



**2008 SADC SUMMIT FOR HEADS OF STATE AND
GOVERNMENT
SANDTON, SOUTH AFRICA
16 - 17 AUGUST 2008**

RECORD

1. ADOPTION OF THE AGENDA

Summit considered and adopted the Agenda (**SADC/SM/1/2008/1**) presented by the Secretariat.

2. ELECTIONS

2.1 Chairperson and Deputy Chairperson of Summit

Summit elected His Excellency Thabo Mbeki, President of the Republic of South Africa, as Chairperson of SADC and His Excellency Joseph Kabila of the Democratic Republic of Congo as the Deputy Chairperson of SADC.

2.2 Chairperson and Deputy Chairperson of the Organ on Politics, Defence and Security Cooperation.

Summit elected His Majesty King Mswati III of the Kingdom of Swaziland, as Chairperson of the Organ on Politics, Defence and Security Cooperation and His Excellency Armando Guebuza of the Republic of Mozambique as the Deputy Chairperson of the Organ on Politics, Defence and Security Cooperation.

3. STATEMENT BY THE OUTGOING CHAIRPERSON

Summit noted the Statement presented by the outgoing Chairperson of SADC.

4. **REVIEW OF THE POLITICAL SITUATION IN THE REGION**
- 4.1 **Report of the Chairperson of the SADC Organ on Politics, Defence and Security Cooperation**
- 4.1.1 Summit considered the Report **(SADC/SM/1/2008/4)** presented by the Chairperson of the SADC Organ on Politics, Defence and Security Cooperation, and in particular the following:
- (i) the implementation of the Hashim Mbita Project;
 - (ii) the implementation of the Strategic Indicative Plan of the Organ (SIPO);
 - (iii) the consolidation of Democracy and Political and Security situation in the Region;
 - (iv) Disaster Management and Mitigation in the Region; and
 - (v) Defence and Security matters of the Region.
- 4.1.2 Summit noted that, generally, the Region remains relatively stable and peaceful with challenges in the Democratic Republic of Congo, Lesotho, Malawi, South Africa and Zimbabwe, which unless addressed, could negatively affect the pace of implementation of the regional integration agenda.
- 4.1.3 Summit also noted that the Organisation continued to play its role of facilitating dialogue within and between Member States aimed at resolving these political challenges amicably, in particular, the following:
- (i) **Political and Security Situation in the Democratic Republic of Congo**

A peace deal was signed on 23 January 2008 and, since the signing, the situation is relatively calm.
 - (ii) **Political and Security Situation in the Kingdom of Lesotho**

The mission of the SADC Eminent Person, Sir Ketumile Masire is still ongoing. He undertook a mission to the Kingdom of Lesotho in February 2008 to resuscitate the dialogue process and get update on the developments with regard to the implementation of the Roadmap.

(iii) **Political Situation in Malawi**

An assessment Mission to Malawi to assess the political situation in the country was fielded in May 2008. As a follow up, a Ministerial Troika Assessment Mission was undertaken to Malawi in June 2008. The Mission learnt that the political impasse was a result of lack of consensus on Section 65 of the Constitution and it was assured that the situation was under control.

(iv) **Political Situation in South Africa**

Violent xenophobic attacks erupted in May 2008, where foreign nationals and some South African citizens were attacked. The Government of South Africa has taken measures to address the violent xenophobic attacks, which, among others, include the establishment of a National Task Force to deal with the perpetrators.

(v) **Elections in Zimbabwe**

Zimbabwe held harmonised elections (Presidential, Senatorial, House of Assembly and local) on 29 March 2008, which resulted in a presidential runoff. Following this, political dialogue has been underway, through the SADC-appointed mediator, His Excellency Thabo Mbeki, President of South Africa to resolve the political impasse in line with AU Resolution reached during the AU Summit in Sharm El Sheikh from 20 June to 1 July 2008.

4.2 **Retreat for SADC Heads of State and Government**

Summit noted the Statement on the Retreat of SADC Heads of State and Government presented by the Chairperson of SADC.

5. **REPORT OF THE MINISTERIAL TASK FORCE ON REGIONAL ECONOMIC INTEGRATION**

5.1 Summit considered the Report **(SADC/SM/1/2008/5)** presented by the Chairperson of the Ministerial Task Force on Regional Economic Integration and, in particular, the following:

(i) **SADC Free Trade Area Implementation**

(a) **Implementation of Tariff Phase Downs**

Eleven Member States have fulfilled their minimum obligations in terms of tariff phase downs (eighty five (85) per cent of duty free by January 2008). Malawi indicated that it had liberalised seventy (70) per cent of its trade with SADC and that with further reduction measures, they will achieve the minimum threshold of eighty five (85) per cent of trade at zero tariff. Angola will present its offer for negotiation once it has been considered and approved by Cabinet. The Democratic Republic of Congo indicated that they are working on the possibility of joining the FTA in the future. Angola, the Democratic Republic of Congo and Malawi have reiterated their commitment to the FTA.

