

**CONSTITUTION**

**OF THE**

**REGIONAL ENERGY REGULATORS ASSOCIATION (RERA)**

**OF THE**

**SOUTHERN AFRICAN DEVELOPMENT COMMUNITY (SADC)**

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<b>DOCUMENT CONTROL INFORMATION</b>
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	Developed By	Reviewed By	Authorised By	Approved By
<b>Name:</b>	RERA Legal Subcommittee	RERA Executive Committee	RERA Executive Committee	RERA Plenary <i>(Chairperson to sign on behalf of Plenary)</i>
<b>Date:</b>				

<b>AMENDMENT HISTORY</b>
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## PREAMBLE

**IN PURSUANCE** of the SADC Energy Ministers' agreement, in principle, to create a regional association of electricity regulators in terms of the SADC Protocol on Energy (1996), the SADC Energy Co-operation Policy and Strategy (1996), the SADC Energy Sector Action Plan (1997), the SADC Energy Activity Plan (2000) and in pursuit of the broader initiative of the African Energy Commission, RERA was **Established** as an association of electricity regulators in 2002 to address the challenges faced by the electricity sector in regional integration and trade.

**TAKING INTO CONSIDERATION** that many of the RERA regulator members, in addition to electricity, also regulate gas, petroleum and biofuels industries, it was **Realized** that there is a need to align the mandate of RERA with the mandates of its constituent bodies; and

### **RECOGNISING –**

- the need to co-operate in and promote the development of regulatory capacity building in the region;
- the increasing interconnections or development of electricity and energy systems and infrastructure between SADC countries and the continuous increase in regional energy trading, driven by the benefits of economies of scale and shared resources;
- that the successful integration of energy systems requires clear frameworks to facilitate the development of harmonised market structures, systems operations and institutional arrangements; and
- the need for appropriate regional policies and strategies to promote infrastructure investment in the energy supply industry across the region to address dynamics and challenges experienced in respect of regional trade in energy, it was **Resolved** that the mandate of RERA be expanded to include the gas, petroleum and biofuels industries.

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**ASPIRING**, in accordance with the in principle decision of SADC Energy Ministers, that RERA eventually be transformed from an association into a regional regulatory authority once appropriate frameworks at regional and national levels are put in place, it was **DECIDED** to amend the RERA Constitution to only expand the mandate of RERA to include the gas, petroleum and biofuels industries in addition to electricity, whilst maintaining the status of RERA as an association.

**WE**, the undersigned, being the representatives duly authorised to sign this Constitution on behalf of our respective organizations, **HEREBY ADOPT** this Constitution:

## **CHAPTER 1 – GENERAL PROVISIONS**

### **ARTICLE 1 – DEFINITIONS**

In this Constitution unless the context indicates otherwise –

<b>African Energy Commission</b>	means a body of African Ministers constituted under the Lagos Plan of Action (1980) of the Organisation of African Unity, and its successor in title under the African Union.
<b>Annual General Meeting</b>	means the Plenary Meeting as described in Article 9.1.
<b>Chairperson</b>	means the person elected in terms of Article 7.2
<b>Energy</b>	means electricity, gas, petroleum, or biofuels, including storage, transportation and marketing thereof,
<b>Energy Sector</b>	<u>means</u> the electricity, gas, petroleum and biofuels industries.

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<b>Executive Committee</b>	means the Committee established in terms of Article 7.3.
<b>Executive Director</b>	means the person appointed in terms of Article 7.5.
<b>Infrastructure</b>	Covers all types of network used by the different Energy Sectors for the transportation, marketing, distribution and supply of Energy.
<b>Member</b>	means the regulatory body which is a signatory to this Constitution.
<b>Plenary</b>	means the highest decision making authority of RERA established in terms of Article 7.2.
<b>Portfolio Chairperson</b>	means the Member elected as Chairperson of a Portfolio Committee in terms of Article 7.4.
<b>Regulator</b>	means a body or person, appointed by a SADC Member country to regulate the energy sector of that Member country.
<b>RERA</b>	means the Regional Energy Regulators Association established in terms of this Constitution.
<b>SADC</b>	means the Southern African Development Community.
<b>Secretariat</b>	means the body appointed by the Executive Committee in terms of Article 7.5.
<b>SAPP</b>	means the Southern African Power Pool.

