



**MINISTER  
TRANSPORT  
REPUBLIC OF SOUTH AFRICA**

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**MR AMOS MASONDO, MP  
CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES  
P.O BOX 15  
CAPE TOWN  
8000**

**Dear Chairperson**

**SUBMISSION OF THE CHARTER ESTABLISHING THE SOUTHERN AFRICAN  
DEVELOPMENT COMMUNITY (SADC) AVIATION SAFETY ORGANISATION  
(SASO) FOR TABLING TO THE NATIONAL COUNCIL OF PROVINCES**

The above subject matter bears reference.

I refer to the Charter Establishing the Southern African Development Community (SADC) Aviation Safety Organisation (SASO) that was approved by Cabinet on 22 August 2018 and was further approved by the National Assembly on 27 November 2018. The National Assembly Minutes NO 48 - 2018 are hereby attached and marked as Annexure “B” for ease of reference.

The tabling of the Charter will be done in terms of Section 231(2) of the Constitution of the Republic of South Africa, 1996 and it reads as follows: *“An international agreement binds the Republic only after it has been approved by resolution in both the National Assembly and the National Council of Provinces, unless it is an agreement referred to in subsection (3)”*.

In light of the above-mentioned, I hereby submit the explanatory memorandum on the Charter marked as Annexure “C”, the Charter marked as Annexure “D”, and legal opinion obtained from the Department of Justice and Constitutional Development and the Department of International Relations and Cooperation marked as **Annexure “E” and “F”** respectively. I therefore, submit the SASO Charter for tabling to the National Council of Provinces.

Warm Regards,



Mr. Fikile Mbalula, (MP)  
**ACTING MINISTER OF TRANSPORT**

Date: 18. 03. 2021

No 48 – 2018] FIFTH SESSION, FIFTH PARLIAMENT

**REPUBLIC OF SOUTH AFRICA**

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**MINUTES OF PROCEEDINGS**

OF

**NATIONAL ASSEMBLY**

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TUESDAY, 27 NOVEMBER 2018

1. The House met at 14:02.
2. The Speaker took the Chair and requested members to observe a moment of silence for prayer or meditation.
3. FIRST ORDER [14:03]

Consideration of Report of Portfolio Committee on Justice and Correctional Services on **Cybercrimes and Cybersecurity Bill** [B 6 – 2017] (Announcements, Tablings and Committee Reports, 7 November 2018, p 6).

There was no debate.

The Chief Whip of the Majority Party moved: That the Report be adopted.

Motion agreed to (Democratic Alliance dissenting).

Report accordingly adopted.

4. SECOND ORDER [14:04]

Second Reading debate – **Cybercrimes Bill** [B 6B – 2017] (National Assembly – sec 75) – (introduced as **Cybercrimes and Cybersecurity Bill** [B 6 – 2017]).

Debate concluded.

Question put: That the Bill be read a second time.

There was no debate.

The Chief Whip of the Majority Party moved: That the Report be adopted.

Declarations of vote made on behalf of the Democratic Alliance, Economic Freedom Fighters, Inkatha Freedom Party, National Freedom Party, United Democratic Movement, Congress of the People and African National Congress.

Motion agreed to (Economic Freedom Fighters dissenting).

Report accordingly adopted.

12. TENTH ORDER [18:19]

Consideration of Request for Approval by Parliament of **Treaty on the Prohibition of Nuclear Weapons** in terms of section 231(2) of Constitution, 1996 (Report of Portfolio Committee on International Relations and Cooperation, see Announcements, Tablings and Committee Reports, 29 October 2018, p 76).

Mr M S A Masango, as Chairperson of the Committee, introduced the Report.

There was no debate.

Declarations of vote made on behalf of the Democratic Alliance, Economic Freedom Fighters, Inkatha Freedom Party, National Freedom Party and African National Congress.

**Treaty on the Prohibition of Nuclear Weapons** accordingly approved.

13. ELEVENTH ORDER [18:36]

Consideration of Request for Approval by Parliament of **Charter Establishing the Southern African Development Community Aviation Safety Organisation (SASO)** in terms of section 231(2) of Constitution, 1996 (Report of Portfolio Committee on Transport, see Announcements, Tablings and Committee Reports, 13 November 2018, p 5).

Ms D P Magadzi, as Chairperson of the Committee, introduced the Report.

There was no debate.

Declarations of vote made on behalf of the Democratic Alliance, Economic Freedom Fighters, Inkatha Freedom Party, Congress of the People and African National Congress.

**Charter Establishing the Southern African Development Community Aviation Safety Organisation** accordingly approved.

14. [18:47] On the proposal of Mr M J Maswanganyi, the House discussed the following subject: **Implementing the National Development Plan in phases to ensure efficient monitoring and evaluation of its targets, measured against the Medium Term Strategic Framework.**

Debate concluded.

15. The House adjourned at 20:00.

P N TYAWA  
Acting Secretary to Parliament

**SECRET**

**ANNEXURE A**



**CHARTER**

**ESTABLISHING**

**THE SOUTHERN AFRICAN DEVELOPMENT  
COMMUNITY AVIATION SAFETY  
ORGANISATION**

**(SASO)**

# SECRET

## PREAMBLE

WE the representatives of the Governments of

The Republic of Angola  
The Republic of Botswana  
The Democratic Republic of Congo  
The Kingdom of Lesotho  
The Republic of Madagascar  
The Republic of Malawi  
The Republic of Mauritius  
The Republic of Mozambique  
The Republic of Namibia  
The Republic of Seychelles  
The Republic of South Africa  
The Kingdom of Swaziland  
The United Republic of Tanzania  
The Republic of Zambia  
The Republic of Zimbabwe

**RECOGNISING** that the SADC Treaty provides for the involvement of the people of the SADC Region and key stakeholders in the process of regional integration.

