



REPUBLIC OF ZAMBIA

REPORT

OF THE

COMMITTEE ON DELEGATED LEGISLATION

ON THE

**PROPOSAL TO RATIFY THE AGREEMENT AMENDING THE TREATY OF THE
SOUTHERN AFRICAN DEVELOPMENT COMMUNITY (SADC)**

FOR THE

THIRD SESSION OF THE THIRTEENTH NATIONAL ASSEMBLY

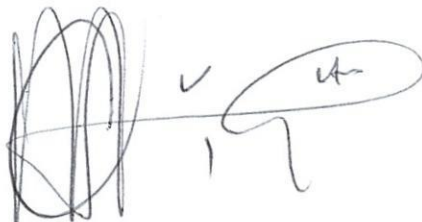
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FOREWORD

Honourable Madam Speaker, the Committee on Delegated Legislation has the honour to present its Report on the consideration of the Agreement amending the Treaty of the Southern African Development Community (SADC), for the Third Session of the Thirteenth National Assembly. The Committee is mandated to consider any matter referred to it by the House or by the Speaker, as per Standing Order 193 (6) of the National Assembly Standing Orders, 2021.

In order to acquaint itself with the ramifications of Zambia ratifying the Agreement, the Committee sought both written and oral submissions from different stakeholders, the list of which is at Appendix II. The Report highlights a summary of submissions from stakeholders and the observations and recommendations made by the Committee.

Madam Speaker, the Committee is grateful to the stakeholders who tendered both written and oral submissions. The Committee also wishes to thank you, for affording it the opportunity to scrutinise the Agreement amending the Treaty of the Southern African Development Community. Further, appreciation is extended to Clerk of the National Assembly for the support and guidance rendered throughout the Committee's deliberations.

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Mr Remember Chanda Mutale, MP
CHAIRPERSON

November, 2023
LUSAKA

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REPORT OF THE COMMITTEE ON DELEGATED LEGISLATION ON THE PROPOSAL TO RATIFY THE AGREEMENT AMENDING THE TREATY OF THE SOUTHERN AFRICAN DEVELOPMENT COMMUNITY (SADC) FOR THE THIRD SESSION OF THE THIRTEENTH NATIONAL ASSEMBLY

1.0 Membership of the Committee

The Committee consisted of Mr Remember Chanda Mutale, MP (Chairperson); Mr Charles Able Mulenga, (Vice-Chairperson); Mr Menyani Zulu, MP; Mr Siphso Hlazo, MP; Reverend Given Katuta Mwelwa, MP; Mr Wesley Kolala, MP; Mr Kenny Siachisumo, MP; Mr Phillimon Twasa, MP; Mr Robert Francis Kapyanga, MP; and Mr Gystave Chonde, MP.

2.0 Background to the Agreement amending the Treaty of the Southern African Development Community

The establishment of the Southern African Development Community Parliamentary Forum (SADC-PF) as a SADC institution under Article 9 (2) of the SADC Treaty was approved by the inaugural Summit of Heads of State and Government on 7th September, 1997, in Blantyre, Malawi.

The main objective of establishing the SADC-PF was to constitute a Parliamentary Consultative Assembly with the ultimate goal being the establishment of a Regional Parliamentary Framework for dialogue on issues of regional interest and concern. Therefore, the establishment of a regional parliament had been envisaged from inception of the Forum.

Over the years, the SADC-PF had mooted the point that it had reached a stage to transform into a regional parliament as it remained the only region without an established and functional parliament. There was general consensus in the SADC Region that the aforementioned objective had arrived for the consummation of SADC-PF into a Parliament.

In view of the above, during the 42nd SADC Summit held in Kinshansa, Democratic Republic of Congo in August, 2022, the Agreement amending the SADC Treaty was tabled for consideration, adoption and signature. Zambia participated in this Summit and was among the countries that unanimously adopted the Agreement providing for the establishment of the SADC Parliament.

As at November, 2023 only nine out of the sixteen SADC countries had signed the Agreement. The Agreement would only enter into force on the date of its adoption and signature by three quarters of all members of the SADC Summit. This was as provided for in Article 5 of the Agreement, reflecting twelve member countries.

With this background, the Government of the Republic of Zambia initiated a Cabinet Memorandum on the proposal to ratify the Agreement amending the Treaty of SADC on the transformation of the SADC-PF into a regional parliament.

