

**THE REPORT OF THE PRESIDENT  
OF THE SADC LAWYERS ASSOCIATION  
TO THE ANNUAL GENERAL MEETING 2005  
WINDHOEK – NAMIBIA  
17-18 JUNE 2005**

**INTRODUCTION:**

In May 2004 the SADC Lawyers Association held its Annual General Meeting and Conference on *Good Governance and Developments* in Maseru, Kingdom of Lesotho. It enjoyed the gracious and warm hospitality of the Lesotho Law Society. The Conference was well representative of Bar Associations and Law Societies in the region and was characterized with well-reasoned and incisive presentations. The debates raised hard issues about law, the Independence of the Judiciary, child justice, cross border practices, conflict management, anti-corruption law and most importantly the impact of the pandemic of HIV Aids in the region. Lesotho will be warmly remembered for the kind and generous hospitality of our colleagues in the Lesotho Law Society.

This year we assemble in Windhoek, Namibia under the banner of a conference, *“Challenges Facing the Legal Profession in the SADC Region”*. Here we will enjoy the hospitality of the Namibia Law Society. The programme of the conference presents a cross section of some of the most significant and critical challenges facing the legal profession. From practical questions on the administration of justice to the broader

principle issues of Independence of the Judiciary, legal education, access to justice, the development of cyber law and the difficult legal issues of anti-money laundering legislation in the region. We will look at the implications of cross border cooperation and GATTS. The impact of competition legislation will also be examined and for the first time our Standing Committees will be physically convened to discuss their work and programmes for the years ahead. Most significantly the women lawyers in SADC Lawyers Association will convene in a special breakfast session to discuss the critical issue of women participation in our Association and generally in the practise of law in the region. The Directors of our various constituent members will also meet to share their experiences and strengthen their organizational networking amongst one another.

As we meet in Namibia we are pleased to announce that the SADC Lawyers Association has been granted NGO observer status to the African Commission on Human and Peoples Rights. The Commission recently met in Banjul where it considered a number of pertinent issues and received referrals of several matters on the continent. Commissioner Sanji Monageng will address us on some of these issues.

In the year since we met in Lesotho there have been significant developments on our continent. Democratic elections have

taken place in some countries whilst elections in others have been marred by serious irregularities. Overall the socio-economic conditions in the region has not significantly improved. The promise of infrastructure and development through the NEPAD process has yet to materialize. In some countries the judiciary and the legal profession remains under pressure with continuing threats to their functions and independence.

However it has not been all that bleak as we were able to celebrate the inauguration of the African Parliament. This remains one of the more bolder and encouraging developments on the continent. We also witnessed a phenomenal resurgence of organizations of civil society rallying around the impact of the proposed merger of the African Court of Justice and the African Court on Human and Peoples Rights. This mobilization has brought about renewed vigor within the civil society movement on the continent with useful developments and opportunities for the strengthening of the African Commission on Human and Peoples Rights and the processes around the establishment of the African Court on Human and Peoples Rights.

As an institution, the SADC Lawyers Association has at long last begun to consolidate on its formative years. It has increasingly begun to assert its role in both the region and in

other international structures. The establishment of its Standing Committees has also been a significant development which is geared to broaden the participation of its members in the affairs of the organization.

## 1 **GOVERNANCE AND MANAGEMENT:**

The Council of the SADC Lawyers Association is responsible for the overall governance of the organization. However as the Council is not able to meet regularly between its annual meetings and the Executive is charged with the responsibility of oversight and the exercising of fiduciary control over the finances and funding of the organization. At its initial meeting after the AGM in Lesotho, the Executive agreed and instituted a programme of regular teleconferences to carry out these functions. It has thus far met on several occasions by telecon and has dealt with inter alia, the following matters:

- i) reviewing the overall financial situation of the organization.
- ii) monitoring the fundraising processes in the organization and ensuring that a high level of interaction and accountability is maintained with the organization's core funders.

