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Democratisation at the Crossroads
Challenges for the SADC Principles and Guidelines Governing Democratic Elections

Khabele Matlosa

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INTRODUCTION

There is no gainsaying that while most Southern African Development Community (SADC) states have embraced liberal democracy, in practice, they are implementing electoral practices that are essentially a narrower form of liberal democracy. The likely impact of the election principles and guidelines adopted by the SADC Heads of State and Government at the 2004 Summit in Mauritius is open to question. Is democracy equal to, or synonymous with, elections *per se*? What exactly is the relationship between elections and democracy? This paper attempts to answer these questions, but we will also indirectly point to the uncertain future of electoral democracy in the SADC region and the challenges faced when institutionalising liberal democracy.

There cannot be democracy without multiparty elections. Yet, ironically, there can be elections in countries that do not embrace democratic governance. While vibrant democratic governance requires regular multiparty elections, elections *per se* do not amount to democracy. Multiparty elections serve a variety of functions but the two most important ones are surely the enhancement of political participation by citizens in the governance process and the legitimate formation of a parliament that is truly representative of political stakeholders in a given country. It is worth noting that, to varying degrees, all SADC countries bar three (Angola, the Democratic Republic of the Congo (DRC) and Swaziland) can claim to have these two qualities of a working democracy.[1]

There cannot be democracy without multiparty elections

The embrace of participatory governance and a fairly representative government reflects a relatively new political culture for most SADC member states (save for the older liberal democracies in Botswana and Mauritius, to a large extent) because they have only been part of the democratic transition since the early 1990s.[2] Some countries in the region (e.g., Zimbabwe) have changed from one-party to multiparty rule in the 1990s, yet they still face daunting governance challenges. At the very heart of the new democratic political culture that has jettisoned authoritarian modes of governance in the region, has been the holding of regular multiparty elections. Be that as it may, it is one thing to conduct multiparty elections almost every five years; it is quite another to ensure that the electoral process is satisfactory to all contestants.

This is why, in the past decade, an enormous amount of energy and time has been invested in designing and developing a set of norms, standards, guidelines and principles for the effective management of elections which, in turn, add more value to democratic governance in the region. It is against this backdrop, then, that we must consider the significance of the new "Principles and guidelines governing democratic elections in the SADC region" adopted by the SADC Summit in August 2004. This paper attempts to answer the following basic questions:

- What are the external and internal explanatory factors behind the SADC principles and guidelines?
- Do these principles and guidelines present any new ideas for best election practices in SADC?
- How do they relate to other existing similar regional initiatives?
- How have the principles been put into effect during the 2004 elections in Botswana (October), Namibia (November) and Mozambique (December); and
- Which major challenges lie ahead for the implementation of the SADC Principles with elections scheduled for 2005? We will specifically consider the Zimbabwean parliamentary elections held in March 2005.

The Contextual Backdrop

The 1990s ushered in what could be referred to as a 'revolutionary' political condition in the SADC region.

This situation manifested itself in more ways than one. First, mono-party and military authoritarianism was jettisoned in favour of multiparty governance anchored to the power of the ballot rather than that of the bullet. Second, the commitment to multiparty democratic governance was translated into a political culture of holding regular multiparty elections every five years. Be that as it may, it is now a cliché to say that elections, in and of themselves, do not amount to democracy. We need to reiterate that democracy cannot exist without regular multiparty elections. Conversely (and paradoxically too), a country can hold regular elections and yet fall far short of the democratic ideal. In 2004, five SADC countries held their national elections: South Africa (April), Malawi (May), Botswana (October), Namibia (November) and Mozambique (December). In 2005, four others have held (or are scheduled to hold) their national elections: Zimbabwe (March), the DRC (June), Mauritius (September) and Tanzania (October). If we include local government elections planned for 2005 then we can add Lesotho (April) and South Africa (latter part of the year) to the list of countries holding elections this year. Our assessment is that the 2004 elections have gone a long way toward institutionalising democratic governance and establishing mechanisms to deal with political instability. Will this positive trend be replicated in those countries holding elections in 2005?

One of the major obstacles to democratic rule in SADC since the 1990s has been sporadic or protracted violent conflicts and the resulting political instability. These conflicts and instability have tended to escalate during elections. Let us accept right from the onset that elections are a high-stakes contest and that conflict is thus likely. The conflict cannot be wished away, and bemoaning its occurrence is not enough. The solution is to devise institutionalised mechanisms that manage the contest constructively. In short, election-related conflict and disputes are a reality of politics.[3] It is against this backdrop, then, that we are able to understand and appreciate the significance of various initiatives aimed at putting in place some guidelines and principles for the management of elections.

One of the major obstacles to democratic rule in SADC ... has been sporadic or protracted violent conflicts and the resulting political instability

Explanatory Factors behind the SADC Principles

Continental Imperatives

In Africa, various continental and regional inter-state supranational institutions have endeavoured to find a common approach to democratic assessment and the measurement of election quality. The democracy and governance declaration of the New Partnership for Africa's Development (NEPAD) and its twin-initiative, the African Peer Review Mechanism (APRM) are examples of those endeavours. These initiatives aim to nurture and consolidate the continent's nascent democratic governance and to institutionalise a mechanism that can ensure sustainable political stability and the constructive management of conflicts. It was for this reason that in July 2002, the OAU/AU adopted the Declaration on the Principles Governing Democratic Elections in Africa. This initiative set the stage for continental and regional efforts toward acceptable, credible and legitimate elections conducted on a level playing field and with minimum violence. The AU Declaration commits member states to these principles:

- Democratic elections are the basis of the authority of any representative government;
- Regular elections constitute a key of the democratisation process and therefore are essential for good governance, the rule of law, and the maintenance and promotion of peace, security, stability and development; and
- The holding of democratic elections is an important dimension in conflict management and resolution.[4]

In a nutshell, the AU embraces the idea that, at all times, elections have to add enormous value to a vibrant democracy and not vice versa. This idea challenges states to constantly review their electoral processes with a view to ensuring that elections build a firm foundation for a working democracy where violent conflict is managed and avoided.

The emergence and adoption of the SADC Principles and Guidelines Governing Democratic Elections is thus traceable to AU governance initiatives. The principles are a deliberate and proactive attempt by states to translate the AU commitments into regional initiatives.

Regional Imperatives

Besides external factors such as the AU, there are also factors within SADC that may have triggered the development of these principles. Within SADC, the principles emanate from the 1992 treaty establishing the organisation, which, among other things, commits member states to a deliberate process of building a regional political community as part and parcel of regional integration through adherence to common political values, institutions and practices. The principles are also directly linked to the SADC Protocol on Politics, Defence and Security adopted in 2001, and its twin instrument, the Strategic Indicative Plan of the Organ adopted in 2004. Therefore, it could be argued that the principles are part and parcel of the institutional transformation underway within the

regional supranational body as defined by the 2003 SADC Strategic Indicative Regional Development Plan (RISDP).

Since the transformation of the previous regional coordination scheme in the form of the Southern African Development Coordination Conference (SADCC) into the current regional integration scheme styled SADC, in the early 1990s, major strides have been made towards the realisation of political integration in the region. The principal framework for this regional integration path is laid on the basis of the SADC Treaty as well as the vision document entitled *Towards the Southern African Development Community* both adopted in Windhoek, Namibia in 1992 and the RISDP.

According to the RISDP, SADC's vision is one of

> A common future, a future in a regional community that will ensure economic well-being, improvement of the standards of living and equality of life, freedom an social justice and peace and security for the peoples of Southern Africa. This shared vision is anchored on the common values and principles and the historical and cultural affinities that exist between the peoples of Southern Africa.[5]

It is evident that part of this vision places governance, peace and security issues at the core of regional integration agenda, but this, in fact, becomes more glaring in the definition of the mission of SADC, namely:

> To promote sustainable and equitable economic growth and socio-economic development through efficient productive systems, deeper cooperation and integration, good governance, and durable peace and security, so that the region emerges as a competitive and effective player in international relations and the world economy.[6]

Governance and security issues are even more pronounced in the five principles that drive regional integration as set out in the 1992 SADC Treaty:

- Sovereign equality of all member states;
- Solidarity, peace and security;
- Human rights, democracy and the rule of law;
- Equality, balance and mutual trust; and
- Peaceful settlement of disputes

The Treaty also identifies various areas in which member states can cooperate and strive toward sustainable regional integration. Article 21 (3) outlines eight such areas, including politics, diplomacy, international relations, peace and security. These areas define the breadth and depth of regional integration in SADC. It is also evident that the type of regional integration underway in the region is multi-faceted but primarily socio-economic and political in both form and content. As we discuss the political import of the SADC principles for elections, it is worth noting that, in the recent past, criticism has been levelled at the conventional approach to pursuing regional economic integration to the detriment of political integration in Africa.[7] It is thus encouraging that SADC appears to be addressing the imbalance. The organisation seems poised to emphasise political integration as much as socio-economic integration.