**RECOGNISING** that the Protocol on Transport, Communication and Meteorology requires the Member States to harmonise their policies and procedures on civil aviation and foster the development of International Civil Aviation through cooperative arrangements.

**IN PURSUANCE** of enhancing the safety of International Civil Aviation throughout the SADC Region;

**ACKNOWLEDGING** that the Principle of Subsidiarity, as approved by the SADC Council of Ministers, at its meeting held in Grand Baie, Mauritius, in August 2004, is cost-effective and promotes accountability and sustainability;

**FURTHER ACKNOWLEDGING** that there is a need to establish an organisation to deal with regional civil aviation safety oversight under the Principle of Subsidiarity.

**HAVE AGREED** as follows:

## ARTICLE 1 DEFINITIONS AND ABBREVIATIONS

### 1.1 Definitions

The following words used in this document, unless the context otherwise requires, shall have the following meanings

"Accident" means an occurrence associated with the operation of an aircraft which in the case of a manned aircraft takes place between the time any

# SECRET

person boards the aircraft with the intention of flight until such time as all such persons have disembarked, or in the case of an unmanned aircraft, takes place between the time the aircraft is ready to move with the purpose of flight until such time as it comes to rest at the end of the flight and the primary propulsion system is shut down in which

- (i) a person is fatally or seriously injured as a result of
  - (a) being in the aircraft or
  - (b) direct contact with any part of the aircraft including parts which have become detached from the aircraft or
  - (c) direct exposure to jet blast, *except* when the injuries are from natural causes self-inflicted or inflicted by other persons, or when the injuries are to stowaways hiding outside the areas normally available to the passengers and crew or

- (ii) the aircraft sustains damage or structural failure which
  - (a) adversely affects the structural strength, performance or flight characteristics of the aircraft; and
  - (b) would normally require major repair or replacement of the affected component, *except* for engine failure or damage, when the damage is limited to a single engine, (including its cowlings or accessories), to propellers, wing tips, antennas, probes, vanes, tires, brakes, wheels, fairings, panels, landing gear doors, windscreens, the aircraft skin (such as small dents or puncture holes) or for minor damages to main rotor blades, tail rotor blades, landing gear and those resulting from hail or bird strike (including holes in the radome); or

- (iii) the aircraft is missing or is completely inaccessible

"Civil Aviation Committee" means a sub-sectoral committee established in terms of the SADC Protocol on Transport, Communications and Meteorology

"Committee of Ministers" means the Committee of Ministers responsible for transport and civil aviation,

"Directors General" means the Heads of the Civil Aviation regulatory authorities of SADC Member States or the equivalent thereof

"Executive Director" means the Head of the SASO Secretariat,

"Incident" means an occurrence other than an accident, associated with the operation of an aircraft which affects or could affect the safety of operation,



# SECRET

"Inspector" means a person employed by a State Civil Aviation Authority with responsibility, under his or her discipline, for ensuring that air operators and aviation organisations comply with aviation safety and security requirements and are properly certificated, that aviation personnel are properly licensed, that aircraft are airworthy, that the facilities and equipment surrounding aircraft and air operations are safe, and that personnel maintaining or operating aircraft conduct their duties safely in accordance with national regulatory standards

"Member State" means a member of the Southern African Development Community;

"State Party" means a Member State that is a Party to this Charter.

"Subsidiarity organisation" means an organisation approved to operate under the Principle of Subsidiarity in accordance with the SADC Guidelines and Procedures on Subsidiarity as approved by the SADC Council of Ministers at its meeting held at Grand Baie, Mauritius, in August 2004;

"Treaty" means the Treaty establishing the Southern African Development Community, as amended,

"Tribunal" means the Tribunal established by Article 9 of the Treaty, and

"Principle of Subsidiarity" means the Principle of Subsidiarity approved by the SADC Council of Ministers at its meeting held at Grand Baie, Mauritius, in August 2004

## 1.2 Abbreviations

The following abbreviations used in this document, unless the context otherwise requires, shall have the following definitions

"ICAO" means International Civil Aviation Organization,

"ICAO SARPs" means ICAO Standards and Recommended Practices as contained in the Annexes to the Convention on International Civil Aviation, 1944;

"SADC" means Southern African Development Community; and

"SASO" means SADC Aviation Safety Organisation

## ARTICLE 2 SCOPE

- 2.1 This Charter shall govern the co-operation of SADC Member States in the area of civil aviation safety oversight

**ARTICLE 3  
OBJECTIVE OF THE CHARTER**

The objective of the Charter is to provide a legal and institutional framework for the establishment of SASO.