(b) **Review of Rules of Origin**

The mid-term review of the Protocol on Trade recommended clear, straight forward, transparent, simple and flexible rules of origin. Most of the outstanding rules have now been consolidated in an updated List Rules document to be circulated to Member States before the end of August 2008 for implementation by 1 September 2008. Tariff lines still outstanding under the review process are mainly textile and clothing. Discussions on these issues will continue in the Trade Negotiation Forum (TNF).

(c) **Institutional Mechanism for Monitoring, Reporting and Eliminating of Non-Tariff Barriers to Trade (NTBs)**

Following the adoption by Ministers of Trade of an Action Plan for the monitoring and elimination of NTBs in July 2007, further proposals were made to improve institutional structures, processes, roles and responsibilities under the approved mechanism. An online NTB reporting and monitoring mechanism will be activated and introduced in all Member States and the Secretariat.

Ministers of Trade and Industry, at their July 2008 meeting in Lusaka, Zambia approved the proposed improvements to the reporting mechanism.

(d) Further Work on the Free Trade Area (FTA)

To consolidate the FTA, Member States will embark on work to address outstanding implementation issues which include, among others:

- phase down of the remaining list of sensitive products to ensure that the tariffs are phased out in 2012 as scheduled;
- implementation of outstanding tariff phase down obligations;
- expedite the rules of origin review process on outstanding tariff lines (mainly textiles and clothing) to ensure a balanced outcome of this exercise;
- review implementation and effectiveness of agreed NTB mechanism;
- urge and assist those Member States who are not yet part of the FTA to accede and participate; and
- update the audit report on the FTA.

(e) Launch of the FTA

The SADC FTA would be officially launched by Summit on 17 August 2008 at the Sandton Convention Centre, South Africa.

(ii) Preparations for the SADC Customs Union

The Task Force created four technical working groups and adopted a working document (Terms of Reference) to guide the groups to continue with their current work programme.

Decision 1

5.2	Summit:
(i)	approved the Report of the Ministerial Task Force on Regional Economic Integration;
(ii)	directed the Task Force to address outstanding issues with regard to the FTA and fast-track preparations for the SADC Customs Union; and
(iii)	approved the programme and launched the FTA.

6. **REPORT ON THE SADC INTERNATIONAL CONFERENCE ON POVERTY AND DEVELOPMENT**

6.1 **Implementation Plan for the Outcomes and Decisions from the SADC International Conference on Poverty and Development**

6.1.1 Summit recalled that it held an International Conference on Poverty and Development on 20 April 2008, in Mauritius, during which it reflected on and adopted innovative approaches to the Region's poverty eradication strategies towards the attainment of the Millennium Development Goals (MDGs).

6.1.2 Summit also recalled that, at the end of the Conference, it signed a SADC Declaration on Poverty Eradication and Sustainable Development which outlines key priority areas requiring attention at the regional level.

6.1.3 Summit noted that, as a way of operationalising the outcomes of the Conference and the decisions taken by Heads of State and Government, the Secretariat developed an Implementation Plan (**SADC/SM/1/2008/6**). The Plan will guide and direct the activities of the Secretariat, Member States and other stakeholders in achieving the goals of the Region to accelerate the commitments to eradicate poverty and establish a sustainable pattern of development.

6.1.4 Summit also noted that the Plan covers the following major areas:

- (i) consolidation of the outcomes of the discussions, the proposals that emanated from the discussions and the decisions that were made;
- (ii) operationisation of the Ministerial Task Force on Food Security to deal with the current food crisis; and encourage regional collaboration on food security;
- (iii) establishment of the Regional Poverty Observatory; and
- (iv) development of a Regional Action Plan for the Poverty Eradication and Sustainable Development Declaration.

Decision 2

6.1.5 Summit:

- (i) approved the Implementation Plan of the decisions emanating from the Summit Conference on Poverty and Development; and

- (ii) directed the Secretariat and urged Member States to implement the Plan; and
- (iii) commended Mauritius for hosting the SADC International Conference on Poverty and Development.

6.2 **Report of the Ministerial Task Force on Food Security**

Summit considered the **Report of the Ministerial Task Force on Food Security (SADC/SM/1/2008/6A)**.

6.2.1 Summit recalled that, at the SADC International Conference on Poverty and Development held in April 2008, in Mauritius, it constituted a Ministerial Task Force, comprising Ministers responsible for Trade, Agriculture and Finance. The objective of the Task Force is to promote regional collaboration in the area of food security. The Task Force was also mandated to immediately focus on the current food crisis.

6.2.2 Summit noted that the Ministerial Task Force on Food Security met in July 2008, in Lusaka, Zambia, and noted the following issues:

6.2.3 **Food Security Situation for 2008/09 Marketing Year**

6.2.3.1 Summit noted that the revised 2008 crop production estimates indicate a twenty three (23) per cent increase in cereal production from 24.24 million tonnes in 2007 to 29.78 million tonnes in 2008. The increase in overall cereal production is mostly due to a 67 (sixty seven) per cent increase in South Africa from 9.29 million tonnes in 2007 to the 2008 forecast production of 15.55 million tonnes (Table 1).

