



REPORT ON THE JOINT SITTING OF THE SADC PF STANDING COMMITTEES UNDER THE THEME: “PARLIAMENTS ROLE IN LEGISLATING FOR STRATEGIC AND SENSITIVE ASSETS TAKING INTO ACCOUNT THE SECURITY OF THE NATION, WHILST ENCOURAGING DIRECT INVESTMENTS” HELD AT THE RADISSON HOTEL & CONVENTION CENTRE OR TAMBO, JOHANNESBURG, SOUTH AFRICA, ON TUESDAY, 9TH MAY 2023

Mr. President, I beg to move that this Plenary Assembly do adopt the Report of the Joint Sitting of Standing Committees on Food, Agriculture and Natural Resources, Standing Committee on Trade, Industry, Finance and Investment, Standing Committee on Human and Social Development and Special Programs and 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 JOINT COMMITTEE

The Joint Committee consisted of the following Members:

Hon. Domingos Mussokola	Angola
Hon. Ruth Adriano Mendes	Angola
Hon. Pedro Sebastiao	Angola
Hon. Dithapelo Keorapetse	Botswana
Hon. Leepeetswe Lesedi	Botswana
Hon. Friction T. Leuwe	Botswana
Hon. Muber Thoniot Serge	DRC
Hon. Dsyo Mokfe	DRC
Hon. Gabriel Kazad Ngoy	DRC
Hon Nadine Mangabu Luabeya	DRC
Hon. Princess Phumelele Dlamini	Eswatini
Hon. Mduduzi Matsebula	Eswatini
Hon. Lovanirina Célestin Fiarovana	Madagascar
Hon. Ramarosoia Emiline Rakotobe	Madagascar
Hon. Lova Herizo Rajaobelina	Madagascar
Hon. Christophe Tsiliva Diddiot	Madagascar
Hon. Ishmael Ndaila Onani	Malawi
Hon. Francis Lucky Phisso	Malawi
Hon. Leonard Mwalwanda	Malawi
Hon. Rachel Zulu	Malawi
Hon. Jeronima Agostinho	Mozambique
Hon. Carlos Moreira Vasco	Mozambique
Hon. Carlos Manuel	Mozambique
Hon. Marie Joanne Tour	Mauritius
Hon. Marie Genevieve S. Anquetil	Mauritius
Hon. Agnes M. Kafula	Namibia
Hon. Vipuakuje Muharukua	Namibia
Hon. Utaara Mootu	Namibia
Hon. Phillipus Wido Katamelo	Namibia
Hon. Anne Rosie Bistoquet	Seychelles
Hon. Richard Marc Labrosse	Seychelles
Hon. Regina Lucia Esparon	Seychelles
Hon. Rocky Joseph Uranie	Seychelles
Hon. Desmond Lawrence Moela	South Africa
Hon. Darren Bergman	South Africa
Hon. Seiso Joel Mohai	South Africa
Hon. Ntombovuyo V. Mente-Nkuna	South Africa
Hon. Selemani Jumanne Zedi	Tanzania
Hon. Kassim Hassan Haji	Tanzania
Hon. Dr. Alfred James Kimea	Tanzania
Hon. Hawa Subira Mwaifunga	Tanzania
Hon. Shally Josepha Raymond	Tanzania
Hon. Christine Mutinta Mazoka	Zambia
Hon. Victor Lumayi	Zambia
Hon. Julien Nyemba	Zambia

Hon. Kalalwe Mukosa
Hon. Tambudzani Mohadi
Hon. Paurina Mpariwa
Hon. Anele Ndebele
Hon. Dought Ndiweni

Zambia
Zimbabwe
Zimbabwe
Zimbabwe
Zimbabwe

2.0 BACKGROUND

In the last decades, many countries have eliminated most barriers to trans-border capital flows and have abolished exceptions to national treatment for the acquisition, ownership, control, or operation of national strategic or sensitive assets by foreigners. This has created economic opportunities for host economies and multilateral enterprises to abundantly benefit. However, these opportunities may be tainted with risks including those related to the host country's essential security interests.