**ARTICLE 4  
ESTABLISHMENT OF SASO**

- 4.1 The Member States hereby establish the SADC Aviation Safety Organisation (SASO) as an international organisation
- 4.2 SASO is established by this Charter as a constituting instrument
- 4.3 SASO shall exist as a Subsidiarity Organisation within SADC and shall be a legal entity observing the Laws of the hosting Member State
- 4.4 The role of the SASO shall be to enhance the safety of civil aviation by complementing, to the extent required by Member States, the certification and oversight capabilities of SADC Member States
- 4.5 SASO is established as an autonomous and self-accounting organisation of SADC
- 4.6 SASO shall possess legal personality and in particular, have full capacity to:
  - (i) enter into contracts,
  - (ii) acquire or dispose of movable and immovable property and
  - (iii) sue and be sued in its own name
- 4.7 The SASO shall have its own logotype and seal

**ARTICLE 5  
LOCATION OF SASO**

The SASO Secretariat is to be hosted by Kingdom of Swaziland.

**ARTICLE 6  
OBJECTIVES OF SASO**

The objectives shall be to:

- (i) promote the safe and efficient use and development of civil aviation within and outside the Member States;
- (ii) assist the Member States in meeting their safety oversight obligations and responsibilities under the Convention on International Civil Aviation signed in Chicago on 7 December

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1944 and its safety-related Annexes and Documents;

- (iii) promote the implementation of industry best practices within the Member States; and
- (iv) develop a regional system and assist Member States in aircraft accident and incident investigation

#### **ARTICLE 7 FUNCTIONS OF SASO**

Subject to Article 4 3, the functions of the SASO shall be to -

- (i) support Member States to strengthen their institutional frameworks in aviation safety and assist in the development of a harmonized regulatory regime for the Member States;
- (ii) provide the Member States with a focal point that deals with issues relating to certification and surveillance with a view to harmonize and standardize all related policies and procedures;
- (iii) provide for the expansion of the Government Safety Inspector (GSI) training programme with the aim of augmenting national inspectors' technical knowledge and qualifications;
- (iv) develop and implement a regional training programme for the purpose of enhancing the technical and other required skills and knowledge of civil aviation personnel in the Member States;
- (v) assist Member States perform certification and surveillance tasks.
- (vi) participate, irrespective of the status of the safety oversight capability of Member States, in all initial certification exercises for the purpose of monitoring and ensuring the uniform application of common standards within the SADC Region;
- (vii) co-ordinate civil aviation safety oversight activities amongst Member States;
- (viii) liaise with ICAO and Member States to ensure that the aviation safety oversight activities of the Member States are in line with ICAO objectives and plans
- (ix) monitor and provide inputs to Member States on the formulation of ICAO SARPs;
- (x) evaluate the status of aviation safety in the Member States through the conduct of aviation safety status assessments and other quality assurance activities;
- (xi) provide information to the Member States and recommend necessary interventions or corrective measures for the resolution of constraints or deficiencies;

Secret

- (xii) assist the Member States to meet or comply with ICAO SARPs and national standards or regulations in force
- (xiii) assist in ensuring that accident and incident investigations are conducted in compliance with ICAO Annex 13.
- (xiv) establish and maintain an accident and incident database to facilitate the effective analysis of information on actual or potential safety deficiencies obtained, including that from its incident reporting systems, and to determine any preventive actions required.
- (xv) establish a mandatory incident reporting system on behalf of Member States to facilitate collection of information on actual or potential safety deficiencies;
- (xvi) establish a Confidential Voluntary Incident Reporting System (CVIRS) on behalf of Member States to facilitate collection of information on actual or potential safety deficiencies that may not be captured by the mandatory incident reporting system;
- (xvii) plan and facilitate the sharing between Member States of technical expertise and facilities in civil aviation;
- (xviii) provide advisory services and assistance as the Member States may require.
- (xix) provide technical assistance to non-Member States, subject to the approval of the Civil Aviation Committee.
- (xx) mobilize and solicit technical and financial resources from external sources.
- (xxi) assist aviation industry in the Member States in the development and implementation of Safety Management Systems (SMS);
- (xxii) establish and maintain relations with other regional safety oversight systems including Regional Safety Oversight Organisations (RSOOs) in all areas of civil aviation to facilitate the transfer of knowledge and expertise and adoption of best industry practices;
- (xxiii) develop and implement programmes which will best benefit the SADC Region;
- (xxvi) develop and implement a Regional Safety Programme including safety reporting systems and assist Member States in developing their State Safety Programs within the ICAO framework; and
- (xxvii) perform other duties that may be necessary for the proper implementation of its regional civil aviation safety oversight functions

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**ARTICLE 8  
RELATIONSHIP WITH THE SADC SECRETARIAT**

- 8.1 SADC Secretariat shall provide overall strategic policy guidance to SASO in order to ensure that the SASO objectives, functions and priorities are consistent with the SADC mandate on civil aviation safety and security matters
- 8.2 SASO shall enter into a Memorandum of Understanding with the SADC Secretariat to operationalise their mutual working relationship

**ARTICLE 9  
GRANTING OF DIPLOMATIC STATUS**

Each State Party may accord SASO, its property and Staff diplomatic status privileges, immunities and facilities in accordance with its own laws.

