



**REPORT OF THE SADC OF STANDING COMMITTEE ON
DEMOCRATISATION, GOVERNANCE AND HUMAN RIGHTS (DGHR) TO
THE 50TH PLENARY ASSEMBLY (GOLDEN JUBILEE) SESSION HOSTED
VIRTUAL BY THE PARLIAMENT OF THE KINGDOM OF LESOTHO FROM
10TH TO 12TH DECEMBER 2021**

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 50th Plenary Assembly Session of the SADC Parliamentary Forum, laid on the table on 10th December 2021.

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1.0 COMPOSITION OF THE COMMITTEE

The quorum for the meeting was confirmed with 11 out of 15 Members present. The Committee consisted of the following Members:

1. Hon. Jerónima Agostinho, Chairperson	Mozambique
2. Hon. Darren Bergman, Vice Chairperson	South Africa
3. Hon. Leepetswe Lesedi	Botswana
4. Hon. Mduduzi Matebula	Eswatini
5. Hon. Nts'alla Mafa	Lesotho
6. Hon. Tsiliva Diddiot Christophe	Madagascar
7. Hon. Deus Gumba	Malawi
8. Hon. Utaara Mootu	Namibia
9. Hon. Richard Labrosse	Seychelles
10. Hon. Selemani Jumanne Zedi	Tanzania
11. Hon. Dought Ndiweni	Zimbabwe

Apologies were received from the following Members:

Hon. Josefina P. Diakité	Angola
Hon. Balamage N'kolo Boniface	DRC
Hon. Ashley Ittoo	Mauritius
Designation of MPs was still pending after 2021 elections	Zambia

2.0 COMMITTEE TERMS OF REFERENCE

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 meeting for the 50th Plenary Assembly under the theme *“Peace, Security and Conflict Trends in the SADC Region: Strengthening Parliament’s Role in Conflict Prevention and Management.”* The meeting was held virtually on Wednesday 13th October 2021 from 09:30 to 13:00.

3.0 BACKGROUND

The Chairperson of the Committee, Hon. Jerónima Agostinho welcomed new Members of the Committee, namely Hon. Mduduzi Matebula of Eswatini, Hon. Utaara Mootu of Namibia and Hon. Selemani Jumanne Zedi of Tanzania. She indicated that the meeting was important as it accorded the Committee the opportunity to deliberate on issues of regional interest and concern pursuant to its mandate as stipulated in Rule 42(d) of the SADC PF Rules of Procedure and submit its report to the Plenary Assembly.

Regarding the theme of the meeting, Hon. Agostinho indicated that this was relevant and timely since peace and security were the *condicio sine qua non* for socio-economic development of the SADC region. She underscored that Member States would be unable to fully realise the objectives of regional socio-economic development, poverty eradication, and regional integration in the absence of peaceful, security and political stability.

The Chairperson commended SADC for the strides it had made towards conflict prevention and management, as well as human and state security within the territories of Member States, which had made Southern Africa one of the most peaceful and politically stable regions of the African continent. In

this regard, the Chairperson enumerated the various regional frameworks and institutions created by SADC to entrench cooperation and mutual trust in peace and security. She specifically cited the harmonised Strategic Indicative Plan for the Organ on Defence, Politics and Security (SIPO), which was the region's main implementation framework for the SADC Protocol on Politics, Defence and Security Cooperation and the SADC Mutual Defence Pact, among other instruments on peace and security.

The Chairperson indicated that the SADC region still faced several challenges related to peace and security and tackling them required collective and resolute efforts by all stakeholders. She cited such challenges as isolated armed conflicts, acute inequality, democracy and governance deficit, rising unemployment among young people and election violence, and added that the COVID-19 pandemic had accentuated the situation, thereby triggering tensions some of which had led to social unrest, looting and violence.