For decades, countries worldwide have had arrangements to review, assess and address potential national security risks arising from specific foreign direct investments. In the 1990s, the Foreign Direct Investment Ratio was only around 7% against around 40% Gross National Product, largely because investment largely took place among allies. However, parameters today are seemingly different with world FDI to GDP ratios increasing six-fold, with advanced and transitioning economies opening to more foreign capital. Many these countries begun to have growing concerns about owners of certain assets or industries, as they feared that malicious owners could sabotage or withhold access to "critical infrastructure", especially when assets are state-owned. With the following being among key concerns: -

- Concerns relating to technological changes and the growing sensitivity and quantity of sensitive data;
- Concerns of the more assertive stance of some countries in the global economy and strategic competition;
- Concerns about natural resources sustainability and generation equity; and
- Debt servicing from foreign countries to build capital infrastructure taking the same infrastructure as guarantee for repayment.

These concerns have seen more of these countries begin to complement, expand, or replace, traditional authorisation requirements in sectors considered sensitive, with new and more comprehensive policies that address the security risks associated with inward investment.

In Africa on the other hand, most countries have not comprehensively come up with policies or enacted laws to ensure sustainability of investments coming into their countries, especially those impacting or involving their natural resources, sensitive infrastructure, or advanced technology. Most have opted for piece meal enactments, in for example, defense and security laws, land laws, company laws, financial management laws, securities law, etc. Many African countries have rather stayed pre-occupied with ensuring big direct investments from foreign countries into their countries-guaranteeing and protecting such investments, and assuring without tight controls, the externalization of foreign exchange earned; save those involving corruption, money laundering and terrorism financing, etc.

World over, the policy area for investments in natural resources, advanced technology, and pharmaceuticals, etc. is fast changing with more

restrictions, access limitations being imposed, and compliance being strictly monitored. Despite these rapid global changes and enhanced protectionist measures, Africa still lags behind, except for a few countries, in legislating stringent legal rules controlling investments in certain national strategic and sensitive assets and advanced technologies by foreigners, without much consideration to security concerns.

1.0 PARLIAMENTS ROLE IN LEGISLATING FOR STRATEGIC AND SENSITIVE ASSETS TAKING INTO ACCOUNT THE SECURITY OF THE NATION, WHILST ENCOURAGING DIRECT INVESTMENTS”.- PRESENTATION BY MRS. EVA VEIGA JHALA

The Consultant made a presentation to the MPs of the Joint Session which covered the following key components:

- The Historical and Regional Historical Background and Perspective on Legislation and Policy on the Protection of Strategic and Sensitive Assets
- Africa’s progress on Investment Policies Addressing Risks to Essential Security Interests
- Changing Policies Relating to Investments in National Strategic and Sensitive Assets
- Addressing Potential National Security Risks
- Addressing Investments in the Face of Potential National Security Risks
- Context of Transformational Reforms
- Parliament's Role in Legislating for Strategic and Sensitive Assets
- SADC-PF’s Facilitatory Role in creating a Model Law for the Protection of Strategic and Sensitive Assets

2.0 MEMBER STATES DELIBERATIONS AND RECOMMENDATIONS

The joint session of committees deliberated as follows:

2.1 Joint Session Chairperson

The Chairperson of the Joint Session made general comments on effective governance and controls in natural resource management and the protection of strategic and sensitive assets. The chairperson reiterated the important role local academia play in policy and legislation and the need for reforms in the conditionalities of Foreign Direct Investment in Africa.

2.2 Member of Parliament’s Submissions

The following were the general comments and observations of the various SADC-PF countries present at the meeting:

ZAMBIA

Zambia appreciated the presentation and acknowledged the need to protect Africa's wealth. The Member of Parliament (MP) submitted that there is urgent need for the House to submit to the SADC-PF Plenary Session the need to create a model law that will help the region safeguard the interests of its people, enhance food security, and increase the regions sovereignty and command on its strategic resources, at a global level.

MALAWI (1)

Malawi submitted that, as a continent, Africa remains poor because as a people, Africans fear their own worth, sit on their wealth and believe they cannot manage it on their own, therefore, calling on foreign investors to do this on their behalf, leaving its people in poverty and at the mercy of the foreign investors. The MP further called for better governance of natural resources by African leaders, and the need for them to negotiate better conditions around foreign debt, and infrastructure investments while addressing their national and regional challenges head-on. He further reiterated the need for more regional trade and transactions between SADC member states.