Table 1: Supply and Demand of Cereals for 2008/09 as at 14 August 2008

	2008/09 Marketing Year			Production (Harvest Year)			5-Year Average	
	Required* ('000 tons)	Available** ('000 tons)	Deficit (-) /Surplus	2007 ('000 tons)	2008 ('000 tons)	2008 % change over 2007	Producti on ('000 tons)	2008 % change
Angola	1,527	829	-698	734	756	3%	745	1%
Botswana	331	78	-253	29	37	26%	31	18%
Lesotho	344	129	-215	78	88	12%	104	-16%
Malawi	2,574	3,144	570	3,616	2,976	-18%	2,332	28%
Mauritius	318	6	-312	2	2	0%	2	0%
Mozambique	2,631	2,464	-167	2,168	2,284	5%	1,981	15%
Namibia	314	180	-133	114	121	6%	126	-4%
South Africa	15,144	17,348	2,204	9,292	15,549	67%	10,963	42%
Swaziland	178	80	-98	47	62	33%	66	-6%
Tanzania	6,454	5,666	-788	5,422	5,621	4%	4,864	16%
Zambia	1,779	1,891	112	1,537	1,452	-6%	1,395	4%
Zimbabwe	2,080	848	-1,232	1,201	836	-30%	1,282	-35%
SADC	33,707	32,663	-1,011	24,240	29,783	23%	23,893	25%

Source: SADC FANR Directorate and Member States

* Includes requirements for SGR (Strategic Grain Reserves)

** 2008 production plus carryover stocks.

Note: Cereals = maize, rice, wheat, sorghum/millet.

6.2.3.2 Summit also noted that the overall regional food security situation has improved compared to last year. Current assessments indicate a 2008/09 regional cereal deficit of 1.01 million tonnes, which is a significant improvement on last year's deficit of 3.68 million tonnes. Cereal surpluses are estimated at 2.20 million tonnes in South Africa; 570,000 tonnes in Malawi; and 112,000 tonnes in Zambia.

6.2.3.3 Summit further noted that, with regard to maize production, an overall surplus of 2.45 million tonnes is estimated for the Region during the 2008/09 marketing year. This is a huge improvement on last year's maize surplus of only 111,000 tonnes. Maize surpluses are estimated at 3.52 million tonnes in South Africa; 591,000 tonnes in Malawi; 244,000 tonnes in Mozambique; and 125,000 tonnes in Zambia. The rest of the Member States indicate maize deficits of varying magnitudes which, however, could be covered from available surpluses in the four (4) Member States.

6.2.3.4 Summit noted that current assessments indicate regional deficits for wheat (2.19 million tonnes), rice (924,000 tonnes) and sorghum/millet (352,000 tonnes).

6.2.4 Current Food Crises

6.2.4.1 Summit noted that, in spite of the improvement in regional food availability during the 2008/09 marketing year compared to the last few years, rising food prices have raised serious concern about the

food and nutrition situation of the majority of the people in the Region with limited income to buy the expensive basic food.

6.2.4.2 Summit also noted that the major contributory factors to the soaring food prices include the following:

- (i) the increasingly poor weather conditions, especially droughts;
- (ii) high energy prices that have made agricultural production more expensive. At least fifteen (15) per cent of food price rise is attributed to rise in energy prices;
- (iii) worldwide reduction in levels of food stocks (20 year low in world stocks);
- (iv) massive shift in crop cultivation towards bio-fuels, especially in the USA;
- (v) increased consumption of food in emerging economies such as India and China;
- (vi) commodity speculation; and
- (vii) reduction and/or inadequate levels of investments in agriculture in recent decades.

6.2.4.3 Summit further noted that food prices in the Region have not yet risen by the same magnitude as world prices due to better cereal harvest, especially maize, during the recent years. However, the situation could easily change if the Region's food production goes down in the coming season as is currently forecast due to a sharp increase in farm input prices, especially fertilisers.

6.2.4.4 Summit noted that the Ministerial Task Force came up with several measures that Member States should consider in order to adapt and mitigate the impact of current and future food crises in the Region. These measures include:

- (i) increasing the levels of investment and budgetary allocation to agriculture;
- (ii) expediting the harmonisation of Sanitary and Phyto-sanitary Standards measures and removal of non-tariff barriers within the Region;

- (iii) improving access to agricultural inputs especially fertiliser through the provision of temporary subsidies to smallholder farmers;
- (iv) promoting programmes on water management, control, harvesting and storage for agriculture;
- (v) encouraging financial institutions, banks, micro-finance institutions and NGOs to prioritise agriculture and extend credit to small scale farmers especially women and vulnerable groups;
- (vi) introducing social security systems targeted at the vulnerable groups to cushion them from the impact of increased food prices;
- (vii) facilitating easy flow of information among Member States and with the Secretariat;
- (viii) facilitating the establishment of the Regional Food Reserve Facility;
- (ix) prioritising infrastructural development such as spatial development corridors, rural feeder roads linked to corridors; agro-processing facilities closer to primary producers and food storage facilities;
- (x) creating appropriate incentives for private sector involvement in services related to agriculture and food security; and
- (xi) urging international cooperating partners (ICPs) to meet and deliver on commitments already taken at various fora such as G8 meetings and the **World Food Summits in Rome, Italy (1996 and 2008) respectively.**

