

# SADC Principles and Guidelines governing Democratic Elections Analysis: A bird's eye view

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## Introduction

In 1992 Southern African Countries signed a treaty in Windhoek forming SADC. This was laudable as sub-regional bodies are becoming of increasing importance in the world in resolving conflicts and charting the way forward in the fight for the eradication of poverty and all its consequences. Sub-regional blocks should not be seen as competing with the regional or international bodies such as the AU or UN but offer a complimentary role in the realization and defence of minimum human rights standards as enshrined in regional and international instruments.

Virtually all the regional and international human rights instruments centre around respect for human dignity and human rights of all members of the human family as the foundation for justice, freedom and peace in the world<sup>2</sup> Sub regional bodies help to minimize in global politics the danger of countries far away from the region to use internal conflict in a country within the subregion as a leverage to achieve ulterior motives. At the same time they assist human rights defenders within the country in the region to fight for the promotion and protection of human rights more effectively within the region while insulated from the negative propaganda that has been used by dictatorial regimes within the region each time complaints of abuses are made at international fora such as the UNHRC. In this context we must all strive to build strong sub-regional bodies that work in a manner that is coherent with the work of the regional and international bodies.

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<sup>2</sup> Preamble to UDHR

## **What are the SADC guidelines?**

This is a body of principles and guidelines that SADC countries adopted in Mauritius in August 2004 in order to govern the conduct of elections in the SADC countries.

## **Why SADC principles?**

The principles and guidelines were adopted in order to “enhance the transparency and credibility of elections and democratic governance [so that there is] acceptance of the results by all contesting parties.”<sup>3</sup> It is important to have all contesting parties accept election results because that guarantees peace and stability, prerequisites for sustainable development. We all know what happened in Angola in 1992 and Zimbabwe in 2000 and 2002 where lack of credibility in the electoral process resulted in serious internal conflict. Absence of credible electoral processes and democratic governance has severe consequences on humanity as was evident during colonialism, apartheid South Africa as well as in post independent states such as DRC during Mobuto’s dictatorship and Angola and Mozambique where multipartyism was banned at independence. Conflict in any country in the SADC has consequences for the rest of SADC because of the contagion effect.<sup>4</sup>

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## **Focal Area of Interest by Political Parties and CSOs in the Principles and Guidelines**

Article 2 containing principles and guidelines for conducting democratic elections have attracted the greatest interest for political parties and CSOs. These state that any election **shall** allow full participation of the citizens in the political process, freedom of association, political tolerance, regular intervals for elections

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<sup>3</sup> Preamble to SADC Principles and Guidelines

<sup>4</sup> The Zimbabwean crisis has resulted in serious migration to neighbouring countries Botswana proportionally bearing the greatest brunt with reports of over 500 000 Zimbabweans settling there where the country population is around about 2 million people.

as provided for by the respective national constitutions, equal opportunity for all political parties to access the state media, equal opportunity to exercise the right to vote and voted for, independence of the judiciary and impartiality of the electoral institutions and voter education.

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## **Commentary**

It is difficult to find any person who would disagree with the statement and content of the principles on paper. The difficult issue is how to translate the principles into reality on the ground given the following factors:

- That African leaders (even sub-regional leaders) have generally shown a tendency of wanting to cling on to power e.g. Zimbabwe (Mugabe who is still getting strong at 82 and has spent 25 years as the Chief Executive Officer of the country and is still ruthlessly dealing with opponents both internal and external to ZANU PF), Namibia (Nujoma's effort to get a third term which was overcome by severe adverse public opinion), DRC (where Mobutu effectively ruled for "life"), Angola (where there is no indication of Eduardo dos Santos giving way to anyone), Malawi (Banda initially for "life" and now where Muluzi still tries to run the country through controlling the ruling party to the extent of even firing a President from the ruling party!), Zambia (where Chiluba even tried to use citizenship laws to ban first president Kenneth Kaunda from contesting Presidential elections!). South Africa and Botswana seem to be exceptions save that it is not clear if in those countries the ruling party would be prepared to relinquish power to an opposition.
- The principles even though inspired by international human rights law and international human rights instruments<sup>5</sup> in their creation and objectives subordinate themselves to domestic law in how to apply and interpret them.<sup>6</sup> This seems contrary to international human rights law which

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<sup>5</sup> See Preambular paragraphs 3, 4 and 6

<sup>6</sup> See 2.1.9; 2.1.10; 5.1.1 and 7.9 of the SADC Principles and Guidelines

provides for international treaties to be observed in good faith and discourage state parties from invoking the provisions of domestic laws in order to avoid implementation of treaties. It is submitted that the SADC principles and guidelines must oblige states parties to the SADC Treaty to repeal or amend domestic laws that are inconsistent with the SADC principles and guidelines and further inconsistent to regional and international treaties since these treaties informed the conception and adoption of the principles and norms. The SADC states must be compelled also to adopt administrative and other measures to ensure the implementation of the principles and guidelines.

