

Southern Africa Report

The 2015 SADC Election Guidelines Can they work?

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Summary

SADC's new guidelines for election observation, adopted in 2015, are intended to fill some of the gaps from its earlier version, which was published more than a decade ago. The 2015 Revised SADC Principles and Guidelines Governing Democratic Elections encourage observers to begin their work at least three months before the polls, to be present during the election and to remain for some time afterwards. The aim is to give their reports the right context and help to forestall post-election violence. The new framework also recommends the inclusion of civil society in SADC observer teams. Will countries accede to the new guidelines? There are penalties for those that do not.

IN JULY 2015, the Southern African Development Community (SADC) adopted a revised framework for election observation, referred to as the *2015 Revised SADC Principles and Guidelines Governing Democratic Elections*. The framework will be used by SADC to observe future elections in its member states.

It is a marked improvement from the first set of election guidelines adopted in 2004.¹ The *2004 Election Guidelines* were limited in terms of scope and effectiveness. Also limiting was the way its provision, stipulating that SADC member states should issue invitations to SADC to deploy election observers 90 days before the voting day, was implemented. The provision stressed that the time period was 'to allow an adequate preparation for the deployment of the Electoral Observation Mission...'² However, the general practice by SADC countries was to accredit SADC Electoral Observation Missions (SEOMs) two weeks before an election. Because of this, SADC could only deploy short-term election observation missions. These could not sufficiently evaluate the various inter-related social and structural factors that affect the integrity of an election.

The 2004 framework was also not explicit on how to deal with SADC countries that violated it. This exposed SADC to criticisms from civil society over its inability to enforce compliance

with the framework. The 2004 framework was also silent on the participation of civil society actors in SADC election observation missions. It made the exercise a largely state-centric affair. So the big question is what difference the new guidelines will make to both the quality of SADC election observation and the strengthening of democracy and stability in the region.

This report makes the point that the revised *Principles and Guidelines* have great potential for improving the way SADC observes elections as well as for strengthening electoral governance in the region. Primarily, the adoption of long-term observation (LTO) and the inclusion of non-state actors in SEOMs will likely enhance the quality and objectivity of election reporting. Also, the revised *Guidelines* define wider parameters for assessing the electoral cycle, based on clearly defined concepts and measurements. Plus there is now stronger oversight from SADC. It has made provisions for dealing with 'any shortcomings' by member states in the application of the revised SADC Guidelines as per compliance provisions in the SADC Treaty. SADC has also given power to its Electoral Advisory Council (SEAC) to ensure the 'scrupulous' implementation of the revised framework.

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The 2015 *Election Guidelines* and the challenges and opportunities that lie ahead for SADC in promoting peace and security through election observation are discussed in greater detail in this report. It will do so in five parts. The first part provides a background to the triggers that necessitated the revision of the initial 2004 *Guidelines*. The processes involved in developing the revised *Guidelines* will also be elaborated. The second part details the prevailing context of electoral observation and the different typologies of observation.

The third part lists 10 important changes and innovations in the revised framework. It highlights the ways in which the new approach to observation works and how it could contribute to the improved integrity of elections in the region, early warning and conflict prevention. How the revised framework is linked to other policy and institutional arrangements of SADC is also elaborated. The fourth part flags some potential challenges in implementing the revised *Guidelines* while offering opportunities for strengthening the way this can work. The report concludes with the importance of the revised framework to peace and security in the SADC region.



LONG-TERM OBSERVATION
WILL ENHANCE THE QUALITY
AND OBJECTIVITY OF
ELECTION REPORTING

Long-term versus short-term observation

In July 2015, the Ministerial Committee of SADC's security organ, the Organ on Politics, Defence and Security Cooperation (OPDSC), adopted the *Revised SADC Principles and Guidelines Governing Democratic Elections* in Pretoria, South Africa. The move was the result of efforts initiated in 2011 to improve the 2004 *Guidelines*. Factors that prompted SADC to initiate the review included the need to strengthen its assessments of regional electoral processes to improve democratic practice. This was also intended to improve its ability to identify the root causes and drivers of electoral-related conflict and provide a practical basis for integrated responses.

In addition, the growing use of new voting technologies in elections, exemplified by Namibia's 2014 national polls, contributed to the revision. SADC also critically evaluated the demographic changes in the region, particularly the reality of diaspora communities regionally, which have had the effect of pressurising governments to review electoral laws and allow for their participation.

The use of long-term observation as a more professional and comprehensive approach to assessing electoral performance equally fed into decisions to review the old framework. LTOs involve technical assessments of the major aspects of an election using the electoral cycle approach, thus covering the pre-election, election and post-election periods for relatively longer intervals. The LTO methodology is suitable for identifying the root causes of electoral-related conflict.