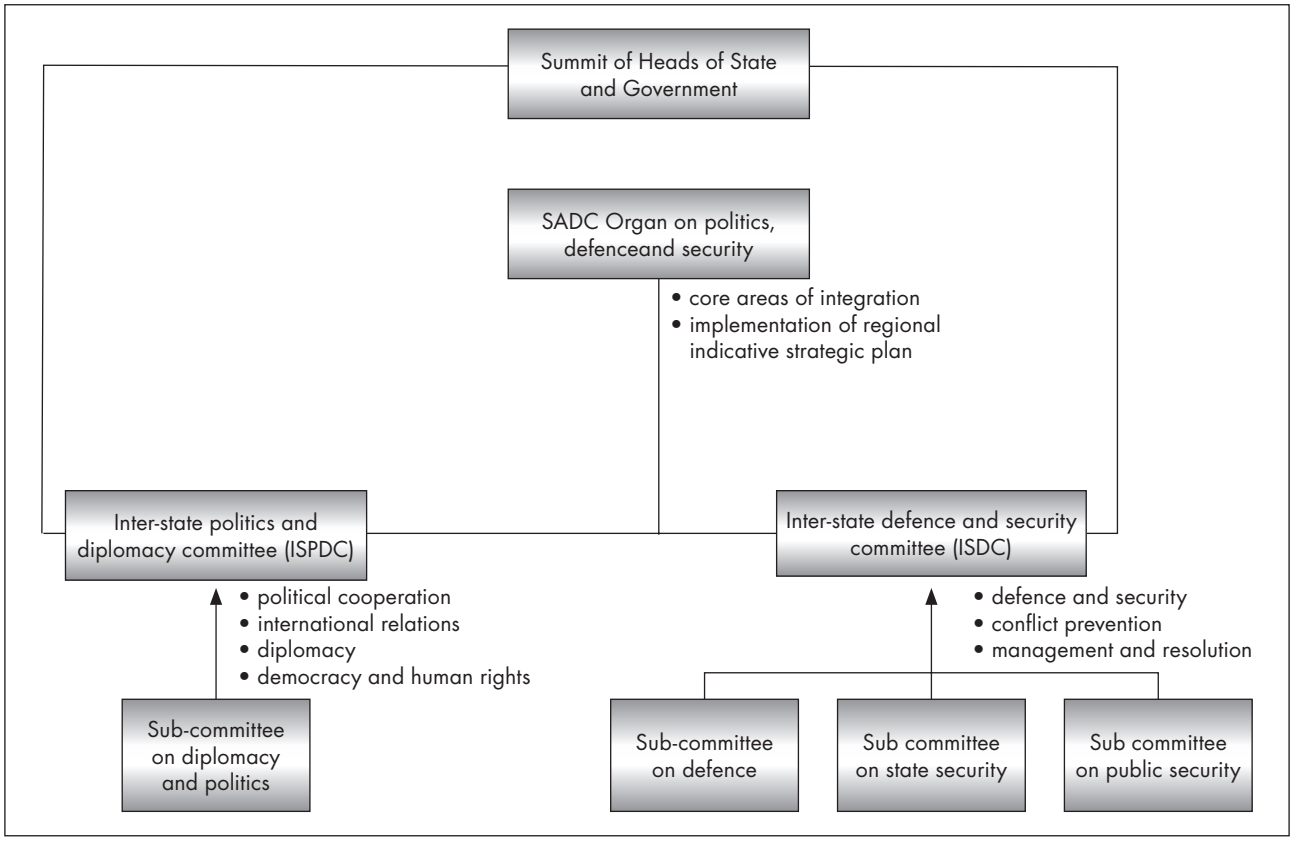
As part of their commitment to regional political integration, SADC member states established the Organ on Politics, Defence and Security. One of the major objectives of the SADC Organ on Politics, Defence and Security (OPDS) is to "promote the development of democratic institutions and practices within the territories of State Parties and encourage the observance of universal human rights as provided for in the Charters and Conventions of the Organisations of the African Union and United Nations respectively".[8]

... signing protocols is one thing; implementation is quite another

The 2001 Protocol on Politics, Defence and Security Cooperation adopted in Blantyre, Malawi on the 14 August 2001 defines the commitment of SADC member states to political integration as coming about "through close cooperation on matters of politics, defence and security".[9] Various accounts have amply demonstrated the paralysis and ineffectiveness that beset the OPDS, particularly between 1996 and 1999. Those teething problems were later generally resolved during a ministerial meeting in Mbabane, Swaziland in 1999.[10] Following the Mbabane meeting, much progress was made on how best to operationalise the OPDS, including the development of the Protocol, although signing protocols is one thing; implementation is quite another.

Not only has the OPDS developed a protocol on politics, defence and security, a planning mechanism has also recently been put in place. The organogram of the OPDS (Chart 1) illustrates how it relates to the SADC Summit and how its various layers are supposed to operate to realise regional political and security cooperation. The OPDS is governed by a troika, comprising President Thabo Mbeki (South Africa) as the chairperson, Mr Pakalitha Mosisili, Prime Minister of Lesotho (outgoing chair), and President Hefikepunye Pohamba of Namibia, who succeeded Sam Nujoma (incoming chair). The OPDS, then chaired by the Prime Minister of Lesotho, Mr Pakalitha Mosisili, developed the Strategic Indicative Plan for the Organ (SIPO) in

Chart 1: Structure of the SADC Organ on Politics, Defence and Security



2003/04 and this plan was duly adopted in August 2004. The SIPO identifies four main areas for regional political integration: (a) the political sector; (b) the defence sector; (c) the state security sector; and (d) the public security sector.[11]

Discussion of the SADC principles for elections should be located within the context of the political sector. The strategies that SADC has identified include:

- Establishment of common electoral standards in the region, including a code of electoral conduct;
- Promotion of the principles of democracy and good governance;
- Encouragement of political parties to accept the outcome of elections held in accordance with both the African Union and SADC electoral standards;
- Establishment of a SADC Electoral Commission with well-defined roles and functions;
- Establishment a regional commission for the promotion of and respect for human rights; and
- Strengthening member states' judicial systems.[12]

It is important to reiterate that, since the 1990s, SADC states have largely embraced procedural rather than substantive democracy.[13] This is euphemistically termed 'liberal democracy', though in the context of Africa and SADC, it can be seen as electoral democracy caught within what Bratton and van de Walle and Eghosa Osaghae aptly term 'the fallacy of electoralism'.[14] Osaghae, however, hastens to add that "although the dangers, or fallacy of electoralism, that is, the equation of democracy with the holding of elections, are well acknowledged…they do not diminish the importance of elections, especially in the context of democratic transition where they serve as foundations and vehicles of transformation".[15]

It is true that one of the most glaring indicators of the democratic transitions in Africa is surely the institutionalisation of regular multiparty elections. Mozaffar observes that:

> The spread of democracy in sub-Saharan Africa has endowed competitive elections with special significance. They have become the organised method of peaceful democratic transition, a salient indicator of democratic consolidation, and the principal institutionalised means for large numbers of people to participate peacefully in forming and changing democratic governments afterwards. Credible elections have thus become a necessary, albeit insufficient, source of behavioural, if not attitudinal, legitimacy in Africa's emerging democracies.[16]

The quality of democracy differs from one country to another. For instance, the governance process is much more conflict-ridden and marked by protracted instability in Zimbabwe, Tanzania and Zambia. The development of the SADC principles is a pro-active response to the AU commitments and an adherence to the SADC Treaty as well as an adjunct of internal transformation within SADC, but it could also be

perceived as a reaction to other similar regional initiatives that are not even acknowledged in the SADC document. These are the SADC Parliamentary Forum norms and standards[17], an initiative of parliamentarians; and the election principles developed jointly by the Electoral Institute of Southern Africa (EISA) and the Electoral Commissions Forum (ECF) of SADC countries in 2003[18], an initiative of civil society organisations (CSOs) and the electoral management bodies (EMBs).