- The principles are merely aspirational and are not binding. They do not create international obligations as this is highlighted by reference to principle 2.1 which is worded “In the event a Member State **decides** to extend an invitation to SADC to observe its elections this shall be based on the provisions of the Protocol on Politics, Defence and security Cooperation”. Quite clearly SADC states are not compelled to invite SADC to observe elections. Invitation is the exclusive prerogative of the incumbent state and this assumes political will on the part of the state, which assumption is not always right. It also potentially places the observers in a situation where they have to be grateful to the state (more precisely the party in power) for extending the invitation when the state was not compelled to do so. This potentially compromises their aggressive commitment to ensuring adherence to the SADC principles and guidelines for fear of prejudicing future invitations.
- The principles create a non-binding obligation or voluntary duty/responsibility on the State to “take necessary measures to ensure the scrupulous implementation of the above principles, in accordance with the constitutional processes of the country” Wording a non-binding document forcefully does not render it any more worth than what it is, a merely aspirational document. So its success in implementation is dependant on the political will of those in power. It is useful tool in lobby and advocacy

but outside that one cannot enforce it. Taking necessary measures in the context of Zimbabwe has been seen as taking legislative measures and administrative measures consistent with the new legislation. To that extent the government has passed the Zimbabwe Election Commission Act (ZEC) and the Electoral Act ostensibly to give domestic effect to the SADC principles and guidelines. But this has been largely a huge exercise in deception for many reasons including but not limited to;

1. This new legislation ZEC and the Electoral Act bans foreign funding of CSOs involved in voter education or issues of governance defined to mean promotion and protection of human rights.
2. The new legislation bans CSOs from being election monitors and reserves this duty to civil servants (the army and intelligence included) who are already so discredited owing to a proven record of being involved in partisan politics in favour of the ruling party.
3. The fact of non repeal and in-fact promulgation of extremely repressive legislation such as the Public Order and Security Act (POSA), the Access to Information and Protection of Privacy Act (AIPPA), the Miscellaneous Offences Act (MOA), The Criminal procedure and Evidence Act (CODE), the Labour Relations Act (LRA), the Broadcasting Services Act (BSA), the Non Governmental Organisations Bill (NGO Law) which undermine and seriously erode the enjoyment of all the rights provided for in Principle 2 of the SADC Principles and Guidelines. For example AIPPA seriously erodes the enjoyment of the right to freedom of expression and information which right “is a fundamental and inalienable human right and an indispensable component of democracy.”<sup>7</sup>

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<sup>7</sup> African Commission on Human and Peoples’ Rights, Declaration of Principles on Freedom of Expression in Africa, I(1), October 2002, Gambia

4. Non transparent appointment of a Delimitation Commission and a non transparent delimitation exercise where urban constituencies were reduced in number and certain constituencies broken down.
5. Non transparent Voter registration exercise done by bodies other than the Zimbabwe Election Commission which on paper is supposed to run the election but is as clueless as everyone on how the Registrar General's office has conducted the voter registration exercise<sup>8</sup>.
6. Deprivation of Zimbabweans in the Diaspora of their franchise contrary to what other countries in the SADC such as Botswana and Mozambique have been able to do by carrying out administrative and other measures of allowing their citizens to participate in the elections while away from home. No justifiable reason has been given by the Zimbabwe government to deny the people in the diaspora their right to vote.
7. Failure to dismantle the factories of violence, (the militias in the youth brigades and certain war veterans, intelligence officers, Police Internal Security Intelligence and the law and order section of the police force).
8. Failure to allow the judiciary to be fully independent and to give real remedies for human rights violations.
9. Failure to carry out constitutional changes that allow for real and effective participation by Zimbabweans in the political life of their country. There has been an effort to pass new legislation to create a new legislative framework to deal with elections in Zimbabwe but the constitution which in essence has created a constitutional dictatorship in Zimbabwe remains untouched. Who is in charge of elections remains a mystery for many. As the opposition has complained there is a plethora of bodies that are dealing with

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<sup>8</sup> The ZE Commission came into existence when the Registrar General's office had already finalized or was in the final stages of finalizing the voter registration exercise.

election management the Electoral Supervisory Commission, the Delimitation Commission, the Zimbabwe Election Commission, Observer Accreditation Commission and the Registrar General's office.<sup>9</sup>

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### **What actions can be taken to advocate for implementation of the SADC principles and guidelines.**