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## **ARTICLE 2 – GUIDING PRINCIPLES**

2.1 For the purpose of implementing this Constitution the Members agree that:

- (i) the developments in the Energy Sectors across the SADC region are in line with broad international trends in which neighbouring countries agree to form integrated energy markets;
- (ii) there are benefits arising from economies of scale and shared resources which are economic imperatives to pursue the development of greater integration of the Energy systems in southern Africa;
- (iii) the successful regional integration of Energy systems requires clear frameworks to facilitate - cross-border transactions, regional systems operations, a system of tariffs for use of regional transmission infrastructure, as well as future investments in such infrastructure;
- (iv) the development of compatible regulatory frameworks is essential to harmonising and creating market structures that remove barriers to trade and attract investment in the Energy Sectors across the region;
- (v) the long-term objective is to create a financially self-sustaining RERA as an institution responsible for the facilitation of regional Energy issues and transforming RERA into a regional energy regulator in line with decisions of SADC institutions; and
- (vi) ensuring that RERA adheres to principles of good corporate governance in conducting its affairs.

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### **ARTICLE 3 – ESTABLISHMENT**

- 3.1 RERA is hereby established in accordance with the terms of this Constitution.
- 3.2 RERA is a body corporate with its legal personality. It shall exist with perpetual succession and has the capacity and power to enter into contracts, acquire, own or dispose of movable or immovable property. RERA, in addition to the objectives, functions or duties assigned to it under this Constitution and other energy laws defining its regulatory responsibilities shall have the following powers:
- 3.2.1 exercise any power and function and perform any duty incidental to the exercise of its powers or functions or the performance of its duties; and
- 3.2.2 exercise such powers or functions and perform such duties as may be assigned to it.
- 3.3 RERA shall, pursuant to Article 3.2 above, have such legal capacity in each member country as is necessary for the proper exercise of its administrative functions.

### **ARTICLE 4 – OBJECTIVES**

- 4.1 The objectives of RERA fall into four broad categories, namely:
- (i) **Capacity Building and Information Sharing**  
Facilitate energy regulatory capacity-building among Members at both a national and regional level through information sharing and skills training;

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- (ii) **Facilitation of Energy Sector Policy, Legislation and Trade**  
Enhance the increasing integration of energy systems and energy trade in the Southern African region and beyond through the facilitation of harmonized policy in Energy Sectors, legislation and regulations for cross-border trading, focusing on issues affecting the economic efficiency of energy interconnections and energy trade and on terms and conditions for access to transmission and distribution capacity, safety and cross-border tariffs.
- (iii) **Consumer Protection and Communication Services**  
Enhance consumer awareness and protection through dissemination of information and standardization of consumer rights, protection and communication in accordance with best practices and national legislation.
- (iv) **Regional Regulatory Co-Operation**  
Deliberate and make recommendations to members on issues that fall outside national jurisdiction, and to exercise such powers as may be conferred on RERA through the SADC Energy Protocol.

## **ARTICLE 5 - FUNCTIONS**

5.1 In order to achieve its objectives outlined in Article 4, the functions of RERA shall be to –

- (i) monitor and evaluate energy regulatory practices among Members to determine regional training needs;
- (ii) develop, conduct or manage information and capacity-building programmes;