SEOMs have been short term, where observers arrive in the country a few weeks or days before polling. Assessments are then compromised by the lack of sufficient presence on the ground. LTOs thus position SADC to determine the veracity of electoral processes more diligently and assess the root causes of electoral-related conflict. SADC also considered how its election observer missions could complement its early warning and conflict prevention structures. And there was the issue of developing a sustainable and cost-effective electoral observation programme for SADC. The policy review process took three years and involved consultations with SADC member states, parliamentarians, election management bodies (EMBs) and a select group of civil society organisations (CSOs).

Indeed, Southern African countries were pioneers in institutionalising election observation through institutions like the SADC Parliamentary Forum (SADC PF) which in 2001 developed the *Norms and Standards for Elections in the SADC Region*.³ Its framework was employed in several key elections and continues to be used by parliamentarians as a complementary election observation tool. But this was not a SADC instrument, since the Parliamentary Forum is not a legislative organ of the SADC.

Southern African countries were pioneers in institutionalising election observation, for example through the SADC Parliamentary Forum

Although the SADC Summit approved the establishment of SADC PF in terms of Article 9(2) of the SADC Treaty 'as an autonomous institution of SADC' it has no reporting relationship with other SADC Structures.⁴ Therefore, its *Norms and Standards for Elections in the SADC Region* were not considered as a treaty or even a non-treaty standard by SADC countries. Treaty standards are legally binding on the state-parties that ratify them while non-treaty standards are considered to have strong moral and political force.⁵ As such, the SADC PF's norms and standards were at best considered to be good election observation practice in the region.

Similarly, in 2004, the Electoral Commissions Forum of SADC Countries (ECF-SADC) in collaboration with the Electoral Institute of Southern African (EISA) crafted the *Principles for Election Management, Monitoring and Observation (Pemmo)*, basically a voluntary peer review tool for EMBs in the region.⁶ Although widely used by EISA and ECF-SADC, the framework was considered a product of a non-governmental formation rather than an obligatory benchmark for SADC members. But, irrespective

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THE REVISED SADC
PRINCIPLES AND GUIDELINES
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of their status, the SADC PF and ECF helped to shape the thinking on best practices for election observation in the region.

To this end, the SADC Heads of State Summit adopted the first set of *SADC Principles and Guidelines Governing Democratic Elections* in 2004. It signaled the first formal commitment by governments in the region to the observation of electoral processes. SADC followed this up with the creation of SEAC in 2005, operationalised in 2010, to ensure the implementation of the new normative framework for elections in the region.⁷ In terms of structures, rules and procedures, SEAC reports to the Ministerial Committee of the Organ (MCO). SEAC's mandate extends beyond elections to cover advisories on conflict prevention, democracy and governance. It may undertake pre-election assessments and goodwill missions to member states even in periods outside of elections in order to assess electoral preparedness and the state of democracy and governance and advise the MCO accordingly.

Madagascar's failure to respect a democratic change of government, and the outcomes of its elections, led to its suspension from the regional grouping

After the adoption of the 2004 Guidelines, SADC member states opened themselves up more readily to the observation of their national elections by SEOMs. However, the commitment levels were varied, as some countries did not always comply with timely accreditation of these observer missions. This made it difficult for observers to observe elections timeously and comprehensively. Then, there were no explicit penalties for non-compliance, hence the different levels of commitment.⁸

The impact of their application can also best be illustrated in conflict situations. Zimbabwe, Madagascar and Lesotho are cases in point. Zimbabwe, for instance, actually adopted and 'domesticated' the 2004 Guidelines prior to its 2008 elections. This was mainly a response to pressure from SADC following intractable internal conflict over disputed elections in the 2002-2008 period.⁹ In fact, Zimbabwe acknowledges that the restructuring of its multi-level state-driven electoral management system established in the post-independence period (1980-2004) was motivated by the adoption of the *Principles and Guidelines Governing Democratic Elections* by Heads of State of SADC in 2004.

In Zimbabwe, further concessions between political parties, the Zimbabwe African National Union-Patriotic Front (ZANU-PF) and the Movement for Democratic Change (MDC), resulted in the development of a road map leading to the formation of a unity government under the Global Political Agreement. The process also led to the promulgation of a new constitution in 2013, which incorporated democratic tenets and electoral norms espoused in the SADC frameworks. This arguably demonstrated the potential for regional normative frameworks to shape national electoral laws.

Madagascar's failure to respect a democratic change of government and the outcomes of its elections led to its suspension from the regional grouping. The circumstances of its suspension were similarly informed by the apparent violation of the *SADC Guidelines*.¹⁰



LESOTHO SOUGHT TO ADOPT TECHNOLOGY-BASED ELECTORAL MANAGEMENT SYSTEMS

Lesotho sought to adopt technology-based electoral management systems, encouraged by *SADC Principles and Guidelines*. Based on the reports of the SEOM and other international observers, Lesotho's Independent Electoral Commission identified the voters' roll as one of the main problems in its electoral management system. It was outdated and inflated with deceased electors.¹¹ Because of this, it embarked on a peer learning process through study tours to Botswana, South Africa and Zambia to understand the modalities of biometric voter registration systems. This was meant to bolster confidence in the electoral process. Of course, as recent events have shown, the underlying causes of conflict in Lesotho are many and will require a much more in-depth analytical approach by the regional body.

