



REPORT OF THE SADC PF STANDING COMMITTEE ON DEMOCRATISATION, GOVERNANCE AND HUMAN RIGHTS (DGHR) TO THE 49TH PLENARY ASSEMBLY SESSION, BASED ON THE VIRTUAL CAPACITY DEVELOPMENT SESSION FOR THE COMMITTEE THAT WAS HELD ON 13TH APRIL 2021 UNDER THE THEME “*THE ROLE OF PARLIAMENT IN PROTECTING CONSTITUTIONALISM AND THE RULE OF LAW IN SOUTHERN AFRICA: PROSPECTS AND CHALLENGES*”

Mr. President, I beg to move that this Plenary Assembly do adopt the Report of the Standing Committee on Democratisation, Governance and Human Rights to the 49th Plenary Assembly Session of the SADC Parliamentary Forum, laid on the table on 25th June 2021.

1.0 PREAMBLE

Mr President, the Standing Committee on Democratisation Governance and Human Rights (DGHR), guided by its mandate in terms of Rule 42 (d) of the SADC PF Rules of Procedure, convened its statutory meeting virtually on 13th April 2021, on the occasion of the SADC PF Standing Committees Committee during the 49th Plenary Assembly Session, under the theme *“The role of Parliament in protecting Constitutionalism and the Rule of Law in Southern Africa: Prospects and Challenges.”*

2.0 CREDENTIALS OF COMMITTEE MEMBERS

Nine (9) of the 15 representatives of the SADC PF Member Parliaments were present as follows:

PRESENT

i)	Hon. Jerónima Agostinho, Chairperson	Mozambique
ii)	Hon. Darren Bergman, Vice Chairperson	South Africa
iii)	Hon. Leepetswe Lesedi	Botswana
iv)	Hon. Mabulala Maseko	Eswatini
v)	Hon. Nts’alla Mafa	Lesotho
vi)	Hon. Christophe Diddiot Tsiliva	Madagascar
vii)	Hon. Deus Gumba	Malawi
viii)	Hon. Richard Labrosse	Seychelles
ix)	Hon. Dought Ndiweni	Zimbabwe

Apologies were received from the following representatives:

i)	Hon. Josefina P. Diakité	Angola
ii)	Hon. Apalata Ambo Bienvenu	DRC
iii)	Hon. Ashley Ittoo	Mauritius
iv)	Hon. Chushi Caroline Kasanda	Zambia

Two parliaments were yet to be constituted following general elections, namely Namibia and Tanzania.

3.0 WELCOME REMARKS BY THE CHAIRPERSON

In her opening remarks, the Chairperson of the Committee Hon. Agostinho observed that Constitutionalism and the Rule of Law lie at the centre of sustainable democracy and Parliaments are the fulcrum of protecting these. In this regard, she informed the meeting that Parliaments must use its constitutional mandate to ensure the observance of the various principles that underline constitutionalism and the rule of law. These principles, she noted, include separation of powers between the legislature, the executive and the judiciary; independence of the judiciary; due process or fair hearings for those charged with criminal offences; respect for individual rights; accountability in the governance process; equality under the law; strong constitutions with constitutional limits on power; human rights; an effective electoral system; commitment to gender equality; laws to protect minorities and other vulnerable groups; and a strong civil society, among others.

She further noted that as the most representative body in any democracy, Parliaments should not only champion for open and democratic societies but should also serve to ensure that citizen participation and consultation become the hallmark of public policy and decision-making processes.

Against this background, the Chairperson noted that SADC PF had organised the capacity development session on the role of Parliament in protecting Constitutionalism and the Rule of Law in Southern Africa for Members of Parliament from the DGHR Standing Committee, Members from other SADC PF Committees and national parliaments to:

- i) Raise the level of knowledge of Members of Parliament on the principles of Constitutionalism and Rule of Law in a democratic system;
- ii) Identify opportunities and challenges faced by Parliaments in fulfilling their role in protecting Constitutionalism and Rule of Law through sharing of comparative experiences;
- iii) Enhance the capacity of SADC Parliamentarians to carry out their constitutional responsibility in upholding and championing Constitutionalism and Rule of Law; and
- iv) Build consensus on priority areas for action to enhance the role of Parliament in protecting Constitutionalism and Rule of Law across SADC Member States.

The Chairperson concluded her remarks by expressing gratitude to the two experts, Professor Lovemore Madhuku and Hon. Justice Oagile Key Dingake who were invited to conduct the capacity building session. She also thanked partners, GIZ and Austrian Development Agency, for the financial support rendered for this event. She wished everyone fruitful deliberations and declared the meeting officially opened.

4.0 MOTION OF SOLIDARITY AND SUPPORT TO MOZAMBIQUE IN VIEW OF THE INSURGENCY

The Committee considered a Motion of Solidarity and Support to Mozambique in view of the insurgency in the northern parts of the country, which was moved by the Vice Chairperson, Hon. Bergman.

In deliberating on the Motion, the Committee expressed concern with the effects of the insurgency on citizens, in particular women and children. Accordingly, the Committee resolved to:

- (a) Express deep concern with the deteriorating security situation in northern Mozambique, where escalating hostilities were being reported, leading to fatalities, with nationals from all the SADC countries being affected;
- (b) Reiterate the importance of peace and security in Mozambique and SADC region for human security and economic, democratic consolidation and economic development;
- (c) Recall the Motion adopted by the 48th Plenary that called on SADC to provide back up to Mozambique to curtail the rebels;

- (d) Welcome the decision by the SADC Double Troika on 6th April 2021, to immediately deploy technical assistance to Mozambique to provide back up to the country's army;
- (e) Reiterate the importance of preserving life and for swift action to subdue the insurgents and ensure return to normalcy for the ordinary people and for commerce and trade;
- (f) Emphasise that Mozambique is a sister country in SADC and as such, whatever happens in Mozambique affects and should therefore, concern the entire region;
- (g) Implore SADC Member States to support each other and work together to bring the situation in Mozambique under control as the impact would be felt across the entire region; and
- (h) Recommend the resolutions of the Committee regarding the Motion on Solidarity and Support to Mozambique to the Plenary Assembly for its consideration and adoption.