**ARTICLE 10  
INSTITUTIONAL ARRANGEMENTS**

The principal institutions responsible for the direction and implementation of this Charter shall be:

- (i) Committee of Ministers,
- (ii) Civil Aviation Committee, and
- (iii) the SASO Secretariat

**ARTICLE 11  
COMMITTEE OF MINISTERS RESPONSIBLE FOR CIVIL AVIATION**

- 11.1 The Committee of Ministers shall be responsible for the approval of:
- (i) policies, strategies and programmes of SASO.
  - (ii) SASO Annual Reports to be submitted through the SADC Secretariat
  - (iii) proposals for amendments to the Charter
  - (iv) annual budget of the SASO.
  - (v) annual audit reports covering operations and finance,
  - (vi) the appointment, renewal or termination of employment service of the Executive Director of the SASO, and

- (vii) the appointment of the experts to constitute the ad hoc committee for dispute settlement under this Charter

11.2 The Committee of Ministers responsible for settlement of disputes in accordance with Article 16 of this Charter.

## ARTICLE 12 CIVIL AVIATION COMMITTEE

12.1 The Civil Aviation Committee (CAC) shall be responsible for strategic planning, formulation and ensuring implementation of the SASO programmes and projects

12.2 The CAC shall conduct its meetings in accordance with its own Standing Rules and Procedures.

12.3 The functions of the CAC shall be to develop policies and to give general directions on the implementation and achievement of the objectives and functions of the SASO

12.4 Without limiting the generality of sub-article 12.3 the CAC shall.

- (i) recommend to the Ministers for approval, appointment of the Executive Director and his or her conditions of employment.
- (ii) review the performance of the Executive Director
- (iii) recommend to Ministers for approval the organisational structure, staff service rules, policies and procedures for the SASO.
- (iv) consider reports submitted to it by the Executive Director;
- (v) establish Technical Committees.
- (vi) review and recommend to Ministers for approval generic civil aviation regulations, manuals and procedures developed by the Technical Committees;
- (vii) recommend to Ministers for approval the financial structure, strategic plans and budget for the SASO on an annual basis and recommend a formula for the contributions to be made to the approved budget by the respective Member States
- (viii) review and recommend to Ministers for approval the annual work programmes of the SASO;
- (ix) consider and recommend to Ministers for approval matters relating to the procurement and disposal of assets of the SASO, and

- (x) perform such other functions as may be assigned to it by Ministers, or that may be necessary for the proper implementation of this Charter

### **ARTICLE 13 SASO SECRETARIAT**

- 13 1 There shall be a Secretariat, which shall be responsible for the day-to-day management and technical coordination of the activities of SASO
- 13 2 The SASO Secretariat shall
  - (i) be headed by an Executive Director, and
  - (ii) perform the role of a coordinator, catalyst and facilitator
- 13 3 The SASO Secretariat shall consist of the Executive Director and such other staff as may be deemed necessary
- 13 4 The Executive Director of SASO shall appoint regional staff of the SASO Secretariat from Member States subject to approval by the Civil Aviation Committee, and all other staff shall be appointed by the Executive Director on the terms and conditions approved by the CAC.
- 13 5 The SASO Secretariat shall prepare annual plans and budget before the start of each financial year for consideration by the Civil Aviation Committee.
- 13 6 The SASO Secretariat shall compile progress reports on the implementation of SASO programmes and projects
- 13 7 The SASO Secretariat shall prepare consolidated Administrative and Audited Financial Reports for consideration by the Civil Aviation Committee

### **ARTICLE 14 SASO EXECUTIVE DIRECTOR**

- 14 1 The Executive Director shall be appointed by the Committee of Ministers responsible for Civil Aviation upon the recommendation of the CAC
- 14 2 A person appointed as the Executive Director shall hold office for a period of four (4) years and shall be eligible for re-appointment for another period of not more than four (4) years subject to satisfactory performance.
- 14 3 The Executive Director shall not serve for more than two consecutive terms
- 14 4 The Executive Director shall be a person

- (i) with considerable knowledge and experience in aviation, administration, industry or engineering, or
  - (ii) who has such other qualifications and experience or proven ability in other fields as the Committee of Ministers responsible for Civil Aviation upon the recommendation of the CAC may consider relevant
- 14.5 The position of the Executive Director shall be filled on a competitive basis.
- 14.6 The Executive Director shall be the representative of the SASO and the principal liaison officer between the Member States and the SASO
- 14.7 The Executive Director shall be responsible for the administration of the functions of the SASO and be accountable to the CAC
- 14.8 The Executive Director shall have the following duties.
- (i) coordination of work of the Technical Committees and any Working Group that may be established,
  - (ii) exchange of information with the Member States and other relevant agencies,
  - (iii) maintenance of current data and information pertaining to the Civil Aviation Authorities of Member States on aviation organisations, aircraft registries, the number, categories and availability of licensed aviation personnel and other relevant matters,
  - (iv) development and maintenance of a website for the SASO,
  - (v) development for consideration by CAC of the organisational policies, staff service rules and procedures,
  - (vi) provision and management of technical support to Member States by the SASO,
  - (vii) organisation and undertaking of audits at the request of Ministers or as scheduled in the approved work programme for the purpose of assessing compliance with ICAO Standards and Recommended Practices (SARPs),
  - (viii) preparation, for consideration by the CAC, of an annual work programme of activities and budget for the SASO,
  - (ix) management of the SASO on sound business and financial principles in accordance with plans and decisions made by CAC,
  - (x) preparation, for consideration by the CAC, of a schedule of fees for services to be provided to non-State Parties of SASO



- (xi) preparation at the end of each financial year but no later than 31 March of the following year, of an annual report on the performance of the functions of the SASO during the preceding year for submission to the CAC;
- (xii) submission of quarterly reports to the CAC on the activities of the SASO, and
- (xiii) ensuring that the SASO is carrying out the functions and duties placed upon it in terms of this Charter including implementation of safety oversight activities,
- (xiv) controlling the resources of operations of all the services under the SASO;
- (xv) implementation of the decisions of the Committee of Ministers responsible for Civil Aviation; and
- (xvi) performance of any other duty as may be assigned by the CAC.