Despite the application of the *Guidelines* in the affairs of member states as highlighted above, there are many challenges to their enforcement. Plus, critics have raised a number of inter-related issues regarding the old framework.¹² For instance, they note that:

- There was no certainty among stakeholders as to whether the *SADC Principles* were legally binding. Also, there were no provisions for sanctions for non-compliance by member states;
- There was no obligation on member states to invite SEOMs to observe their elections;¹³
- While interim reports of SEOM were made public, the final report was not presented to stakeholders to determine the levels of satisfaction or consensus on the quality of the assessment;
- SADC observers were chosen only by member states. There were no provisions for the participation of non-state actors. As a result, election observation was seen as a highly politicised process;
- The 2004 framework only allowed for two weeks' pre-election deployment, which was not sufficient for SEOM to assess the electoral cycle;
- The provisions on the impartiality, composition, tenure and financial autonomy of missions, among others, were inadequate to assure public confidence and professional conduct; and
- The Principles did not define concepts such as 'free and fair' and how they were to be scientifically measured. Different stakeholders, including the media, understood these terms differently and it tended to create confusion.

Typologies of election observation

While it is well established that elections alone do not constitute democracy, it is undeniable that they are an essential requirement for any polity to be considered democratic. Their centrality to democracy notwithstanding, electoral experts are often wary of the political contradictions that elections portend. On the one hand, they provide the theatre for constructive resolution of conflict between powerful competing ideas and personalities. On the other, if they are not constructively managed, they unleash destructive social conflict and destabilise societies. Therefore, as much as 'free and fair' elections should, ideally, be calibrated to build democracy, they do not guarantee peace and security, particularly when the rules and structures of political competition are undermined.

For this reason, a high premium is placed upon institutional design to ensure that electoral systems and processes are inclusive, transparent and accountable. As history has shown, building a political culture of dialogue and tolerance and of trust in democratic institutions takes time. Elections in the SADC region are generally highly contested and there have been debates on whether their outcomes genuinely reflect the popular will. This is where electoral observation that has the confidence of the people comes in.

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There is also a need to consider growing voter apathy in the region. If less than 50% of the population eligible to vote participates in an election, they are indeed making a fundamental statement on the credibility of the system. There also have been instances where elections radically failed to meet continental and international norms and standards, invariably leading to destructive conflict.

The causes of electoral conflict are, of course, varied. They may range from the contestants' failure to respect electoral rules, unconstitutional extensions of office tenure by incumbents, a lack of integrity of electoral commissioners and a lack of capacity to manage diversity by EMBs, to social and demographic factors that could foment conditions for instability.¹⁴ Unsurprisingly, the triumphalism that occasioned the transitions to democracy and the many relatively successful multi-party elections held over the last two decades has been tempered by persistent public distrust of EMBs and political institutions more generally.¹⁵

It is noteworthy that the African Union's (AU) Panel of the Wise, whilst acknowledging the significance of democratic elections, also cautions that multi-party contestation has become a major cause of conflict on the continent.¹⁶ In this regard, the continental body calls for the 'building of institutions that balance competition with order; participation with stability; and contestation with consensus'.

These uncertain political circumstances, one might argue, have rendered the observation of electoral processes even more critical in the present day. Election observation¹⁷ is generally defined as an unobtrusive exercise conducted by persons who are not inherently authorised to intervene in the electoral process.¹⁸ The role of the observer is to purposefully and systematically gather information pertaining to the electoral process in order to arrive at an informed assessment of the overall integrity of the election. Election observation is distinct from other related forms of election assessments such as election monitoring, which entails the authority to intercede in the electoral process when rules and regulations are violated.

Neither election observation nor monitoring, however, approximate mediation, which denotes a third-party engagement with disputants to resolve conflict. Electoral assistance, on the other hand, involves technical support and advice to the EMB or other such institutions dealing with elections. Finally, electoral supervision and audit demands the process of certifying the validity of all or major aspects of the electoral process.¹⁹

In highly competitive situations and in post-conflict countries, election observation is seen to foster transparency and accountability

Proponents of election observation postulate that it advances the cause of democratic development, respect for human rights, the rule of law and peace building.²⁰ It is also generally understood to be part of the monitoring process of the implementation of international human rights treaties ratified by state parties, and a means of gauging their absorption by the relevant provisions of national law.²¹ In highly competitive situations and in post-conflict countries, election observation is seen to foster transparency and accountability; to prevent or minimise electoral malpractice; and to enhance public confidence in the electoral process.