TANZANIA (1)

Tanzania appreciated the progress and works made by respective Parliaments, giving Tanzania as an example. An incident was mentioned where a mining company set up close to a river that was experiencing changes in colour from pollution and was reprimanded by the area Member of Parliament and action against the Mining company is being taken to address the impacts on the water resources and health of the people in that area.

The MP further cited the following as key challenges in the management of natural resources in the region:

- **Lack of technological advancements**- these place African countries at a disadvantage in natural resource management, exploration, and utilisation. There is need to invest in technological advancements as opposed to transferring ownership and management of resources to foreign enterprises;
- **Lack of community between African countries**- as opposed to harmony and unity of purpose, countries in the region tend to compete against each other for foreign investment. There is need for countries in the region to be united in creating these strict rules and regulations for the protection of natural resources to set a standard for all African countries;
- **Lack of patriotism**-this has led to many leaders seeking self-benefit as opposed to making decisions that benefit the people they serve;
- **Lack of transparency**- contracts and agreements involving strategic assets are often not transparent and not inclusive. Decisions involving national assets must be open, inclusive, and transparent, giving the people a say in the management of their assets.

- **Limited constraints on power of political authorities-** Many African leaders hold a significant amount of control and power to decide how national resources are used and managed, on behalf the people with little accountability on them during and after their tenure.

TANZANIA (2)

Tanzania further submitted that the theme is interesting but rather complex, and member states may have challenges striking a balance between encouraging FDI and protecting strategic assets as it has been in the past. The MP further noted that states often lack not only resources and regulations to protect our assets and resources, but to a large extent lack capacity to implement these regulations, and therefore specific focus must be placed on capacity building to ensure laws and regulations are well enforced. Further, the model laws and legislation must give a practical balance between encouraging FDI and protecting the interests of the people.

ANGOLA

The MP stated that at the core of safeguarding the interests of the people were strong institutions and leaders; and that for the outcomes of the Forum to be more effective, there is need for transformation from a Regional Forum to a Regional Parliament which will bring harmony in safeguarding the interests of the people in the region. Further, the MP submitted that the SADC region has the resource base to meet the energy, food, and economic needs of the people in the region without having to turn to the global north for assistance.

ZIMBABWE

Zimbabwe noted that as the region, Member States lack unity and harmony in legislation that protects strategic resources and prevents the exploitation of our people. The MP noted that there is need for a law that protects our mineral resources, and this will not see the light if we wait for partners to do it and must be done by Member States on their own. Further there is urgent need to enhance manufacturing and value addition in the region.

To ensure model laws developed by the forum are adopted by member states, there is need to transform the Forum into a Regional Parliament that will develop binding SADC Laws in turn creating unity in policy and legislation governing our natural resources in the region. The MP cited the example of Zimbabwe as a victim of the lack of harmonized legislation to protect the interests of the people. Zimbabwe had legislation that restricted FDI to 49%. 51% must be for indigenous people, which in turn led to investors leaving Zimbabwe and flocking to other countries.

DEMOCRATIC REPUBLIC OF CONGO-DRC (1)

The Democratic Republic of Congo-DRC stated that the presentation was very rich and closely related to the current situation in the DRC. The National Parliament enacted a mining code to stop illicit trade of natural resources giving locals the opportunities for artisan mining, however, foreign entities still hide behind these licenses to exploit natural resources. The MP stated that there is need to speed up process of transforming the Forum into a Regional Parliament to enhance practicality of the legislation developed.

DEMOCRATIC REPUBLIC OF CONGO-DRC (2)

The MP from the DRC noted that there is often resistance from foreign investors when legislation is put in place to protect local resources. He cited the resistance to the Mining Code. He further noted that illicit flows of natural resources are often aided by neighboring countries that allow them through.

MADAGASCAR (1)

The MP noted concerns over the management of resources in Madagascar. He stated that despite the country holding abundant minerals, energy resources, water, and good arable land, making it rich in resources, it remains extremely poor. The MP stated that technology for the exploitation of resources is available but they require help from the outside because of lack capacity, and therefore, there is need for a strategy to build local capacity in production, natural resource exploitation and value addition. The lack of value addition means there is a lack of sustainable local income, development of, and investment in, strategic resources and hence slow economic development.

