



SADC Lawyers' Association and International Commission of Jurists Workshop on the SADC Tribunal Review Process

Birchwood Hotel and OR Tambo Conference Centre- Johannesburg: South Africa

27 January 2011

1. BACKGROUND

The creation of the Southern African Development Community Tribunal (SADC Tribunal) was welcomed with enthusiasm and hope within the SADC region and beyond, and has been regarded as a laudable step by SADC states towards pursuing regional integration, cooperation and development under the supervision and scrutiny of a judicial organ - in line with other African sub-regions. Established under Article 9 of the Treaty establishing the Southern African Development Community (SADC Treaty), the SADC Tribunal is vested with the mandate of ensuring adherence to, and the proper interpretation of, the provisions of the SADC Treaty and its subsidiary instruments, and of adjudicating upon disputes arising out of the implementation of those instruments and the validity of acts of the Community's organs. Article 16 of the SADC Treaty provides for the mandate of the Tribunal whilst the composition, powers, procedures, functions and related issues on the Tribunal are provided for under the SADC Protocol on the Tribunal.

Since November 2005 the Tribunal has been operational and has handled several cases, with the bulk of complaints lodged against the Government of Zimbabwe, which refused to comply with the Tribunal's judgments and threatened to withdraw from the Tribunal, raising serious objections on its jurisdiction and legality. The SADC Council of Ministers was then tasked in August 2009 with responding to Zimbabwe's objections and presenting a draft answering opinion. At the Jubilee SADC Summit in Windhoek, Namibia in August 2010, the regional Ministers of Justice/Attorneys-General had not completed their study by August 2010 but nonetheless recommended to the SADC Summit that independent consultants be vested with the task to undertake and complete, within six months from the decision of the Summit, "a review of the operations of the Tribunal with a view to strengthening it and

improving its terms of reference”. Additionally, it was determined that the Tribunal would not receive any new cases pending the completion of the review process. Those recommendations were adopted as a binding decision by the SADC Summit, which further did not renew the tenure of office of five members whose terms had expired and failed to replace them.

Whilst there have been mixed views over the legality of the process and the effect that it will have on the upholding of the rule of law and the independence of the judiciary in the region, lawyers and judges in the region have seen this as an opportunity for them to contribute towards the strengthening of the Tribunal. Legal professionals in the SADC region have a strong interest in the effective and efficient functioning of the Tribunal as they are the ones who have a direct interface with the institution on behalf of the region’s citizens. It is therefore important that as the SADC review process is underway, that key rule of law actors within the region be offered an opportunity to make an input into the review process. In view of this, the SADC Lawyers’ Association and the Africa Programme of the International Commission of Jurists will hold a workshop on the 27th of January 2011 in Johannesburg to deliberate on the SADC Tribunal Review Process.

The workshop will focus on a wide range of topics concerned by the review process and come up with recommendations to the independent consultants and SADC Heads of State and Government in line with the review process. The main topics to be addressed include:

- The legality and jurisdiction of the SADC Tribunal;
- The interface between SADC law and national laws in SADC;
- The role of the Tribunal in guiding domestic courts on the application of community law;
- The effect of its decisions on domestic law;
- The recognition, enforcement and execution of the Tribunal’s decisions;
- The process of nomination, appointment and the qualifications of judges of the Tribunal.

2. GOALS AND MAIN OBJECTIVES OF THE WORKSHOP

The aim of the Workshop on the SADC Tribunal Review Process is to ensure that the SADC Tribunal does not emerge from the review process as a weak and ineffective judicial institution, but that it emerges stronger, more vibrant and better placed to interpret the laws of the region and to effectively administer justice for all. This is also an opportunity for regional

lawyers to raise the concerns that have been presented at various fora concerning the relevance and effectiveness of the Tribunal in administering justice in the region.

The main objectives of the Regional Workshop on the Review of the SADC Tribunal are:

- To allow participants to discuss the main issues involved in the review process and come up with recommendations to the independent consultants and SADC Heads of State and Government in line with the review process.
- To provide regional legal professionals the opportunity to learn from each other's experiences and challenges in their interactions with the SADC Tribunal;
- To foster a greater collaboration and building of synergies between actors in the legal sector for a meaningful and continuing monitoring of the SADC Tribunal review process;
- To strengthen their capacity to advocate for the survival and the strengthening of the SADC Tribunal.

3. PARTICIPANTS AND FACILITATORS

The workshop will be attended by leaders or senior members of Bar Associations and Law Societies, judges, academics and human rights defenders from the SADC region. The SADC Tribunal's registry, the SADC secretariat's legal office and leading lawyers from the World Trade Advisers – the organisation that is conducting the review of the SADC Tribunal - will also be in attendance. Internationally renowned SADC Lawyers, judges and academics have been identified to lead the deliberations at the workshop.

4. ORGANISERS/PARTNERS

- **International Commission of Jurists (ICJ)** is a global rule of law and human rights organization dedicated to the primacy, coherence and implementation of international law and principles that advance human rights. What distinguishes the International Commission of Jurists (ICJ) is its impartial, objective and authoritative legal approach to the protection and promotion of human rights through the rule of law. The ICJ provides legal expertise at both the international and national levels to ensure that developments in international law adhere to human rights principles and those international standards are implemented at the national level. The Commission was founded in Berlin in 1952 and its membership is composed of sixty eminent jurists who are representatives of the

different legal systems of the world. Based in Geneva, the International Secretariat, of which the Africa Regional Programme is part, is responsible for the realization of the aims and objectives of the Commission. In carrying out its work, the International Secretariat benefits from a network of autonomous national sections and affiliated organizations located in all continents. *Visit our website on <http://www.icj.org>*

- **SADC Lawyers Association (SADC LA)** is an independent voluntary association made up of Law Societies/Bar Associations of the Southern African Development Community (SADC) region. It has been in operation since August 1999. Its vision is to uphold human rights, the respect for the Rule of Law, promote and support the Independence of the Judiciary and protect fundamental liberties especially for the underprivileged and minority groups. *Visit our website at www.sadclawyers.com*