



**MOTIVATION SPEECH**  
**BY**  
**HOURLABLE LIDWINA SHAPWA, DEPUTY MINISTER OF JUSTICE**  
**ON THE OCCASION OF THE**  
**RATIFICATION OF THE 2014 PROTOCOL ON THE TRIBUNAL**  
**IN THE**  
**SOUTHERN AFRICA DEVELOPMENT COMMUNITY**  
**(SADC)**

**NATIONAL ASSEMBLY**

**11 NOVEMBER 2015**

Hon. Speaker, Hon, Members,

I rise to motivate the ratification of the Protocol on the SADC Tribunal, in accordance with article 63 (2) (e) of the Namibian Constitution read together with Article 32(3) (e) of the same Constitution.

The former SADC Tribunal was created to ensure adherence to, and proper interpretation of the provisions of the SADC Treaty and subsidiary instruments. It also had powers to adjudicate upon disputes referred to it. It was established by the Protocol on the Tribunal, which was signed in Windhoek, Namibia during the year 2000 Ordinary SADC Summit. The inauguration of the Tribunal and the swearing in of members took place on 18 November, 2005 in Windhoek, Namibia where it was based. In addition to the administrative staff, it also consisted of judges appointed from Member States.

The Tribunal was *de facto* suspended at the 2010 SADC Summit. As a general principle of public international law, parties to international treaties are member states or international organizations. In respect of the former Tribunal, individuals and private institutions were granted access to it, and this was realized that it was not the original intention of

the creation of the tribunal and is contrary to the principles of public international law. On 17 August 2012 in Maputo, Mozambique, the SADC Summit addressed the issue of the suspended Tribunal. The SADC Summit resolved that a new Protocol on the Tribunal for the Southern Africa Development Community (SADC) should be negotiated. The Summit further resolved that its mandate should be confined to interpretation of the SADC Treaty and Protocols relating to disputes between Member States, as well as to give advisory opinions on matters referred to it by the Summit.

During the period of suspension of the Tribunal, the Republic of Namibia participated in the negotiations to develop a new instrument which will govern the operations of the new Tribunal. A number of meetings on the suspension and the establishment of the Tribunal were held during the tenure of Namibia's chairmanship of SADC.

On 18 August 2014, SADC member states, signed a new Protocol on the Southern Africa Development Community at Victoria Falls, Zimbabwe.

The budget of the SADC Tribunal shall be funded from the annual budget of SADC.

The new Protocol will enter into force thirty (30) days after the deposit of the instrument of ratification by two thirds of the SADC member states

In conclusion, Hon. Speaker, Hon. Members, it is Namibia's submission that the agreement of SADC Member States to amend the Protocol on the Tribunal to exclude natural and juristic persons from the jurisdiction of the Tribunal is highly commended and it is testimony of the spirit of brotherhood, sisterhood and comradeship which exists in the SADC region. In this regard, I would like to acknowledge the valuable contributions made by Honourable Pendukeni Iivula-Ithana and Honourable Utoni Nujoma who as ministers of justice at the respective times, contributed to the discussions and recommendations which led to the suspension of the 2000 SADC Protocol on the Tribunal and creation of the new 2014 SADC Protocol on the Tribunal.

Finally, Honourable Speaker, Hon. Members, I now humbly requests that this august house ratifies the new Protocol on the SADC Tribunal.

I thank you.