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SADC-LA STANDS IN SOLIDARITY WITH THE LAW SOCIETY OF SOUTH AFRICA (LSSA) ON ITS COURT CHALLENGE AGAINST THE SA GOVERNMENT FOR SUPPORTING THE DISBANDING OF THE SADC TRIBUNAL

The LSSA will this week from 5-7 February 2018, take to court its challenge of the constitutionality of President Jacob Zuma's part in sponsoring the demise of the SADC Tribunal in its original form. The court challenge by LSSA is part of a region wide effort by law societies of the SADC Region in terms of a resolution by the SADC-LA Council to challenge and engage governments for allowing the removal of the SADC Tribunal's jurisdiction over individual and institutional rights cases.

Timeline & Brief Facts

- 2000 - Signing of the SADC Tribunal Protocol
- 25 August 2015 - Tribunal officially established
- 18 November 2005 - tribunal members sworn in
- 2009 - Zimbabwe challenged the legitimacy of the Tribunal stating that it had not been established according to international law norms. (This was after the tribunal had castigated Zimbabwe's land reform and ruled that the Zimbabwean government must restore the land of the white farmers who were the applicants in the case and compensate them fully for loss incurred.)
- 2010 - The Zimbabwe challenge led to suspension of the Tribunal by decision of SADC leaders.

- 2014 - The Protocol establishing the SADC Tribunal was revised to remove the Tribunal's power to hear disputes brought by citizens against states and its mandate was restricted to hear disputes between SADC member States only.
- 2015 - SADC leaders approved a resolution to establish a new Tribunal, called the SADC Administrative Tribunal (SADCAT). The new Tribunal has jurisdiction only to hear administrative matters between SADC states and SADC secretariat staff, while under the revised Protocol the SADC Tribunal will hear interstate disputes only.

The total net effect of the above events and actions was to strip the whole of the SADC citizenry of the protection of an apex regional human rights court and reduce platforms of accountability in the region. More importantly, it removed the safety net of an impartial and effective tribunal that enjoyed the support of a strong regional body. The same structure was responsible for protecting respective judicial bodies in member states when they exercised jurisdiction over politically sensitive human rights matters. As a consequence, the recasting of the SADC Tribunal exposed domestic courts to the whim of executive power and constituted the gravest assault on judicial independence in the SADC Region. It also endorsed the death of constitutionalism and replaced it with constitutionality.

SADC-LA condemns in the strongest sense the spirit and deliberate timing of the move to mutilate the SADC Tribunal as a source of effective remedies for human rights violations. SADC-LA fervently hopes the LSSA court challenge will succeed in letting political leaders know that they cannot act to sanitize the stripping of rights of citizens and create mutual space for arbitrary rule and overall regional regression in place of accountable government.

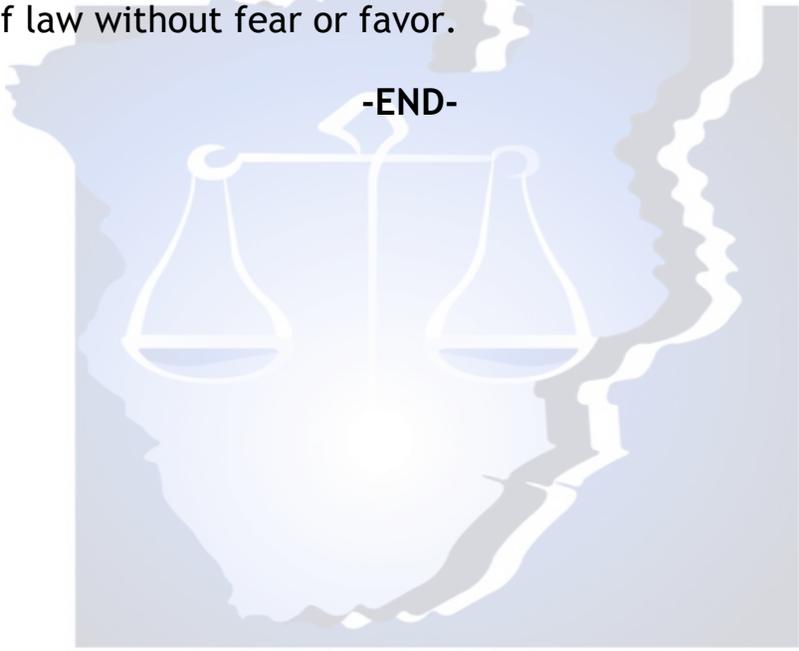
SADC-LA takes this opportunity to emphasize the urgency with which it is necessary to revive the SADC Tribunal or at least come up with viable mechanisms to address the waning human rights infrastructure of our once stable region.

To that end, the SADC-LA calls upon all law societies, partners and stakeholders to support and stand in solidarity with the LSSA in this critical bid.

About SADC-LA

The Southern African Development Community Lawyers' Association (SADC Lawyers Association/SADC-LA) is the representative body of law societies, bar associations and individual lawyers from the SADC region. SADC-LA is dedicated to the advancement and promotion of human rights, the rule of law, democracy and good governance in the SADC Region and beyond. Our mission is to promote and defend the rule of law without fear or favor.

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