

Southern African Development Community, African Regional Bodies

## Protocol on Legal Affairs in the Southern African Development Community

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Southern African Development Community

# Protocol on Legal Affairs in the Southern African Development Community

Published

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*[This is the version of this document at 7 August 2000.]*

## **Preamble**

**WE**, the Heads of State or Government of:

The Republic of Angola

The Republic of Botswana

The Democratic Republic of Congo

The Kingdom of Lesotho

The Republic of Malawi

The Republic of Mauritius

The Republic of Mozambique

The Republic of Namibia

The Republic of Seychelles

The Republic of South Africa

The Republic of Swaziland

The United Republic of Tanzania

The Republic of Zambia

The Republic of Zimbabwe

**MINDFUL** of Article 21 of the Treaty which enjoins Member States to cooperate in all areas necessary to foster regional development and integration,

**IN PURSUANCE** of Article 22 of the Treaty which mandates Member States to conclude such Protocols as may be necessary in each area of cooperation,

**FURTHER IN PURSUANCE** of the Council's decision made in Lusaka, Zambia in February, 1999 which established the Legal Sector,

**RECOGNISING** that the application and interpretation of SADC legal instruments require the inputs and involvement of the Ministers of Justice/Attorneys-General. and Legal Experts of Member States,

**BEARING IN MIND** the fact that for SADC institutions to perform their functions, they require constant legal support and advice by a legal sector,

**CONVINCED** of the usefulness of all SADC legal instruments being cleared by the Legal Sector before they are submitted to the Council and to the Summit,

**HEREBY** agree as follows:

## Article 1 – Definitions

1. In this Protocol, terms of expressions defined in Article 1 of the Treaty shall bear the same meaning unless the context otherwise requires.
2. In this Protocol, unless the context otherwise requires,
  - “**Contact point**” means the official referred to in Article 3(3)(b) of this Protocol;
  - “**Co-ordinator**” means the official appointed in terms of Article 3(4)(c) of this Protocol;
  - “**Co-ordinating country**” means the State Party responsible for co-ordinating the Legal Sector;
  - “**Protocol**” means this Protocol and any amendments thereto;
  - “**Rules of Procedure**” means rules of procedure for the meetings of the Sectoral Committees of Ministers and Standing Committee of Officials, as the case may be, made pursuant to Article 20 of the Treaty; and
  - “**State Party**” means a Member of SADC that has ratified or acceded to this Protocol.

## Article 2 – Objectives

The objectives of the Legal Sector shall be to—

- (a) provide legal assistance to SADC and all its Institutions and Member States in matters relating to the interpretation and implementation of the Treaty, Protocols and subsidiary legal instruments made thereunder;
- (b) provide legal advice and related legal services to other SADC sectors;
- (c) assist State Parties in developing legal capacities and expertise in specific legal areas of concern;
- (d) facilitate the adoption of appropriate schemes of co-operation in criminal and civil matter;
- (e) promote the adoption of mutual assistance agreements and arrangements in criminal and civil matters;
- (f) facilitate the harmonious implementation of decisions taken by multilateral organisations of which SADC States are members;
- (g) develop, as far as possible, common strategies and standards dealing with the administration of justice and law enforcement;
- (h) promote legal assistance to the SADC institutions as may, from time to time, be required;
- (i) promote the harmonisation of administrative and legislative measures in civil and criminal matters; and
- (j) facilitate the development, within State Parties, of facilities to enhance information sharing, and to undertake and promote research on legal issues of common concern within the mandate of SADC.

## Article 3 – Functional institutions

1. State Parties hereby establish the following functional institutions for the implementation of this Protocol:
  - (a) the Committee of Ministers of Justice/Attorneys-General,
  - (b) the Committee of Legal Experts, and
  - (c) the Legal Sector Co-ordinating Unit.

**2. The Committee of Ministers of Justice/Attorneys-General**

- (a) The Committee of Ministers of Justice/Attorneys-General (hereinafter referred to as “the Committee of Ministers”) shall consist of Ministers of Justice/Attorneys-General.
- (b) The Committee of Ministers shall—
  - (i) be responsible for providing guidance and for co-ordination of policies, programmes and projects for the Legal Sector;
  - (ii) advise Council on legal matters arising from the activities of SADC; and
  - (iii) liaise with the SADC Secretariat on matters pertaining to the Legal Sector.

**3. The Committee of Legal Experts**

- (a) The Committee of Legal Experts (hereinafter referred to as “the Legal Experts”) shall consist of legal experts, one each designated by each State Party.
- (b) Each member of the Committee of Legal Experts shall be the contact point in each State Party for the Legal Sector.
- (c) The contact point shall establish and maintain effective consultations with the Coordinating Unit on matters concerning the Legal Sector in the State Party.
- (d) The Committee of Legal Experts shall, *inter alia*—
  - (i) examine legal aspects of all reports and documents submitted to it by the Co-ordinator, SADC Secretariat, Commissions, and other SADC institutions;
  - (ii) advise the Committee of Ministers on issues, proposals, and projects to be presented to the Council for approval;
  - (iii) review any sectoral programme of action in order to ensure that it is consistent with the objects of the Legal Sector and those of SADC; and
  - (iv) receive all communications relevant to legal matters from other Sector Coordinators and other SADC institutions, and ensure that the relevant national institutions and stakeholders, including the private sector, are kept informed of the work of the Legal Sector.