The SADC Parliamentary Forum (SADC PF) has developed norms and standards for use in SADC elections since 2001 and has used these guidelines to observe all elections in the region since that time. The Zambian general election in 2001 was the first to be observed this way. The norms and standards are principally a political statement and a commitment by parliamentarians in the region towards credible election management and legitimate election outcomes. It reads more like a political declaration and an advocacy tool for best practice that has been agreed by both ruling and opposition members' of parliament. The SADC PF has used their 'norms and standards' framework when observing and judging all SADC countries holding elections since 2001 but it is worth noting that this regional parliamentary institution was not invited to observe the 2005 parliamentary election in Zimbabwe.

In 2003, EISA, jointly with the SADC Electoral Commissions Forum (ECF), also developed an instrument known as the Principles for Election Management, Monitoring and Observation (PEMMO). EISA has used these principles when observing the South African and Malawian elections in April 2004 and May 2004, respectively. The same instrument was also used to observe the elections in Botswana (October 2004), Namibia (November 2004) and Mozambique (December 2004). PEMMO will also be used in observing some of the forthcoming elections in the region in 2005, namely Mauritius (July) and Tanzania (October). The PEMMO, like the SADC PF instrument, outlines problems facing SADC countries during elections and offers best practice guidelines. PEMMO is much more of a technical election instrument and not a political declaration. Given that EISA was not invited to observe the 2005 Zimbabwe election, PEMMO will not be used to determine election best practices for Zimbabwe. The SADC PF initiative is essentially a valuable political contribution by parliamentarians to the whole process of electoral reforms in the region, whereas the PEMMO is more of a noble technical project by both civil society and electoral commissions. Each has the same goal: democratic consolidation and political stability.

SADC Principles and the Existing Frameworks

It is tempting to ask what is new about the SADC principles and how they relate to those already developed and used by the SADC PF and EISA/ECF. In a nutshell, the SADC principles and guidelines have five main components:

- Basic elements for levelling the election playing field;
- Establishment and deployment of SADC Election Observer Missions (SEOMs);
- The code of Conduct for SEOMs;
- Rights and responsibilities for SEOMs; and
- Responsibilities for member states holding elections.

A careful reading of the first point, which, to all intents and purposes constitutes the crux of the principles, reveals that there are no fundamental differences between what SADC has proposed and what the SADC PF and the EISA/ECF instruments. Most observers have, understandably, called for the three instruments to be merged into one. Plausible as this is, however, the problem is that it fails to appreciate that these three instruments come from diverse and also divergent political forces with often-contradictory interests and perspectives in relation to democracy and governance. SADC PF represents parliamentarians and could be perceived as closer to the executive branch of governments, which is essentially what SADC is. But the fact that SADC PF includes opposition MPs in its membership makes it rather distinct and suspicious in the eyes of the executives that drive SADC; hence the tenuous relationship between the two bodies. EISA is a non-governmental organisation, while ECF is an autonomous regional election management structure. SADC structures are not known for their inclusiveness and seldom allow participation by actors outside government control.

SADC structures are not known for their inclusiveness and seldom allow participation by actors outside government control

The principles and guidelines commit member states to the following best practices:

- Full participation by citizens in the political process;
- Freedom of association;
- Political tolerance;
- Regular intervals for elections as per the respective national constitutions;
- Equal opportunity for all political parties to access the state media;
- Equal opportunity to exercise the right to vote and be voted for;
- Independence of the judiciary and impartiality of the electoral institutions;
- Voter education;
- Acceptance and respect of the election results by political parties proclaimed to have been free and

fair by competent national authorities in accordance with the law of the land; and
- Challenge of the election results as provided for in the law of the land.

Most analysts agree that these are commendable and noble principles, but this is as far as the SADC declaration goes regarding best practices.

Rather paradoxically, the largest part of the SADC election guidelines document is devoted to election observation, and less attention is given to election management. Technically, therefore, the document suffers some kind of 'schizophrenia'; it appears to be more of an election observation guide than an election management guide, although SADC leaders tend to think of it as an 'election principles' document. Even the title of the document belies its form and content. Methodologically, the correct title for this document should have been 'Principles and Guidelines for the Observation of Elections' because it is stronger on observation than on election management. By contrast, both the SADC PF and EISA/ECF instruments are comprehensive election management guides, and have less to say about monitoring and observation.

Thus, in terms of form and content, the SADC principles contain nothing new in comparison to what already exists. However, those wishing to understand both election management and observation can use the three documents well together.

Essentially, a major challenge still hampers the closer coordination, harmonisation of the three regional election instruments. Coordination of the instruments is not the same thing as proposals for the merger of the three into one. However, for the first time, regional states have made a public declaration to adhere to some best practices. Having said this, though, one must hasten to add that over the years SADC has proved extremely good at making progressive declarations that hardly ever receive the political commitment necessary for implementation. Thus, the challenge for SADC today is to implement the declaration adopted in Mauritius in August 2004. It would be interesting to see how, for instance, SADC reacts to a situation where one of the member states does not adhere to the principles. That would be the ultimate test of commitment to the declaration.

Implementation of the SADC Principles since 2004

Whereas five elections were held in the SADC region, the principles and guidelines for democratic elections adopted at the Mauritius Summit in August have been put to the test in only four countries: Botswana (October 2004), Namibia (November 2004) and Mozambique (December 2004) and Zimbabwe (March 2005). They will also be put into effect during the three forthcoming elections in the region in 2005. We are able to make a general assessment of the application of these principles in Botswana, Namibia, Mozambique and Zimbabwe thus far. First and foremost, the basic tenets of the principles are subordinate to national laws and, as such, where the national laws contradict the principles, then the former will prevail. In fact, Tsunga[19] raises a two-pronged substantive critique of the legal force of the SADC principles. One prong is that although international human rights law inspires the principles, they are subordinate to domestic law. According to Tsunga, then, "this seems contrary to international human rights law, which provides for international treaties to be observed in good faith, and discourages 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 state 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".

... as a result, in part, of the lack of legal force, the SADC principles are just inspirational, voluntary and non-binding

The second prong of the critique is that as a result, in part, of the lack of legal force, the SADC principles are just inspirational, voluntary and non-binding. This helps explain why the Zimbabwean Minister of Justice, Legal and Parliamentary Affairs, Patrick Chinamasa, recently referred to the principles as merely a political roadmap without legal force.[20] Thus, the principles are not backed up by in any forceful way, which further diminishes their political force. This is compounded by the fact that the development of the principles was principally a state-centric process without the participation of other non-state actors. Thus, the implementation of the principles will also depend overwhelmingly upon state behaviour and attitudes with little regard to civil society input. We will provide some specific comments below aimed at identifying bottlenecks and suggesting the best ways to improve the implementation of the SADC principles.

Critique of the SADC Principles

Firstly, all the SADC election observer missions are put together by the troika governing the SADC OPDS (South Africa, Namibia and Lesotho), with the President Thabo Mbeki playing a central role as the current chairperson. It is worth noting that all the missions are led by South Africa as the chair of the Organ in accordance with article 6.1.10 which stipulates that "the SEOM shall be headed by an appropriate official from the Office of the Chairperson of the Organ who

shall also be the spokesperson of the Mission".[21] All SADC member states are expected to participate in the SEOMs. However, since the Mauritius Summit, there seems to be some reluctance on the part of a majority of SADC member states to take part in the observation process. It is evident from the table below that in all the three general elections held in 2004 since the Mauritius Summit, the highest number of participating countries in the observation process was just five out of a total of thirteen member states. However, as will become clear later, this situation improved during the Zimbabwe election in March 2005. It remains to be seen what will happen with during subsequent elections.

Table 1: Participating Countries in SEOMs in 2004

Botswana General Election	Namibia General Election	Mozambique General Election
Lesotho	Lesotho	Lesotho
Mozambique	Angola	Namibia
Namibia	South Africa	South Africa
South Africa	Mozambique	Tanzania
Zimbabwe		SADC Secretariat

Source: SADC Secretariat, Gaberone

In all the interim statements of the SEOMs, the issue of non-participation by a majority of member states has been raised because it affects the effectiveness of the observation process itself and the commitment of the member states to the process. It is thus imperative that all SADC member states make efforts to participate fully in the implementation. It is also imperative that the SADC Secretariat consistently provides logistical and administrative back-up to the SEOMs. From the table above, it is clear that the SADC Secretariat only assisted the Mozambique mission and not the Botswana and Namibia missions.