However, the presence of observers alone should not be construed as an endorsement of the legitimacy of an election. Normative frameworks for election observation, including those of the AU and SADC, discourage the observation of elections when the political environment is not conducive to holding a democratic election. This includes security assurances for voters and contestants, which can be difficult to enforce.

But certainly, a lack of integrity by election observers or the perception that they are compromised will invariably contribute to distrust of the institution of elections and possibly contribute to conflict among stakeholders. To prevent this, organisations involved in international election observation or assistance, including the United Nations, AU, SADC, European Union, Commonwealth, Carter Center and IDEA, subscribe to a common code of conduct.²² Election professionals generally agree that the quality of election observation, assessment and reporting matter just as much as the poll itself. The definition that lends itself to this approach is that observation should be unobtrusive.



THE ROLE OF THE OBSERVER IS TO PURPOSEFULLY AND SYSTEMATICALLY GATHER INFORMATION

There are four distinct methodologies of election observation that have emerged from varied experiences. They include:

- 1) **Election Day observation:** This is now considered 'primitive' and unscientific. It characterised the early stages of election observation and rarely involved formal, institutionalised training. Observers seldom spent more than a day or two to observe voting processes.
- 2) **Short-term observation/Enhanced short-term observation:** Although it attempted to encapsulate pre-election, election and post-election periods, experts realised that this approach would not unravel the root causes of electoral-related conflict or enable a mission to arrive at a comprehensive and fair assessment of the process.
- 3) **Specialised observation:** This methodology is research-based and targets specific aspects of the process, e.g. expenditure on social programmes by states and how that may be used as electoral leverage to gain votes (therefore creating an unlevelled playing field). It involves the work of specialised agencies, such as media monitoring outfits; or interest groups interested purely in comparative studies on legal frameworks, for example. It has also been known to be conducted by members of the diplomatic corps whose official roles include assessing the polls on behalf of their governments.
- 4) **Long-term observation:** This involves the systematic assessment of the entire or major segments of the electoral cycle, for as long as three months or more. It covers legal/constitutional frameworks, civic and voter education, nominations, registration of voters, campaigning, voting, tabulation, results announcements and post-election adjudication processes, among others. The AU, United Nations (UN), European Union (EU), the Organisation for Security and Cooperation in Europe (OSCE) and now SADC have all embraced this model.

The presence of observers alone should not be construed to indicate the legitimacy of an election

Finally, and as highlighted in the beginning of the report, SADC election observation has been informed by continental and international obligations. International norms and standards for elections exist at international level and at a regional level. It is also instructive to note that different instruments have different classifications, depending on whether they constitute legal force or signify political or moral commitment by the state parties.²³ These have been classified in accordance with the weight they carry. Agreements between states that denote legal obligations have been classified as treaty standards, while instruments constituting 'political and moral force' have been termed non-treaty standards. Others, with advisory remit or reflecting expressions of intentions by state parties, are termed pledges, political commitments and recommendations.

The European Commission (EC) expands on these typologies as follows:

- **Treaty standards** are legally binding on state parties and include international or regional treaties and covenants. The African Charter on Human and People's Rights, the African Charter on Democracy, Elections and Governance and the SADC Treaty could be placed in this category.



SHORT-TERM OBSERVATION
WOULD NOT UNRAVEL
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RELATED CONFLICT

- **Non-treaty standards**, also known as ‘soft law’ instruments, denote ‘strong moral and political commitment’ to the protection of human rights encompassed in the Universal Declaration of Human Rights. They have been defined as declarations of policy or intention; joint statements and commitments by inter-governmental organisations. The EC is instructive in describing them as complementary or explanatory tools that inform emerging trends in international law.²⁴ When a majority of member states adopt them, they are considered as augmenting the creation of customary international law. The 2004 *SADC Guidelines* form part of this set of ancillary instruments. These political instruments may assume legal force upon domestication into national law or when upgraded to the level of regional protocols ratified by members of a regional organisation.²⁵
- **Pledges, inter-state dialogue or draft policy frameworks** fall under the category of political commitments, while recommendations or general comments by bodies appointed by the UN or other such inter-government agencies usually augment the authoritative interpretation of specific provisions within international treaties.²⁶

What is striking about the sanctions provision in the revised instrument is the use of language: ‘shall’ has replaced ‘will’ or ‘may’

The revised 2015 framework has 10 important changes, namely:

1. **A stronger treaty basis:** The instrument categorically states that its principal objective is to ensure that member states adhere to the SADC Treaty²⁷ and the *SADC Protocol on Politics, Defence and Security Cooperation*. So, the revised instrument is directly tethered to the SADC Treaty. It stipulates that remedial action shall be taken based on the terms of the regional body’s measures for sanctioning non-compliance.
2. **Compliance enforcement through the Organ and the Summit:** Should a member state be found to have violated the revised SADC Principles and Guidelines Governing Democratic Elections, the Chair of the Organ shall report ‘all shortcomings’ to the SADC Summit which should deal with the matter in terms of the SADC Treaty.²⁸ This suggests that Article 33 of the Treaty, which provides for sanctions when the provisions of the Treaty are breached, could be invoked.