Hon. Agostinho underscored the critical role that legitimate and functioning Parliaments could play as long-term conflict prevention and management mechanisms. She added that the legislature served as the national forum where diverse issues affecting society were debated and through constant contact with the citizens they represented, Parliaments were able to detect early signs of conflict and facilitate appropriate timely responses.

The Chairperson challenged national Parliaments to ensure that legal frameworks of their respective countries were strengthened to facilitate the establishment of independent public institutions that promoted democracy and good governance in line with SDG 16. She also urged SADC PF to prioritise capacity building for MPs in conflict prevention and management in line with objective 3 of the SADC PF Strategic Plan (2019 – 2023).

On the issue of the Role of Parliaments in Promoting and Protecting Constitutionalism and the Rule of Law in the SADC, Hon. Agostinho underlined that the Committee needed to reflect on the matter in view of the deliberations and resolutions by the 49th Plenary Assembly on the same matter while considering the Committee's report. The Chairperson further clarified that the issue of particular concern was whether the development of a SADC Mode Law on the Role of Parliament in Promoting and Protecting Constitutionalism and the Rule of Law would infringe on the sovereignty of Member States.

The Chairperson expressed gratitude to the resource persons, namely Mr Jorge Cardoso, Director of the SADC Organ on Politics, Defence and Security Affairs whose attendance was coming at the back of the decision by the 41st SADC Summit on 17 August 2021, approving the transformation of SADC PF into a SADC Parliament; Justice Professor Oagile Key Dingake, former Judge of the High Court in Botswana, Residual Special Court for Sierra Leone, and the Supreme Court of Papua New Guinea; His Excellency Ambassador Said Djinnit, Special Advisor African Centre for the Constructive Resolution of Disputes (ACCORD); and Dr. Adane Ghebremeskel, Executive Manager - GIZ

Peace, Security and Governance Project. She also thanked GIZ and Austrian Development Agency for the financial support towards the hosting of the meeting.

4.0 SESSION I: REFLECTIONS ON THE ROLE OF PARLIAMENTS IN PROMOTING AND PROTECTING CONSTITUTIONALISM AND THE RULE OF LAW IN THE SADC REGION IN VIEW OF THE DELIBERATIONS AND RESOLUTIONS BY THE 49TH PLENARY ASSEMBLY

4.1 Presentation by Justice Dingake

The Committee received a presentation from Justice Dingake based on a policy paper prepared following the deliberations and resolutions by the 49th Plenary Assembly regarding the role of Parliaments in promoting and protecting constitutionalism and the rule of law in the SADC region. The presentation, *inter alia*, interrogated whether the proposal to develop a Model Law within the broader context of promoting and protecting constitutionalism and the rule of law in the region could infringe on the sovereignty of Member States given the diverse legal and government systems in different countries. The presentation also laid bare the various ways in which national parliaments could play a role in protecting the rule of law and defending the constitution.

Justice Dingake emphasised that the rule of law was fundamental for any functioning democracy since its tenets implied that governments were accountable by law and that everyone was equal before the law. It incorporated elements such as a strong constitution with limits on power, human rights, an effective electoral system, a commitment to gender equality, laws to protect minorities and vulnerable groups, and a strong civil society. He explained that an independent judiciary was the hallmark of the rule of law, given its role in protecting human rights, safeguarding the dignity of all citizens, and protecting institutions of accountability from potential obstruction and manipulation.

Justice Dingake highlighted that the SADC Treaty was unequivocally clear about its commitment to the rule of law and democracy. Similarly, the African Union (AU) had adopted instruments such as the African Charter on Democracy, Elections and Governance (ACDEG), which placed obligations on state parties to, among others, promote adherence to the principle of the rule of law premised on respect for and the supremacy of the constitution and constitutional order. He argued that it was, therefore, incumbent upon regional organisations that derived legitimacy from the SADC Treaty and AU statutes such as the SADC PF, to take the lead in upholding and strengthening the rule of law within the confines of their mandates. This could be achieved through developing regional normative frameworks and other initiatives that promoted democracy, good governance and affirmed respect for human rights. He also highlighted that SADC PF had in fact, inspired by the same trajectory, pioneered the development of normative standards,

including Model Laws in critical thematic areas of regional interest and concern such as HIV/AIDS, elections, and child marriages.