6.2.4.5 Summit also noted that the Ministerial Task Force noted that there are opportunities that the current increasing food prices present to the Region. The higher food prices could be used to stimulate greater food production and strengthen the agricultural sector. Similarly, the increasing demand for bio-fuels could be used to boost agricultural production and create more employment opportunities. However, there is need to expedite efforts to develop a regional policy on bio-fuels to ensure that production of bio-fuels does not compromise food security.

Decision 3

6.2.4.6 Summit urged Member States:

- (i) with cereal surplus (Malawi, South Africa and Zambia) to encourage regional sales in order to enhance regional food security;
- (ii) to undertake short-term measures to mitigate against the current high food prices which may include social safety nets, food/cash for work, feeding schemes for students and zero rating on food imports;
- (iii) to undertake long-term measures that would increase cereal production and access in the region; and
- (iv) to take advantage of the opportunities offered by rising food prices in stimulating the growth of the sector.

7. **ABOLITION OF THE ICM AND ITS REPLACEMENT BY SECTORAL AND CLUSTER MINISTERIAL MEETINGS**

7.1 **The Role of ICM**

7.1.1 Summit recalled that, at its Extra-Ordinary Summit held in March 2001, in Windhoek, Namibia, it approved the “Report on the Review of the Operations of SADC Institutions” presented by Council. The Summit, among others, approved a new structure that included the establishment of the Integrated Committee of Ministers (ICM) to replace the Sectoral Committees of Ministers. The composition, functions and *modus operandi* of the ICM were incorporated into the amended SADC Treaty in Article 12 and further elaborated in the Explanatory Notes of the Review Report, respectively. The main function of the ICM was to oversee and monitor the implementation of the Regional Indicative Strategic Development Plan (RISDP).

7.2 **Operational Challenges of ICM**

7.2.1 Summit noted that since its launching in Luanda in March 2003, ICM has encountered operational challenges. These include the level and degree of participation of sectoral Ministers, lack of clear division of responsibilities between ICM and Council and limited capacities to operationalise sub-committees at both national and regional levels.

7.2.2 Summit noted that, in order to address these issues, Council at its meeting held in August 2003, in Dar-es-Salaam, the United

Republic of Tanzania, considered various options and approved that ICM at the integrated level meets in May each year. ICM would meet in three sessions, namely: session one being a plenary to consider cross-cutting issues; session two to consider cluster issues; and session three for consolidation of issues and decisions.

7.2.3 Summit further noted that, notwithstanding the implementation of the above decisions, the above challenges have continued to be encountered. In addition, SADC sectoral Ministers have continued to request the ICM to mandate them to meet or establish ad hoc or permanent sub-committees. Further more, some sectoral Ministers have continued to meet sometimes outside SADC structures in order to adopt SADC common positions at international fora.

7.2.4 Summit noted that, in order to resolve the above challenges, Council approved the establishment of a Task Force comprising Angola, Lesotho, Mauritius, South Africa, Tanzania and Botswana as Chair, which was mandated to examine and review the operations of ICM including cost-benefit analysis of various options that may be considered.

7.3 **Recommendations of the Task Force**

7.3.1 Summit noted that Council, at its meeting held in August 2007, in Lusaka, Zambia, considered the Report of the Task Force, which made the following observations:

- (i) the role of Sector Ministers is indispensable if RISDP programmes are to be effectively owned and implemented;
- (ii) certain specialisation and competencies to endorse policies and programmes rest more with Sector Ministers than ICM;
- (iii) experience has shown that the ICM deliberations do not add value to the Sector Ministers, as they only note or endorse the recommendations of Sector Ministers and acts as a conduit of the same to Council;
- (iv) the overlapping mandate and responsibilities of Sector Ministers and ICM; and ICM and Council suggest that there is need to rationalise the levels of ministerial fora from Sector Ministers directly to Council; and
- (v) cross-cutting issues which are also currently handled by ICM are adequately addressed by the respective Sector Ministers and are mainstreamed in the various sectors through the Directorates and Units at the Secretariat.

7.3.2 Summit also noted that, based on the above observations; Council considered the following options as the way forward:

- (i) Option I: Maintain the Status Quo; and
- (ii) Option II: Replacement of ICM by Sectoral Committees of Ministers.