3.0 The objectives of the Agreement amending the Treaty of SADC

The Committee was informed that the general objective of the Agreement was to amend the Treaty of SADC by transforming SADC-PF into a Parliament as stipulated in Article 16A of the Agreement.

4.0 Specific Objectives

In order to fully realise the general objective, Article 16A of the Agreement set out the specific objectives of the Agreement as listed hereunder.

- (a) To deepen consultation and dialogue on SADC Common Agenda by Parliamentarians from the Region.
- (b) To establish a consultative and deliberative body with no law-making or other binding authority.
- (c) To provide for the composition, powers, functions, procedures and other related matters governing the SADC Parliament to be prescribed in a protocol.

5.0 Salient Provisions of the Agreement

The Committee was informed of the following salient provisions of the Agreement set out hereunder.

Article 1 – Definitions

This Article defined various terms used in the Agreement.

Article 2

This Article sought to amend Article 1 of the Treaty by inserting immediately after the definition of the words “SADC National Committee” the following new definition: “SADC Parliament,” which meant the Parliament of the Community as established by Article 9 of the Treaty.

Article 3-Amendment to Article 9

This Article provided for the amendment of Article 9 in paragraph 1 by:

- (a) inserting immediately after sub-paragraph (g) the following new sub-paragraph “the SADC Parliament”
- (b) renumbering the existing sub-paragraphs “as sub-paragraph (i) and
- (c) deleting the word “and”, at the end of existing sub-paragraph (g) and inserting it immediately at the end of the new sub-paragraph (h).

Article 4-Insertion of Article 16A-Objectives

This Article provided for the objectives of the Agreement. As stated above, the main objective of the Agreement was to amend the Treaty of SADC by transforming the SADC-PF into a Regional Parliament to be constituted with a view to consultation and dialogue on SADC Common Agenda by Parliamentarians from the Region and as a consultative and deliberative body with no law-making or other binding authority.

With regards the composition, powers, functions, procedures and other related matters governing the SADC Parliament, a Protocol would be promulgated.

The Article also focused on renumbering the existing Article 16A as Article 16B.

Article 5-Entry into force

This Article provided that the Agreement would enter into force on the date of its adoption and signature by three-quarters of all Members of the Summit.

Article 6-Depository

This Article provided for the Executive Secretary of the SADC as custodian of the original text to transmit certified copies of the Agreement to all Member States and have the Agreement registered with the Secretariat of the United Nations Organisation and the Commission of the African Union.

6.0 SUBMISSIONS AND CONCERNS OF STAKEHOLDERS

The Committee was informed that before an international agreement could be ratified, regard was to be made to whether or not the agreement was in the best interest of Zambia as provided for in section 3 of the *Ratification of International Agreements Act, No. 34 of 2016*. In doing so, there was need for consideration to be made to the object of the international agreement; whether existing legislation adequately addressed the object of the international agreement; the impact of implementing any measure specified in the international agreement; and any legislative measures that may be required to give effect to the international agreement.

Stakeholders submitted that the Agreement amending the Treaty of SADC was progressive as it sought to establish and recognise the SADC Parliament as one of the institutions created by Article 9 (1) of the SADC Treaty. They noted that this would not only elevate the status of the organ from being a mere Forum to a Parliament, but also facilitate structured engagement between the SADC Parliament and other organs of SADC, including the Summit through the Council of Ministers, via submission of resolutions of the SADC Parliament to SADC.

Therefore, unlike the existing *modus operandi* whereby resolutions of the Forum were only submitted to Member Parliaments for onward transmission to the relevant line Ministries, under the SADC Parliament, resolutions would be adopted by the Summit of Heads of State and Government. This would ensure that resolutions were owned by the Executive arm of Government in Member States for action and consideration. Therefore, the transformation from a Forum to a SADC Regional Parliament was expected to trigger the heightening of linkages which existed between the SADC policy organs and the SADC Parliament. It would further lead to greater coordination through an enhanced empowerment of the standing committees of the SADC Parliament.

However, some stakeholders submitted that **Article 16A**, which provided for the objectives of the proposed SADC Parliament appeared to create an institution that would play a similar role to that of the SADC Parliamentary Forum, in that the SADC Parliament would essentially be a consultative and a deliberative body with no law-making or binding authority.

