



**Statement by Hon. Sackeus Shanghala, MP,
Minister of Justice, Chairperson of
SADC Meeting for SADC Ministers of Justice, Government
Attorneys & Senior Legal Officials.
At the meeting of SADC Ministers of Justice, Government
Attorneys & Senior**

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Windhoek
Namibia**

Deepening SADC Cooperation through the Legal Sector

Sakeus E.T. Shanghala, MP^φ

Good morning Honourable Ministers of Justice, Attorneys-General, Members of the Secretariat and Legal Officials,

I am honoured to welcome you to Windhoek, Namibia and more so to the SADC Meeting of Ministers of Justice and Attorneys-General. I look forward to sharing with you some ideas for consideration by this gathering of learned minds.

Before I continue, I would like to express sincere condolences to the people of Malawi, Mozambique and Zimbabwe that have experienced the devastating effects of Cyclone Idai.¹ Many were under the impression that Zimbabwe was experiencing unseasonably heavy rainfall, but instead a humanitarian crisis has been left in the wake of the cyclone. The effects of climate change are being clearly seen in the SADC region and these weather phenomena have a knock-on effect on the economies and lifestyles of the people of SADC. We assure our brothers and sisters in these countries that our thoughts and prayers are with you during this time.

Colleagues,

^φ Statement by the Honourable Minister of Justice of the Republic of Namibia, in his capacity as Chairperson of the SADC Meeting of Ministers of Justice and Attorneys-General at the opening of the SADC Meeting in Windhoek, Namibia on Monday, March 25, 2019.

¹ The cyclone made landfall on March 14, 2019 and caused much devastation, loss of life and flooding in the said countries.

I trust I speak for all of us in thanking the Republic of South Africa for providing the venue for the Solidarity Conference with the People of Western Sahara,² which just ended. This generation, and the one after it, must not, should not, turn a blind eye to any measure of oppression to the right to self-determination. The people of Southern Africa know too well what this type of subjugation has done to them not to assist others that find themselves in our situation of yester years. We should also urge that the situation of the Palestinian people be resolved for future generations, and condemn any unilateral encroachment upon territory. There is nothing that cannot be resolved with political will – weapons only kill. They have no other purpose and those who manufacture it has no other intention but to make profits.

In our world today, where leading economies are looking inward and less outward, now more than ever, it is imperative for SADC to strive to achieve economic development, peace and security, alleviate poverty, enhance the standard and quality of life of the peoples of Southern Africa, and support the socially disadvantaged through Regional Integration.

All of the areas of development require reputable, efficient and responsive legislation at domestic level, buttressed by regional instruments.

SADC is focusing on increasing its competitive advantage as a Sub-Saharan Africa destination for investment through deepening cooperation amongst its Member States. Protocols continue to be signed and domesticated which provide the legal framework for implementation of agreed decisions at regional level.

The value we attach to these Protocols will become clear when we gauge our ability to engage and cooperate with each other in various fields. If we do not attach value to it then we will be the ones who will suffer most as a result. The responsibility for the domestication of the Protocols lies in our hands, as Ministers of Justice and Attorneys-General. We must

² In support of the right to self-determination of the Saharawi people, consistent with the United Nations (UN) Charter and the Constitutive Act of the African Union (AU), the Southern African Development Community (SADC) held a Solidarity Conference with Western Sahara on 25 and 26 March 2019, in Pretoria, Republic of South Africa.

commit to the sustained implementation of the policies required for regional integration through practical enforcement mechanisms. We should explore avenues, even outside of the SADC region, which can be beneficial to us if we collaborate closer with each other. Let us share best practices where we have established processes that can enable us to serve our people better.

Some of the key areas agreed by Member States to make SADC an attractive investment destination include macro-economic stability,³ infrastructure developments,⁴ and regional peace and stability.⁵ SADC is viewed as the region with the greatest potential to spearhead the African Renaissance.⁶

As the Chairperson of this meeting I want to draw our focus to two specific issues which tie in directly with the vision and mission of SADC to deepen regional economic integration and growth.

1. Cross Border Insolvency; and
2. Cyber Security.

There are few countries in SADC which do not have South African shops and banks operating in their economies. In lesser proportion, other SADC countries have their local companies operating in more than one country, yet their center of main interest may be in another jurisdiction. When any of those entities in the enterprise group befall financial woes, it does not help that we have out dated insolvency legislation, which did not foresee cross border interaction between our insolvency practitioners and the Courts. We should not wait

³ The Macro-Economic Surveillance and Performance Unit of the Southern African Development Community (SADC) Secretariat was created to support implementation of the Regional Indicative Strategic Development Plan (RISDP).

⁴ Regional Infrastructure Development Masterplan (RIDMP) (2012-2027) and the Regional Industrialization Strategy, Roadmap and Action Plan (2015-2063).

