



19 May 2011

CONCERN AT THE REVIEW OF THE SADC TRIBUNAL AS THE SUB-REGIONAL COURT OF JUSTICE

The Southern African Development Community Lawyers Association (SADC LA) and the International Commission of Jurists (ICJ) Africa Programme have been monitoring with keen interest the developments around the review of the SADC Tribunal that was ordered after the SADC Heads of State Summit in August 2010. As part of this monitoring exercise, the two organizations have among others done the following:

1. Convened a conference of legal experts of the SADC in January 2011. The legal experts conference was also attended by the consultants, WTI International who were consulted by the SADC to carry out the research and submit a report as part of the review process;
2. Held meetings with various relevant departments of government of some member states of SADC;
3. Held meetings with the SADC Secretariat to submit the report of the SADC legal experts on the review of the SADC Tribunal;
4. Monitored meetings of different government legal experts and policy community from the SADC member states at which the SADC Tribunal review was considered;

Our general observations have been that the consensus that emerged from the review, documents and decisions of the different legal experts from SADC states can be summarized as follows:

- The SADC Tribunal was properly established and its protocol entered into force in accordance with international law;
- Most recommendations formulated by the WTI Consultants and discussed by Senior Legal Officers of the SADC States were endorsed by the Ministers of Justice;
- All recommendations that entail amendments to SADC instruments will be further discussed at a specific SADC treaty amendment conference to be convened at an appropriate time;

- Members of the Tribunal should be appointed at the upcoming Summit of the Heads of State on 20 May 2011, in order to enable the Tribunal to continue its work;
- The Summit will be held in Namibia, on 20 May 2011, if nothing changes; and
- Zimbabwe proposed that the SADC instruments be amended to exclude the individual complaint procedure. No decision was taken on that proposal during the time of the SADC LA and ICJ monitoring.

Based on these observations and the continuous long term monitoring that has been done of the review process it is anticipated and hoped that the SADC Tribunal will come out of the review process as a strengthened judicial institution. It is with this background that the SADC LA and the ICJ are left with no option but to reject the account given by the Herald newspaper in Zimbabwe between 16 and 19 May 2011¹ alleging that *“The SADC Justice Ministers have acknowledged that the SADC Tribunal was improperly constituted and its decisions, mainly on land matters in Zimbabwe were null and void.”*

“We hope that the statements attributed to the government of Zimbabwe by the Herald newspaper do not betray a position that shows that the SADC Tribunal review process has now been hijacked by people who do not believe in the rule of law. The review process must maintain a trajectory that it was taking that would result in strengthening of the SADC tribunal as a judicial organ” said Martin Masiga, the Deputy Director of the ICJ Africa Regional Programme

“It is important that our heads of state and government demonstrate to the SADC citizens on 20 May 2011 in Windhoek that they value strong and independent institutions to entrench the rule of law so fundamental to the development of the SADC region and the uplifting of the lives of the people of the SADC region” said Thoba Poyo-Dhlwati the President of the SADC LA.

For any inquiries, please contact:

Thoba Poyo Dlwati: *thoba@npdinc.co.za: President of SADC Lawyers Association
Mobile +27 829 296 180, or*

Arnold Tsunga: *arnold.tsunga@icj.org: Director of ICJ Africa Regional
Programme Mobile +27 731 318 411*

1.

http://www.herald.co.zw/index.php?option=com_content&view=article&id=10331:sadc-council-of-ministers-to-finalise-agenda&catid=38:local-news&Itemid=131