- iii) responds to interventions required by the SADC Lawyers Association in the region.
- iv) responds to invitations to the SADC Lawyers Association to attend meetings and conferences in the region and international events.
- v) to receive regular reports from the Executive Secretary on the management of the organization and the monitoring of his performance in the execution of his functions.
- vi) monitored the initiation of a newsletter and the revamping of the website.

The day-to-day management of the affairs of the organization is tasked to the Executive Secretary Mr Godwin Kunda. The head office of the organization is based in Gaborone, Botswana and is situated proximate to the offices of the Law Society of Botswana.

The Executive Director has enjoyed regular access to the treasurer of the SADC Lawyers Association Mr Ophemetse Motumise and the Executive Director of the Law Society of Botswana Ms Sanji Monageng. Both Mr Motumise and Ms Monageng have provided invaluable support, counseling,

oversight and mentorship to the Executive's Secretary for which the executive wishes to record its appreciation.

## **2 STANDING COMMITTEE OF THE SADC LAWYERS ASSOCIATION:**

The Executive Committee committed itself to the establishment of various Standing Committees after the AGM in Lesotho. Nominations were called for and received from constituent members of the Association for the following committees:-

- a) The Constitutional Review Committee – this committee is charged with the ongoing review of the organisation's constitution and to make appropriate recommendations for amendments.
- b) The Harmonization of Laws in the SADC region.
- c) Human Rights.
- d) Legal Education.
- e) Publications.

- f) A Reaction Committee which is required to respond on an urgent basis to matters affecting the organization.

Initially the response from our constituent members was slow but many have since submitted names to serve on these committees. These committees will convene at this AGM to consider their particular focuses and to put in place a process to prepare work plans for the next 12 months. The Executive Committee has recommended that these committees meet on a regular basis by telecon, to save costs, and that the Executive Secretary and other staff will be responsible for the overall communication and co-ordination of the work of the committees.

It is hoped that these Standing Committees will become the engine room of activity in the SADC Lawyers Association and which will generate increased interaction amongst members and generally strengthen the profile of the organization in the region.

### **3 FUNDING AND FINANCE:**

The SADC Lawyers Association has enjoyed the generous financial support of its core funders SIDA, OSISA and has received a conference grant from the Canadian Bar Association.

The Executive Committee approved a fundraising budget of P231 000(pula) for the financial year 2004/2005. A new proposal was submitted to SIDA for the ongoing activities of the organization. OSISA has committed a generous grant to the projects and the work of the organization.

The Executive Committee has also adopted stringent measures to ensure ongoing reductions in expenditure of the organization. It has not incurred any costs in face-to-face meetings and has relied on telecons to maintain its oversight functions. It has also approved the moving of the head office to cheaper although bigger and better premises.

The Executive Committee has considered and approved a proposal to OSISA to fund the SADC Lawyers Association to employ a legal officer. OSISA has approved this application and the organization will in due course advertise for the position. Constituent members are requested to assist in this process by bringing it to the attention of appropriate persons who may be interested in the position.

The organisation's books of account have been audited by our auditors Kauya & Partners. Although the organization has received an unqualified audit our auditors have raised a number of matters in its initial management letter which are

being responded to. Mr Motumise has kindly agreed to interact with the auditors in respect of the various matters raised by them.

The Council of the SADC Lawyers Association will at its meeting consider the audited financial statements for approval.

During the course of February 2005 various allegations by a certain Mr Peter Mackinnon (unidentified) were made about the handling of the accounts of the SADC Lawyers Association by officials in the Law Society of South Africa (LSSA). The LSSA had managed the financial affairs of the organization prior to it being transferred to Botswana in September 2003. In response to these allegations the LSSA had appointed independent forensic investigators to investigate the allegations and to provide a report. The investigators United Risk Management have found that there is no evidence of any impropriety by officials of the LSSA in the handling and management of the accounts of the SADC Lawyers Association. The Executive Secretary of the SADC Lawyers Association was also instructed by the Executive to review the accounts of the SADC Lawyers Association with regard to these allegations and in particular the period when the accounts are transferred from the LSSA to the SADC Lawyers Association. The Executive Secretary has reported that no

irregularities have been found with regard to the handling of the accounts by the LSSA.