It is important to pay particular attention to the pre-embular paragraphs 3, 4 and 6 of the SADC principles and guidelines as they provide an avenue for importation of international instruments and standards into the SADC civil and political affairs and elections.<sup>10</sup> For example the AU Charter has strong emphasis on human rights standards and norms and good political governance. More importantly the 53 countries in the AU have a binding treaty in force the African Charter on Human and peoples rights (ACHPR), which contains minimum human rights standards such as freedoms of expression and association.<sup>11</sup> Such rights are also contained in the International Covenant on Civil and Political Rights

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<sup>9</sup> The Standard newspaper of 27 February 2005 (p2) reported that David Coltart, the MDC Secretary for legal affairs was of the opinion that "the government [of Zimbabwe] had successfully hoodwinked the Southern African Development Community into thinking that the recently enacted Zimbabwe Electoral Commission Act had leveled the electoral playing field- The Electoral Supervisory Commission is appointed by Robert Mugabe and therefore cannot be impartial, the Delimitation Commission is appointed by Mugabe and therefore cannot be impartial, the Observer's Accreditation Commission is headed by the chairperson of the ESC, who is an appointee of the President. The Registrar General is accountable to Cabinet. The Zimbabwe Electoral Commission goes some way towards being inclusive in its nature but does not include civic society, churches and the public. In any case its chairperson is appointed by Mugabe."

<sup>10</sup> Preambular paragraph 3 of SADC principles and guidelines provides that "Article 4 of the [SADC] Treaty stipulates that 'human rights, democracy and the rule of law' are principles guiding the acts of its members. Article 5 of the [SADC] Treaty outlines the objectives of SADC, which commits the Member States to 'promote common political values, systems and other shared values which are transmitted through institutions, which are democratic, legitimate and effective. It also commits Member States to 'consolidate, defend and maintain democracy, peace security and stability' in the region." Preambular paragraph 5 of SADC principles and guidelines provides that "...SADC shall promote the development of democratic institutions and practices within the territories of State Parties and encourage the observance of universally recognized human rights as provided for in the Charter and Convention of the Organisation of African Unity [African Union] and the United Nations." Preambular paragraph 6 provides that "The Guidelines are not only informed by the SADC legal and policy instruments but also by the major principles and guidelines emanating from the OAU/AU Declaration on the Principles Governing Democratic Elections in Africa – AHG/DECL.1 (XXXVIII) and the AU guidelines for African Union Electoral Observation and Monitoring Missions – EX/CL/35 (111) Annex II

<sup>11</sup> Articles 9, 10 and 11

(ICCPR).<sup>12</sup> In so far as the SADC principles and guidelines provide for the enjoyment of these rights as a precondition for the holding of free, fair and credible elections, it is submitted that the enjoyment of these rights is therefore an issue of binding commitments between the African States and between the SADC states.

CSOs, political parties, labour movements, grass roots movements (such as churches, students, women organisations and labour) should impress upon the SADC people and in particular the SADC leadership that the adoption of the SADC principles and guidelines which are inextricably intertwined and interwoven with country obligations in terms of the signed and ratified instruments which have been interpreted by the treaty monitoring bodies such as the African Commission on Human and Peoples Rights (African commission) creates responsibilities that could be close to obligations. In this context the SADC principles and guidelines could be seen merely as a codification of binding regional and international human rights standards and norms. This way we raise the SADC principles and guidelines from being merely aspirational to close to being peremptory standards.

From this perspective, where the AU (assisted by any of its organs or appropriate bodies) has taken a position about the human rights situation in a SADC country and made recommendations as happened in Zimbabwe<sup>13</sup> it is inexcusable for CSOs, human rights defenders and SADC political leadership and political parties to pretend that everything is normal and to devote energies towards developing and working for new aspirational standards (principles and guidelines) instead of working on a timetable for the implementation of the workable and achievable recommendations of the AU on Zimbabwe.

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<sup>12</sup> Articles 19, 21 and 22

<sup>13</sup> At the Assembly of Heads of State meeting at Abuja from 30-31 January 2005, the African heads adopted the African Commission's Fact Finding Mission Report on Zimbabwe which established serious human rights violations in Zimbabwe and made recommendations on how the situation could be reversed for the better. Assembly/AU/Dec.56 (IV)



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## **Conclusion**

The SADC principles and guidelines are laudable as they contain what would be ideal to achieve free and fair elections. The main problem is not with the statement of the standards but with the how to ensure that these values and ideals are realized on the ground by the African people within the SADC who have been yearning for so long for real and effective participation in the civic affairs of their countries without fear of harm to their limbs. In so far as the SADC political leaders have created a useful tool for benchmarking their performance and for lobby and advocacy, they need to be acknowledged. However the real test for their commitment is going to be in their political will to implement the standards. Only then can we say that the quality of political leadership in the sub region has been raised a step higher. Sub-regional economic prosperity becomes a natural by-product of this process.

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