They, therefore, submitted that the objectives intended to be achieved by the proposed SADC Parliament were the same and were adequately covered under Article 6 and 17 of the Constitution of the SADC-PF, which listed the objectives of the Forum and the functions of the Regional Parliamentary Model Laws Oversight Committee (RPMLOC), respectively.

Stakeholders informed the Committee that the proposed amendment still left the SADC Summit with the responsibility for the overall policy direction and control of functions of the community, ultimately making it the policy-making institution of SADC.

With regards to the cost implication of creating the SADC Parliament, the Committee was informed that the institution would not engender an increase in Member subscriptions of national parliaments. Therefore, no additional costs were expected to arise as a result of the transformation of the Forum into a Parliament. It was noted that the SADC Parliament would be empowered to mobilise additional resources and it was expected that a stronger institutional framework would reinforce the confidence of cooperating partners and donors that earmarked funds for inter-parliamentary programmes worldwide.

7.0 COMMITTEE'S OBSERVATIONS AND RECOMMENDATIONS

The Committee notes that majority of the witnesses who appeared before it, were in support of the proposal to ratify the Agreement amending the Treaty of SADC. While the Committee acknowledges that the Agreement creates a Parliament that will have no law-making or binding authority, it considers this move as progressive and a starting point towards creating an institution that is important to the growth of SADC.

The Committee also supports the decision that the Republic of Zambia should ratify the Agreement. In supporting the ratification, the Committee makes the observations and recommendations set out below.

- i) The creation of the SADC Parliament is in line with the ultimate goal for which the SADC-PF was established, and that is to be a Regional Parliament for dialogue on issues of regional interest and concern.

In this regard, the Committee recommends that in due course, the proposed Parliament should be distinguished from the Parliamentary Forum by enhancing its decision-making powers to include simple opinions, mandatory assent and limited co-decisions and co-legislation powers.

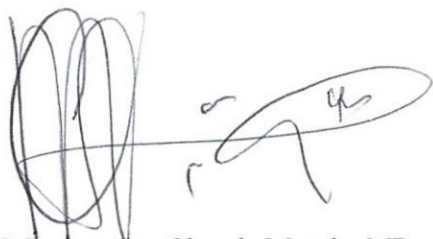
- ii) The Committee is concerned that despite the progressive resolutions pronounced by the SADC Plenary and the Model Laws promulgated by the RPMLOC, Member countries have been reluctant to implement the recommendations.

The Committee, therefore, recommends that there is need for greater political will in the SADC Region concerning matters of common interest, such as the establishment of the SADC Parliament, if the SADC Common Agenda is to be achieved.

8.0 CONCLUSION

The creation of the SADC Parliament is aimed at providing strong formal linkages between the Regional Parliament and SADC institutional organs. At the same time, the increased linkages will ensure that cooperating partners and donors are confident about the institutional processes of the SADC Parliament and its ability to create an impact in the SADC Region through parliamentary interventions. The Committee is, therefore, optimistic that this Agreement will prove essential to the overall objective of creating a Parliament that will ensure regional integration and achievement of the SADC Common Agenda.

We have the honour to be, Madam, the Committee on Delegated Legislation mandated to consider the Agreement amending the Treaty of the Southern African Development Community (SADC).

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Mr Remember Chanda Mutale, MP
CHAIRPERSON

November, 2023
LUSAKA

APPENDIX I-NATIONAL ASSEMBLY OFFICIALS

Mrs Doreen N C Mukwanka, Acting Principal Clerk of Committees (SC)

Mrs Chitalu K Mumba, Deputy Principal Clerk of Committees (SC)

Mr Geoffrey Zulu, Senior Committee Clerk (SC2)

Mr Timothy C Lumba, Committee Clerk

Ms Eneless Njobvu, Administrative Assistant

Mr Daniel Lupiya, Committee Assistant

Mr Muyembi Kantumoya, Parliamentary Messenger

APPENDIX II-LIST OF WITNESSES

Ministry of Foreign Affairs and International Cooperation
Ministry of Justice
SADC Parliamentary Forum
Chapter One Foundation
Southern African Centre for Constructive Resolution of Disputes
University of Zambia - School of Law
Law Association of Zambia
Consumer Unity and Trust Society
Common Market for Eastern and Southern Africa)
Zambia Law Development Commission