⁵ Regional Indicative Strategic Development Plan (RISDP) available at <https://www.sadc.int/documents-publications/show/Regional_Indicative_Strategic_Development_Plan.pdf>.

⁶ SADC Major Achievements and Challenges available at <https://www.sadc.int/files/7713/5826/4978/Achievements_booklet.pdf>.

for an event to occur, finding us without solutions, to the detriment of our people, and hence I speak of Cross Border Insolvency. The possibility of an instrument such as a protocol on Cross Border Insolvency is something within our reach should we determine it to be a priority. It will eliminate incongruities in how we treat creditors, employees and entrepreneurs involved in activities which find themselves under liquidation.

As for cyber security, there are no borders. Yet the service providers, such as Google, Apple, Microsoft, Netflix and so forth are billion dollar companies with balance sheets larger than some of our economies.⁷

If the United States could not compel Microsoft Corporation (in the well known Microsoft Ireland case) to surrender communication clouded with a subsidiary in Ireland, what would a small SADC jurisdiction such as Namibia, Lesotho, Botswana, Swaziland, Mauritius or Madagascar do when faced with such a goliath of an entity?⁸ Unlike Russia, India and China, we could not compel these entities to put servers with traffic originating or terminating in our small SADC jurisdictions, within our jurisdictions.

Yet if SADC, as a collective, developed legislation that speaks to one another, making sure that none of our jurisdictions are havens for cyber offenders, then one day, it will not be unfathomable for us to compel a Google of this world to put its cloud servers for our citizens within the SADC region, where we can have access to it through a regional instrument.

Colleagues,

⁷ For the last quarter of the 2018/ 2019 financial year Apple announced a quarterly net profit of \$14.1 billion available at <<https://www.apple.com/newsroom/2018/11/apple-reports-fourth-quarter-results/>>. The annual revenues of companies such as Apple, Microsoft, and Walmart are so huge that they take on whole new dimensions. So much so that their profits dwarf the economy of many countries across the globe - for example, in 2017 Walmart earned more than the whole of Belgium. In 2010 Walmart Stores Inc, bid to buy Massmart Holdings, the South African retailer which bought the majority share in Pupkewitz Megabuild in Namibia. Enormous corporations could be entering SADC sooner than we realised and then cross border insolvency provisions must already be well established.

⁸ United States v. Microsoft Corporation 584 U. S. (2018) available at <https://www.supremecourt.gov/opinions/17pdf/17-2_1824.pdf>.

All of us here are bound by the Universal Declaration of Human Rights (UDHR). All of us undergo the Universal Periodic Review process. Yet we never invite the Office of the Human Rights Commissioner to address us here, so we may discuss common positions on evolving Human Rights discourses. All States present here undergo the peer review under the Universal Periodic Review Mechanism of the Human Rights Council, thus, we should not shy away from opportunities to engage with the Office of the High Commissioner. Those who are struggling to implement accepted recommendations under this mechanism can benefit from continuous engagements in this regard.

This Committee of Ministers of Justice and Attorneys-General should not merely be the end process of what our officials dictate upon us. We are super scrubbers of texts worked upon by our officials, as they handicap us with titles and urge us not to think too hard, or work too hard. Maybe this is why we do not pay much attention to this Committee in the first place. If we did, we would not experience the high incidence of lack of quorum. Trust me, I was an official and can attest to the instances where we nearly did not have quorum. In the rest of the world, in UN fora, SADC countries are absent and when we are there, we have scattered views, even vis-à-vis our neighbours. We used to have the African Group when we developed the Framework Convention on Tobacco Control (FCTC). What about the SADC Group?

Have we no commonality on anything? This cannot be. I therefore suggest the secretariat consider presenting the best continuous work program and presentable collaborations for regular consideration by this Committee of Ministers of Justice and Attorneys-General, with bodies such as the Human Rights Commission. This will make this learned Committee more functional and rewarding for attendees such as ourselves. This is a think-tank that has a wealth of knowledge and experience and should be utilized to its full potential.

I leave you with my suggested text for a declaration which ought to be made by the Summit of Heads of State and Government of SADC on Albinism. Since I am told that agenda items need to be submitted and sanitized before we can discuss them, I will be making a formal submission in writing further to what I have submitted.

Lastly Colleagues,

I know that you did not sign up to a sermon. For sure, I am no preacher man. Therefore, I shall not preach to you any longer. By the way, even when it comes to religious activities, we may want to cooperate because we have seen religious activities across our regional borders and which may potentially cause legal problems with immigration and regulated activities. Again, proving how potentially important this Committee is.

With these few remarks, it is my pleasure to open this meeting and look forward to our productive engagement.

End.