A second critique is that SADC observer missions undertake little coordination of their observation work with other election observer missions. This leads to a situation where they are not able to share important information with other missions on various aspects of the electoral process. Coordination in the observation process is not necessarily a problem for the SEOMs alone, but it is a challenge for all observer missions in most elections taking place in the region. Consequently, in the Mozambican election of December 2004, the United Nations Development Programme (UNDP) ultimately coordinated observers. It is imperative that observer missions try as much as they can to coordinate their activities without necessarily relying on the UN to play that role. For instance regional/continental missions such those by AU, SADC, SADC PF and EISA should strive for a better-coordinated observation process despite the fact that they use distinct instruments to assess the electoral process. Better coordination will allow teams to work in harmony and take advantage of the synergies in the observation process without compromising their independence. If the various instruments were to be merged into one, the autonomy of the concerned institutions would be compromised.

A third point of criticism is that, thus far, the SEOMs covering the elections in Botswana, Namibia and Mozambique produced interim statements, not full election observation reports as is ordinarily expected. Article 6.1.12 states that the SEOM shall "issue a statement on the conduct and outcome of the elections immediately after the announcement of the result".[22] While this article is consistently adhered to by the SEOMs, the one that has not yet been adhered to is 6.1.13, which requires the missions to "prepare a Final Report within 30 days after the announcement of the results".[23]

A fourth critique is that, due to a lack of careful observation of all the phases of elections (especially pre-election and post-election phases), SADC election interim statements tend to make unsubstantiated pronouncements about how the electoral process proceeded, the extent to which the nature of the outcome conforms to the SADC principles, and highlights and possible electoral reforms. Consequently, the interim statements tend to be fairly short.

Interim statements by EISA and the SADC PF are longer, usually between seven and ten pages. The EISA mission statements often follow the following format: (a) introduction; (b) about EISA; (c) mission composition; (d) deployment plan and strategy; (e) methodology or method of observation; (f) the principles for election management, monitoring and observation in the SADC region; (g) findings of the mission; (h) areas for improvement and recommendations; and (i) conclusion and date of issuance. At the foot of the conclusion page are the names and signatures of the mission leader and the deputy mission leader. This is then followed by a full list of observers, their countries and their signatures. The SADC PF interim statements follow a fairly similar pattern as follows: (a) introduction; (b) SADC Parliamentary Forum; (c) the electoral process; (d) mission terms of reference; (e) method of work; (f) findings; (g) good practices from the election; (h) recommendations; (i) conclusion and date of issuance, followed by the names and signatures of the mission leader and deputy mission leader and a list of names and signatures of the other members of the mission indicating their countries.

It is evident that SADC is aware of the need to improve its election observation missions. This explains, in part, the rationale behind the workshop the SADC Organ was supposed to have organised in Maseru, Lesotho. Some of the issues supposed to be discussed at the Lesotho workshop included (a) timeous notification and invitation of the SEOMs by SADC member states holding elections; (b) allocation of requisite resources for election observation by member states;

(c) active participation of all SADC member states in the SEOMs; (d) clearer specification of the roles of High Commissions and Embassies in the pre-election and post-election observation; (e) determination of the composition, level and status of the SEOMs; and (f) review of the methodology and conduct of SEOMs.[24]

In order to improve its methodology of work and on the form and content of its statements, the SEOM needs to develop a technical checklist with a view to collecting and collating the relevant information in a systematic manner. A checklist is a very useful tool for assessing the three stages of an election (pre-election stage, voting day and post-election period). On the basis of that assessment, the SEOM can pronounce whether or not an electoral process has met the required standards. SADC observer missions would be well advised to adopt the observation methodology used by observer missions such as EISA and SADC PF. The SADC observer team could develop the check-list tool by translating relevant sections of the SADC principles into clear and simple questions that each observer is then required to answer on the basis of meetings with stakeholders and visits to polling stations and counting centres. Most questions could be drawn from the following sections of the SADC principles: (a) section 2 (principles for conducting democratic elections), (b) section 4 (guidelines for the observation of elections) and (c) section 7 (responsibilities of the member state holding elections) of the SADC election principles. In this way, the process of election observation is bound to be well systematised and the form and content of election reports enhanced. SADC must learn from the experiences of the application of the principles during the 2004 elections and try to make possible improvements during the 2005 elections. A major challenge that SADC faced was its observation of parliamentary elections in Zimbabwe on 31 March 2005.

... opposition parties in Zimbabwe, as elsewhere in SADC, are weak, fragmented and forced to react to the ruling party

The 2005 Parliamentary Election in Zimbabwe

Keen observers of the Zimbabwe political scene watched closely to see how the election unfolded and the extent to which electoral authorities and other key stakeholders adhered to various regional electoral norms, guidelines and principles – particularly the SADC principles outlined earlier in this paper. The broader context within which we are able to understand the complexities around the 2005 Zimbabwe election is the history of one-party rule that has been entrenched in the country between 1980 and 1987. Also important is the centralisation of power and the curtailment of diversity of opinion and political tolerance during the past two decades. Although the one-party era is obviously over and was replaced by a multiparty political regime marked by regular elections in the 1990s, the vestiges of the old order still linger on and, as they say, old habits die hard. It is thus no surprise that the behaviour of the ruling ZANU-PF towards both opposition parties, especially the Movement for Democratic Change (MDC) and other non-state political actors such civil society organisations, bears the hallmarks of a one-party political culture where criticism of or political challenges of officialdom is considered heretical at best, or treason at worst. This political culture survives on coercion and the 'conspiracy of silence' rather than persuasion and public dialogue. A net effect of political coercion and silencing has been the polarisation of the Zimbabwe polity, especially since the 1999 constitutional referendum and the 2000 parliamentary election.

However, it should also be noted that opposition parties in Zimbabwe, as elsewhere in SADC, are weak, fragmented and forced to react to the ruling party. The MDC is the main opposition party in Zimbabwe and the official opposition in the legislature. Thus, much was expected of the MDC as it prepared for and entered the 2005 election race. It is instructive then, that the main opposition party took a painstakingly long time to make its decision to contest the election after making it publicly known that it would boycott the poll. Corroborating the observation above, Kagwanja notes aptly that,

> The main opposition party, the MDC, is also having its own woes, which undermine its standing as a viable alternative to Mugabe and the ZANU-PF. On February 3, the MDC voted to contest the March elections, reversing an earlier decision made in August 2004 to boycott the elections until the ruling party implemented in full the SADC electoral guidelines. This decision was a result of pressure from the party's supporters, who viewed the move to boycott as an act of betrayal that amounted to handing the victory to ZANU-PF on a silver platter. The MDC President, Morgan Tsvangirai summed up the dilemma his party faced in taking the decision when he told a forum in South Africa: 'we are damned if we participate, and damned if we don't'.[25]

Thus, the MDC did not participate in two by-elections in Seke and Masvingo South where, consequently, ZANU-PF candidates were declared winners upon nomination. Their non-participation in the by-elections and the prevarication about whether or not it would participate in the March 2005 parliamentary election

came at a cost. Not only did this eat into the party's precious campaign time, it also led to a situation where the party declared publicly that they were entering the race under protest; this gave little confidence to their supporters.

There is also no doubt that the 2005 election was organised in the context of a profound political crisis marked, *inter alia*, by deep political polarisation between the ruling ZANU-PF and the opposition MDC. The 2002 Fact-Finding Report of the African Commission on Human and Peoples Rights on the human rights situation in Zimbabwe observes aptly that:

> We observe that Zimbabwean society is highly polarised. It is a divided society with deeply entrenched positions. The land question is not in itself the cause of division. It appears that at heart is a society in search of the means for change and divided about how best to achieve change after two decades of dominance by a political party that carried the hopes and aspirations of the people of Zimbabwe through the liberation struggle into independence.[26]

This deeply entrenched culture of political polarisation has not only undermined political tolerance, it has also triggered violent, politically-motivated conflict. It is worth emphasising that violent conflict breeds political instability which, in turn, undermines governance and creates a climate that is not conducive to the promotion and protection of a culture of human rights. This violent conflict tends to escalate during election time. This is not surprising, of course, given that elections are a high stakes contest for the control of state power by political parties. This contest tends to raise political temperature to levels that ignite conflicts that escalate from disagreement to violent encounters. This situation is exacerbated in Zimbabwe where parliamentary elections are held separately to the presidential elections. The former takes place every five years while the latter takes place every six years. The outcomes of the latest parliamentary and presidential elections are illustrated in Tables 2 and 3.

Table 2: Zimbabwe Parliamentary Election Results, 2000

Party/Representation	Parliamentary seats	% of votes
Zanu (PF)	62	51.7
MDC	57	47.5
Zanu-Ndonga	1	0.8
Non-constituency Members of Parliament	12	
Provincial Governors	8	
Chiefs	10	
Total	150	100.0

Source: Electoral Supervisory Commission (ESC), Harare

Thus, major national elections in Zimbabwe take place every three years, which is politically unhealthy for the institutionalisation of mechanisms for constructive and sustainable conflict management.