Justice Dingake explained that the Model Laws as part of soft law, were not binding on Member States and only carried persuasive power and as such it was inconceivable that their development could infringe or undermine the sovereignty of Member States. SADC PF's record in developing Model Laws even in critical and potentially sensitive political processes such as elections attested to the non-interference nature of its Model Laws.

Judge Dingake also highlighted the central role played by Parliaments play in upholding the rule of law through reviewing, debating and enacting legislation; and scrutinising government actions and holding the government accountable. He affirmed that legislative work and scrutiny of the executive would be enhanced if approached from the rule of law perspective and in an environment where Parliamentarians were knowledgeable about the rule of law and constitutionalism.

5.0 SESSION II: CONSIDERATION OF THE THEME: “PEACE, SECURITY AND CONFLICT TRENDS IN THE SADC REGION: STRENGTHENING PARLIAMENT’S ROLE IN CONFLICT PREVENTION AND MANAGEMENT.”

5.1 Presentation by the Director of the SADC Organ on Politics Defence and Security Affairs, Mr Jorge Cardoso

In presentation Mr Cardoso stated that the SADC region continued to enjoy sustained peace, security and stable political environment despite low level political intra-state tensions and the emergence of acts of terrorism in a few Member States. He indicated that SADC had deployed its Standby Force – the SADC Mission in Mozambique (SAMIM) – to quell the terrorism threat in Cabo Delgado. Similarly, SADC had deployed the Force Intervention Brigade (FIB), in support of the United Nations Organisation Stabilisation Mission (MONUSCO), to counter the negative forces in the Democratic Republic of Congo (DRC). The Director also informed the meeting that, as part of its long-term strategy towards durable peace, SADC was also strengthening Member States’ mediation-support capacities for peaceful resolution of intra-state conflicts, providing capacity building for conflict prevention and preventative diplomacy mechanisms, and bolstering the national Infrastructures for Peace. This he said would guarantee SADC’s preparedness for pro-active responses to conflict situations, thereby enabling the fulfilment of the regional integration agenda espoused in the SADC 2050 vision and the Regional Indicative Strategic Development Plan (RISDP) 2020-2030.

The Director highlighted the importance of establishing Infrastructure for Peace (I4P) in communities by ensuring the establishment of effective institutions, processes, policies, and constructive relationships that contribute to peace building. In this regard he commended Member States for having established different Peace Infrastructures, including local peace committees; national peace platforms; government departments or ministries

that support and develop strategies for peacebuilding; conflict analysis and early warning and response systems; development of conflict management skills including through insider mediators; as well as policies and initiatives promoting a shared culture of peace.

Mr Cardoso observed that Parliaments served not only as platforms for dialogue, unity and reconciliation but also played a vital role in conflict prevention and resolution. He emphasised that SADC PF was one of the key strategic institutions forming SADC's regional I4P.

The Director indicated that SADC had since 2020, embarked on a mapping exercise for regional and national I4Ps to assess the human, technical and financial capacities and challenges of regional and national I4Ps in peacebuilding, conflict prevention and resolution. Eight (8) Member States had since been covered, namely DRC, Lesotho, Malawi, Mozambique, Namibia, South Africa, Zambia and Zimbabwe. Mr Cardoso informed the meeting that the regional mapping exercise had revealed that SADC PF was an important I4P – not only was it a representative institution for the SADC citizenry but it also served as a valid interlocutor for the political and security needs and aspirations of citizens. SADC PF also brought national Parliaments together across political party lines and national boundaries in pursuit of strengthening SADC's capacity to address peace and security issues. SADC PF had also been most visible through its involvement in election observation missions and active promotion of electoral standards such as contained in the SADC Model Law on Elections, to mitigate the risks of electoral related conflicts.