#### **ARTICLE 15 SOURCES OF FUNDING**

SASO shall derive its income from

- (i) membership contributions
- (ii) charging consulting and training fees;
- (iii) grants and donations; and
- (iv) any other source, which the Ministers may deem appropriate

#### **ARTICLE 16 SETTLEMENT OF DISPUTES**

##### **Part A Disputes between State Parties**

- 16.1 Any disputes between State Parties regarding the interpretation and application of this Charter, its annexures and any of its other subsidiary legal instruments, shall in the first instance be resolved by negotiation and agreement amongst the concerned State Parties within ninety (90) working days of the dispute arising
- 16.2 If the negotiations referred to in sub-article (1) fail to resolve the dispute under consideration, a complaining party may within 30 working days notify the SASO Secretariat of the failure to resolve the dispute

- 16.3 Upon notification of a dispute to the SASO Secretariat the complaining party shall pay to the SASO Secretariat such fee as may be prescribed from time to time.
- 16.4 The SASO Secretariat shall upon receiving notification under sub-article(2), facilitate the appointment of an *ad hoc* committee within thirty (30) working days for determination of the dispute
- 16.5 The *ad hoc* Committee shall consist of five (5) experts on the relevant matter to be appointed by the Ministers of the State Parties not being parties to the issue in dispute due for consideration
- 16.6 The *ad hoc* Committee shall reach a decision, by majority, within sixty (60) days of its appointment
- 16.7 The decision of the *ad hoc* Committee shall be referred to the Committee of Ministers, not being parties to the issue in dispute, for approval.
- 16.8 The decision of the Committee of Ministers shall be final and binding

**Part B**  
**Disputes Between State Parties and SASO**

- 16.9 Any disputes between State Parties and SASO regarding the interpretation and application of this Charter, its annexures and any of its other subsidiary legal instruments, shall in the first instance be resolved by negotiation and agreement amongst the concerned parties within ninety (90) working days of the dispute arising
- 16.10 If the negotiations referred to in sub-article (1) fail to resolve the dispute under consideration, a complaining party may within thirty (30) working days notify the SASO Secretariat of the failure to resolve the dispute
- 16.11 Upon notification of a dispute to the SASO Secretariat the complaining party shall pay to the Secretariat such fee as may be prescribed from time to time.
- 16.12 The SASO Secretariat shall upon receiving notification under sub-article (2), facilitate the appointment of an *ad hoc* committee within thirty (30) working days for determination of the dispute
- 16.13 The *ad hoc* Committee shall consist of five (5) experts on the relevant matter to be appointed by the Ministers not being parties to the issue

Secret

due for consideration

16.14 The *ad hoc* Committee shall reach a decision, by majority, within sixty (60) working days of its appointment

16.15 The decision of the *ad hoc* Committee shall be referred to the Committee of Ministers, not being parties to the issue in dispute, for approval

16.16 The decision of the Committee of Ministers shall be final and binding

#### **ARTICLE 17 AMENDMENT OF THIS CHARTER**

17.1 A State Party may propose amendments to this Charter in writing to the Executive Director

17.2 Upon receipt of such proposal the Executive Director shall duly notify all Member States of the proposed amendment at least thirty (30) days before consideration of the proposed amendment

17.3 Amendment to this Charter shall enter into force upon adoption by a decision of three quarters of the State Parties

#### **ARTICLE 18 ENTRY INTO FORCE**

18.1 This Charter shall enter into force thirty (30) days after signature by two-thirds of the Member States.

18.2 This Charter shall remain in force, for as long as there is at least two thirds of the State Parties.

#### **ARTICLE 19 WITHDRAWAL**

19.1 A State Party may withdraw from this Charter upon the expiry of twelve (12) months from the date of giving a written notice to the Executive Director of SASO, to that effect

19.2 The Executive Director of SASO, upon receiving a withdrawal notification, shall inform the State Parties of the intention of that State to withdraw

19.3 A State Party that has given notice to withdraw under Sub-article 18.1 shall cease to enjoy all rights and benefits under this Charter upon the

Secret

withdrawal becoming effective, but shall be obligated to settle its outstanding obligations under this Charter

#### **ARTICLE 20 TERMINATION OF SASO**

- 20.1 The SASO shall terminate in the event that
- (i) its membership becomes less than two thirds of the State Parties; or
  - (ii) two thirds of the State Parties agree to dissolve SASO
- 20.2 Upon termination of this Charter, any funds and assets, movable and immovable property, remaining under the jurisdiction and responsibility of SASO shall be re-distributed amongst the State Parties on terms agreed by State Parties after full and lawful settlement of all operational and financial obligations.