7.4 **Proposed Sectoral and Cluster Ministerial Committees to replace ICM**

7.4.1 Summit noted that Council, at its Extra-Ordinary meeting held in November 2007, in Lusaka, Zambia, approved Option (ii), namely, the replacement of ICM by Sectoral Committees of Ministers. Council also approved a framework for the convening of Sectoral and Cluster Ministerial Committees. The Sectoral and Cluster Ministerial Committees are:

- (i) Trade, Industry, Finance and Investment;
 - (a) Ministers responsible for Finance, Economic Planning and Investment; and
 - (b) Ministers responsible for Trade and Industry.
- (ii) Infrastructure and Services (I & S):
 - (a) Ministers responsible for Energy;
 - (b) Ministers responsible for Water;
 - (c) Ministers responsible for Transport and Meteorology;
 - (d) Ministers responsible for Postals, Communications and ICT; and
 - (e) Ministers responsible for Tourism.
- (iii) Food, Agriculture, Natural Resources and Environment;
 - (a) Ministers responsible for Agriculture and Food Security; and
 - (b) Ministers responsible for Natural Resources; and
 - (c) Ministers responsible for Environment.

- (iv) Social, Human Development and Special Programmes (SHD & SP);
 - (a) Ministers responsible for Health and HIV and AIDS;
 - (b) Ministers responsible for Education, Labour and Employment; and
 - (c) Ministers responsible for Gender.
- (v) Politics, Defence and Security;
 - (a) Inter-State Defence and Security Committee; and
 - (b) Inter-State Politics and Diplomacy Committee.
- (vi) Ministers responsible for Legal Affairs and Judicial Matters.

7.4.2 Summit noted that Ministers responsible for Science and Technology could be allocated to either the cluster of SHD & SP or I & S.

Decision 4

7.4.3	Summit :
	(i) approved the abolition of the ICM and that its functions be carried out by the Sectoral and Cluster Ministerial Committees, whose main responsibility will be to oversee the activities of priority areas of integration and cooperation; and
	(ii) mandated Council to allocate Science and Technology to one of the clusters.

8. CREATION OF THE SECOND POSITION OF DEPUTY EXECUTIVE SECRETARY

8.2.1 Summit recalled that, at its meeting held in August 2006, in Maseru, Lesotho, it took a decision to fast-track the implementation of the SADC Integration Agenda.

8.2.2 Summit also recalled that, at its Extra-Ordinary Summit held in October 2006, in Midrand, South Africa, it mandated the Task Force on Regional Economic Integration and the Executive Secretary to re-align the structure of the Secretariat with the priorities of the Organisation.

- 8.2.3 Summit noted that Council directed the Secretariat to undertake a Job Evaluation exercise in order to adjust and re-align the structure of the Secretariat to the prioritized SADC Programme of Action based on the RISDP. To this end, the Secretariat enlisted the services of a consultant (KPMG Botswana) to carry out the Job Evaluation exercise.
- 8.2.4 Summit also noted that Council, at its meeting held in November 2007, in Lusaka, Zambia, noted that upon receiving the Consultant's Report, the Executive Secretary circulated it to Member States and undertook extensive consultations with Member States, management and staff. Against this background, Council deliberated on the Executive's Report on recommendations emanating from the Job Evaluation, which included the proposal to elevate the position of the Chief Director to a second Deputy Executive Secretary, which would require minimal additional resources.
- 8.2.5 Summit noted that Council abolished the position of the Chief Director.
- 8.2.6 Summit also noted that Council recommended the creation of a second post of Deputy Executive Secretary, with one Deputy Executive Secretary coordinating programmes while the other will be in charge of services.
- 8.2.7 Summit further noted that the introduction of the two Deputy Executive Secretaries should further strengthen the leadership of the Secretariat and ensure overall team effectiveness through improved cohesion and balanced communication within the various functions of the Secretariat. The proposed top management structure gives an opportunity for the release of the Executive Secretary to focus on high level matters of strategy and sensitivity, effective delegation and authority levels, addressing bureaucratic delays and facilitating decision making processes. The creation of the additional post of Deputy Executive Secretary would also eliminate the challenges of reporting lines between Deputy Executive Secretary and Chief Director.
- 8.2.8 Summit noted that, in view of the urgency to deploy a second Deputy Executive Secretary, the approval of the Deputy Executive Secretary could be undertaken at the next Summit or Extra-Ordinary Summit.
- 8.2.9 Summit also noted the possibility of not providing for a specific number and portfolios of Deputy Executive Secretaries in the Treaty to avoid amending the Treaty each time a Deputy Executive Secretary is appointed. The Committee of Ministers of

Justice/Attorneys Generals would consider the matter at its future meetings.

Decision 5

8.2.10	Summit:
	(i) approved the creation of a second position of Deputy Executive Secretary; and
	(ii) directed the Chair of Council assisted by the Secretariat to expedite the recruitment of the second Deputy Executive Secretary, who should be sworn-in during the next Summit or Extra-Ordinary Summit; and
	(iii) mandated Ministers of Justice/Attorneys Generals to consider the possibility of not providing for a specific number and portfolios of Deputy Executive Secretaries in the Treaty to avoid amending the Treaty each time a Deputy Executive Secretary is appointed and submit a report to Council.