The MP further recommended that there is need for changes in local mining codes and increases in taxes on raw materials for export out of Madagascar. The MP further cited the restrictions and embargos on exports of finished products from Madagascar and recommended that the SADC PF develops a model law that will help manage and regulate the exploitation and use of material and mineral resources for the benefit of a greater SADC Region.

MADAGASCAR (2)

The MP noted that despite the leadership being aware of the situation prevailing in natural resource management in many African countries, there is very little political will to protect resources and interest has been on the enhancement of FDI. There is need to encourage continental trade between African States. Much was needed for creating synergy between States to protect Africa's strategic and sensitive assets and resources.

MOZAMBIQUE

The MP called for the protection of public investments. Africa has abundant resources but lacked technology giving foreign investors the upper hand in

the exploitation and exploration of our natural resources. Because of this, resources are exploited, exported, with no value-added and low-quality finished products, whilst good quality stays in investors home countries. There is need for unity in the SADC Region. Leaders tend to prefer agreements for personal benefits as opposed to agreements for the benefit of the people. He urged that as a region, there is a need to consider the financial resource concerns and limitations and conditions that come with aid and investments must be re-considered. He cited the crisis in Cabo Delgado, Mozambique, as an example of instability that comes with being natural resource rich, where crisis only begun after resources were discovered in the region.

ESWATINI

The MP stated that there is need for solutions, as opposed to complaints, and is in full support of the enactment of a Model law to bridge gaps in current legislation for protection of strategic assets, in addition to value-addition and finance policies.

MALAWI (2)

The MP noted that the presentation is a true reflection of what is going on in our nations and suggested that the presentation must be made to Heads of State. There is need for unity of purpose and for SADC nations to be a united front region if it is to succeed. The MP recommended that a Model law must be developed and followed by all SADC countries for it to be successful.

NAMIBIA

The MP noted that there has been a lack of commitment to cardinal issues around protecting the interests of locals in the past with very little application of knowledge and poor implementation. He cited Namibia as an example, of being the biggest producers in beef but with a limited market for it, while DRC has a readily available market, supporting the need for more coordinated value chain management within the SADC region. He stated that there is need for more synergy in trade and investment to enhance the region's values and strengths.

SOUTH AFRICA (1)

The MP highlighted the need for Parliamentary oversight on multinational loans and agreements. He stated that there is need for more transparency in the processes involved in multilateral agreements. He recommended that a Model law must be created, and must include provisions on transparency and accountability, that are consistent with the growth objectives of the countries. There must be prioritization of manufacturing and value additions in the region.

BOTSWANA

The MP noted with concern that there is often much talk but very little implementation on matters of urgency such as the protection of strategic and sensitive assets.

ZIMBABWE

The MP stated that there is need for the realization that the protection of national resources and assets is not a call to frustrate FDI, nor is it a call for interference in the private sector's self-regulation, but rather a challenge to our region to become a rule-maker and not rule-taker. There is much need to decolonize the investment arena by making radical decisions to protect the interests of our people. The MP noted that this is a challenge to kick start collaborative projects in the region in the protection, and exploration of strategic resources. A starting point for Africa is for countries to fully explore the extent to which minerals exist to make informed decisions. Africa has both the population and resources to create the development of Africa's needs.

NAMIBIA (1)

Namibia pointed out that FDIs tend to go around laws and push these boundaries to maximize their benefits. The MP suggested that SADC comes up with uniform reporting structures and oversight to create harmony and unity amongst States. There are many wholly owned African companies but few are competing at world stage, which can be attributed to the weak links amongst States and which must be addressed.

NAMIBIA (2)

The MP cited the Marine Resources Act that gives ministers control over fishing allocations. This led to one of the biggest quota scandals in Namibia, showing the limited constraints on powers of political authorities. There is need to close existing gaps in the law to avoid exploitation and strengthen research institutions to base reforms on researched and informed data. Companies must be held accountable for the illicit exploitation of strategic resources, which was an example of how key resources may be mismanaged in the absence of targeted laws.