#### **ARTICLE 21 DEPOSITARY**

The original text of this Charter and its amendments shall, in the English, French and Portuguese languages, be deposited with the Executive Director of SASO who shall transmit certified copies to all Member States

#### **ARTICLE 22 SIGNATURE**

This Charter shall, after entry into force, remain open for signature by any Member State

Secret

IN WITNESS WHEREOF, WE, the undersigned, being duly authorised representatives of our respective Governments, have signed this Charter

Done at ..... this ..... day of ..... 2015 in  
three (3) original texts, in the English French and Portuguese languages, all  
texts being equally authentic

REPUBLIC OF ANGOLA

REPUBLIC OF BOTSWANA

DEMOCRATIC REPUBLIC OF CONGO

KINGDOM OF LESOTHO

REPUBLIC OF MADAGASCAR

REPUBLIC OF MALAWI

REPUBLIC OF MAURITIUS

REPUBLIC OF MOZAMBIQUE

REPUBLIC OF NAMIBIA

REPUBLIC OF SEYCHELLES

REPUBLIC OF SOUTH AFRICA

KINGDOM OF SWAZILAND

UNITED REPUBLIC OF TANZANIA

REPUBLIC OF ZAMBIA

REPUBLIC OF ZIMBABWE



Department:  
Justice and Constitutional Development  
REPUBLIC OF SOUTH AFRICA

**OFFICE OF THE CHIEF STATE LAW ADVISER**

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Ref: 208/2017/18 A & B  
Enq: Adv B Venter  
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E-mail: [bventer@justice.gov.za](mailto:bventer@justice.gov.za)  
Website: <http://www.dol.gov.za>

Date: 21 August 2017

Mr Pule Godfrey Selepe  
The Director-General  
Department of Transport  
Private Bag X193  
PRETORIA  
0001

Dear Mr Selepe

Attention: Levens Mabaso

**REQUEST FOR LEGAL OPINION ON THE REVISED DRAFT CHARTER ON  
ESTABLISHING OF THE SADC SASO: YOUR CA21/1/1 DATED 4 AUGUST 2017**

1. In our Opinion No. 247/2015/16 A&B, dated 17 August 2015 (our "previous Opinion"), we scrutinized, on an extremely urgent basis, the "Revised Draft Charter on Establishing of the SADC SASO", hereinafter referred to as the "Charter", in terms of the *Manual on Executive Acts of the President of the Republic of South Africa* and with reference to the *Constitutional Handbook for Members of the Executive*, the Constitution of the Republic of South Africa, 1996 (hereinafter referred to as the "Constitution") and other relevant legislation.
2. The Department of Transport (the "Department") refers us to Paragraph 26 of our previous Opinion, which reads as follows:  
  
"26. Since this is a multilateral agreement and Article 18 of the Charter provides that it is subject to ratification, acceptance or approval in accordance with the domestic law and procedures in force in the countries of the Member States, this Agreement falls within the scope of section 231(2) of the Constitution. Therefore, the

Charter has to be approved by Parliament before it can be binding on the Republic of South Africa." (Our emphasis.)

3. According to the Department, the International Cooperation, Trade and Security Cluster has raised a concern with paragraph 26 of our previous Opinion that the Charter does not specifically provide for **ratification, acceptance and approval** by the Member States. Article 18 of the Charter provides that:

"18.1 This Charter shall enter into force thirty (30) days after signature by two-thirds of the Member States.

18.2 This Charter shall, after entry into force, remain open for signature by any Member State."

4. The Department of Transport's attention is drawn to the provisions of section 231 of the Constitution, which provides as follows:

"(1) The negotiating and signing of all international agreements is the responsibility of the national executive.

(2) An international agreement binds the Republic only after it has been approved by resolution in both the National Assembly and the National Council of Provinces, unless it is an agreement referred to in subsection (3).

(3) An international agreement of a technical, administrative or executive nature, or an agreement which does not require either **ratification or accession**, entered into by the national executive, binds the Republic without approval by the National Assembly and the National Council of Provinces, but must be tabled in the Assembly and the Council within a reasonable time.

(4) Any international agreement becomes law in the Republic when it is enacted into law by national legislation; but a self-executing provision of an agreement that has been approved by Parliament is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament.

(5) The Republic is bound by international agreements which were binding on the Republic when this Constitution took effect."

J.V.N.

(Our emphasis.)

5. In terms section 231(2) of our Constitution an international agreement binds the Republic only after it has been approved by resolution in both the National Assembly and the National Council of Provinces, unless it is an agreement referred to in subsection (3). The approval referred to in subsection (2) is obtained by ratification or accession (as mentioned in subsection (3)).

6. Since the Charter appears not to be one of a mere technical and administrative nature as contemplated in section 231(3) of the Constitution, we are of the view that the Charter, as a multilateral agreement with political or other significance, would fall within the ambit of section 231(2) of the Constitution. This means that the Charter needs to be ratified or acceded to, to be binding on the Republic of South Africa.

7. In view of the concerns raised by the International Cooperation, Trade and Security Cluster, we would like to rephrase paragraph 26 of our previous Opinion as follows:

"26. Article 18.1 provides that the Charter shall come into force thirty (30) days after signature by two-thirds of the Member States. In accordance with the domestic law and procedures in force in the Republic of South Africa, this is a multilateral agreement with political or other significance, which falls within the scope of section 231(2) of the Constitution. Therefore, the Charter has to be approved, after signature, by Parliament before it can be binding on the Republic of South Africa."

8. The Department's attention is further drawn to *paragraph 5.21 of the Manual on Executive Acts of the President of the Republic of South Africa* which obliges the Department of International Relations and Cooperation to confirm whether or not the Protocols do indeed fall within the ambit of section 231(2) of the Constitution.