The Director urged SADC PF to consider building upon its current portfolio on the role of Parliament in conflict prevention and management by deepening perspectives on the following critical issues:

- (i) Empower national Parliaments as actors in conflict prevention, mediation and post-conflict recovery;
- (ii) Promote the involvement of national Parliaments in conflict prevention and the silencing of guns;
- (iii) Enhance the legislative and oversight capacity of national Parliaments to prevent and manage conflicts and/or electoral violence;
- (iv) Strengthen collaboration with civil society organisations to respond to the challenges of gender-based violence (GBV) in the region;
- (v) Share knowledge and lessons learned; and
- (vi) Facilitate the participation of Members of Parliament in mediation and conflict analysis skills trainings offered by the SADC Secretariat and other organisations, in order to strengthen support to mediation processes in the region.

SADC PF was also urged to consider promoting awareness among citizens and their representatives regarding regional protocols related to the prevention, combatting and eradication of the illicit manufacturing of firearms, ammunition and other related materials which are linked to drug trafficking,

terrorism, transnational organised crime, mercenary and other violent criminal activities. The Director proposed the development of Model Laws in these areas as it would help to combat contemporary threats of proliferation of small arms and light weapons (SALW) in the SADC region and promote best practices and standards for prevention and combating illicit proliferation, circulation and trafficking of firearms, ammunitions and related materials.

Regarding the transformation of the SADC PF into a SADC Parliament and its roadmap which were approved by the SADC Summit on 17 August 2021 in Malawi, the Director explained that a Protocol stipulating the composition, powers, functions and procedures of the Parliament would be drafted and the SADC Treaty would be amended to enable the Regional Parliament to become a SADC institution. Mr Cardoso celebrated the historic decision and added that it provided a solid foundation for collaboration between SADC PF and other SADC institutions towards strengthening the region's capacity to sustain peace and prevent or manage conflicts and ensure political and security stability, and consolidation democracy. He also explained that the establishment of the SADC Parliament would amplify the voice of ordinary citizens into the regional integration process. The Director also implored the region to prioritise building a critical mass of cross-sectoral mediators, conflict analysts and facilitators at national and regional levels to strengthen SADC's peace and security architecture in the long term.

5.2 Presentation by Ambassador Said Djinnit, Senior Political Advisor, ACCORD and Former African Union Commissioner for Peace and Security

Ambassador Djinnit congratulated SADC PF and national Parliaments for the milestone of having reached the Golden Jubilee Plenary Assembly Session. He explained the nexus between democratisation, governance and human rights on one hand conflict prevention and management on the other, and added that bad governance, disregard for human rights, failure to consolidate democracy, and unconstitutional changes of governments, among others, constituted some of the triggers of the many violent conflicts and societal tensions that SADC and the African continent had witnessed.

The Ambassador observed that since the early 1990s Southern African States had undergone substantial political transformations which had seen some of the countries shift from one-party states to multi-party democracies. He added that this had created fertile ground for the establishment of a rules-based governance system characterised by constitutional democracy and underpinned by regular free and fair elections, enjoyment of freedoms and rights and peaceful transfer of power based. He however, pointed out that the changes had not been consistently smooth throughout the region as many countries were still struggling to entrench and institutionalise democracy and a culture of democratic practice was taking longer to evolve in some parts of the region.

Ambassador Djinnit also highlighted that some of the measures put in place to curb the spread of COVID-19 had subverted the work of democratisation

in the SADC region. For instance, the general lack of economic transformation in many societies in the region, and the economic destruction brought by COVID-19, had increased the already constrained economic opportunities. Consequently, political office, which came with financial rewards, had more than likely become a highly contested terrain, sometimes with violence which often contributed to national instability with a potential for regional spill-over effects.