The timeous payment of annual subscriptions from our constituent bodies remains a matter of concern. The Executive Secretary is required on a regular basis to remind constituent members to settle their subscriptions. Whilst we are mindful of the difficult financial circumstances many of our constituent members find themselves, late payments impact on the cash flow of the SADC Lawyers Association. There still remains a number of constituent members who are paying off the once off payment of U\$5,000.

The Association has to address its financial sustainability on an ongoing basis. New opportunities for fundraising will have to be explored and the Executive Committee has suggested that funding from co-operate firms within the SADC region be identified and vigorously pursued.

All constituent members are urged to assist wherever possible in these initiatives.

#### **4 THE ZIMBABWEAN LAWYERS FOR HUMAN RIGHTS:**

Towards the end of 2004 the Zimbabwean Lawyers For Human Rights addressed the proposal to the SADC Lawyers Association to consider the relocation of their activities and

infrastructure to form part of the Human Rights Committee of the SADC Lawyers Association. The government of Zimbabwe was in the process of passing the notorious NGO Bill which would have impacted significantly on the operations of the ZLHR and their ability to receive foreign funding. The organization was also concerned that its activities could be proscribed in terms of the legislation. As a result of the important role that the ZLHR has played in Zimbabwe and their capacity and infrastructure to carry out these functions at a broader level in the region they proposed that the SADC Lawyers Association consider that their organizational infrastructure and programmes become directly accessible to the constituent members of the SADC Lawyers Association through the Human Rights Standing Committee.

The Executive Committee has thoroughly considered the proposal and has responded to the ZLHR in approving in principle the proposal subject to the consideration and ratification by the Council.

This matter now lies before the Council of this AGM to consider. The Executive Committee having considered this matter recommends to the Council that subject to the resolution of various practical and logistical issues and that the ZLHR are able to provide support to a broad range of our members that the proposal be favourably considered by the

Council. The ZLHR have exceptionally highly motivated staff who are dedicated human rights activists which will bring important capacity and strength to the SADC Lawyers Association.

## **5 PROPOSAL FOR AN AFRICAN FORUM OF REGIONAL LAWYERS ASSOCIATIONS:**

Arising from the discussions of African delegates at the 2004 IBA Conference in Auckland, New Zealand, strong motivation was expressed for the need for greater interaction and co-operation amongst African lawyers and their regional structures. OSISA convened a full day workshop to consider these proposals. The Deputy President and President of the SADC Lawyers Association, Mr Sammy Modiba and Ms Beatrice Phiri both of OSISA, Mr Olawale Fapohunda of the Nigeria Bar Association and Mr Mike Dzakuma of OSIWA attended the workshop to consider these matters. Members of other regional Bar Associations were unfortunately not able to attend. It was agreed to put forward a proposal to the other regional bodies to consider the formation of a Forum of African Regional Lawyers Associations to deal with amongst other issues:

- “Placing lawyers in the centre of development through advocating on good governance, respect for the rule of law and promotion of human rights, as well as on economic issues with a special emphasis on trade

negotiations and legislation, corporate responsibility and rights based development projects.

- Building capacity of African legal institutions and regional lawyers' associations through sharing and exchange of information and engagement with key bodies and organs (such as the AU, Regional Economic Communities, UN, G7 and G8, IMF, WTO, World Bank, etc.) to advance social and economic justice.
- Talking amongst ourselves as African lawyers and to the rest of the world on good governance, respect for the rule of law and promotion of human rights in Africa through collective and focussed participation in regional and international forums.
- Building leadership through promotion and support to African lawyers to take leadership positions (focusing on youth and women) and/or be represented in key legal platforms and development institutions and organs, both in Africa and internationally.
- Promote political plurality and democracy through advocating for participatory political systems, constitutions, electoral systems and institutions through management and resolution of political disputes and conflicts.” Concept Paper

A Concept Paper has been drafted from the workshop which has been circulated to members of the East and West Africa Bar Associations, PALU and other lawyer Associations for their consideration.