9. We trust that the Department finds the amended version of our paragraph 26 in order.

Yours sincerely



FOR THE OFFICE OF THE CHIEF STATE LAW ADVISOR

B VENTER / JV NURSE / N LEKGORO



Johannah Sekele - RE: RE: REVISED DRAFT CHARTER ESTABLISHING THE SADC SASO

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**From:** "Jordaan, F Mr : Directorate : SADC, DIRCO" <JordaanF@dirco.gov.za>  
**To:** "Multilateral@dot.gov.za" <Multilateral@dot.gov.za>  
**Date:** 2015/10/09 02:44 PM  
**Subject:** RE: RE: REVISED DRAFT CHARTER ESTABLISHING THE SADC SASO  
**Cc:** 'Karen Naidoo' <NAIDOOK@dot.gov.za>, 'Johannah Sekele' <sekele.J@dot.gov....>

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Dear Ms Skosana,

With reference to previous communications, please find below the legal opinion received from the Office of the Chief State Law Adviser International Law on the Revised Charter Establishing the SADC Aviation Safety Organisation (SASO).

Quote

The State Law Advisers (IL) are requested to scrutinize the Revised Draft Charter Establishing the Southern African Development Community Aviation Safety

Organisation (SASO) (hereinafter the "draft revised Charter" or the "draft Agreement"; and "SADC" respectively). We wish to comment as follows from an

international law angle:

3. Background

- 3.1 The SADC Council on 14-15 August 2015 already approved the draft revised Charter plus recommended that the SADC Ministers responsible for transport sign it.

4. Relevant International Law to assist the Directorate: SADC

- 4.1 In modern treaty law practice, the name (designation) of an international instrument does not, in itself, determine the status of an instrument; What is decisive is whether the negotiating international actors, normally states or international/Intergovernmental organisations, intended the international instrument to be legally binding or not, because of the definition of a treaty in the VCLT: "An international agreement concluded between states in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation." In particular the requirement of "governed by international law" embraces the element of an intention to create obligations under international law amongst international actors (Aust A., Modern Treaty Law and Practice, 2004, University Press, p. 17, 20, and 26). The actual practice is to indicate their intention to conclude a Treaty by consciously employing peremptory terminology. Therefore an agreement cannot be

assessed solely on its title. The provisions of the agreement, the particular circumstances in which it was drawn up and the intention of the Parties may disprove any suggestion communicated by the designation (Dörr O & Schmalenbach K. (eds.) Vienna Convention on the Law of Treaties A Commentary, 2012, Para 35).

4.2 The relationship between an international organisation and its members are complex:

- a. The starting point of analysis is the question of legal personality, as separate legal personality implies liability for activities entered into (Shaw A., International Law, (2003), pp1199-1200).
- b. However, a Treaty does not create either obligations or rights for a third State without its consent (Art 34 VCLT, Aust p.207), therefore the VCLT rest on the sovereignty and independence of States: a Treaty cannot by its own force impose an obligation on a third state, nor modify in any way the legal rights of a third states without its consent.

4.3 The following elements must be present in order to qualify as an international organisation (Sands P. & Klein P., Bowett's Law of International Institutions, (2009) Para 1-028 to 29; Brownlie I., Principles of Public International Law, 7th ed. (2008), p. 677):

- a. A permanent association of States, with lawful objects, equipped with organs;
- b. A distinction, in terms of legal powers and purposes, between the organization and its member States;
- c. The existence of legal powers exercisable on the international plane and not solely within the national systems of one or more States; and
- d. It must be established by Treaty or other instrument governed by international law such as a resolution adopted in an international conference.

4.4 The Principle of Subsidiarity is normally applied to distribute powers between national authorities/Stater and an International Organisation (see Stemmet A., "A Future Court of Human and People's Rights and Domestic Human Rights Norms, (199) 23 SAYIL, at 233).

- a. The national authorities/Stater have the initial responsibility to guarantee rights and freedoms within the domestic legal orders of their respective States, and in discharging this duty can decide on the appropriate means of implementation.
- b. The International Organisation has a subsidiary role: a narrower and supervisory competence in subsequently reviewing the Member State's choice of action against the standard set by the provisions of the International Organization

## 5. SADC

5.1 There is no doubt that SADC is an International/Intergovernmental Organisation and thus an international actor that can conclude Treaties on the international plane.

6. The Draft Revised Charter
- 6.1 The South African Treaty Section, the depositary of all South African Treaties, confirmed that the Protocol on Transport, Communications and Meteorology in the Southern African Development Community (SADC) Region was ratified by South Africa on 24 December 1997, and that it entered into force on 6 July 1998.
- 6.2 Section 231(2) of the Constitution of the Republic of South Africa, 1996 (hereinafter the "Constitution"), states that all international agreements shall bind the Republic only after it has been approved by resolution of both Houses of Parliament. Section 231(1) of the Constitution provides as follows: *"The negotiating and signing of all international agreements is the responsibility of the national executive."* Section 85(2) of the Constitution provides that executive authority is exercised by the President together with the other members of Cabinet. Section 81(2) provides that the Cabinet consists of the President, a Deputy President and Ministers. It follows that the national executive consists of the President, the Deputy President and Cabinet Ministers. Taking into account the provision of Section 231(1) of the Constitution, it follows that only members of the national executive can sign international Agreements. This draft revised Charter therefore has to be signed by the responsible Minister in the Cabinet. The draft revised Charter falls under Section 231(2) of the Constitution and that Parliamentary approval would be required - it creates a new International Organization and is a multilateral Agreement of major political importance.
- 6.3 ARTICLE 9: GRANTING OF DIPLOMATIC STATUS - The Directorate: SADC and the line-function Department should take note that the Diplomatic Immunities and Privileges Act, (Act No. 37 of 2001) ('DIPA') determines that any organization recognized by the Minister of DIRCO and any official of such organization enjoy such privileges and immunities as may be provided for in any Agreement entered into with such organization. However the Directorate: SADC should note that DIRCO must publish the host country agreement in the *Government Gazette* in terms of Section 7(1) of the DIPA in order for the immunities and privileges to become effective.
- 6.4 ARTICLE 17: AMENDMENT OF THIS CHARTER - The amendment of a multilateral Treaty can be complex and problematic. Due to the many states participating in a multilateral Treaty regime the process of agreeing on amendments and then bringing them into force can be nearly as difficult as negotiating and bringing into force the original Treaty; and because of their long life multilateral Treaties are more likely to need amendment (See Aust pp. 212-222). The basic rule for the amendment of Treaties is found in Article 39 of the VCLT, namely that a Treaty may be amended by "agreement" between the parties. Article 39 also recognises that many Treaties, in particular multilateral, have their own built-in amendment mechanisms, in order to avoid the problems inherent to amending a multilateral Treaty by means of another Treaty. The Directorate: SADC should take note that Article 17 of the draft revised Charter provides for an automatically binding amendment mechanism: Once an amendment has been approved by a specified percentage of the members it is binding on all members. Essentially, once an amendment has entered into force, it also binds all those who did not vote for or ratify it.
- 7 Recommendations regarding the Text of the Draft Revised Charter

