right to question when and how a principal decides to delegate or rescind delegation to an agent. It is clear that the Tribunal is the agent of the member states and not the other way round. As such, member states have the prerogative to reform an agent whom they feel is not serving their interests. This is standard behaviour in international politics. Even in the EU, which many view as the model IO, member states have largely maintained control of key issues such as decision-making, and they continue to reform the RO in ways that suit their interests (Pollack, 2017).

Moreover, Delreux and Adriaensen (2017, p. 1) note that even though EU member states continue to delegate more decision-making power to the RO, they remain the masters of the EU budget; hold decisive power in the appointment of commissioners, judges in the Court of Justice and other influential positions; retain sovereignty over the implementation and transposition of much EU legislation; or put the intergovernmentally organised European Council at the centre of the most salient EU decision-making processes. This is yet more evidence that SADC member states' limited delegation of decision-making power and authority to the RO is not as awkward as some scholars have made it out to be (Nathan, 2012). Indeed, this phenomenon is also observable in other ROs such as the EU.

Furthermore, the Tribunal itself is guilty of failing to comprehend its position in SADC's hierarchy where the member states are the political masters or principal. As the agent, the Tribunal ought to have respected the principal's interests when deciding on matters of importance, such as Zimbabwe's land issue. This is something that other international courts have done in order to avoid mortality or re-contracting by the principal (Alter, 2006). Clearly, there was more to SADC decision-making on Zimbabwe's land issue than just norms. SADC decision-making was shaped by a pragmatism that recognised the principal-agent dynamics in the RO and the contextual realities of each case.

## CONCLUSION

If this study is anything to go by, then it would appear that delegation and control dynamics are indeed critical determinants of decision-making in IOs/ROs. In the case of SADC decisions on Zimbabwe's land issue, these dynamics included the member states' limited delegation to the RO and subsequent strict but effective control of RO processes such as decision-making. These are all measures that restricted agency slack in decision-making and ensured that SADC's approach reflected the principal's interests and preferences, which in this case was solidarity with Zimbabwe over a genuine and justified land reform programme. SADC decision-making on Zimbabwe's land issue is, thus, an empirical example of principal-agent dynamics and how they shape RO outcomes. Notably, the case of SADC decision-making on Zimbabwe's land issue shows both the positive and negative consequences of an international delegation.

The argument in this paper is typically principal-agent in theoretical orientation in that it stresses that factors internal to the principal-agent relationship were key in shaping SADC outcomes on Zimbabwe's land issue from the year 2000 onwards. These factors included the inevitable opportunistic behaviour by the agent. While there is evidence that external dynamics, particularly external actors such as Western powers, were able to influence SADC's stance on Zimbabwe's land issue, it should be noted that this influence was more indirect than direct. These external actors had to go through an actor in SADC in the form of a member of the collective principal or agent in order to exert their influence on SADC decision-making. This is consistent

with postulations of the principal-agent theory that external actors can only indirectly influence ROs of a principal-agent nature such as the SADC. Therefore, by positing that principal-agent dynamics was the key factor in SADC decision-making on Zimbabwe's land issue, this paper does not discount or underrate the influence of external actors. It merely emphasises that these external actors have to go through an actor within the principal-agent relationship to exert their influence on the RO. This is indeed an alternative way of accounting for SADC's approach to crisis management decision-making in Zimbabwe that departs from the dominant normative approach.

Another important aspect to note is that, SADC decision-making on Zimbabwe's land issue from the year 2000 onwards is a phenomenon that has been well studied albeit without using the analytical tools that the principal-agent framework provides. Hence, the application of a principal-agent framework to the study of SADC's approach to Zimbabwe provides a new dimension and new variables in SADC decision-making that enhances our understanding of SADC and IOs in general. As explained by Delreux and Adriaensen (2017), the principal-agent approach retains its relevance and usefulness wherever and whenever the scope conditions of the model are satisfied. These scope conditions, which are the delegation of power and authority to an agent by political principals, were indeed satisfied in the case of SADC decision-making on Zimbabwe's land issue. Hence, the principal-agent approach was able to adequately account for the key dynamics that shaped SADC decision-making on Zimbabwe's land issue.