The Ambassador also articulated how inequalities and poor governance, particularly of natural resources, had eroded social cohesion and triggered tensions and conflicts in communities where the exploitation of these natural resources had not transformed into economic development and job creation for the local people.

Ambassador Djinnit reiterated that regional parliamentary bodies such as the SADC PF ought to also consider, and devise strategies to enhance the role of Parliamentarians in conflict resolution against the history of domination by the Executive and civil society, to the exclusion of Parliamentarians. He thus urged SADC PF to enhance its conflict prevention and peacebuilding efforts across the region by for instance, deploying information sharing and good will missions to the countries affected by conflicts or even tensions.

5.3 Presentation by the Dr Adane Ghebremeskel, Executive Manager - GIZ Peace, Security and Governance Project.

In his presentation Dr Ghebremeskel explained that there was convergence between the conventional roles of Parliament of representation, law making and oversight and their responsibility in conflict prevention. He explained that representational role provided a platform where diverse interests and views of society were articulated, leading to compromises. The compromises were formulated into laws and policies that were used by different societal actors as references to guide their behaviour. Subsequently, societal actors, especially the ones that acted on behalf of the state had to be brought to account on what, why and how they acted on all public issues. He further explained that Parliament's institutional arrangements and operational modalities had rendered the institution optimally positioned to play a key role in conflict prevention and management through early warning and early responses.

6.0 DELIBERATIONS AND RECOMMENDATIONS

6.1 Recommendations on the Role of Parliament in Protecting and Promoting Constitutionalism and the Rule of Law

On the Role of Parliament in Promoting Constitutionalism and the Rule of Law, the Committee deliberated and resolved to recommend to the Plenary Assembly as follows:

- (i) **Reiterated** that the development of the Model Law on the Role of Parliament in Promoting and Protecting Constitutionalism would not interfere with or undermine the sovereignty or internal processes of

Member States since Model Laws were not binding on Member States and countries had the liberty to choose the elements of the Model Law that would be applicable to their respective contexts.

- (ii) **Resolved** to request the Plenary Assembly to rescind its resolution during the 49th Plenary Assembly and allow the Standing Committee on Democratisation, Governance and Human Rights, in consultation with stakeholders, to commence the process of developing a SADC Law Model Law on the Role of Parliament in Promoting and Protecting Constitutionalism to assist Member States to comply with their regional legal commitments and obligations regarding constitutionalism and the rule of law.
- (iii) **Reiterated** that Model Laws were useful to modern states in various ways including setting of best practice and benchmarking since most of the standards contained therein had a universal bearing and provided a cheaper and optimum way of gaining technical capacity.
- (iv) **Reaffirmed** the central role that National Parliaments play in upholding the rule of law and protecting constitutionalism through reviewing, debating and enacting legislation; and scrutinising government actions and holding the government accountable.

6.2 Recommendations on the Role Parliament in Conflict Prevention and Management

Regarding the Role of Parliament in Conflict Prevention and Management the Committee deliberated and resolved to recommend to the Plenary Assembly as follows:

- (i) **Commended** SADC for deploying its Standby Force – the SADC Mission in Mozambique (SAMIM) – to quell the terrorism threats in Cabo Delgado and for deploying Force Intervention Brigade (FIB), in support of the United Nations Organisation Stabilisation Mission (MONUSCO), to counter the negative forces in the Democratic Republic of Congo (DRC).
- (ii) **Commended** SADC for implementing various initiatives aimed at ensuring that the region continued to enjoy sustained peace and security and that Member States were politically stable.
- (iii) **Urged** SADC to ensure the implementation of a long-term strategy towards durable peace including strengthening Member States' mediation-support capabilities, conflict prevention and preventative diplomacy mechanisms, and bolstering the national I4P.
- (iv) **Encouraged** SADC to strengthen its preparedness for pro-active responses to conflict situations to enable the region to fulfil the regional integration agenda espoused in the SADC 2050 vision and the RISDP 2020-2030.
- (v) **Reiterated** the importance of establishing I4P in local communities of Member States by ensuring the establishment of effective institutions, processes, policies, and constructive relationships that contribute to peace building.
- (vi) **Commended** Member States for having established different Peace Infrastructures, including local peace committees; national peace platforms; government departments or ministries that support and

develop strategies for peacebuilding; conflict analysis and early warning and response systems; development of conflict management skills including through insider mediators; as well as policies and initiatives that promoted a shared culture of peace.

