



**LAW SOCIETY**  
OF SOUTH AFRICA

**PRESS RELEASE**

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**LAW SOCIETY LAUNCHES COURT BID AGAINST PRESIDENT AND  
MINISTERS TO STOP RATIFICATION OF 2014 SADC PROTOCOL**

The Law Society of South Africa (LSSA) has launched an application in the North Gauteng High Court, Pretoria to declare the actions of the President as well as the Ministers of Justice and International Relations and Cooperation in voting for, signing and planning to ratify the SADC Summit Protocol in 2014 as it relates to the SADC Tribunal, to be unconstitutional.

'Unlike the previous Protocol, the 2014 Protocol deprives citizens in the SADC region – including South Africans – of the right to refer a dispute between citizens and their government to a regional court if they fail to find relief in their own courts. By signing the 2014 Protocol, the President has infringed the right of South African citizens to access justice in terms of our Bill of Rights,' say LSSA Co-Chairpersons Richard Scott and Busani Mabunda.

As the Protocol now stands, it limits the jurisdiction of the SADC Tribunal to disputes only between member states – and no longer between individual citizens and states – in the SADC region.

At the 2014 SADC Summit at Victoria Falls in August 2014, President Jacob Zuma signed the 2014 Protocol which must now be ratified. The LSSA has brought the application in the interest of members of the public including the private sector, civil society, NGOs, workers and employers' organisations and all citizens of our country in terms of s 38 of our Constitution.

Prior to its earlier suspension in 2010 by the SADC Summit, the SADC Tribunal received 30 matters and finalised 24, all instituted by individuals. No single case had been received from SADC member states. Of the 24 cases instituted by individuals, six were still pending. 'It is highly unlikely that states will make use of the Tribunal to settle matters as they use diplomatic channels to do so,' say Mr Scott and Mr Mabunda.

Other law societies and Bar councils in the SADC region have or are in the process of launching similar actions in their courts to challenge the ratification of the SADC Protocol in their countries. This resolution was taken by members societies at the SADC Lawyers Association annual general meeting held at Victoria Falls immediately after the SADC Summit last year.

'Also of concern to lawyers in the SADC region is the continued approach by the SADC States in making decisions on the SADC Tribunal without involving citizens of the country as required by Article 23 of the SADC Treaty, to which South Africa is a signatory,' say Mr Scott and Mr Mabunda.

'We have an independent and efficient judiciary in our country at the moment, but we have no guarantee that it will always be so. As we know, the protection of our democratic values requires eternal vigilance. This is the specific duty of lawyers. We can cite the example of the irregular and arbitrary arrest and imprisonment of our colleague, human rights lawyer Thulani Maseko and editor and journalist Bheki Makhubu in Swaziland. The fact is that their trial and continued imprisonment – including recent solitary confinement – has little to do with them but rather with the democratic rights they stand for. The courts and judiciary in Swaziland have failed them. They now do not have recourse to the SADC Tribunal as citizens of SADC,' conclude Mr Scott and Mr Mabunda.

- [Founding affidavit](#) by former LSSA Co-Chairperson Max Boqwana attached.

**ISSUED ON BEHALF OF THE LAW SOCIETY OF SOUTH AFRICA**

by the Law Society of South Africa Communication Department

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Editor's note

The Law Society of South Africa brings together its six constituent members – the Cape Law Society, the KwaZulu-Natal Law Society, the Law Society of the Free State, the Law Society of the Northern Provinces, the Black Lawyers Association and the National Association of Democratic Lawyers – in representing South Africa's 23 000 attorneys and 5 500 candidate attorneys.

The LSSA is a member of the SADC Lawyers Association.