5.0 PRESENTATIONS AND DELIBERATIONS ON “THE ROLE OF PARLIAMENT IN PROTECTING CONSTITUTIONALISM AND THE RULE OF LAW IN SOUTHERN AFRICA: PROSPECTS AND CHALLENGES.”

5.1 Background

The Committee received a presentation by Professor Lovemore Madhuku and an intervention by Justice Oagile Key Dingake on the role of parliament in protecting constitutionalism and the rule of law in Southern Africa, assessing the prospects and challenges.

The presentation highlighted that constitutionalism refers to a situation where there is adherence to the provisions of the Constitution, and it assumes that the Constitution itself has good provisions or limits the exercise of power and curtails the abuse of power. Constitutionalism, therefore, is about ensuring that there is limited governmental power and that there are checks and balances in the exercise of power within the confines of the Constitution.

On rule of law, it was explained that this implies equality before the law and as such, everyone follows the law and does nothing outside the law. This means there exist laws before exercise of power and the exercise of power should be derived from the law. However, it is not all the laws that subscribe to the rule of law. Draconian or undemocratic laws that take away the rights of citizens do not pass the test of the rule of law.

Regarding the role of Parliaments in protecting constitutionalism and the rule of law, it was emphasised that the legislature plays a pivotal role in safeguarding separation of powers between the three organs of state, namely, the legislature, the executive, and the judiciary. Parliament must exert checks and balances on the executive and not be a ‘rubber-stamp’ institution for democracy to thrive.

Another critical role of Parliament in protecting constitutionalism and rule of law is through legislating. Accordingly, Parliaments must not abdicate their primary responsibility of lawmaking by over-delegating this role as this would be an affront to constitutionalism and rule of law. Parliaments must also make sure that the content of the laws they make protect rather than undermine the rights of citizens. Parliaments should ensure that participatory democracy does not end with elections by ensuring genuine and meaningful public participation in lawmaking and other parliamentary processes. It was also highlighted that most constitutions in SADC, such as South Africa and Zimbabwe, for example, require Parliament to ensure genuine public participation in the legislative process. This is critical in ensuring that citizens have a say in matters that affect them.

In order to safeguard constitutionalism and rule of law, it is peremptory for Parliaments to develop internal mechanisms for ensuring compliance with the constitution. The measures should include establishing a committee that scrutinizes and analyzes legislation to ensure its compliance with the constitution and rule of law. Parliaments should also provide scope for the initiation of legislation by other organs of the state other than the executive, including private members' bills.

Parliaments also have the duty to perform exclusive constitutional role such as passing a vote of no confidence in government, scrutinising public appointments such as judges and commissioners who work for commissions that support democracy such as Electoral Commissions, impeachments, election of presidents.

Another very important and prominent role of Parliament is oversight, monitoring and accountability as it generally occurs in full view of the public. Parliament fulfills this role by demanding that government ministers come to parliament to account, subjecting government to parliamentary committees, receiving petitions by members of the public, considering reports of other constitutional bodies and ensuring that the judiciary is independent.

5.2 Recommendations

Having deliberated on the presentations, the Committee resolved as follows:

- i) *Urged* SADC PF to collaborate with partners such as SADC Lawyers Association to provide long-term SADC-wide capacity development initiatives for MPs and other stakeholders such as the judicial officers, executive members, and media on their role in promoting democracy, including through protecting constitutionalism and rule of law and to produce knowledge tools on the same.
- ii) *Urged* Member States to adhere to the SADC Treaty in developing their laws, rules and regulations aimed at consolidating constitutionalism and rule of law.

- iii) *Implored* MPs not blindly follow the dictates of political parties but rather be guided by their conscience since society relies on the good will of individual MPs.
- iv) *Urged* for a collaborative approach between MPs and civil society in conscientizing society on the broad concepts of the rule of law and constitutionalism, particularly in ensuring the enactment and implementation of legislation that guarantee separation of powers and empowering citizens to participate in the democratic process.
- v) *Urged* SADC PF to bridge the gap in citizen engagement by undertaking extensive awareness raising programmes in communities on key issues such as the role of Parliament, institutions that support democracy, independence of the judiciary, and other organs of the state in promoting constitutionalism and rule of law.
- vi) *Urged* Parliaments to play a key role in curbing since bad governance and corruption deprive communities of their rights and undermine the rule of law and constitutionalism.
- vii) *Urged* SADC PF to consider developing a Model Law on the Role of Parliaments in Promoting and Protecting Constitutionalism and Rule of Law in the SADC region and facilitate its domestication by Member Parliaments.
- viii) *Called* on SADC PF to strengthen its strategies for facilitating the domestication of Model Laws by Member States, including some monitoring mechanisms in order to close the implementation gaps that are currently in existence.
- ix) *Resolved* to convene an annual regional high-level conference on rule of law and protection of constitutionalism with different stakeholders including members of the executive, judiciary, MPs, media, civil society.

Hon. Hon. Jerónima Agostinho
CHAIRPERSON

Sheuneni Kurasha
COMMITTEE SECRETARY