9. LEGAL INSTRUMENTS FOR CONSIDERATION AND SIGNING

9.1 Draft Agreement Amending the Treaty

9.1.1 Summit noted that, arising from its decisions under items 7 and 8, and in view of the urgent need to implement these decisions, Council has recommended the amendment of the SADC Treaty in pursuit of the following objectives:

- (i) the provision of two Deputy Executive Secretaries for the Secretariat; and
- (ii) the abolition of the Integrated Committee of Ministers and its replacement by sectoral and cluster ministerial committees.

9.1.2 Summit also noted that only the Summit has the power to amend the SADC Treaty as provided for in Article 36 (1). To this end, the Secretariat prepared the draft amendment to the Treaty, and circulated it to Member States.

9.1.3 Summit further noted that Ministers of Justice/Attorneys General, at their meeting held in May 2008, in Lusaka, Zambia, cleared the Draft Agreement Amending the Treaty **(SADC/SM/1/2008/9.1)** and recommended it to Council for approval and subsequent referral to Summit for signature.

- 9.1.4 Summit noted that the Standing Committee of Senior Officials considered the Document **(SADC/SM/1/2008/9.1)** and made suggestions aimed at improving the text as indicated in document **(SADC/SM/1/2008/9.1B)**.

Decision 6

- 9.1.5 Summit approved the Agreement Amending the Treaty (SADC/SM/1/2008/9.1B) and Angola, Democratic Republic of Congo, Lesotho, Mozambique, Namibia, Seychelles, South Africa, Swaziland, United Republic of Tanzania, Zambia and Zimbabwe signed the Protocol.

9.2 Draft Protocol on Gender and Development

- 9.2.1 Summit recalled that, at its meeting held in August 2007, in Lusaka, Zambia, directed Member States to carry out consultations with a view to improving the text of the Draft Protocol on Gender and Development.
- 9.2.2 Summit noted that as per the roadmap developed, the Ministers responsible for Gender/Women's Affairs met in April 2008, in Windhoek, Namibia, and approved the revised Protocol on Gender and Development in December 2007, in Livingstone, Zambia. Ministers recommended the revised Protocol to the Ministers of Justice/Attorneys General for their consideration.
- 9.2.3 Summit also noted that Ministers of Justice/Attorneys General, at their meeting held in June 2008, in Lusaka, Zambia cleared the Draft Protocol on Gender and Development **(SADC/SM/1/2008/9.2)** and recommended it to Council for approval and subsequent referral to Summit for signature. The Protocol has also taken into account the contents of the Declaration on Gender and Development.
- 9.2.4 Summit noted that Mauritius might not sign the Protocol because it needed to consult with State Counsel Office on the Article dealing with affirmative Action, which is not in line with its Constitution.

Decision 7

- 9.2.5 Summit approved the Protocol on Gender and Development and Angola, Democratic Republic of Congo, Lesotho, Mozambique, Namibia, Seychelles, South Africa, Swaziland, United Republic of Tanzania, Zambia and Zimbabwe signed the Protocol.

9.3 **Draft Protocol on Science, Technology and Innovation**

- 9.3.1 Summit noted that the Ministers responsible for Science, Technology and Innovation held a meeting in July 2007, in Pretoria, South Africa, where they adopted the Draft Protocol on Science, Technology and Innovation.
- 9.3.2 Summit also noted that at the same meeting, the Ministers responsible for Science, Technology and Innovation recommended the Draft Protocol on Science, Technology and Innovation to the Ministers of Justice/Attorneys General for their consideration.
- 9.3.3. Summit further noted that Ministers of Justice/Attorneys General, at their meeting held in June 2008, in Lusaka, Zambia, cleared the Draft Protocol on Science, Technology and Innovation **(SADC/CM/2/2008/9.3)** and recommended it to Council for approval and subsequent referral to Summit for signature.
- 9.3.4 Summit noted that the Draft Protocol on Science, Technology and Innovation has taken into account the contents of the Declaration on Science, Technology and Innovation.

Decision 8

- 9.3.5 Summit approved the Protocol on Science, Technology and Innovation and Angola, Democratic Republic of Congo, Lesotho, Mozambique, Namibia, Seychelles, South Africa, Swaziland, United Republic of Tanzania, Zambia and Zimbabwe signed the Protocol.

9.4 **Draft Agreement Amending Article 20 of the Protocol on Trade**

- 9.4.1 Summit recalled that the Committee of Ministers of Trade (CMT), at its meeting held in October 2004, in Victoria Falls, Zimbabwe, approved that a provision be made in the Protocol on Trade for emergency temporary safeguard measures to enable Member States to protect local industries in the event of serious threat or injury from products imported from another Member State.
- 9.4.2 Summit noted that the CMT, at its meeting held in July 2006, in Gaborone, Botswana, adopted the Draft Agreement Amending Article 20 of the Protocol on Trade, and referred it to the Ministers of Justice/Attorneys General for consideration.
- 9.4.3 Summit also noted that the emergency provisional safeguards would be implemented over shorter periods than the normal safeguard measures, which are already provided for under Article 20 of the Protocol.