Beyond this empirical case of SADC decision-making, this paper proves the generalizability of the principal-agent approach in accounting for outcomes of international delegations outside of the EU context where the model has been extensively applied. The principal-agent model is indeed useful and relevant in understanding and explaining the relationships and outcomes of international bureaucracies in the developing world.

Moreover, this study provides some rare justification for SADC's decisions on Zimbabwe's land issue. These decisions such as the disbandment of the Tribunal have been widely criticised in academia. However, as argued in this study, there is nothing wrong with member states influencing or controlling the decisions of an IO/RO. It is perfectly normal for member states as they are the principal in

a principal-agent relationship with their agent, the IO/RO. However, this is a fact that critics of SADC decision-making on Zimbabwe's land issue seem to have missed or disregarded.

An important aspect to note about this paper is that it does not claim that principal-agent dynamics in SADC is the only factor shaping SADC decision-making on Zimbabwe's land issue from the year 2000 onwards. Equally critical is the fact that this study does not assert that principal-agent dynamics is the most important reason behind SADC's solidarity with Zimbabwe over the member state's land issue. What this paper does is to bring to the fore a perspective that has been largely overlooked in previous studies on SADC decision-making in Zimbabwe's land issue. Indeed, this paper demonstrates that there is more to SADC's vexing but interesting approach to Zimbabwe's land issue than just norms. This paper thus recommends future studies to apply the principal-agent model to other SADC crisis management decision-making cases to prove or disprove the validity of the approach in the SADC context.

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## APPENDIX

### CITED INTERVIEWS

1. Dr Ibbo Mandaza (Executive Chairman Southern Africa Political Economy Series [SAPES] Trust), Harare, Zimbabwe, September 26, 2019, 1100Hrs-1230Hrs

2. Cde Simbarashe Mumbengegwi (Former Zimbabwe Minister of Foreign Affairs and current ZANU PF Secretary for External Relations), Harare, Zimbabwe, October 18, 2019, 1530Hrs-1700Hrs
3. Ambassador Dr Andrew Hama Mtetwa (Former Zimbabwe Secretary for Foreign Affairs; former Zimbabwe Permanent Representative to the AU, UNECA, EEC and the ACP; former Zimbabwe Ambassador to Ethiopia, Japan, Belgium, Netherlands and Luxembourg; former Zimbabwe High Commissioner to South Africa, Zambia), Harare, Zimbabwe, October 24, 2019, 1449Hrs-1602Hrs
4. Cde Patrick Chinamasa (ZANU PF Secretary for Finance, former Zimbabwe Minister of Justice Legal and Parliamentary Affairs, former Zimbabwe Minister of Finance and former Zimbabwe Attorney General), Harare, Zimbabwe, October 30, 2019, 1530Hrs-1730Hrs
5. His Excellency Ambassador Batiraishe H. Mukunoweshuro (Zimbabwe Ambassador to the Republic of Botswana, former Consular General at the Zimbabwean Embassy in the Republic of South Africa and a member of the Secretariat that transformed SADCC into SADC in 1992), Zimbabwe House, Gaborone, Botswana, November 12, 2019, 1400Hrs-1600Hrs
6. Dr David Mandiyanike (Senior Lecturer, Department of Political and Administrative Studies, Faculty of Social Sciences, University of Botswana), Gaborone, Botswana, November 14, 2019, 1030Hrs-1200Hrs
7. Dr Mopeli Moshoeshe (Senior Lecturer, Department of International Relations, University of the Witwatersrand), Johannesburg, South Africa, November 20, 2019, 1200Hrs-1330Hrs
8. Dr Christopher Williams (Senior Lecturer, Department of International Relations, University of the Witwatersrand), Johannesburg, South Africa, November 21, 2019, 1022Hrs-1130Hrs