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- (iii) promote and support the development of independent energy regulators in Member countries where same are not presently established;
- (iv) source funding for the implementation of programmes and projects;
- (v) facilitate co-ordination in the development of the following key areas:
  - (a) regional energy regulatory policies, legislation and trade;
  - (b) energy market structures in the region;
- (vi) promote research and prepare position papers on key aspects of regional energy regulation, including but not limited to examination of policies, strategies and legislation in the Energy Sectors of the region in comparison with international trends and best practices;
- (vii) require members to provide information as may be reasonably required to facilitate the co-ordination of energy trade and systems operations, in conjunction with industry players;
- (viii) facilitate the management of an information database relating to the regional Energy Sectors and regional energy trade, taking into account the confidentiality of commercially sensitive information;
- (ix) investigate and deliberate on issues referred to it by Members or emanating from any other source, relating to matters which impact on the development of integrated energy supply systems in the southern African region;

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- (x) promote where necessary the establishment of norms and standards for the Energy Sectors across the SADC region, including (but not limited to) environmental and safety regulations; and
- (xi) establish working relationships with other agencies that promote the regional development and co-ordination of energy related matters.

## **ARTICLE 6 – MEMBERSHIP**

- 6.1 Membership is open to bodies responsible for regulating the respective Energy Sectors in each country within SADC.
- 6.2 Membership is limited to independently established regulators of the Energy Sectors in each country.
- 6.3 Each Member shall be represented by its Chief Executive Officer (or an incumbent of its equivalent position) mandated by the Member to make decisions on behalf of that Member at a RERA Meeting, unless a Member gives a written notice appointing another official of the Member to be its representative.
- 6.4 Every Member shall pay an annual subscription as determined at the Annual General Meeting on or before a date determined by the Plenary.
- 6.5 Any Member with outstanding arrears of contributions for the previous two complete financial years shall be deprived of the right to participate and vote in Meetings or to present candidates for any post in any of the organs of RERA.
- 6.6 New membership will be permitted at any time by application to the Executive Committee, with notification thereof being circulated to all existing members. Membership will be approved by the Plenary at its

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meeting following the receipt of the application. Confirmation of membership status will be forwarded to the applicant within two months of approval at the Plenary Meeting, and upon payment of the new Member's assessed contribution.

- 6.7 Members are entitled to resign from their membership of RERA by giving one (1) year's written notice to the Chairperson, who shall notify the Plenary at its following meeting. Members must meet their financial and other obligations and commitments during the notice period up to the date of termination of their membership.
- 6.8 Where a country has one or more Members, and any one (but not all) of them resigns in terms of clause 6.7, non-resigning Member/s will remain a Member/s of RERA.

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## **CHAPTER 2 – MANAGEMENT**

### **ARTICLE 7 – STRUCTURE OF RERA**

7.1 The organs of RERA shall be –

- (i) the Plenary
- (ii) the Executive Committee;
- (iii) the Portfolio Committees;
- (iv) the Secretariat;
- (v) Sub-Committees; and
- (vi) other organs that may be established in accordance with the provisions of this Constitution.

#### **7.2 The Plenary**

- (i) There shall be a Plenary which shall be composed of all the Members of RERA.
- (ii) The Plenary shall elect a Chairperson and a Deputy – Chairperson for a term of two (2) years and shall not be re-elected for to the same office for the next consecutive term.
- (iii) The Plenary is the highest decision making authority of RERA.
- (iv) The designated official from the SADC Secretariat responsible for the energy portfolio shall be an *ex officio* member of the Plenary.

#### **7.3 The Executive Committee (EXCO)**

- (i) There shall be an Executive Committee, which shall be responsible for conducting the affairs of RERA and co-ordinating the Portfolio Committee Meetings, and ensuring that minutes are

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kept of such meetings by the Secretariat and circulated to members.

- (ii) EXCO shall comprise the Chairperson, the Deputy Chairperson, the chairpersons of the Portfolio Committees and the host country Member. In case of more than one Member from the host country, the host country shall appoint one member to EXCO.
- (iii) The chairpersons of the Portfolio Committees shall be elected at the Annual General Meeting, from and by the Plenary. The Chairperson and Deputy Chairperson shall not qualify to be chairpersons of Portfolio Committees while holding their respective offices.
- (iv) Other than the host Member, all Executive Members are elected for a period of two (2) year and shall not be re-elected to the same office for the next consecutive term.
- (v) The meetings of the Executive Committee shall be chaired by the Chairperson or, in his/her absence, by the Deputy Chairperson. In the absence of both the Chairperson and the Deputy Chairperson, the Executive Committee shall appoint or elect a chairperson for the purpose of chairing the meeting only.