- 9.4.4 Summit further noted that Ministers of Justice/Attorneys General, at their meeting held in May 2008, in Lusaka, Zambia, cleared the Draft Agreement Amending Article 20 of the Protocol on Trade **(SADC/CM/2/2008/9.4)** and recommended it to Council for approval and subsequent referral to Summit for signature.

Decision 9

- 9.4.5 Summit approved the Agreement Amending Article 20 of the Protocol on Trade and Angola, Democratic Republic of Congo, Lesotho, Mozambique, Namibia, Seychelles, South Africa, Swaziland, United Republic of Tanzania, Zambia and Zimbabwe signed the Protocol.

9.5 Draft Agreement Amending Article 6 of the Protocol on the Tribunal and the Rules of Procedure Thereof

- 9.5.1 Summit recalled that, at its meeting held in August 2005, in Gaborone, Botswana, appointed ten (10) Members of the SADC Tribunal pursuant to Article 4 (4) of the Protocol on Tribunal and the Rules of Procedure Thereof.

- 9.5.2 Summit noted that, in accordance with Article 6 (1) of the Protocol on Tribunal and the Rules of Procedure Thereof:

- (i) Members shall be appointed for a term of five (5) years and may only be re-appointed for a further term of five (5) years;
- (ii) out of the Members initially appointed, the terms of two (2) of the Regular and two (2) of the additional Members shall expire at the end of three (3) years; and
- (iii) the Members whose term is to expire at the end of three (3) years shall be chosen by a lot to be drawn by the Executive Secretary immediately after the first appointment.

- 9.5.3 Summit also noted that, following the stipulation of Article 6 (1) of the Protocol on the Tribunal and the Rules of Procedure Thereof, at the time of the first appointment in 2005, a drawing of lot should have been carried out to select those Members of the Tribunal whose term of office should expire in August 2008. However, this exercise was not effected in 2005.

- 9.5.4 Summit further noted that to overcome the anomaly, the Secretariat and the Tribunal referred the matter to the Ministers of Justice/Attorneys General. Ministers of Justice/Attorneys General, at their meeting held in June 2008, in Lusaka, Zambia, recommended that:

- (i) an amendment to the Protocol on the Tribunal and the Rules of Procedure Thereof was necessary to specifically address cases where the drawing of the lot is not done immediately after the Members are appointed; and
- (ii) for the current Members of the Tribunal, the lot should be drawn immediately once the proposed amendment comes into force.

9.5.5 Summit noted that the Ministers of Justice/Attorneys General prepared the Draft Agreement Amending Article 6 of the Protocol on the Tribunal and the Rules of Procedure Thereof (**SADC/SM/1/2008/9.5**) and recommended it to Council for approval and subsequent referral to Summit for signature.

Decision 10

9.5.6 Summit approved the Agreement Amending Article 6 of the Protocol on the Tribunal and the Rules of Procedure Thereof and Angola, Democratic Republic of Congo, Lesotho, Mozambique, Namibia, Seychelles, South Africa, Swaziland, United Republic of Tanzania, Zambia and Zimbabwe signed the Protocol.

10. REPORT OF THE TRIBUNAL

10.1 Cases Filed

Summit noted that the Tribunal started hearing cases. A total of four (4) cases and ten (10) cases were filed in 2007 and 2008, respectively.

10.2 Enforcement and Execution

10.2.1 Summit noted that Article 32 (2), (3), (4), (5) of the Protocol on Tribunal provides as follows:

- (i) Article 32 (2): States and institutions of the Community shall take forthwith all measures necessary to ensure execution of decisions of the Tribunal;
- (ii) Article 32 (3): Decisions of the Tribunal shall be binding upon the parties to the dispute in respect of that particular case and enforceable within the territories of the States concerned;

- (iii) Article 32 (4): Any failure by a State to comply with a decision of the Tribunal may be referred to the Tribunal by any party concerned; and
 - (iv) Article 32 (5): If the Tribunal establishes the existence of such failure, it shall report its finding to Summit for the latter to take appropriate action.
- 10.2.2 Summit also noted that pursuant to Article 16 of the Treaty of SADC, the Tribunal is constituted to ensure adherence to and the proper interpretation of the provisions of the Treaty and Subsidiary instruments and to adjudicate upon such disputes as may be referred to it.
- 10.2.3 Summit further noted that on 5 October 2007 a case was filed with the Tribunal being Case No SADC (T) 2/07 between Mike Campbell (Pvt) Limited versus the Republic of Zimbabwe in which the applicant are challenging the legality of the Land Reform Programme introduced by the Republic of Zimbabwe.
- 10.2.4 Summit noted that the applicants in Case No SADC (T) 2/07 further applied for urgent interim reliefs pending determination of the substantive case. The Tribunal granted the said reliefs in its ruling delivered on 13 of December 2007 herein attached.
- 10.2.5 Summit also noted that several other applicants filed intervener applications pursuant to Rule 70 of the Rules of Procedure Thereof in cases no SADC (T) 02/08 Gideon Stephanus Theron versus The Republic of Zimbabwe, SADC (T) 03/08, Douglas Stuart Taylor-Freeme and Three Others versus The Republic of Zimbabwe, SADC (T) 04/08, Andrew Paul Rosslyn Stidolph and Others versus The Republic of Zimbabwe and SADC (T) 06/08, Anglesea Farm (Pvt) Ltd and Others versus The Republic of Zimbabwe and Others.
- 10.2.6 Summit further noted that the Tribunal delivered a ruling on the 28th of March 2008 granting permission to the applicants to be joined as parties in Case No SADC (T) 2/07. The Tribunal further granted the interim reliefs sought. The said ruling is also attached for information.
- 10.2.7 Summit noted that on 28 of May 2008, Case No 2/07 was set down for hearing from the 16 to 18 July 2008. Before the Tribunal convened on 16 of July 2008, the applicants pursuant to Rule 32(4) of the Rules of Procedure Thereof, referred to the Tribunal, an urgent application in Case No SADC (T) 11/08 alleging that the Republic of Zimbabwe had not complied with the orders of the Tribunal as stipulated in its rulings of 13 December, 2007 and 28 March 2008, respectively.

