Policy Dialogue Outcomes Report

The Role of Electoral Management Bodies (EMBs) in Strengthening Electoral Democracy in the SADC Region

10 August 2019 | Elephant Hills Hotel | Victoria Falls | Zimbabwe
I. Introduction

The SADC LA convened its 20th Annual General Meeting and Conference from 8 to 10 August in Victoria Falls, Zimbabwe. In an endeavour to promote democracy and strengthen the role of EMBs, the Institute for Democracy and Electoral Assistance International (International IDEA) in partnership with SADC LA utilized the opportunity as a platform to convene a policy dialogue session on “The role of EMBs in promoting electoral democracy in the SADC Region” as one of the SADC LA Conference sessions. The policy dialogue was held on 10 August 2019.

II. Background

World over, elections are regarded as an indispensible root of democracy. They can either be used to further democracy, development, human rights and security, or, to undermine them. For this reason, elections command great attention and priority in democratic countries. To be credible, the elections need to be organised to high and visible standards before, during and after the casting of votes. When conducted in a free and fair manner, as defined by the electorate, elections have the capacity to serve as a powerful catalyst for improved governance, greater security as well as, human development. However, in the absence of credible elections, citizens often have no recourse to peaceful political change. This development breeds a fertile environment for conflict, corruption, fraud and intimidation thereby, undermining and degrading the entire political system slowly from within. To be clear, while electorate integrity does not in itself develop economies, create good governance or make peace, by and large, research suggests that improved elections can be medium for realising democracy’s transformative potential.

Several global regions recognise elections as indispensible to the installation or reinstallation, sustenance, and consolidation of democracy. Globally, Electoral Management Bodies (EMBs) have also been recognised as key institutions in the management, organisation and delivery of elections. Realising the magnitude of their mandate and responsibilities, EMBs in the region considered the increasing need to learn and share experiences and knowledge, leading to the formation of the first regional EMB associations including the Electoral Commission Forum of Southern Africa development Community (ECF-SADC) for the SADC region.

Undoubtedly, EMBs are key institutions in driving the global efforts of deepening the advancement of democracy. The evolution of EMBs in the SADC region, therefore, cannot be separated from the democratisation processes of the respective member states of the regional bloc, generally. It should be observed that the quest for the EMBs to ensure legitimacy and credibility of their mandate is at different levels across the region. Generally, the commitment of EMBs to credible elections largely depends on the electoral framework, political and social expectations, and the cultural environment within which they operate. Influences include the political will to allow the EMBs to operate freely and impartially; the range of powers and functions given to an EMB; qualifications of members or staff for appointment and terms of office; the way in which members or staff are selected and appointed; oversight and accountability framework and, whether the EMB has a legal personality or is able to sue or be sued.

The contention over elections in SADC region must be understood in the broad historical context of an unfinished democratisation project and the political economy of democratic elections. In a bid to
enhance the quality of elections in the region and foster democracy, the SADC adopted its revised Principles and Guidelines Governing Democratic Elections in 2015. The Principles and Guidelines have been positively received and celebrated for being forward-looking and moving in tandem with continental and international best practices regarding democratic participation, political freedom and governance. In 2018, the SADC Participation Forum Plenary held in Maputo adopted the SADC Model Law on Elections – another forward-looking framework aimed at enhancing the integrity of elections in the region if domesticated by member states.

III. Objectives

The policy dialogue sought to create a platform for reflection on the role of Election Management Bodies (EMBs) in promoting electoral democracy in Southern Africa. Specific objectives include:

- To assess the achievements and challenges faced by EMBs in advancing electoral democracy in SADC region;
- To proffer recommendations that can be instituted by EMBs to enhance electoral democracy at country level in SADC region; and,
- To create a platform for experiential learning by a community of legal practitioners and election experts on the prerequisites for the role of EMBs to successfully promoting electoral democracy.

IV. Key Messages and Outcomes

- EMBs are crucial in strengthening electoral democracy. EMBs are institutions for human rights defence and promotion which should be placed within broader context of the political culture of a country, the political system as well as, state capture narrative;
- Most EMBs in the region are administratively efficient but have not fared well in safeguarding constitutional rights and democracy. The post 2008 election violence in Zimbabwe is an example;
- SADC region has been largely ruled by liberation movements and where they have been eased out of power, replacement dominant opposition political parties have come in with debilitating sense of entitlement;
- The role of an EMB in advancing electoral democracy is proportional to the degree in which it applies the core principles which guide its effective functioning. The principles include: transparency, professionalism, impartiality, sustainability and independence. If these principles are not observed, then an EMB can be a source of conflict itself as has been observed in a number of countries across the region;
- EMBs should be well structured for them to facilitate effective decision making and ultimately the delivery of their mandate. While most countries in Southern Africa have established EMBs, it is apparent that their structures as well as the level of effectiveness is different. In Mozambique, the EMB has 17 members, some appointed by political parties represented in Parliament and some from civil society but co-opted by political parties. This was deemed as a very problematic method. Namibia EMB has five (5) members. The Chairperson is full term while four (4) others are part-time members appointed from professionals who independently apply; South Africa EMB has three (3) part-time
commissioners while Lesotho has 3 full-time commissioners. DRC’s EMB like Mozambique is constituted by members seconded by political parties;

- In a number of countries, such as Mozambique, Madagascar and Zimbabwe, citizens lack trust in EMBs because these institutions have failed to inspire citizens confidence to actively participate in electoral processes. Challenges have been observed in the subjective constituencies’ delimitation exercises, voter registration, management of the voters’ roll and electoral results management. There are also weak public engagement mechanisms in the electoral processes a situation which was partly attributed to disenfranchisement of voters resulting in low voter turn-out in most elections across the region. Weak and delays in availing and publishing public interest information has been a major source of conflict experienced in some parts of the SADC region;