#### **7.4 The Portfolio Committees**

- (i) There shall be Portfolio Committees constituted by the Portfolio Committees' Chairpersons which shall execute the objectives and functions of RERA as outlined more fully in Articles 4 and 5, namely:
  - (a) Capacity Building and Information Sharing;
  - (b) Facilitation of Energy Sector Policy, Legislation and Trade;

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- (c) Consumer Protection and Communication Services;  
and
- (d) Regional Regulatory Cooperation.

- (ii) Members shall be entitled to membership of each of the Portfolio Committees.
- (iii) These Portfolio Committees may determine their own terms of reference and exercise such powers as the Plenary confers on them; and
- (iv) On carrying out the functions assigned to them, in terms of Article 4 and 5 above, the Portfolio Committees shall submit written reports outlining provisional work programmes or recommendations, to be approved by the Plenary.

## 7.5 The Secretariat

- (i) The Secretariat shall consist of an Executive Director and other staff as may be determined by the Executive Committee.
- (ii) The Executive Director shall be appointed by the Executive Committee and shall be the Head of the Secretariat. The Executive Director shall be appointed for a term of five (5) years following a transparent competitive recruitment process. The term of office of the Executive Director may be renewed for such period as may be deemed necessary by the Executive Committee, which period shall not be more than another term of five years.
- (iii) The Executive Director reports to EXCO and the Plenary.

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- (iv) The terms and conditions of employment of the Executive Director and other employees shall be determined by the Executive Committee, subject to Plenary approval.
- (v) Other employees, if any, shall be appointed by the Executive Committee and the Executive Director in accordance with the approved terms and conditions.
- (vi) The duties of the Secretariat shall be to –
  - (a) Organise and arrange all Meetings of RERA, provided that all notices shall be issued by the Executive Director in consultation with the Chairperson; without in any way derogating from the generality of the aforesaid, the duties shall include the preparation and circulation of agenda to Members, preparation, receipt and distribution of papers and keeping the minutes of Meetings;
  - (b) Attend and provide logistical support to all Meetings of RERA;
  - (c) Collect and process statistical data on the Energy Sectors of the RERA Member countries;
  - (d) Prepare or collate position papers;
  - (e) Obtain and circulate information that will facilitate the achievement of the objectives of RERA as may be directed by the Executive Committee;
  - (f) Provide administrative and technical support to the Portfolio Committees of RERA;
  - (g) Comply with and continuously improve good corporate governance requirements in RERA, including proper assessment of business and IT risks and mitigation of such risks;
  - (h) Prepare in consultation with the Finance Administration Risk and Management Subcommittee the annual budget of

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RERA in accordance with Article 8.3 for approval by the Plenary;

- (i) Collect and account for the funds of RERA, and to keep books of accounts; and
  - (j) Monitor the development of the objectives of RERA on a continuous basis;
  - (k) Such other duties as may be assigned to it.
- (vii) RERA shall establish a set of rules for its operation which rules shall be ratified by the Plenary and published within a month of ratification and circulated to all members by the Secretariat.
- (viii) Each Portfolio Committee shall be responsible for developing its terms of reference and be approved by Exco, which shall be ratified by the Plenary;
- (ix) Any amendments to any rules shall be circulated to all Members two months prior to the rule taking effect.

#### **7.6 Sub-Committees:**

- (i) There shall be established such Sub-Committees as may be determined by the Plenary from time to time, which shall also determine their terms of reference.
- (ii) Such Subcommittees shall report to the relevant Portfolio Committees with the exception of the Sub-Committee responsible for Finance Administration Risk and Management which shall report directly to the Executive Committee.