- 7.1 As the SADC Council has already approved, the text, we will limit our comments on this multilateral instrument – note the text is basically in order except for the following.
- a. Delete 'REVISED DRAFT' in the designation/title; and
  - b. Delete the definition of "Tribunal" on page 4 and everywhere throughout the text
- 8 You are reminded that the following procedure will have to be followed:
- 8.1 For the Agreement to be signed:
- a. The President's approval needs to be obtained before the agreement can be signed.
  - b. This entails the text of the draft Agreement must be submitted to the State Law Advisers at the Department of Justice & Correctional Services (17 August 2015) for scrutiny to ensure that it is consistent with domestic law and to the State Law Advisers (IL) at the DIRCO through the relevant political desk (this opinion), for scrutiny to ensure that it is consistent with international law. The text of the draft Agreement must then be certified by the State Law Advisers (IL) at DIRCO.
- 8.2 In order for the draft Agreement to be certified for signature by the President, the following documentation must be submitted to OCSLA (IL) in folder Z137: Two copies of the President's Minute; Two copies of the Explanatory Memorandum setting out the purpose of the Agreement and proposed date of signature; Two copies of the finally agreed text of the draft Agreement; Two copies of the legal opinions from the State Law Advisers at the Department of Justice and Constitutional Development and OCSLA (IL); and a completed certification checklist.
- 8.3 To obtain approval for ratification:
- a. Cabinet memorandum prepared in the normal manner and submitted through the relevant ministry to the cabinet secretariat;
  - b. Note that the various Cabinet committees may have their own requirements.
  - c. Once Cabinet recommended that the agreement should be approved by Parliament, the agreement needs to be tabled in Parliament: Tabling is the authority of the Presiding Officers; Letters requesting tabling should be addressed to the Speaker of the National Assembly and Chairperson of the National Council of Provinces; The letter must clearly indicate that the tabling is done in terms of Section 231(2) of the Constitution; The requesting letter must be signed and dated by the responsible Minister; An explanatory memorandum and a draft resolution must accompany the tabling of an international agreement that has to be approved by Parliament. The explanatory memorandum must briefly set out the history, objective and implications of the agreement; Indicate recommendation of the cabinet; Include the legal opinions of the State Law Advisers of the Department of Justice and Constitutional Development and of the State Law Advisers of DIRCO; State whether the agreement has self-executing provisions that will become law in the Republic upon the approval of the agreement in parliament; And give account of the projected financial and other costs of the agreement for the State and contain all information needed by Parliament to make an informed decision.

Secret

- d. Upon receipt of the request for tabling, the Clerk of the Papers immediately refers the request to the Presiding Officers for approval.
- e. The paper (agreement) is tabled on the day in which it is recorded in the *Announcements, Tablings and Committee Reports*.
- f. The Agreement so tabled is referred to the relevant committees of Parliament for debate.
- g. The Agreement is considered by the relevant portfolio committees of both houses of Parliament.
- h. The committees will report on their decisions and the reports will be printed in the *Announcements, Tablings and Committee Reports*.
- i. The reports are then placed on the Order Paper for consideration in the National Assembly and the National Council of Provinces.
- j. The reports of the committees are considered by the National Assembly and National Council of Provinces sitting separately.
- k. Both the National Assembly and the National Council of Provinces must adopt the reports. This approval is printed in the Minutes of Proceedings.
- l. A copy of the Minutes of both Houses reflecting the decision of the Houses must be submitted to the DIRCO and a draft Instrument of Ratification with the request that the Minister of DIRCO should sign the Instrument. The line function department may approach DIRCO/OCSLA with request for assistance in drafting an Instrument of Ratification and the deposit procedure.

(It should be noted that at least an 8 week period must be allowed for agreements to be processed through Parliament; Departments must work through their Parliamentary offices and officers in Cape Town; Departments must ensure that the correct title of the Agreement is clearly written to avoid confusion; A copy of the originally signed copy of the Agreement is to be tabled; and Departments, through their Parliamentary officers, should liaise with the committee chairperson and secretary to ensure that the Agreement is considered and reported on by the committee.)

Unquote

It is trusted that the information will suffice

Kind regards,

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