10.2.8 Summit also noted that hearing of this urgent referral matter in Case No 11/08 was set down for hearing on 16 of July 2008, the same day the Tribunal was scheduled to commence hearing the substantive submission in Case No SADC (T) 2/07. Due to the prioritization of cases, Case No 11/08 was heard on 17 of July 2008.

10.2.9 Summit further noted that the Tribunal, in accordance with Article 32 (5) of the Protocol on Tribunal and the Rules of Procedure Thereof, has established the existence of the failure by the Respondent to comply with a decision of the Tribunal. The finding is contained in the Tribunal's ruling of 18 July 2008, which is attached **(SADC/SM/1/2008/10)** for information and for the Summit to take appropriate action.

Decision 11

10.2.10 Summit referred the matter on non-compliance of the SADC Tribunal ruling in case No SADC (T) 2/07 to Ministers of Justice/Attorneys General for consideration and advice on the action to be taken by the Summit.

10.3 Tribunal Building

10.3.1 Summit recalled that the SADC Tribunal building in Windhoek, Namibia was damaged by fire on 18 January 2007.

10.3.2 Summit also recalled that the Government of the Republic of Namibia indicated its readiness to rehabilitate the building to its original state and to provide alternative court room if necessary.

10.3.3 Summit further noted that the Government of the Republic of Namibia has since rehabilitated the Tribunal building to its original state and handed over the keys to the Tribunal on 9 May 2008.

10.3.4 Summit noted that during the rehabilitation exercise, the Government of the Republic of Namibia availed the SADC Tribunal court room space at the Supreme Court Building in Namibia.

Decision 12

10.3.5 Summit commended the Government of the Republic of Namibia for the hospitality and commitment shown in hosting the SADC Tribunal.

11. **MEMBERSHIP OF SEYCHELLES**

- 11.1 Summit recalled that, at its meeting held in August 2006, in Maseru, Lesotho, mandated the Chairperson of Summit, in collaboration with Dr. The Honourable Navinchandra Ramgoolam, G.C.S.K., Prime Minister of Mauritius, to engage in further consultations with Seychelles on the matter, more specifically to assess the level of contribution and to accommodate them without forcing SADC to review its contribution formula.
- 11.2 Summit also recalled that, at its meeting held in August 2007, in Lusaka, Zambia, noted the Report from the Prime Minister of Mauritius, on the consultations with Seychelles. Mauritius, on behalf of SADC, proposed to Seychelles to pay two (2) per cent of the SADC budget as annual contributions while Seychelles confirmed its ability to pay a maximum of US\$75,000 annually.
- 11.3 Summit further recalled that, at its meeting held in August 2007, in Lusaka, Zambia:
- (i) resolved to offer Seychelles to pay US\$100,000 as annual contributions to SADC; and
 - (ii) mandated the Prime Minister of Mauritius to negotiate with Seychelles on this matter.
- 11.4 Summit noted that Seychelles accepted the offer to pay US\$100,000 as annual contributions to SADC.

Decision 13

- 11.5 Summit:
- (i) admitted Seychelles into SADC membership, and directed the Secretariat to liaise with the Government of Seychelles in effecting the appropriate legal instruments.
 - (ii) commended Mauritius for facilitating the admission of Seychelles to SADC.
- 11.6 Summit noted Seychelles' acknowledgement of the Member States' recognition of its specific conditions which led it to withdraw from SADC; and its commitment to play its part in developing the Region.

12. **ANY OTHER BUSINESS**

13. **VENUE AND DATE OF NEXT MEETING**

Summit noted and accepted the offer made by the Democratic Republic of Congo to host the 2009 Ordinary Summit of Heads of State and Government.

14. **COMMUNIQUÉ**

Decision 14

Summit considered and adopted the Communiqué of the 28th Ordinary Summit of SADC Heads of State and Government.

His Excellency Thabo Mbeki, Chairperson of SADC and
President of the Republic of South Africa

Date