



**REPORT OF THE SADC PF STANDING COMMITTEE ON
DEMOCRATISATION, GOVERNANCE AND HUMAN RIGHTS (DGHR) TO THE
53RD PLENARY ASSEMBLY**

**THEME: TOWARDS A RIGHTS-BASED APPROACH TO THE CONDUCT OF
BUSINESS WITHIN THE NATURAL RESOURCES SECTOR IN THE SADC
REGION: WHAT CAN PARLIAMENTS DO?**

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 53rd Plenary Assembly Session of the SADC Parliamentary Forum, laid on the Table on 4 July 2023.

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1.0 COMPOSITION OF THE COMMITTEE

The Committee consisted of the following Members:

1. Hon. Dought Ndiweni, Chairperson	Zimbabwe
2. Hon. Pedro Sebastiao	Angola
1. Hon. Leepeetswe Lesedi	Botswana
3. Hon. Thalie DASYO MOKFE Proxy of Hon. Chikez Diemu Ghislain	DRC
4. Hon. Mduduzi Matsebula,	Eswatini
5. (TBA)	Lesotho
6. Hon. Tsiliva Didiot Chistophe	Madagascar
7. Hon. Hon. Leonard Mwalwanda	Malawi
8. Hon. Jerónima Agostinho	Mozambique
9. Hon. Ashley Ittoo	Mauritius
10. Hon. Utaara Mootu	Namibia
11. Hon. Richard Labrosse	Seychelles
12. Hon. Darren Bergman	South Africa
13. Hon. Selemani Jumanne Zedi	Tanzania
14. Hon. Victor Lumayi	Zambia

2.0 TERMS OF REFERENCE

The Standing Committee on Democratisation, Governance and Human Rights (DGHR), was guided by its mandate in terms of Rule 42 (d) of the SADC PF Rules of Procedure.

3.0 NUMBER OF MEETINGS HELD AND MEETING DATES

The DGHR Standing Committees held its meeting on 9th May 2023. The meeting was held under the theme: *“Towards a Rights-Based Approach to the Conduct of Business Within the Natural Resources Sector in the SADC Region: What Parliamentarians Can Do?”*

4.0 BACKGROUND

A rights-based approach to the conduct of business in the extractive sector was relevant to Southern Africa in view of the region’s endowment with both solid and liquid mineral resources. If properly utilised, these resources could be a boon for the progressive realisation of environmental, economic, social, and cultural rights, including supporting social protection programmes, creating jobs, eradicating poverty, and reducing inequalities. However, the exploitation of natural resources in Southern Africa, like elsewhere on the African continent, had often been associated with human rights violations and enormous environmental damage. The multinational or transnational corporations (TNCs) operating in the sector had the tendency to disregard human and community rights, resulting in flagrant violations of environmental, labour, health and human rights and, in some cases, deaths.

Unfortunately, the current legislative frameworks and state institutions mandated to regulate corporate conduct to safeguard human and community rights were weak, leaving communities vulnerable. Globalisation and the transboundary nature of TNCs operations were aggravating the situation by creating an unbalanced power relation between the state and TNCs. Territorial regulation by individual countries had become impracticable and had created more complex gaps in natural resource governance.

The need to transition to renewable energies had triggered increased demand and exploitation of mineral resources in Southern Africa as the world raced towards net zero emission targets. The decarbonisation of the energy and transport sectors, for instance, required minerals like lithium, cobalt and copper to manufacture batteries and other green technologies. The SADC region was home to a significant share of these critical minerals: DRC was producing about 70% of the world's cobalt; South Africa had the largest share of manganese reserves; Mozambique had significant shares of graphite, and Zimbabwe had largest deposits of lithium in Africa.

There was need to maximise the potential of the region's transitional minerals for the benefit of citizens and significant contribution to the SADC Vision 2050, Africa's Agenda 2063 and the UN sustainable development agenda. There was also need fully consider the human rights impact of mining projects and to implement remedies on the entire transitional minerals value chain in order to avoid perpetuation of violation of community rights with no benefits.