- (vii) **Reaffirmed** the importance of Parliaments as I4P since they served not only as platforms for dialogue, unity and reconciliation but also as vital instruments for conflict prevention and resolution.
- (viii) **Reiterated** the centrality of SADC PF as a vital component of SADC's regional I4P since it is a representative institution for the SADC citizenry and therefore, a valid interlocutor for the political and security needs and aspiration of the public and a symbol of political diversity.
- (ix) **Commended** SADC PF for being visible in its involvement in election observation missions and active promotion of electoral standards such as those contained in the SADC Model Law on Elections, to mitigate the risks of electoral related conflicts.
- (x) **Encouraged** the SADC Secretariat to engage SADC PF and national Parliaments during the mapping exercise for regional and national I4P to establish a baseline regarding their human, technical and financial capacities and gaps in peacebuilding, conflict prevention and resolution.
- (xi) **Urged** SADC PF to consider building upon its current portfolio on the role of Parliament in conflict prevention and management by deepening perspectives on the following critical issues:
 - (a) Empower national Parliaments as actors in conflict prevention, mediation, and post-conflict recovery.
 - (b) Promote the involvement of national Parliaments in conflict prevention and the silencing of guns.
 - (c) Enhance the legislative and oversight capacity of national Parliaments to prevent and manage conflicts and/or electoral violence.
 - (d) Strengthen collaboration with civil society organisations to respond to the challenges of GBV in the region.
 - (e) Share knowledge and lessons learnt for peer learning and benchmarking.
 - (f) Facilitate the participation of Parliaments in mediation and conflict analysis skills through trainings offered by the SADC Secretariat and other organisations, in order to strengthen support to mediation processes in the region.
- (xii) **Encouraged** SADC PF to sensitise citizens and their representatives regarding regional protocols related to the prevention, combatting and eradication of the illicit manufacturing of firearms, ammunition and other related materials which are linked to drug trafficking, terrorism, transnational organised crime, mercenary and other violent criminal activities.
- (xiii) **Urged** SADC PF to develop a regional Model Law on the Control of Small Arms and Light Weapons (SALW) to assist Member States in combating the proliferation of small arms and ammunition in SADC and promote

best practices and standards to control the circulation and trafficking of firearms, ammunitions and related materials.

- (xiv) **Welcomed** the approval of the transformation of the SADC PF into a SADC Parliament by the SADC Summit on 17 August 2021 in Malawi and added that this would pave way for enhanced collaboration between SADC PF and other SADC institutions in strengthening the region's capacity to sustain peace and prevent or manage conflicts and consolidate democracy.
- (xv) **Reiterated** that the establishment of the SADC Parliament would also serve to amplifying the voice of ordinary citizens in the regional integration process.
- (xvi) **Urged** SADC to prioritise building a critical mass of cross-sectoral mediators, conflict analysts and facilitators at national and regional levels to strengthen the region's peace and security architecture in the long term.
- (xvii) **Reiterated** the need for SADC PF and other regional parliamentary to devise strategies to enhance the role of Parliamentarians in conflict resolution against the history of a dominant role by the Executive and civil society, to the exclusion of Parliamentarians, through deploying information sharing and good will missions to the countries affected by conflicts or even tensions.

I submit.

Hon. Jerónima Agostinho
CHAIRPERSON

Sheuneni Kurasha
COMMITTEE SECRETARY