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## **ARTICLE 8 – FUNDING ARRANGEMENTS**

- 8.1 Members shall share the costs of the operation of RERA as may be determined by the Plenary.
- 8.2 The financial year shall be from 1 January to 31 December of the same year.
- 8.3 The Secretariat shall, before every Annual General Meeting, prepare a budget showing the recurrent costs of RERA together with any identified capital expenditure for the following financial year and the contribution contemplated to be raised from each Member for review by the Executive Committee. After reviewing such a budget the Executive Committee shall submit it to the Plenary of RERA for approval.
- 8.4 Each Member shall remit to the Secretariat its contribution for the current financial year in the manner prescribed by the Plenary. For avoidance of doubt, where there are more than one Member from a specific country, each of the Members is responsible for the payment of its membership fees and costs.
- 8.5 The management of funds of RERA shall be in accordance with the rules set by the Plenary.
- 8.6 The financial resources of RERA may consist of:
- (i) Annual contributions by Members;
  - (ii) Special contributions by Members;
  - (iii) Other sources as may be approved by the Plenary, such as grant funding or donations.
- 8.7 The Executive Director shall prepare and keep books of account and have the financial statements audited annually within four months of

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the end of the financial year by an independent auditor appointed by the Executive Committee. The Plenary must approve the audited financial statements.

- 8.8 The Executive Director must submit the draft financial statements to the auditors for auditing within two months after the end of the financial year, after approval by the Sub-Committee responsible for Finance Administration Risk and Management.

## **ARTICLE 9 – MEETINGS**

### **9.1 Annual General Meetings**

- (i) RERA shall hold an Annual General Meeting once every year.
- (ii) One month's notice shall be given for such a Meeting and such notice shall include the agenda for the meeting and documentation to be considered at the meeting.
- (iii) The Annual General Meeting shall be held to review the annual report of the activities of RERA, the effectiveness of RERA, the audited accounts and the forecasted operating budget as well as the business plan submitted by the Executive Committee, or any other matter referred to it by at least half of the Members for consideration.
- (iv) Annual General Meetings shall be chaired by the Chairperson or, in his absence, by the Deputy Chairperson, and in the absence of both, by a Member elected by the Plenary.

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## 9.2 Special General Meetings

RERA may hold a Special General Meeting at the instance of the Chairperson, the Executive Committee, or whenever requested by at least half of the Members. One month's notice shall be given for such a Meeting and such notice shall include the agenda for the meeting.

## 9.3 Portfolio Committee Meetings

The Portfolio Committees shall meet twice a year or at the instance of the Executive Committee, the Portfolio Chairpersons, or when requested to do so by at least half of the Plenary.

## 9.4 Venue of the Meetings

- (i) The venue of the Meetings shall be determined by a simple majority of Members at a Meeting, taking into consideration the principle of rotating Meetings among Member countries. In the absence of agreement by the majority of Members, the decision on the venue of a particular Meeting shall be made by the Executive Committee.
- (ii) The methodology for hosting of Meetings, including the costs and logistical arrangements therefore, will be decided by the Plenary through guidelines developed from time to time.

## 9.5 Assistance by Host Member

The Member in whose country a meeting is held may provide such logistical assistance as may be determined by RERA in consultation with host member, from time to time.

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## 9.6 Quorum

Subject to Articles 15.1 and 17.2, the quorum for any Meeting shall be a simple majority of RERA Members.

## 9.7 Voting

Unless specified otherwise in the Constitution –

- (i) each Member shall have one vote at any Meeting;
- (ii) subject to the other provisions of this Constitution, all decisions shall be taken by a simple majority of Members present. In the case of equal votes, the Chairperson shall be entitled to have both a deliberative and casting vote;
- (iii) voting shall be conducted by ballot.
- (iv) members shall not be allowed to vote by proxy.

## 9.8 Decisions

Members shall be entitled to take decisions by written resolutions on matters determined by the Plenary outside meetings provided that such resolutions and supporting documentation is sent out to all members and supported by at least fifty percent plus one member,

## 9.9 Observers

- (i) Observers may, with the consent of the Executive Committee, be invited to any RERA Meeting.