SOUTH AFRICA (2)

The MP noted that there is too much international interference in domestic matters. He stated that Africa has limited infrastructure to implement solutions to our problems. There is need for strong trade between African States to resolve economic and financial issues.

DEMOCRATIC REPUBLIC OF CONGO (3)

The MP reiterated the need for peace and security in the DRC, for enhanced trade and unity amongst African States. Model Laws cannot be implemented without peace and security.

3.0 OBSERVATIONS AND RECOMMENDATIONS

Pursuant to the deliberations, the Joint Session recommended the following Resolution to the 53rd Plenary Assembly:

CONCERNED that sensitive and strategic assets of Member States constitute jewels of the nation and are often pivotal for the adequate functioning of Government and society, including hospitals, roads, bridges, dams or airfields;

FURTHER CONCERNED that such assets often turn out to be foreign-owned or are at the mercy of debt instruments which impose foreclosure of these assets in case of non-payment of the debt obligations;

AWARE that on the other hand, Foreign Direct Investment (FDI), remains a prerequisite for steady economic growth, with countries aiming for clean FDI that is compliant with Anti-Money Laundering (AML)/Combatting the Financing of Terrorism (CFT) regulations, Double Tax Avoidance Treaties and other prescribed norms;

MINDFUL that it is an international practice that countries help one another through foreign aid and that nearly all countries, even advanced nations, have a margin of foreign debt which they commit to repay over time;

COGNISANT that there is a need for a careful balancing exercise to be conducted by Member States to weigh the need to contract foreign aid through debts taken on strategic assets, against failing to provide citizens with the necessary infrastructures required for development, especially as the Sustainable Agenda 2030 is dependent on adequate state infrastructure to house institutions, promote public peace, entrench gender equality, to cite but a few objectives.

NOW, THEREFORE the Joint Session recommends to the 53rd Plenary Assembly to:

- i. **URGE** SADC Member Parliaments to review the normative framework for the use of strategic assets of the nation, and to dissociate those from foreign ownership;

- ii. **PROMPT** SADC Member States to find healthy and innovative ways of attracting FDI, and to depart from the sale of assets, especially land to foreigners as a means to improve the yearly FDI figure given that such forms of FDI would be one-off only and would not be renewable to the economy;
- iii. **URGE** SADC Member States to leverage on the African Continental Free Trade Area (AfCFTA) to promote intra-Africa investments which are sustainable and which generate wealth that can be absorbed within Africa;
- iv. **ENCOURAGE** SADC Member States to submit major debt instruments that are likely to bind successive Governments to Parliament for its approval by a qualified majority, in view of improving good governance, transparency and accountability in the management of public funds, especially where such funds will be utilized to acquire or construct strategic or sensitive assets;
- v. **FURTHER ENCOURAGE** SADC Member States to constitute such oversight bodies or agencies as are permissible by law to monitor the contracting of foreign debt by all public bodies or departments and to ensure that hidden debt or guarantees are not concealed through complex organizational structures.
- vi. **CALL UPON** SADC Member Parliaments to domesticate the SADC Model Law on Public Financial Management (PFM) adopted by the 51st Plenary Assembly of the Forum to heighten parliamentary control over the public financial processes, including government debt operations;
- vii. **URGE** SADC Member Parliaments to enact laws that provide for transparency with regards to foreign debt instruments, and a renegotiation of terms of foreign debt where these disclose stringent foreclosure procedures on strategic assets of the State;
- viii. **CALL UPON** the Forum, through its Plenary Assembly, to adopt a Model Law on the Management of Strategic and Sensitive Assets of the State, which will also encompass issues relating to the linkages of such assets with debt obligations and the need to preserve clean FDI for sustainable economic growth;

4.0 CONCLUSION

The Joint Session concluded by reiterating that the issue of the impact of public debt on strategic assets will be a recurrent one, especially as many debt instruments which have accumulated over decades are tied to strategic and sensitive assets of the nation. In the years to follow, it was highlighted that there would be a dire need for better regulation to govern both public debt and use of strategic assets in order to protect the security of citizens. In all circumstances, Parliament must remain at the forefront of deliberations

and initiatives to protect citizens from the nefarious effects that the sudden foreclosure of strategic assets can entail.

Mr President, I beg to move that the report of the Joint Session be adopted by this august Assembly.

Ends.