According to Article 33 of the Treaty, sanctions can be imposed on member states in three instances. The first is when a member state ‘persistently fails without good reason to fulfil obligations under the SADC Treaty and other treaties’.²⁹ The second is when a member state implements policies undermining SADC principles and objectives. Thirdly, member states can be sanctioned if they are in arrears with their member state contributions.³⁰ What is perhaps striking about the sanctions provision in the revised instrument is the use of language. ‘Shall’ has replaced ‘will’ or ‘may’, suggesting that it is a directive, rather than an appeal to countries to adhere to the shared principles.

3. **Shift from short-term to long-term observation:** Under LTOs, SEOMs may observe elections for an indeterminate length of time, depending on the political or conflict situation in a member state holding elections. This LTO team headed by a

Article 33

OF THE SADC TREATY
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coordinator will provide daily or weekly reports to the chairperson of the Organ on the preparedness of the EMB and the country. Phase two involves the arrival of a core team of administrative and operational staff. Based on their expert knowledge of the country holding elections, the LTOs will assist the core team in developing a deployment strategy for the final, larger group of short-term observers. STOs, in terms of the new regulations, are to be deployed two weeks before Election Day. They will form a combined SEOM with the LTOs.

STOs depart a week or so after voting while the LTO may remain for a longer period, depending on the prevailing political climate. The extended technical appraisal therefore provides the opportunity for the LTOs to analyse election results, the formation of a government, initiation of reforms and procedures for the next election and the adjudication of election disputes.

- 4. Consensus on definitions and measurement of 'free and fairness':** For the first time, SADC will use four different objective measures to gauge electoral integrity, in addition to the traditional and often controversial notion of 'free and fair'.³¹ These include 'credible' and 'transparent'.³² Not only are these concepts now defined in the revised framework; there is also a range of related definitions, which lend themselves to a degree of scientific measurability. The lack of distinct objective measurements in the 2004 framework detracted from the international norms associated with election observation and tended to dilute the reports of the regional body.
- 5. Expansion and diversity of SEOMs:** SEOM participation has been formally opened to non-state actors. Previously, they were exclusively made up of state officials. Non-state actors include experts, academics, civil society members and legislators. The aim is to achieve wider ownership and a sturdier empirical basis upon which SADC's peace and security architecture may respond to electoral-related conflicts. In addition, member states are to meet the gender equity ratios prescribed by the *SADC Protocol on Gender and Development*. So gender balance is one of the requirements for future SEOMs.³³

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- 6. Stronger role for SEAC throughout the electoral cycle:** SEAC will assess the conditions that might lead to conflict and advise the Organ on mediation strategies. It will determine, through goodwill missions and pre-election assessments, the technical requirements for SEOMs ahead of each election. In doing so, SEAC does not necessarily need to be expressly invited to do this by the member state holding elections. SEAC's pre-election assessments and goodwill missions position it to analyse conflict dynamics and triggers.

While not an integral part of the SEOM, during elections SEAC will serve as an adviser to SEOM mission leadership but will play no proactive role in observation per se. The implication of this for non-state actors is that there is space within the



GENDER BALANCE IS
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political and security structures of SADC through which they can engage states on electoral practice on a regular basis.

- 7. Provisions for post-election stakeholder reviews:** SEAC, working with the Election Management Body of the country holding elections, will host a post-election stakeholder review meeting to discuss the SEOM election reports and SEAC's own report and evaluate the content in relation to popular perception of the poll. This post-election engagement should provide civil society and political contestants an opportunity to interrogate the methods, practice and conduct of the electoral process and render their own determination as to whether the country did indeed comply with regional norms and standards. Further, it presents an opportunity to inform SADC's related conflict analysis, prevention, mitigation and resolution initiatives.

Post-election engagement should give civil society and political contestants an opportunity to interrogate the methods, practice and conduct of the electoral process

- 8. Inclusion of technology in elections:** The revision has also been influenced by the introduction of new voting technologies. The use of electronic voting machines by Namibia in its November 2014 national elections rendered a large part of the SEOM observation virtually obsolete, as they were not mandated or trained to examine bio-technological data. Tanzania, Zambia and Zimbabwe are also already using biometric voter registration systems. E-voting is expected to be adopted in much the same way, although a number of concerns persist.

The emergence of these technologies necessitates a change in the training and organisation of SEOMs and an understanding of what is observable and analysable. Key to the process is determining whether there was stakeholder consensus in the acquisition of the E-voting machines. Secondly, observers need to be present when pre-election audits and tests are done and to take note of locations and custody of machines; their physical security, transportation and in-polling station storage measures. Lastly, the transmission, tabulation and retrieval of electronic data need to be understood and evaluated. SADC has now agreed to allow its SEOMs access to bio-technological data as part of the technical observation process.