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- (ii) Observers may be permitted to participate in discussions and/or deliberations but shall not have voting rights.

### **ARTICLE 10 – RESIDUAL POWERS**

- 10.1 All powers not specifically delegated to any RERA governance structure in terms of this Constitution or any delegation matrix that has been approved by Plenary, shall be exercised by the Plenary.

### **ARTICLE 11 – SANCTIONS**

- 11.1 Sanctions may be imposed against any Member that is in arrears with payment of its contributions for more than one year for reasons other than exceptional circumstances, beyond its control, that gravely affect its ability to fulfil its financial commitments, provided that such circumstances are communicated to and accepted by the Plenary.
- 11.2 The nature and extent of sanctions to be applied shall be determined at an Annual General Meeting on a case-by-case basis.
- 11.3 Article 11.1 above must be read together with Article 6.5.

### **ARTICLE 12 – SEAT OF THE SECRETARIAT**

- 12.1 The Seat of the Secretariat shall be determined by the Plenary.

### **ARTICLE 13 – ENTRY INTO FORCE**

- 13.1 This Constitution shall come into force on the date when it is signed by at least half of the Members from at least six different SADC countries

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## **ARTICLE 14 – DEPOSITORY**

- 14.1 This Constitution shall be deposited with the Executive Director, who shall transmit certified signed copies to all Members.
- 14.2 The Executive Director shall issue each member with membership certificate.

## **ARTICLE 15 – DISSOLUTION OF RERA**

- 15.1 RERA may be dissolved under the following circumstances:
- (i) By resolution taken at an Annual General Meeting or a Special General Meeting called for this specific purpose by at least three-quarters majority of the Members, subject to approval by SADC; or
  - (ii) By decision of SADC.
- 15.2 Such resolution shall determine the terms and conditions of dealing with the liabilities and the disposal of the assets of RERA.

## **ARTICLE 16 – INDEMNITY**

- 16.1 Every officer, employee or agent of RERA shall be indemnified by RERA against any liability incurred in the *bona fide* exercise of their functions.

## **ARTICLE 17 – AMENDMENTS TO THE CONSTITUTION**

- 17.1 This Constitution may be amended at the General Meeting, provided that a notice of such amendment and the proposed amendments shall

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have been delivered to each Member three (3) months prior to the date of the Meeting.

- 17.2 An amendment shall be implemented if it is so resolved at a General Meeting by at least two-thirds majority of the Members.

### **ARTICLE 18 – INTERPRETATION**

- 18.1 The decision of a Plenary Meeting shall be final on the interpretation of this Constitution.







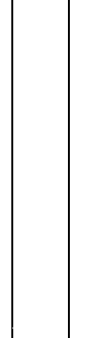

### **ARTICLE 19 – SETTLEMENT OF DISPUTES**

- 19.1 Any dispute arising from the application of this Constitution, which cannot be settled amicably, shall be referred to a Plenary Meeting for resolution.
- 19.2 The decision of the Plenary shall be final and binding upon Members.

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### CHAPTER 3– SIGNATORIES TO THE CONSTITUTION

In witness whereof, the undersigned being duly authorized by their respective regulators have signed this Constitution:

Regulator	Name of authorized signatory	Signature
MERA (Malawi)	BR. COLLINS HAKKASI	
ERB (Zambia)	MS Langiwa Topa Lungu	
AREN (MOZAMBIQUE)	Mr. Guilherme Luis Mavila	
IRSEA (ANGOLA)	Mr. José Adelino Guimarães Quast	
LEWA (LESOTHO)	Prof. Lebhang K. MOLEKO	
LCB (Namibia)	Forbe. K. NAMENE	
BERA (ESWATINI)	Vumunzi N. MAKHUMANE	
ZERA (ZIMBABWE)	EDMUND TAPERA NZARAUZAN	

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