Table 3: Presidential Election Results, 2002

Name/Party	Valid Votes Cast	Percentage of the total votes
R. Mugabe (ZANU-PF)	1 681 212	55.18
M. Tsvangirai (MDC)	1 262 403	41.43
W. Kumbula (Independent)	31 368	1.03
S. Maya (NAGG)	11 906	0.39
P. Siwela (Independent)	11 871	0.39
Total	2 998 760	100.00

Source: Electoral Supervisory Commission (ESC), Report on the March 2002 Presidential, Mayoral and Council Elections, p.26.

In between these two national elections are regular by-elections that are organised to fill vacant parliamentary seats. Between 2000 and 2004, Zimbabwe held 16 by-elections as illustrated in the table below.

Table 4: By-elections in Zimbabwe, since the 2000 general election

Constituency	Party that won 2000 election	Date of by-election	Party that won by-election
1.Marodera West	ZANU-PF	Nov. 2000	ZANU-PF
2.Bikita West	MDC	Jan. 2001	ZANU-PF
3.Bindura	ZANU-PF	July 2001	ZANU-PF
4.Makoni West	ZANU-PF	Sept. 2001	ZANU-PF
5.Chikomba	ZANU-PF	Sept. 2001	ZANU-PF
6.Inzisa	MDC	Oct. 2001	ZANU-PF
7.Highfield	MDC	Mar. 2003	MDC
8.Kuwadzana	MDC	Mar. 2003	MDC
9.Makonde	ZANU-PF	Aug. 2003	ZANU-PF
10.Harare Central	MDC	Aug. 2003	MDC
11.Kadoma Central	MDC	Nov. 2003	ZANU-PF
12.Gutu North	ZANU-PF	Feb. 2004	ZANU-PF
13.Zengeza	MDC	Mar. 2004	ZANU-PF
14.Lupane	MDC	May 2004	ZANU-PF
15. Masvingo South	ZANU-PF	Aug. 2004	ZANU-PF
16.Seke	MDC	Sept. 2004	ZANU-PF

Source: ZESN, Harare, Zimbabwe, 2005.

The close proximity of the parliamentary and presidential election, and the frequent by-elections suggests that the country hardly ever gets out of the electioneering mood that is often marked by conflict. This situation tends to intensify a turbulent political culture of violence that undermines political stability and the legitimacy of the government.

In this conflict-ridden political condition, to what extent did the Zimbabwe election adhere to or comply with

the SADC principles? The first point to make in this regard, which may be self-evident, is simply this: the election took place under conditions of various kinds of conflict (covert and overt; non-violent and violent) involving principally the ruling ZANU-PF and the main opposition MDC, although it should also be accepted that the degree of violent conflict was relatively lower than during the 2000 and 2002 elections. The major issue is not so much that conflicts formed a characteristic feature of the election process, but that effective institutional and procedural measures for constructive management of these conflicts need to be put in place. One way to ensure sustainable constructive management of election-related conflicts is electoral reform. In fact, in many countries, adherence to the various regional instruments for election management (including the SADC principles) requires far-reaching electoral reform.

Almost all the observer mission reports on the 2000 parliamentary election and the 2002 presidential election made various recommendations for electoral reforms in Zimbabwe (see SADC PF election observation reports 2000 & 2002 and ECF observer mission reports 2000 & 2002). Between 2003 and 2004, EISA and the Zimbabwe Election Support Network (ZESN) undertook a joint project on electoral reform in Zimbabwe. The project report made a number of recommendations considered critical to redressing the pervasive trend of election-related conflict and political instability. These recommendations included the following:

- Establishment of an independent electoral commission (IEC);
- Establishment of party liaison committees (PLCs);
- Establishment of electoral tribunals;
- Establishment of an electoral court;
- Change of the electoral model from the present First-Past-The-Post (FPTP) system and adoption of the Mixed Member Proportional (MMP) system;
- Monitoring of elections by independent monitors drawn from civil society organisations (CSOs) and not by public servants as is currently the case;
- The IEC to draw guidelines for the management of candidate nominations and party lists ahead of elections;
- Utilisation of fixed polling stations as against mobile polling stations;
- Extension of postal voting to all Zimbabweans outside the country;
- Counting of ballots at polling stations; and
- Use of translucent ballot boxes

The Zimbabwean government has not taken up most of the recommendations proposed by election observers. It was, thus, not surprising that the government did not seem receptive to the above recommendations emanating from a joint electoral reform project undertaken by EISA and ZESN. However, around April/May 2004, the ZANU-PF government announced its plans to put in place some electoral reforms in advance of the 2005 elections, arguing that they were in line with the SADC guidelines and principles. These reforms included the establishment of the Zimbabwe Electoral Commission (ZEC); one-day voting; counting at polling stations; introduction of translucent ballot boxes; and establishment of the electoral court. These reforms have been effected through the amendment of the relevant legislation and the establishment of the ZEC and the electoral court. Two pieces of legislation introduced to give the reforms legal teeth are the Zimbabwe Electoral Commission Act (2004) and the Electoral Act (as amended), 2004. However, the ZANU-PF government adopted a rather selective approach to electoral reform without taking into account the comprehensive reform proposals made by election observers and the EISA/ZESN project. The government has also tended to be reluctant to allow a national dialogue on the reform measures involving other key actors such as opposition parties, especially the main opposition MDC, which is also represented in parliament. The government-engineered reform process also excluded broad-based consultations with civil society organisations and other key actors such as the faith-based organisations and the business community, who are also equally concerned about political instability in Zimbabwe. It is also likely that the reform measures are not only tantamount to papering over the cracks of a collapsing wall, they are too small an effort and rather too late. The reform measures will remain cosmetic so long as thorough-going constitutional reforms are not effected, and so long as political polarisation, marked by violent political conflict, still afflicts the Zimbabwean polity.

One way to ensure sustainable constructive management of election-related conflicts is electoral reform

It may not be possible for any electoral reform process to succeed in a political condition such as the one in Zimbabwe, where controversial legislation tends to restrict political competition. These include the Public Order and Security Act (2002) and the Access to Information and Protection of privacy Act (2002), both of which came into effect before the presidential election of the same year. The 2002 AU Fact-Finding Mission to Zimbabwe corroborates that observation:

> There has been a flurry of new legislation… to control, manipulate public opinion and that limited civil liberties. Among these, our attention was drawn to the Public Order and Security Act, 2002 and the Access to Information and Protection of Privacy Act, 2002. These have

> been used to require registration of journalists and for prosecution of journalists for publishing 'false information'. All these, of course, would have a 'chilling effect' on freedom of expression and introduce a cloud of fear in the media circles. The Private Voluntary Organisations Act has been revived to legislate for the registration of NGOs and for the disclosure of their activities and funding sources.[27]

The electoral reform measures introduced by the government came rather late and, as such, did not change the political landscape considerably. They were effected only about three months before election day, which was why some commentators called for the postponement of the election to allow sufficient time for the reforms to be implemented. It was possible, even constitutionally, for the election to be postponed until June 2005 to allow the electoral reform measures to take effect, for new institutions to firm up and to level the playing field. Although, constitutionally there was absolutely nothing wrong with March as the election date, politically, the timing was compromised by the late implementation of selective reform measures decided without a national dialogue.

The electoral reform measures ... came rather late and, as such, did not change the political landscape considerably

To what extent did the Zimbabwe 2005 parliamentary election comply with the implicit ethical code of conduct spelled out in the SADC election principles? When the ZANU-PF government adopted the selective electoral reforms around April/May 2004, it announced publicly that it was doing so in conformity to the SADC principles. At the time, even the keenest observers of the SADC electoral scene had hardly heard of the SADC principles given the veil of secrecy behind which they were developed. It was only around the August 2004 SADC summit in Mauritius that others began to be aware of the SADC principles, yet the Zimbabwe government had already begun implementing some of their basic tenets. Yet, ironically, when the principles were adopted in Mauritius, there was no confirmation by the summit that one of the member states (Zimbabwe) had already begun implementing the principles. There was no official SADC delegation that visited Harare to ascertain that indeed the pre-election environment and the electoral reforms underway in Zimbabwe conformed to the SADC principles. Despite this, the ZANU-PF government kept assuring its citizenry and the international community that the reforms were in tune with the principles. The big question is: why was the ZANU-PF government reluctant to allow the SADC mission to monitor their compliance with the principles as the election drew closer? Why did SADC seem lukewarm about monitoring the pre-election condition in Zimbabwe and ascertaining that the principles had been adhered to? Peter Kakwanja makes a poignant observation corroborating the observation above:

> "SADC and its regional members have largely maintained a cautious approach to Zimbabwe, although these electoral benchmarks are praised as symbolising a paradigmatic shift from the hands-off approach that insisted on non-intervention in the internal matters of individual member states to a policy of non-indifference and shared vision of a democratic future. Part of the problem is that these guidelines are neither legally binding nor equipped with penalties for non-compliance".[28]

In brief, there was a curious coincidence between the apparent ZANU-PF reluctance to open its doors to SADC pre-election observation and SADC's apparently deliberate procrastination in monitoring compliance. A couple of recent vignettes will explain this coincidence.

