



SADC Lawyers Association

Statement by the SADC Lawyers Association following the decision of the SADC Extraordinary Summit to extend the suspension of the SADC Tribunal

The SADC Extraordinary summit was held on the 20th of May 2011 in Windhoek, Namibia. One of the resolutions of the extraordinary summit was to extend the suspension of the SADC Tribunal until August 2012. The Communiqué that was issued after the Extraordinary Summit stated that the Summit had decided as follows:

1. That it mandated the Ministers of Justice and Attorneys General to initiate a process aimed at amending the relevant SADC Legal Instruments and submit a progress report at the Summit in August 2011 and a final report to summit in August 2012
2. That it decided not to reappoint members of the Tribunal whose term of office expired on 31 August 2010
3. That it decided not to replace members of the Tribunal whose term of office will expire on 31 October 2011
4. And it reiterated the moratorium on receiving any new cases or the hearing of any cases by the Tribunal until the SADC Protocol on the SADC Tribunal has been reviewed and approved.

The SADC Lawyers Association notes and applauds the fact that at this stage the SADC Summit acknowledged that the SADC Tribunal was properly and legally established in terms of the SADC Treaty and the SADC Protocol on the Tribunal and therefore remains a duly recognized institution of SADC.

The Association is however concerned that this acknowledgment of the legal existence of the Tribunal is contradicted by the decision of the Summit to effectively suspend the operations of the Tribunal by failing to appoint judges to the Tribunal and by instructing the Tribunal not to take new cases or to hear any cases until August 2012. It is the Association's considered view that any review of the legal instruments governing the SADC Tribunal can be undertaken whilst the Tribunal is operating. The reviewing of the operations of judicial institutions at both national and international level is normal practice as this helps in enhancing the effectiveness of the justice delivery system. However such reviews are undertaken whilst the judicial institutions are operational. The decision to extend the suspension of the operations of the Tribunal therefore puts into question the real motive behind the review and whether this process is being undertaken in good faith.

In addition, the Association is concerned that the suspension of the Tribunal is indefinite as the submission of the report by the Ministers of Justice and Attorneys General in August 2012 will not guarantee the resumption of operations. This denies the people of SADC access to justice for an indefinite period of time.

The Association remains committed to engaging and dialoguing with the SADC leaders and governments to ensure that the Tribunal emerges from this process as a strengthened and effective regional judicial institution for the benefit of all the people of the region.

We therefore urge SADC leaders to undertake the review of the Tribunal in good faith for the maintenance of human rights and rule of law in the region.

We also urge the Ministers of Justice and Attorneys General to delegate the review of the legal instruments to an independent institution or person/s to allow for an impartial and uncompromised review.

Issued for and on behalf of the SADC Lawyers Association
By Mrs Thoba Poyo-Dlwati
President
8 June 2011.