Discussions on the proposal was also taken up at the meeting in Kenya attended by the Deputy President, Stanford Moyo where it received enthusiastic support.

A special session has been set side at this AGM for the leaders of the various regional bodies to consider these proposals and to advance the formation of a continental wide Forum of African Regional Lawyers Associations.

## 6 **REGIONAL INTERVENTIONS:**

### i) **Lesotho Law Society:**

The Society received threats of prosecution for its criticism of a judicial appointment. The SADC Lawyers Association addressed a communication to the authorities in Lesotho that it desists from such prosecution. The Lesotho Law Society will report more fully on these developments at our Conference.

### i) **Botswana:**

The SADC Lawyers Association together with the IBA supported the Botswana Law Society in raising concerns about the impact on the independence of the judiciary in Botswana through the making of contractual appointments of judges on an ongoing basis.

**THE SYMPOSIUM ON THE INDEPENDENCE OF THE JUDICIARY, ZIMBABWE:**

The President of the SADC Lawyers Association attended and presented a paper on the *Role and Independence of the Legal Profession* at the symposium organized in Harare by the Zimbabwean Lawyers For Human Rights. The Deputy President of the SADC Lawyers Association also made a presentation and reports were received from members of the Swaziland Law Society and Lesotho Law Society on the situation in those countries .

**SUMMER SCHOOL – ZIMBABWE LAW SOCIETY:**

Mr Mabvutu Hara attended on behalf of the SADC Lawyers Association the Zimbabwe Law Society Annual Summer School. He participated in a panel discussion with members of the East Africa Bar Association on the role and functions of regional lawyer structures.

**HUMAN RIGHTS AWARD – ZIMBABWEAN LAWYERS FOR HUMAN RIGHTS:**

The President of the SADC Lawyers Association was invited as the guest speaker by the ZLHR in the presentation of their Human Rights Award.

He was also able to meet with the officials of the ZLHR and visit their offices in Harare.

**TRIAL OBSERVATIONS:**

The IBA invited members of the executive of the SADC Lawyers Association to observe the trial of Roy Bennett in Zimbabwe (charged for breaching the rules of Parliament). Unfortunately due to the short notice we were not able to do so.

**ELECTION MONITORING AND OBSERVATIONS:**

The Executive Committee considered providing election observers to the various elections held in the region. An application was made to the Zimbabwean government for accreditation of the SADC Lawyers Association but no response was timeously received.

**IBA MEETING - AUCKLAND NEW ZEALAND**

The Deputy President, Stanford Moyo represented the SADC Lawyers Association at the Annual Meeting of the IBA in Auckland. Mr Moyo presented a paper on the challenges facing the region and was able to interact with a number of lawyers from other African regional structures.

Unfortunately the SADC Lawyers Association application for sustaining member to the IBA had not been successful. . The

IBA has nonetheless committed itself to working closely with and to supporting the work of the SADC Lawyers Association.

**INTERNATIONAL HUMAN RIGHTS DAY – PRISON VISITS:**

At the last AGM the SADC Lawyers Association committed itself to celebrating International Human Rights Day on 10 December by having its members do visits to local prisons on a pro bono basis. Reports of such observations would be submitted to prison authorities and a regional report on conditions in the prisons and their compliance with international human rights standards would also be submitted to SADC, the African Commission on Human and Peoples Rights and other relevant bodies. Three constituent members were able to do the visits, the Namibian Law Society, The Zimbabwean Law Society and the Law Society of South Africa. Copies of the reports of these prison visits will be handed over at our AGM to representatives of the African Commission on Human & Peoples Rights, SADC and the African Union and the Permanent Secretary of Safety and Security, Namibia for their consideration.