First, there was an official visit by the SADC troika directorate of the OPDS scheduled for the 17 January 2005. This visit never materialised because President Mugabe claimed his schedule was too busy due to his heavy electioneering schedule. This intriguing reasoning demolished this noble SADC initiative; intriguing because, in fact, the three SADC leaders were visiting President Mugabe to discuss an issue that was not outside his electioneering diary. The visit was thus relevant to his schedule and it seems there may have been other reasons why the Zimbabwean president did not want to meet his colleagues and brief them on the country's preparedness for the parliamentary election. The first major opportunity for close monitoring of the pre-election environment by SADC at a high level of heads of state and government was lost with deleterious repercussions for both SADC and the ZANU-PF government (Mail & Guardian, 18-24 February 2005).

The second major opportunity that was lost was a potential visit to Harare by a SADC legal team of experts from Lesotho, Namibia and South Africa, supposed to have been dispatched on 16 February 2005. This mission was supposed to assess the legal condition and political environment in the run-up to the election and inform the broader SADC election observer mission later on. In a television interview with the South African Broadcasting Corporation (SABC), the President Thabo Mbeki had argued that the Zimbabwe government had absolutely no qualms regarding the mission and would be ready to welcome it in Harare. In his own words, Mbeki argued that: "I've discussed the matter with President Mugabe, I am quite sure that

the SADC delegation can go to Zimbabwe…. I think **that we should send in a SADC delegation as quickly as possible – not to go there and observe**, but to be able to intervene to help to create the situation for free and fair elections" (emphasis added).[29] However, no official invitation was forthcoming from the Zimbabwe government to make it possible for the legal team of experts to visit Harare.

Thus, hardly a week after Mbeki's overtly optimistic assurances, the legal mission collapsed in a more melodramatic fashion than that of the three heads state and government earlier. Not only did Harare fail to issue the official invitation letter to the legal team of experts but even more interesting is the fact that the South African Ministry of Foreign Affairs issued a letter to the SADC Secretariat stating unequivocally that following discussion "at the highest level" the "issue of the legal experts' visit should not be followed up".[30] This last-minute instruction from the South African government to SADC did not only trigger a misunderstanding between the SADC OPDS troika and the SADC Secretariat as to how to handle the Zimbabwe election, but it confirmed SADC's procrastination on monitoring the compliance of the Zimbabwe electoral process with its Mauritius principles.

Given that Thabo Mbeki is the chairperson of the OPDS and is the key person in regard to monitoring compliance of states and in charge of putting together SADC election observer missions, SADC's procrastination on Zimbabwe could be interwoven with Mbeki's quiet diplomacy. President Mbeki's argument, which, to all intents and purposes is crafted within the framing of quite diplomacy, was that the electoral reforms and the political environment in Zimbabwe were conducive to a credible electoral process and a legitimate outcome. He expressed his optimism about the Zimbabwe election as follows:

> I have no reason to think that anything will happen… that anybody in Zimbabwe will act in any way that will militate against the election being free and fair…. I do not know what has happened in Zimbabwe which is a violation of the SADC Protocol. As far as I know, things like an independent electoral commission, access to public media, the absence of violence and intimidation… those matters have been addressed.[31]

It is no wonder, therefore, that the South African Foreign Minister, Nkosazana Dlamini-Zuma, echoed President Mbeki by expressing her optimism about the reforms in Zimbabwe. It was thus felt unnecessary to follow up the issue of the legal experts' visit to Harare (Mail & Guardian, 18-24 February 2005). At the time of writing, the issue of legal experts' visit to Harare had been laid to rest but even in the last week of February President Mbeki was still optimistic that the election would pan out satisfactorily and in conformity with the SADC principles. During an interview with the *Financial Times* on Sunday 20 February 2005, President Mbeki seemed to suggest that a SADC mission would soon be deployed in Harare for the Zimbabwe election and that such a team would be able to play a much more interventionist role than conventional election observations. In his own words, this is what he seems to have had in mind:

> …I would expect that we could have a SADC delegation in Zimbabwe this coming week… Not observers, in the sense of 'we'll come there and observe and we'll see bad things being done, we'll write them in our notebooks so that at the end of the process we can then say, uh-uh, this election was not free and fair because the following bad things happened', it is not that. Because our interest indeed is to have free and fair elections in Zimbabwe and therefore to go there with a view to assisting, to ensure that we have those free and fair elections… to be able to be around the country as much as is possible, so that we'll be able to intervene in instances where there is violence and intimidation and so on…. The team would have to be there, ready to receive complaint in the event that (access to state media) has not been granted, but I'm saying, not in order to record that it's not been granted, but to intervene to make sure that it is granted. So that's the approach that we want to take to this. My view is that we can do it.[32]

SADC's procrastination on Zimbabwe could be interwoven with Mbeki's quiet diplomacy

The ZANU-PF government was not only reluctant to facilitate official SADC missions to observe the early pre-election electoral processes with a view to ascertaining that the letter and spirit of SADC principles are upheld, but some government ministers insinuated that the principles were not legally binding. The Zimbabwean Minister of Justice, Legal and Parliamentary Affairs, Patrick Chinamasa argued that the principles were not a legally-binding document and enforceable at law, but rather "a political document pegged out for the region, a roadmap which we must all follow towards a perfect democratic future".[33] In a sense, Chinamasa was correct but the point that he missed is that the principles as a collectively agreed and adopted political instrument for conducting elections are politically binding to SADC member states. Declarations made by supranational bodies such as SADC translate into a political commitment to taking particular policy actions and such commitment has to be translated

into practice. Turning a commitment into a practical policy intervention is what is conventionally required of SADC member states. Principles are indeed not legally binding but politically binding, so to speak. This is where the often-blurred line of distinction between law and politics becomes clear to both theorists and practitioners alike.

One of the most glaring breaches of the SADC principles by the Zimbabwe government has to do with the official invitation of SADC election observer mission. Section 7.10 states that "issuing invitation by the relevant Electoral Institutions of the country in election 90 (ninety) days before the voting day in order to allow an adequate preparation for the deployment of Electoral Observer Mission" (SADC, 2004). This principle was not adhered to. On 15 February 2005, the South African Minister of Foreign Affairs, Nkosazana Dlamini-Zuma, raised her concern as follows:

> "We were hoping that the invitation would have materialised by now, we hoped it would have arrived last week…. According to the spirit of the region, we need to be there to observe those elections. As SADC, we have an agreement that we can observe each other… we will be very concerned if we are not invited…. We are putting together a SADC delegation and we are waiting for a formal invitation".[34]

Various international observer missions ... were not invited to observe the Zimbabwe election

According to section 4.1.10 of the SADC principles, "SADC Election Observation Mission should be deployed at least two weeks before the voting day".[35] The SADC Observer Mission to Zimbabwe, led by the then South African Minister for Energy, Mineral and Natural Resources, Phumzile Mlambo-Ngcuka, arrived in Harare on Monday, 14 March 2005. The official South African delegation headed by the country's Labour Minister, Membathisi Mdladlana also arrived in Harare during the same week. Upon arrival, the South Africa government observer mission was embroiled in Zimbabwe's electrically charged electioneering environment when its leader, Minister Mdladlana, made a public statement suggesting that the pre-election conditions were conducive to a free and fair election. This statement triggered a political furore from opposition and NGO circles in Harare leading to the main opposition party, the MDC, taking an official position not to engage with the South African government mission until and unless the leadership of the mission was changed. By a twist of irony, Minister Mdladlana was dispatched to Geneva for a meeting of the International Labour Organisation (ILO) on Thursday 17 March 2005 and in his absence, the former premier of the Limpopo Province, Ngoako Ramatlhodi, assumed the leadership of the South African Government observer mission until his return just before the election. It thus came as no surprise that Ngoako Ramatlhodi managed to initiate contact and cooperation with the opposition MDC through an initial meeting with the party's member of parliament, Priscilla Misihairambwi-Mushonga.[36] During the following week, the MDC president, Morgan Tsvangirai, agreed to meet the mission with a view to ironing out their different points of view regarding the electoral process.[37]