- 9. Diaspora participation:** The revised instrument takes into account the dilemma of diaspora populations in the region. Southern Africa experiences all forms of movements of peoples, including mixed, irregular migration, labour migration and displacement arising from conflict. For example, the International Organisation for Migration estimated 2.4 million migrants in South Africa, of which 1.5 million are from Zimbabwe. In addition, the Democratic Republic of Congo and South Africa between them host an estimated 200 000 refugees.³⁴ To avoid disenfranchisement of those populations, SADC has 'encouraged' member states to 'regularly review' diaspora participation 'based on their national experiences and national laws'.

- 10. Links to SADC security structure:** The revised framework can help SADC streamline its conflict prevention and mediation processes. This could be through

2.4 million

THE NUMBER OF
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SEAC's collaboration with SADC envoys, its Mediation, Conflict Prevention and Preventative Diplomacy Mechanism, and its Early Warning System. To elaborate, SEAC advises SADC on mediation strategies and may support SADC envoys where the Organ or Summit has appointed one to undertake fact-finding and analysis and to advise it on the nature and dynamics of a conflict, its potential for escalation and the options to peacemaking.

In terms of links to SADC's mediation structure, SEAC would, ideally, be linked to its structural components, which include a Mediation Reference Group, a Mediation Support Unit and a Panel of Elders. Through the collaboration, SEAC would assist in the development of mediation strategies to address conflicts in the pre- and post-election periods. Where there is any indication of an election-related dispute in a member state, SEAC may recommend to the MCO that an extraordinary meeting to attend to the dispute be convened. Collaboration with the Regional Early Warning System is evolving since both are relatively new structures. LTO reports and related data can help the REWS in determining the adequacy of security, constitutional and legal provisions governing the conduct of elections.

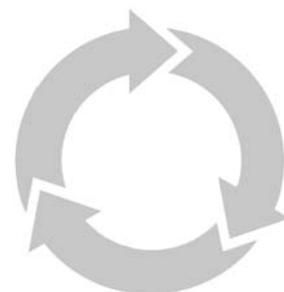
The new approach to election observation also strengthens the implementation of the SADC security cooperation plan, the Strategic Indicative Plan of the Organ (SIPO). This is because it is a holistic approach, taking a broad and longer-term view of election monitoring and governance. Since an election is one of many strategies aimed at promoting good governance and development, the new observation methodology helps flag threats to the long-term institutionalisation of good governance practices in a given country.

The new approach to election observation also strengthens the implementation of the SADC security cooperation plan

The complementarity is clear: LTOs concern themselves with the integrity of contemporary electoral processes and practices as well as the future of democratic governance. SIPO is concerned with developing common democratic practices in member states. SEAC, through the work of LTOs, is responsible for ensuring the application of the *Principles and Guidelines* by each member state, the implementation of SEOM as well as MCO directives and the provision of information and advisory services to SADC electoral institutions on an ongoing basis. It therefore helps countries standardise their practices and also strengthens national regional links when it comes to policy compliance.

Challenges and opportunities

Conceptual and operational orientation: The shift from short-term to long-term observer missions requires a conceptual shift in observation that integrates the electoral cycle approach with a conflict cycle approach. An integrated conflict and elections programming approach can be used, as it aims to link electoral assistance to conflict prevention, mitigation and resolution. From a SADC perspective, LTOs can assist in providing evidence-based approaches to early warning, mediation and conflict resolution.



THE NEW APPROACH IS HOLISTIC, AND TAKES A LONGER-TERM VIEW OF ELECTION MONITORING AND GOVERNANCE

Funding: An expanded mandate for election observation comes with human and resource implications. This is to be determined by SADC as it implements the revised framework.

Implementation of SEOM recommendations by member states: Observation can lead to improved practices by host countries. But given the varied institutional capacities of SADC members, it remains to be seen how SADC will foster this.

Links to the Regional Early Warning Centre (REWS): The Situation Room of the REWS was inaugurated on 12 July 2010. The model, critiqued by some scholars as intelligence-based as opposed to open source, would need to embrace data and analyses from SADC's new approach.³⁵ Closer collaboration with SEAC and SEOMs could certainly bolster its effectiveness in predicting potential conflicts and advising SADC to take early action.

Including the expertise of non-state actors has the potential to de-politicise election observation and to engender a sense of regional ownership

Links to SADC structures at national level: Ideally, election observation should have an impact on governance, which concerns both the state and civil society. A collaborative approach can lead to long-term improvements in legislation, election administration, and other aspects of the democratic process. The SADC national committees (SNCs) are important in this regard. They are a statutory organ of SADC meant to support participatory multi-stakeholder policy-making and implementation, also with regards to election regulation.³⁶ They provide an opportunity for national input in the formulation of SADC policies as well as the co-ordination and implementation of these programmes at national level. However, SNCs are uneven across SADC, and non-existent in some countries.