- Electoral Forum for SADC (ECF-SADC) is a key regional platform that can assist in elevating best practices emerging in the region and facilitate experiential learning for EMBs in the region;

- Registering of political parties and delimitation of constituencies function varies with individual countries in the region, for example in Namibia, a temporary delimitation commission is set up for this specific purpose and is dissolved once the activity is concluded but in some jurisdictions such as Zimbabwe, the function is embedded in the EMB;

- The integrity of voter’s registers is a bone of contention in some countries in the region. For example, Mozambique’s voter registration process for the October 2019 general elections has been marred with allegations of manipulation of figures for some provinces;

- Insecurity of tenure of commissioners is a challenge affecting the work of some EMBs especially, where an EMB is not a constitutional entity. The insecurity of tenure can undermine the legitimacy of an EMB. There was also contention that the very nature of personal political economy that most people appointed to EMBs are not retirees but see a potential career path of potential appointments in the judiciary or, political appointments.

- Given this scenario, there is need to balance the security of tenure and institutional memory to prevent mistakes from recurring;

- Most countries’ EMBs have limited impartiality and independence of decision and action. The appointment mechanism and reporting structure of EMB chairpersons (mostly impartial senior members of the judiciary) is largely linked to the executive discretion thus limiting their inability to bend to governmental, political or other partisan interest on their decisions. The incumbency therefore plays a huge role in tilting the playing field to the advantage of the ruling parties. A lack of electoral equality has been undermining the transparency and credibility of elections and EMBs in Southern Africa;

- Most of the EMBs in the region are under-funded, a situation which always resulted in sourcing budget deficits from donors. While donor support may help to improve the quality of elections or necessitate elections to occur, over reliance on external inputs and resources to support electoral processes in the region has implications on EMBs financial and economic sustainability and sustainable delivery of credible elections. Underfunding of EMBs by incumbent governments can be used as a means for managing and controlling EMBs resultantly undermining their legitimacy;

- EMBs and other constitutional bodies have become sites of accumulation of power and not service and where they are not financially sustainable, they lose political power to hold incumbent and opposition to account and to defend the public without interfering with interest of dominant political parties;
• Passive participation of EMBs in electoral legal and institutional administrative reform agendas despite country level pressure from civil society, political parties and international groups to reform electoral management arrangements. Sustained electoral reform advocacy by civil society organisations, political parties and other non-state actors has not yielded much traction in countries such as Zimbabwe and Malawi;

• Party fragmentation - the disintegration of big parties to form smaller ones, is prevalent during election periods often resulting in the need to register smaller parties in a short period of time;

• Unresolved Social conflicts – for example in Namibia land is a contentious issue and has unfortunately been politicised. If people are not happy with electoral commission or the ruling party, they revert to burning voters’ cards although the two clearly have no relation;

• Over interference by the security forces in the electoral process e.g. in Lesotho is a source of conflict;

• Electoral cycle should be managed as a process not an event - conduct regular proactive constructive engagement with parties and stakeholders;

• Conflict prevention, management and resolution be an integral part of EMB’s work;

• Most EMBs in the region lack technological competencies including on cyber securities required for running technology driven elections;

• Market control is the biggest determinant of direction of elections with control from business sector and EMBs in the region have not done meaningful work towards advocating for regulations of private sector contribution to political parties during the electoral cycle excluding South Africa. For example, the process of political party primaries by which democracies are mortgaged, is not in purview of inquiry by EMBs;

• For EMBs to be truly effective there is need to deal with Secretariat issues of substance. If 90% of an election’s administrative logistics is manned by EMB secretariat, the major concern is that most members of the secretariat are civil servants who report to serving members of government belonging to a political party with some seconded by security forces and military;

• There is need to visit the entire ecosystem governing the elections, political party financing, role played by soldiers, the police, intelligence, and Media and, to address fundamental issues on who the head of the EMB reports to for accountability and establish if it is not the incumbent;

• Inadequate preparedness by critical electoral stakeholders to deal with the full business of elections manifesting through the inability by opposition political parties and civil society organisation to cover polling stations with the most neglected being the rural constituencies as well as the shady candidate selection leads to dispute and conflict.

V. Recommendations

Key recommendations that were proffered are:

• Budget for elections and for EMB must be subject to democratic input of citizens and elected representatives; must be debated and known ahead of time; should not be up to the discretion of one of the actors; donors’ contributions should be determined and not be based on arbitrary assumptions;

• Communication by EMBs should not be limited to voter education and announcing results but addressing all issues raised by political actors;
• Ambiguity – procurement of material should not be a secret. For example, it should be in the interest of the public to know if the political actor has any shareholding or control relationship with the printer or producer of electoral materials;
• SADC countries should advance mechanisms for political parties funding including enacting appropriate laws to regulate both public and private funding of parties and candidates;
• Electoral cycle should be managed as a process not an event - conduct regular proactive constructive engagement with parties and stakeholders. The method is crucial and allows for post elections reviews;
• Conflict prevention, management and resolution be an integral part of EMB’s work;
• Transparent election results management and timely announcement of election results;
• Role of police and defence forces should be distinct;
• Delimitation of constituencies should be a function of EMBs;
• Political appointees should not be members of an EMB;
• Capacity building of EMBs should be supported to enable them to meet the expectations of running technologically driven elections.