The existing voluntary frameworks for the protection and fulfilment of human rights in business such as the UN Guiding Principles on Business and Human Rights had been ineffective due to their voluntary nature. This was the reason why the resolution, sponsored by South Africa and Ecuador, by the 26th session of the UN Human Rights Council in 2014, proposing an international legally binding instrument on TNCs and other business enterprises was a major milestone.. Similarly, the decision by the 74th Ordinary Session of the African Commission on Human and People's Rights adopting a resolution on Business and Human Rights in Africa on 7th March 2023 was a landmark for Africa in its quest to ensure TNCs' accountability and access to remedies for violation of business-related human rights.

Parliamentarians were central in promoting the concept of business and human rights through their legislative, representative and oversight roles. In this regard, legislators should be supported to fully participate in the binding treaty development processes at continental and international levels. Parliamentarians also had the capacity to rally their respective executive arms to join other SADC Member States that were already advocating for a strong, legally binding international instrument.

Collaboration between MPs and civil society was critical in enhancing the capacity of MPs in business and human rights and in buttressing evidence-based approaches to promoting respect for human rights in the conduct of business within the natural resources sector in the SADC region.

Against the above background, the Committee considered various issues under the Committee's ambit and held a training session to expose Parliamentarians the concept of business and human rights. The training also served to update the parliamentarians on key developments on the negotiations for the legally binding instrument on business and human rights and why it was important for the SADC region.

5.0 SUMMARY OF PRESENTATIONS ON THE THEME

5.1 Introduction

The presentation highlighted that traditionally, there was a clear divide between human rights and business – human rights were the preserve of government as guided by Human Rights Law while business was the preserve of companies guided by Business Law. However, there was a growing shift as the boundary between business and human rights was increasingly becoming blurred and some corporate practices and investments were associated with human rights abuses. Globalisation, increased FDI and market liberalisation had made the power of corporations more pronounced and exposed the limited capacity of the state. It was also highlighted that although corporates had introduced initiatives such as corporate social responsibility and self-regulation standards and guidelines to project good corporate behaviour, these lacked adequate accountability mechanisms.

5.2 Why Business and Human Rights in the Natural Resources Sector

The presentation quoted the former UN Special Representative on Business and Human Rights, John Ruggie who saliently observed that extractive companies had a history of adverse impact on human rights like resettlement of communities without adequate consultation and compensation; environmental degradation which affected health, livelihoods and access to clean water; and forced labour, rape and even extrajudicial killings under the pretext of protecting company assets.

The presentation also highlighted that natural resources were critical to the production of basic human needs including energy, consumer goods and food and as such, their use, development and depletion were critical. They could be a great source of wealth for both governments and local communities and bring benefits to all citizens. However, in practice, investments in oil, gas, coal, minerals, renewable energy, and large-scale agriculture were often entwined with human rights abuses and the SADC region had experienced its fair share of such abuses dating back to the days of colonialism and apartheid. It was

also indicated that the increasing need for and exploitation of critical minerals which the SADC region had in abundance had the potential to trigger an increase in these abuses.

5.3 Voluntary Business and Human Rights Frameworks

The presentation outlined the various frameworks that had emerged to try and address the challenges, including the United Nations Guiding Principles on Business and Human Rights (UNGPs). The UNGPs required states to protect citizens and communities against human rights abuses by third actors through policies, regulation and adjudication while business had the responsibility to respect human rights across the mining value chain. Victims, on the other hand, needed to have access to judicial, state and non-state remedies in case of human rights abuses.

5.4 Towards a Legally Binding Instrument to regulate TNCs and other Business Enterprises

The presentation highlighted that the existing voluntary mechanisms were not effective as the global south was failing to control TNCs, which left communities exposed to rights abuses. This had precipitated the call for a legally binding international instrument to regulate the activities of TNCs and other business enterprises. Accordingly, the UN Human Rights Council had passed a resolution for the drafting of an international legally binding instrument on TNCs and other business enterprises which was sponsored by Ecuador and South Africa. The process was continuing under the intergovernmental Working Group at the UNHRC in Geneva, chaired by Ecuador. It was also indicated that the process was very highly contested, with relentless opposition from the global north led by the United States of America, the EU bloc, Canada and Australia. The global south was insistent, citing the defectiveness of the current voluntary frameworks.