CSO–SADC relations: Some CSOs in the region have described SADC as unfriendly to civil society. While there is the SADC Council of Non-Governmental Organisations (SADC-CNGO), an umbrella body of NGOs in the region, relationships have not always been cordial. SADC-CNGO is also not a formal structure of SADC. An existing memorandum of understanding signed with SADC-CNGO has yet to be fully implemented.³⁷ Plus, while some SADC states have achieved harmonious relations with their civil society, others are still hostile, and even prevent civil society from observing elections. SADC should standardise the norms regarding creating space for civil society to engage throughout the electoral cycle.



A COLLABORATIVE
APPROACH CAN LEAD TO
LONG-TERM IMPROVEMENTS
IN LEGISLATION AND
ELECTION ADMINISTRATION

Conclusion

SADC election observation missions have largely appeared to be political exercises rather than technical and professional ones and have not been strongly linked to early warning and conflict prevention. But changes in the 2015 framework have great potential to improve the situation. There is now an opportunity for SADC to rationalise its various but inter-related activities in the promotion of peace and security in a way to benefit from the activities of election observation. A link between election observation and conflict prevention approaches will likely improve electoral integrity and possibly forestall conflict. The inclusion of the definition of key concepts such

as 'free and fair', 'credible' and 'transparent' will also assist experts, scholars, media and citizens in general to understand how the assessment was arrived at, and possibly minimise the persistence of doubt by those that are disaffected.

Moreover, the inclusion of the expertise of non-state actors, academics, parliamentarians and election management boards in SADC observer missions has the potential to de-politicise election observation and finally to engender a sense of regional ownership of this framework. As the new approach by SADC is now to include experts whose skills may be deemed necessary

for specific missions, there is likely to be an increased sense of ownership of the election reports.

Civil society can also monitor the implementation of the revised framework in each member state and engage SEAC on violations and the areas requiring improvement in future elections. This then makes the new framework a living document, an important point to be appreciated by both SADC and civil society in the region. There should always be room for continuous improvement through practice. This will make SEOMs indispensable to peace and security in the region.

Notes

- 1 SADC, *Principles and Guidelines Governing Democratic Elections*, Gaborone: SADC Secretariat, 2004.
- 2 Ibid.
- 3 SADC Parliamentary Forum, *Norms and Standards for Elections in the SADC Region*, Windhoek: SADC-PF Secretariat, 2001.
- 4 T Musavengana, *The Proposed SADC Parliament. Old wine in new bottles or an ideal whose time has come?* Pretoria: ISS, 2011.
- 5 European Commission, *Compendium for International Standards for Elections: 2007, 232*
- 6 EISA, ECF-SADC, *Principles for Election Management, Monitoring and Observation*, Auckland Park: Eisa, 2003.
- 7 SADC, *Principles and Guidelines Governing Democratic Elections*, Gaborone: SADC Secretariat, 2015.
- 8 SADC *Principles and Guidelines Governing Democratic Elections*, Gaborone: SADC Secretariat, 2004.
- 9 As discussed in Eaglestone and K Chitsike, *Compromise or compromised? An assessment of democracy in transitional Zimbabwe*, Cape Town: Idasa, 2013 and Zimbabwe Lawyers for Human Rights, *Zimbabwe geared up for another election? Then and now: 2008 elections in retrospect*, Harare: ZHLA, 2010.
- 10 Madagascar was suspended from SADC in 2009. The suspension was lifted on 30 January 2014 by SADC Heads of States after concluding that the election and efforts of President Hery Rajaonarimampianina to undertake reconciliation and social and economic recovery steered the country towards democracy. The summit commended member states 'for standing firm on SADC Principles against those who usurp power through violence and unconstitutional means...'. See *SADC Communiqué of the Extraordinary Summit of Heads of State and Government*, 30 January, 2014.
- 11 Electoral Institute for a Sustainable Democracy in Africa (EISA), *Election Observer Mission Report: Parliamentary Elections*, Lesotho, Johannesburg: EISA, 2012.
- 12 See K Matlosa, *Managing Democracy: A Review of SADC Principles and Guidelines Governing Democratic Elections*, Auckland Park: EISA, 2004, D Motsamai, *SADC's 2013 Review of its Principles and Guidelines Governing Democratic Elections: Need for civil society inputs?*, IGD, 2013, K Chirambo, *Reviewing the SADC Principles and Guidelines Governing Democratic Elections: Lessons from a global and regional perspectives*, Issues Paper, Pretoria: SADC, 2015.
- 13 The section stipulates that member states may invite SEOM 'in the event a member state deems it necessary to invite SADC to observe its elections'.
- 14 African Union/International Peace Institute, *Election-related disputes and political violence: Strengthening the role of the African Union in preventing, managing and resolving conflict*, Report of the AU Panel of the Wise, International Peace Institute, 2010, pp1-12.
- 15 Afrobarometer, Round 6, Cape Town, 2014/15.
- 16 African Union/International Peace Institute, *Election-related disputes and political violence: Strengthening the role of the African Union in preventing, managing and resolving conflict*, Report of the AU Panel of the Wise, International Peace Institute, 2010: pp1-12
- 17 In the revised SADC Principles and Guidelines Governing Democratic Elections, observation is defined as follows: 'the purposeful gathering of information regarding an electoral process and the making of informed judgments on the basis of the information collected by persons who are not inherently authorised to intervene' [SADC, 2015]. Election monitoring, on the other hand, which generally entails the authority to intervene is often carried out by the United Nations in a post-conflict reconstruction environment.
- 18 IDEA, *The New International IDEA Guidelines*, Stockholm: IDEA, 2014.
- 19 African Union, *Election Observation Manual*, Addis Ababa: AU, 2013.
- 20 As discussed in IDEA, *The New International IDEA Guidelines*, Stockholm: IDEA, 2014, United Nations, *Declaration of Principles for international election observation and code of conduct for international observers*, New York: UNED, 2005.
- 21 IDEA, *The New International IDEA Guidelines*, Stockholm: IDEA, 2014.
- 22 According to the *Declaration of Principles for International Election Observation and Code of Conduct for International Observers* (2005) endorsed by AU, EC, OSCE and international NGOs involved in electoral observation, international election observation is conducted in terms of the provisions of the UDHR, ICCPR, ICERD, CEDAW; and it focuses on civil and political rights, as part of international human rights monitoring. It must be conducted on the basis of the highest standards for impartiality concerning national political competitors and must be free from bilateral or multilateral considerations that could conflict impartiality; International election observation also evaluates pre-election, election-day and post-election periods through comprehensive, long term observation, employing a variety of techniques.
- 23 European Commission, *Compendium of International Standards for Elections*, 2nd edition, Brussels: EC, 2007, pp 26-27.
- 24 Ibid.
- 25 See <http://www.wunrn.com> [<http://www.pacii.org/oldpits/English/domestication.html>]: Domestication includes passage of national and local legislation that conforms to international treaties. The OHCHR is instructive in emphasising that ratification is a different process from domestication. Unless a treaty between states is incorporated in domestic law, the rights and obligations contained therein are inapplicable and unenforceable domestically. However, it is