The two major regional observer groups not invited by the Zimbabwean government were those from the SADC Parliamentary Forum, which uses it own norms and standards for assessing elections and the EISA mission which uses PEMMO. It is worth noting that until and unless there is harmony between the SADC PF norms and standards, the EISA/ECF's PEMMO and the SADC principles, mutual suspicions about election observation are bound to persist. Interestingly, though, while the Zimbabwean government did not invite EISA, in its own right, it invited the ECF, which in turn asked EISA to provide technical support for its mission. Thus, the ECF deployed its observer mission in the Zimbabwean elections with technical and logistical backstopping from EISA. Various international observer missions, including the European Union, the Commonwealth, the Carter Centre, were not invited to observe the Zimbabwe election. The emergence of the SADC principles and how they are applied has attracted enormous interest in both Europe and North America. It was thus not surprising that on 16 March 2005 a motion was tabled in the German Bundestag on the application of the SADC principles in Zimbabwe's parliamentary election, imploring the German Federal Government to:

- Call, in cooperation with the EU partners, for free and fair parliamentary elections on the basis of the SADC electoral guidelines;
- Make contact with selected SADC states that hold leadership positions within various SADC structures and draw their attention to Germany's particular interest in the SADC electoral guidelines being enforced in Zimbabwe;
- Draw the attention of South Africa and Mauritius governments in particular to the fact that bear special responsibility in terms of the regional policy for free and fair elections;
- Draw attention to the country chairing SADC to the need for the elections to be independently evaluated by a SADC observation mission;
- Carry out its own assessment, together with other EU partners and civil society players, of the election and take appropriate measures; and

Table 5: Pre-Election Phase: Actors and Conflicts

Actors/Issues	Boundary delimitation	Voter Registration	Nominations	Campaign
Government	Government controlled	Lack of transparency		
EMB		Poor management and maintenance of voters' roll		
Political Parties			Lack of intra-party democracy	Uneven playing field
Voters		Lack of civic and voter education		
Security Forces				Biased interventions
Observers/monitors	No observation or monitoring	No observation or monitoring		

- Establish, together with EU partners, funding opportunities that allow European funds to be quickly disbursed for all SADC elections where funding problems make it difficult for the SADC to monitor elections adequately, and to actively offer this assistance to the SADC.[38]

If election-related conflicts are to be addressed and redressed adequately in Zimbabwe and, for that matter, in any of the other countries holding elections in 2005, SADC will have to anticipate the conflicts well in advance and put strategies in place for managing them constructively. That strategy will have to take into account the stark reality that conflicts mark all three phases of the electoral process as illustrated in the next three tables. The tables demonstrate some of the conflict hot spots in all the stages of the electoral process. In all the three stages the main actors are the same (governments, EMB, political parties, voters, security forces and observers/monitors), but the issues of contestation tend to differ from one stage to another.

The conflict issues in the pre-election stage are many and varied, but the major ones tend to revolve around boundary delimitations, voter registration, the voters' roll, party registration, candidate nomination and political campaign. The table above illustrates some of the conflict hot spots in the pre-election stage of the Zimbabwean parliamentary election. Various stakeholders in the country's political scene, including opposition parties and civil society organizations, felt that the manner in which the Delimitation Commission (DC) was appointed compromised its impartiality and the methodology of its work was seen to be amenable to undue political influence. That left the door wide open for gerrymandering.[39] The voter registration process was undertaken by the Registrar-General and not by the newly elected Zimbabwe Electoral Commission (ZEC) – a development that invited criticism from other election stakeholders because of its likely adverse repercussions on the nature of the playing field.

The maintenance of the voters' roll also triggered a political furore about which body should be responsible for the management and maintenance of the voters' roll. Should it have been the Registrar-General, the Electoral Supervisory Commission or the Zimbabwe Electoral Commission? Opposition parties constantly complain of an uneven political playing field during campaigns due in part to the automatic advantage enjoyed by incumbent parties. But another conflict issue within political parties themselves is the lack of intra-party democracy, which in turn leads to some party members deserting the parties and contesting elections as independent candidates. One of the controversies in

Table 6: Election/polling Phase: Actors and Conflict

Issues/Actors	Election material	Polling stations	Voting	Security of the ballot	Counting
Government	Delay in supplies				
EMB			Assistance to people with disabilities		
Political parties		Role of party agents & candidates	Role of party agents & candidates	Role of party agents & candidates	Where are the votes counted?
Voters		Poor information on polling stations			Delays in counting
Security forces				Lack of security of ballot boxes	
Observers/Monitors			Ineffective observation and monitoring		

Table 7: Post-Election: Actors and Conflict

Actors/Issues	Announcement of results	Acceptance of results	Declarations by observers	Formation of government
Government				Govt. with minority votes (less than 50%)
EMB	delays			
Political Parties		Losing parties cry foul		
Voters				Legitimacy and credibility of the new government
Security Forces		The nature of reaction of the security forces to a contested election outcome		
Observers/Monitors			Observers and monitors issue contradictory verdict	

the elections in Zimbabwe is that NGOs were not given room to conduct voter education. This is generally the preserve of the ESC with little, if any, participation by civil society organizations. Concerns were raised about the involvement of security forces (the police and the army personnel) in the management of elections as election staff. Finally, it is worth noting that civil society organizations are not allowed to monitor elections in Zimbabwe. The monitoring role is reserved for public servants. This practice does not lend itself to best election management practice, given that public servants are state functionaries and, as such, their impartiality in election management may be doubtful.

Usually, the conflicts that occur during election day revolve around delays in the supply of election material; assistance to voters with disabilities; roles and responsibilities of the political parties, candidates and party agents; information about polling stations; delays in vote counting; lack of ballot security and ineffective monitoring and observation.

In the post-election period, potential conflicts revolve around possibilities of a minority government that could suffer a legitimacy crisis (this has not yet happened in Zimbabwe); delays in the announcement of results (here again, Zimbabwe has never experienced this problem); losing parties crying foul over the electoral process and election results; legitimacy and credibility of the new government in the eyes of the voters (this has never been a pronounced problem in Zimbabwe); the nature of reaction of the security forces to a contested election outcome; and a contradictory verdict by the electoral process and the monitors and observers.

It is a truism in electoral governance discourses that an election could become either a political liability or a political asset for a working democracy. This is often judged by the degree to which an election triggers conflict that propels political instability (liability) or provides an opportunity for the entrenchment of institutional mechanisms for managing political conflict in a constructive manner (asset). From the pre-election debate[40] on the Zimbabwe electoral process various scenarios can be imagined, each of which has implications for the on-going political crisis in the country. We highlight just the three most likely scenarios below.

... an election could become either a political liability or a political asset for a working democracy

The first scenario was that of a resounding electoral victory for the ruling ZANU-PF which would ensure a two-thirds majority in parliament allowing the ruling party the political leeway to change the constitution and achieve their political interests, especially in advance of the 2008 presidential election. The second scenario was that of a resounding electoral victory for the main opposition, the MDC, which would give it the power and authority to control the legislature, but less control over the other arms of the state such as the executive, the bureaucracy, the judiciary and the security establishment. It would introduce a politically bifurcated and truncated governance regime because in this scenario the parliament would be run by MDC while the presidency and other key organs of the state would still be run by ZANU-PF. This political bifurcation could have intensified the polarization and the conflict, further worsening the crisis. The third scenario was one in which both major parties (ZANU-PF and MDC) failed to achieve an outright electoral victory, as happened in the parliamentary election of 2000. All factors considered, pre-election projections pointed to the high likelihood of the first scenario. The political context and configuration of power among the political actors as well as their strategies and tactics in approaching the electoral contest tended to rule out, in our view, the plausibility of scenarios two and three.

