



RECOMMENDATIONS OF SADC LAWYERS AND JUDGES AT THE WORKSHOP ON THE SADC TRIBUNAL REVIEW PROCESS, HELD IN JOHANNESBURG, ON 27 JANUARY 2011

At the Workshop on the SADC Tribunal Review Process, convened on 27 January 2011 at the Birchwood Hotel and Oliver Tambo Conference Centre, Johannesburg, by the SADC Lawyers' Association and the International Commission of Jurists (ICJ Africa Regional Programme), attended by SADC Bar leaders or senior members of Bar Associations and Law Societies, judges, academics and human rights defenders;

In an effort to make in-puts into the SADC Tribunal review process and to ensure that the SADC Tribunal emerges from the review process as a stronger and more effective judicial institution, better placed to interpret SADC laws and to effectively administer justice for SADC citizens and residents,

The following recommendations were formulated and adopted for submission to the Independent Reviewers of the SADC Tribunal, the SADC Secretariat and the SADC Summit:

1. On the Role and Functioning of the SADC Tribunal:

- The individual complaint procedure should be simplified to increase access to justice by SADC citizens and/or residents. This should at least allow interested parties to file complaints and other documents electronically and make use of new technology while acknowledging limitations therein;
- As provided for in the Protocol on the SADC Tribunal, the establishment and operationalisation of national field offices of the SADC Tribunal's Registry would be welcome to increase access to the SADC Tribunal throughout the region;
- Judicial procedures should be simplified to address the issues of procedural delays and unnecessary costs;
- The challenge of languages and translation should be alleviated through further recruitment, for which funding is required;
- Member states, civil society and international concerned partners should support the current efforts made by the SADC Tribunal, such as its Strategic Plan;

2. On the Jurisdiction of the SADC Tribunal and the Inter face between Community and National Laws in SADC:

- The existing normative and institutional framework for human rights in the SADC legal structure should be strengthened further by expanding the human rights provisions to include clear references and links to relevant international instruments such as the Universal Declaration of Human Rights and the African Charter on Human and Peoples' Rights, which the SADC Tribunal may apply in its interpretation and application of the SADC Treaty and subsidiary instruments;
- The competence of the SADC Tribunal to receive and determine human rights cases emerging from SADC member states should also be expressly reaffirmed in the relevant treaties;
- The application and interpretation of the SADC Treaty and Protocols, including the Protocol on the SADC Tribunal is a judicial, not an executive function; and should be solely the power of the SADC Tribunal;
- As provided for in the Protocol on the SADC Tribunal, the principle of exhaustion of local remedies should be applied in light of contemporary international treaty, customary and case law;
- All domestic processes and mechanisms should be initiated to ensure that SADC law is incorporated into domestic law of SADC member states;

3. On the Recognition, Enforcement and Execution of SADC Tribunal decisions:

- Decisions of the SADC Tribunal should remain enforceable in all and every SADC member state;
- All SADC countries should confer to those decisions the force of law and empower their judicial organs to implement them;
- The procedures for the enforcement of decisions from the SADC Tribunal should be harmonised, either through a Protocol (that would still need to be incorporated in the laws of the member states) or a Model Harmonised Legislation, with the focus being on ensuring enforcement as of right throughout the region and not as foreign judgments;
- The SADC Tribunal should be empowered to impose remedies for non-compliance with its judgments and other decisions.

4. On the Status and Selection Process of Judges of the SADC Tribunal: Issues, Challenges and Opportunities

- SADC must come up with minimum standards governing the nomination and appointment process of members of the Tribunal. These standards must meet international standards for the independence of the judiciary, such as those developed under the Burgh House Principles on the Independence of the International Judiciary and the AU Guidelines, and ensure transparency of process, 50% gender parity, security of tenure, due process for the removal of judges and clear rules respecting the rule of law;
- Advertisement of judicial posts at the SADC Tribunal should be made through media in all member states;
- National Judicial Service Commissions (or similar national organs) should be allowed to advise on nominations to the SADC Tribunal;
- As a general rule, the government should follow the list recommended by the Judicial Service Commission and be obliged to nominate more than one candidate;
- SADC should establish an Independent Panel made up of judges nominated by National Judicial Services Commissions, International Law Experts and representatives of Bar Associations and civil society to interview all prospective candidates and to make a recommendation to the SADC Summit for judicial appointments to the Tribunal;
- SADC must come up with an interview template to ensure fairness and establish an Interview Panel for judge candidates, which panel should be the same for all candidates;
- Members of the Tribunal with reviewable terms should be automatically reappointed, unless they cease to comply with qualification requirements.

5. On Lacunae and Ambiguities in the SADC Treaty and Protocol on the SADC Tribunal:

- The principle of human rights and the rule of law, and the human rights obligations thereto related should be expanded in the SADC legal instruments and respected by all SADC organs and member states;
- The regime of sanctions under the SADC instruments should provide for sanctions in case of violations by SADC states of their obligations under SADC law;
- Sanctions should include coercive measures such as complete or partial interruption of economic relations, the interruption of communication means, the severance of diplomatic relations, the freezing of assets belonging to the defaulting state, and the suspension of voting rights or other rights and privileges.
- In the application of the principle of consensus, a member state with a direct interest in a matter should not take part in the process;
- The review process should be extended to the entire SADC legal and institutional framework to ensure that the entire SADC normative and institutional framework is stronger and more effective.

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