- posited that by virtue of ratifying international human rights treaties, governments undertake to institute domestic measures and legislation consistent or compatible with their treaty obligations and duties. Regional mechanisms would in this sense assist countries that fail to meet their obligations to reform their laws to ensure that international human rights standards are respected, implemented and enforced at all levels. See www.wunrn.com [www.paclii.org/oldpits/English/domestication.html].
- 26 Ibid.
- 27 Particularly Article 5 which states: 'common political values, systems and other shared values which are transmitted through institutions, which are democratic, legitimate and effective' (SADC Treaty, 1992: Art 5).
- 28 SADC, *Principles and Guidelines Governing Democratic Elections*, Gaborone: SADC Secretariat, 2015.
- 29 SADC Treaty, Article 33.
- 30 Ibid.
- 31 In the revised SADC Principles and Guidelines 'Free (elections)' means 'Fundamental human rights and freedoms are adhered to during electoral processes, including freedom of speech and expression of the electoral stakeholders; and freedom of assembly and association; and that freedom of access to information and right to transmit and receive political messages by citizens is upheld; that the principles of equal and universal adult suffrage are observed, in addition to the voter's right to exercise their franchise in secret and register their complaints without undue restrictions or repercussions.'
- 32 'Credible elections' means 'electoral processes enjoy considerable support and confidence of the citizenry and international or regional community, leading to mutually agreeable results from competing entities that participate actively in the electoral process.'
- 33 OSCE, *Election Observation Handbook*, Warsaw: OSCE, 2010.
- 34 See this discussion on the IOM website at www.iom.int/southern-africa.
- 35 See B Terefe Tiruneh, *Establishing an Early Warning System in the African Peace and Security Architecture: Challenges and Prospects*, KAIPTC Occasional Paper N. 29, D Motsamai, *SADC 2012 Launch of the Revised SIPO II: New Hopes, old challenges*, Pretoria: ISS, 22 November 2012.
- 36 O Nzewi and L Zakwe, *Democratising Regional Integration in Southern Africa: SADC national committees as platforms for participatory policy-making*, Research Report No 122, Johannesburg: Centre for Policy Studies, 2009.
- 37 As discussed in T Kasambala and M Zakeyo, *Draft Proposal on SADC Mechanisms for Engagement with Non-state Actors*, Johannesburg: Southern Africa Trust, December 2014.

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