Some of the critical components of the binding instrument which would be in SADC's interest included the following:

- Gender Justice - by building an effective tool for corporate accountability by incorporating an African gender perspective and building an effective tool for corporate accountability.
- Free, Prior, Informed Consent by Affected Communities - by entrenching the right to free, prior, informed consent of affected communities rather than mere consultation.
- Climate and Environmental Justice Approach
- Scope of Application and Adjudicative Jurisdiction - by shifting the focus from the nature of the enterprise to its activities to enable jurisdiction provisions to be extended to allow for legal suits to be brought wherever a corporation had an operational presence.

6.0 DELIBERATIONS AND RECOMMENDATIONS

During the subsequent deliberations, the Committee resolved to recommend to the Plenary Assembly to:

- i) **Reaffirm** the centrality of Parliamentarians in advancing the concept of business and human rights in the extractive sector in Southern Africa to ensure that TNCs complied with human rights and environmental laws and that remedies were available and accessible to citizens and communities in case of violations;
- ii) **Urge** SADC Parliamentarians to raise awareness among stakeholders in their respective countries, including the among relevant government ministries, regarding the UN Binding Treaty on Business and Human Rights and encourage robust participation in the process to ensure that the final outcome would be inclusive, covering all human rights in order to curb corporate impunity of TNCs;
- iii) **Urge SADC** Parliamentarians to prioritise the strengthening of the oversight function of Parliament by supporting the process for the adoption of the binding treaty as this would enhance accountability by the government in discharging its regulatory role and establish effective measures to protect States from corporate capture;
- iv) **Call** on SADC Parliaments to strengthen the representative role of SADC legislators by amplifying their voice in the ongoing processes towards the adoption of the binding treaty on business and human rights, leveraging collaboration with partners including civil society organisations;
- v) **Encourage** SADC PF Secretariat to, in line with the already entrenched Model Law making approach, explore the feasibility of developing model textual provisions for the binding treaty which serves as a benchmark for negotiations and subsequent domestication at national level;
- vi) **Call** on SADC national Parliaments to curb corporate impunity through strong legislation at the national level;
- vii) **Urge SADC** Parliamentarians to support the African Commission on Human and People's Rights' resolution on Business and Human Rights in Africa and advocate for its speedy implementation to ensure accountability and access to remedy for business-related human rights violations in Africa, particularly for the marginalised and vulnerable populations;
- viii) **Urge** SADC Parliaments to leverage their mandate to advocate for the alignment of regional natural resources governance frameworks with

the Business and Human Rights Concept and for the development of National Action Plans on Business and Human Rights;

- ix) **Urge** the SADC PF Secretariat to prioritise the training of MPs in business and human rights through collaboration with partners in order to buttress evidence-based approaches in promoting the respect of human rights in the conduct of business within the natural resources sector in the SADC region; and
- x) **Call** for sustained collaboration between SADC PF and the Zimbabwe Environmental Law Association (ZELA), the Centre for Applied Legal Studies (CALS) Wits University, the African Coalition for Corporate Accountability (ACCA), and the Business and Human Rights Resource Centre (BHRRC) to ensure that the training of MPs in Business and Human Rights was undertaken.

Hon. Dought NDIWENI
CHAIRPERSON

Sheuneni KURASHA
COMMITTEE SECRETARY

7.0 APPENDICES

APPENDIX I – LIST OF OFFICIALS

Boemo Sekgoma, Secretary General	SADC PF Secretariat
Sheuneni Kurasha, Committee Secretary	SADC PF Secretariat
Paulina Kanguatjivi	SADC PF Secretariat
Thoko Gumedze, staff	Eswatini
Jaime Ezequiel Numaio, staff	Mozambique
Edna Mafuruse, SRHR Researcher	Zimbabwe
Eunice Kajibanga, staff	Angola
Marcellin Makitukeba, staff	DRC

APPENDIX II – RESOURCE PERSONS

Ms Josephine Chiname	Zimbabwe	Environmental Law Association (ZELA)
Ariella Scher		Centre for Applied Legal Studies, Wits University
Anesu Dera		Centre for Applied Legal Studies, Wits University