We hope that other Bar Associations will be able to do the prison visits on

10 December 2005 and so institute it as an annual project and event of the organization in the region. The prison visits conducted highlighted the appalling conditions that exist in

many of our prisons in the regions. Of particular concern has been the huge overcrowding and the lack of proper rehabilitation facilities for prisoners. This is an area which requires some attention by our constituent members with a view to making representations to our domestic governments.

### **CONFERENCE ON AFRICAN COURT FOR HUMAN AND PEOPLES RIGHTS:**

As already mentioned a conference on the impact of the proposed merger of the African Court of Justice and the African Court on Human and Peoples Rights was held in Nairobi, Kenya. Stanford Moyo and Mabuto Hara attended on behalf of the SADC Lawyers Association. Mr Moyo has prepared

a comprehensive report on the resolutions emanating from the conference. The practical impact of the merger was thoroughly discussed and measures needed to support and strengthen the work of African Commission on Human and Peoples Rights were also adopted. Mr Moyo and Hara were also able to discuss and advance the proposal for the African Forum of Regional Lawyers Association.

### **NEWSLETTER AND WEBSITE:**

The Executive Secretary has successfully initiated the revamping of our website. Constituent members are urged to provide information on their structures and in particular their

membership directories to ensure that users of our website are able to access lawyers in the SADC region. The website has proved to be a useful means of communication with not only our members but broadly with other human rights lawyers and lawyer organizations globally. Constructive and positive feedback has been received from SIDA and the Law Society of England and Wales.

The Executive Secretary has thus far also prepared two electronic newsletters which has also been well received. Members are also urged to provide information and articles that they wish to share with other lawyers and activists in the region.

### **CONCLUDING COMMENTS:**

The SADC Lawyers Association is increasingly becoming a key role player within the region on legal and human rights issues. Despite limited capacity and resources the organization should be able to play a far greater role. The organization is also increasingly required to intervene in regional matters and on an ongoing basis to support the independence of the Judiciary and the strengthening of the Rule of Law in the region.

The SADC Lawyers Association must embrace the vision of a broader forum for African lawyers with the prospect that it will

bring about greater interaction and co-operation amongst lawyers on the continent. This would enable African lawyers and their respective regional bodies to assert their role and the profile in international forums. A forum of this nature provides us with a strategic opportunity with which to play this role.

At a regional level the organization remains committed to its founding objectives in strengthening regional Bars and Lawyer Associations in the areas of:-

- i) the imperative of harmonization of the laws;
- ii) matters relating to cross-border practices;
- iii) the building and strengthening of the independence of the Judiciary;
- iv) the building and strengthening of the Rule of Law;
- v) the strengthening and enhancement of the legal skills of our members in various areas of law;
- vi) the strengthening of the ethical obligations of legal practitioners.

These founding commitments of the organization remain all the more urgent now as ever. We are confident that the SADC Lawyers Association will through its participation and as an observer to the African Commission and Human and Peoples

Rights will usefully contribute to the socio-economic challenges facing millions of people on the continent.

On behalf of the Executive Committee of the SADC Lawyers Association I wish to express our sincere thanks and appreciation in particular to our funders, OSISA, SIDA and our friends in the Canadian Bar Association, the International Bar Association, Commonwealth Lawyers Association and other international bodies who have and continue to support us.

To our constituent members and legal practitioners who have made every effort in attending the Conference and the AGM we are particularly pleased once again to have the opportunity of interacting with all of you.

Lastly, we wish to thank the Namibian Law Society for their kind and very generous hospitality in co-hosting this, our 6<sup>th</sup> AGM of the SADC Lawyers Association.

I thank you.

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VINCENT SALDANHA

President SADC Lawyers Association

JUNE 2005