**4. The Legal Sector Co-ordinating Unit**

- (a) The Legal Sector Co-ordinating Unit (hereinafter referred to as “the Co-ordinating Unit”) shall be the executing agency of the Legal Sector.
- (b) The Co-ordinating Unit shall be established in the Ministry or Department responsible for justice or legal affairs of the co-ordinating country.
- (c) The Co-ordinating Unit shall be headed by a Co-ordinator appointed by the State Party responsible for co-ordinating the Legal Sector, and he or she shall be assisted by such supporting staff of professional, administrative and secretarial personnel as the Co-ordinator may deem necessary.
- (d) The Co-ordinating Unit shall—
  - (i) provide leadership in the articulation of the objectives and policies of the Legal Sector;
  - (ii) facilitate the development, as far as possible, of SADC policies and strategies and those of the State Parties where this may be required;
  - (iii) facilitate sharing of information in the legal field on matters falling under the objectives of the Legal Sector;
  - (iv) advise State Parties on matters pertaining to the activities of the Sector;
  - (v) organise and manage or assist in organising and managing all meetings of the Legal Sector;

- (vi) prepare Annual Reports of the Legal Sector;
- (vii) convey to and follow-up with relevant parties the decisions of Sectoral Ministers and the Council as they relate to the Legal Sector;
- (viii) mobilise financial and technical resources for the implementation of the programmes and projects of the Legal Sector;
- (ix) carry out any duties aimed at the promotion of the work of the Legal Sector, and in general of SADC programmes.

5. **Sub-Committees**

- (a) The Committee of Ministers and the Committee of Legal Experts may each establish sub-committees to carry out specific tasks on its behalf.
- (b) The composition and functions of a sub-committee established under subparagraph (a) shall be determined by the relevant Committee.

### **Article 4 – Rules of procedure of meetings**

1. The rules of procedure that shall apply to meetings of the Committee of Ministers and any sub-committee thereof shall be the Rules of Procedure of Meetings of Sectoral Committees of Ministers made in pursuance of Article 20 of the Treaty and approved by the Summit.
2. The Rules of Procedure of Meetings of the Standing Committee of Officials made in pursuance of Article 20 of the Treaty and approved by the Summit shall apply *mutatis mutandis* to meetings of the Committee of Legal Experts and any sub-committee thereof.

### **Article 5 – Attainment of objectives**

1. The Legal Sector shall, with the leadership and direction of the Co-ordinating Unit, endeavour to attain the objectives of the Sector.
2. Each State Party shall put in place adequate legislative and administrative measures required to attain the objectives of the Legal Sector.
3. State Parties shall co-operate and share information with one another and with the Coordinating Unit with the view to contributing to the attainment of the objectives of the Legal Sector.

### **Article 6 – Financial provisions**

1. State Parties shall endeavour to allocate the necessary funds for the effective implementation of this Protocol, particularly programmes and projects of the Legal Sector, at the national level.
2. The cost of administering and managing the affairs of the Co-ordinating Unit shall be borne by the Co-ordinating country.
3. Programmes and projects of the Legal Sector may be financed by funds legitimately solicited from various sources, including the international donor community and other cooperation partners.
4. The Legal Sector may accept gifts, grants, legacies and donations from any sources so long as such acceptance is in conformity with any guidelines that may be set by the Council.



## **Article 7 – Settlement of disputes**

Any dispute arising from the interpretation or application of this Protocol which cannot be settled amicably shall be referred to the Tribunal for determination.

## **Article 8 – Annexes**

1. State Parties may develop and adopt annexes for the implementation of this Protocol.
2. An annex shall form an integral part of this Protocol.

## **Article 9 – Amendment**

1. An amendment to this Protocol shall be adopted by a decision of three-quarters of the Members of the Summit.
2. A proposal for the amendment of this Protocol may be made to the Executive Secretary by any State Party to this Protocol. Within thirty (30) days of receipt, the Executive Secretary shall notify States Parties to this Protocol of any proposal for amendment. Three (3) months after notification, the Executive Secretary shall submit the proposal for amendment to the Council for preliminary consideration.

Three (3) months after notification, the Executive Secretary shall submit the proposal for amendment to the Council for preliminary consideration.

## **Article 10 – Signatures**

This Protocol shall be signed by duly authorised representatives of Member States.

## **Article 11 – Ratification**

This Protocol shall be ratified by the signatory Member States in accordance with their respective Constitutional process.

## **Article 12 – Entry into force**

This Protocol shall enter into force thirty (30) days after the deposit of the instruments of ratification by two-thirds of the Member States.

## **Article 13 – Accession**

This Protocol shall remain open for accession by any Member State.

## **Article 14 – Reservations**

No reservations shall be made to this Protocol.

## **Article 15 – Withdrawal**

1. Any State Party wishing to withdraw from this Protocol shall give to the Executive Secretary 12 months' written notice of its intention. Withdrawal shall be effective on the date of expiration of the notice period.

2. Any State Party withdrawing from this Protocol shall—
  - (a) cease to enjoy all rights and benefits under this Protocol from the effective date of the withdrawal;
  - (b) remain bound to the obligations assumed under this Protocol until the withdrawal takes effect.

### **Article 16 – Depositary**

1. The original text of this Protocol and all instruments of ratification and accession shall be deposited with the Executive Secretary of SADC who shall transmit certified copies to all Member States.
2. The Executive Secretary of SADC shall register this Protocol with the Secretariat of the United Nations and the Organisation of African Unity.

**IN WITNESS WHEREOF, WE**, the Heads of State of Government of SADC Member States, or our duly authorised representatives, have signed this Protocol.

Done at Windhoek this 7<sup>th</sup> day of August 2000 in three original texts in the English, French and Portuguese languages, all texts being equally authentic.