The Election Outcome and its immediate Aftermath

The outcome of the Zimbabwe election confirmed our pre-election predictions that ZANU-PF would win

the election with a landslide that would give the party a two-thirds majority in parliament thereby allowing it to make some constitutional changes with less opposition challenges in the national assembly. Out of a total of 120 constituencies, the ruling ZANU-PF won 78 and the main opposition MDC won 41, while one independent candidate, Jonathan Moyo, won one constituency. It should be noted that the additional 30 appointed seats in the National Assembly will give ZANU-PF a total of 108 seats and the party will thus be well-positioned to introduce and pass legislation aimed at constitutional reforms, probably along the lines of the 2000 draft constitution, produced by a government-appointed Constitutional Commission, which was rejected in a national referendum. Two important reform measures that are likely to be introduced relate to the character of the executive authority and the composition and structure of the legislature. With respect the executive authority, we have argued earlier that it is likely that a post of the an executive Prime Minister (Head of government) is on the ZANU-PF cards, while a ceremonial President (Head of State) is likely to be retained. If these reforms are embarked upon they are likely to approximate the proposal contained in Chapter V (Parts I-III) of the draft 2000 constitution.

With regard to the legislature, it is highly likely that the upper house (Senate) will be introduced. In Chapter V1 (Parts I-III), the 2000 draft constitution had proposed adoption of a bicameral legislature comprising the lower house (National Assembly) and the upper house (Senate). The draft constitution had in fact proposed an increase of the size of the National Assembly from 150 to 200 all MPs elected on the basis of a mixed member proportional (MMP) system (150 through the first-past-the-post (FTPT) system and 50 through proportional representation system). It is highly likely that the new reforms may strive towards an increase of the size of the National Assembly to 200 and electoral system reform adopting MMP in place of the FPTP system. The proposed sixty (60) member Senate was to comprise five (5) senators elected on the basis of PR from each of the country's ten (10) provinces and ten chiefs elected through the College of Chiefs. The ZANU-PF has used its parliamentary majority to introduce the Senate through recent constitutional amendments. The new Senate is likely to be elected before the end of 2005.

The next question is how the SADC observers undertook their task as eyewitnesses and fact-finding, and how they passed a verdict on the process. The mission arrived in Harare on 15 March 2005, a couple of weeks before Election Day, consistent with the requirements of the SADC principles. The mission's 55 observers were drawn from 10 SADC countries: Angola, Botswana, DRC, Lesotho, Namibia, Malawi, Mozambique, Tanzania, South Africa and Zambia. There was speculation before the deployment of the mission that it was to include the team of legal experts from Lesotho, Namibia and South Africa that had not been deployed to assess the pre-election politico-legal environment, but this did not materialize. As usual, the SADC mission left the pre-election and post-election phase to diplomatic missions already accredited to Zimbabwe and did not cover these aspects in any detail. However, when it came to coverage of the election phase, this mission, compared to others before it (Botswana, Namibia, Mozambique), seemed more technically prepared:

- It had significant political clout and profile and was led by a minister;
- It was the largest SADC observer mission since the principles were adopted;
- It established an operations room staffed by professionals from the SADC Organ;
- It had substantial logistical backup from the SADC Secretariat;
- A large number (the largest so far) of SADC countries took part in the observer mission;
- It issued an interim statement timeously (on 2 April) which was also posted on the SADC website in good time (on 3 April).

While the mission declared the election credible and acceptable, it also noted areas that would require attention

The mission found the electoral process smooth and the election outcome expressive of the will of the Zimbabwean people and declared as follows "the SADC mission congratulates the people of Zimbabwe for peaceful, credible, well-managed elections, which reflect the will of the people. In line with the SADC Principles and Guidelines, the Mission would like to urge all political parties and candidates to respect the will of the people and, any complaints be pursued with the Electoral Court".[41] While the mission declared the election credible and acceptable, it also noted areas that would require attention as part of an electoral reform agenda in Zimbabwe. These including the following:

- Improvement of equitable access to state media by all political parties;
- The need to simplify the procedures and to ensure that authorisations for voter education are provided easily and timeously by the relevant institutions;
- The need for wide publicity of the updating and verification of the voter's roll;
- The need to ensure that all police and presiding officers are informed of the role and rights of observers; and

- The need to ensure that complaints are backed up by sound and verifiable facts to facilitate follow-up and fast decision making.[42]

In brief, in terms of efficiency and technical preparedness, the SADC mission did much better than they did in the previous elections in Botswana, Namibia and Mozambique in 2004.

Conclusion

It is evident that liberal democracy in the SADC region is developing as a narrow form of electoral democracy. But even the narrow electoral democracy underway today seems confronted with daunting, albeit not insurmountable, challenges. This paper has unravelled these challenges by providing a general survey of the state of democracy in the SADC region. The paper specifically introduces and reviews existing regional election frameworks, with special reference to the SADC principles and guidelines governing democratic elections.

The contextual backdrop included three possible imperatives for the emergence of the principles and guidelines: a proactive response by SADC to the AU Principles Governing Democratic Elections, adherence to the SADC Treaty, OPDSC protocol and SIPO, and a reactive response to the earlier similar regional initiatives by the SADC PF and EISA/ECF. We have observed that while the SADC principles and guidelines are a welcome political development for the democracy project in the region, they add little value to the technical management and observation of elections. Their major value is simply that for the first time they publicly commit SADC heads of state/government to proper elections. The three instruments can be used independently of each other in election management and observation and there should be no worries or concerns about duplication because they have the same end-goal: democratic consolidation and political stability.

We examined the challenges posed for the SADC principles by the upcoming elections in the region in 2005 with a special focus on Zimbabwe's parliamentary elections held in March. We have discovered that there is no convincing hard evidence that the on-going electoral reforms in Zimbabwe are strictly in conformity with the SADC principles. We have also argued that while the ZANU-PF government has been reluctant to actively facilitate official visits to Harare by various SADC missions to ascertain compliance with the principles, SADC itself has exhibited a rather lukewarm attitude towards the need to ensure the success of the official pre-election missions. Consequently, all the missions to Zimbabwe that were meant to materialise in January and February turned into a political fiasco. SADC deployed its mission to observe the Zimbabwe election within the timeframe stipulated in the principles and guidelines. Although we noted that the mission was comparatively better prepared for the task, its major weakness was a lack of observation of the pre-election and post-election phases. Those phases were left to diplomatic missions already accredited to Zimbabwe.

Endnotes

1 K. Matlosa, SADC's electoral guidelines: What's new? *Global Dialogue,* 10 (1), February 2005.
2 K. Matlosa, Caught between transition and democratic consolidation: Dilemmas of political change in Southern Africa', in Landsberg & Mackay, 2004.
3 K. Matlosa, Elections and conflict in Southern Africa, paper prepared for the International Conference on African Conflict Management: Resolution, Post-Conflict Recovery and Development hosted by the Organisation for Social Research in Eastern and Southern Africa (OSSREA), United Nations Conference Centre, Addis Ababa, Ethiopia, 29 November - 1 December 2004.
4 OAU/AU, Declaration on principles and guidelines governing democratic elections, Addis Ababa, Ethiopia, 2002.
5 SADC, Regional Indicative Strategic Development Plan (RISDP), Gaborone, Botswana, 2003.
6 Ibid.
7 C. Ake, Development and Democracy in Africa, Washington DC: Brookings Institute, 1996; SAPES/UNDP/SADC. Regional Human Development Report, Harare: SAPES Books, 1998; SAPES/UNDP/SADC. Regional Human Development Report, SAPES Books, 2000.
8 SADC, Protocol on politics, defence and security cooperation, Gaborone, Botswana, 2001.
9 Ibid.
10 J. Cilliers, Building security in Southern Africa: An update on the evolving architecture, ISS Monograph Series**,** No. 43, 1999.
11 SADC, Strategic Indicative Plan for the Organ on Politics, Defence and Security Cooperation, Gaborone, Botswana, 2004.
12 SADC, Principles and guidelines governing democratic elections, Gaborone, Botswana, 2004.
13 C. Landsberg and S. Mackay, (eds) *Southern Africa post-apartheid? The search for democratic governance,* IDASA, Cape Town, 2004.; E. Osaghae, 'Making Democracy Work in Africa: From the institutional to the substantive', *Journal of African Elections,* 3 (1), June 2004.
14 E. Osaghae, Making democracy work in Africa: From the institutional to the substantive, *Journal of African Elections,* 3 (1), June 2004; Bratton, M and van de Walle, N. *Democratic experiments in Africa: Regime transitions in comparative perspectives,* Cambridge: Cambridge University Press, 1997.
15 E. Osaghae, Making democracy work in Africa: From the institutional to the substantive, *Journal of African Elections,* 3 (1), June 2004.

16 S. Mozaffar, Patterns of electoral governance in Africa's emerging democracies, *International Political Science Review,* 23 (1), 2002.
17 SADC PF, Norms and standards for elections in SADC, Windhoek, Namibia, 2001.
18 EISA/ECF, Principles for election management, monitoring and observation (PEMMO), Johannesburg, South Africa, 2003.
19 A. Tsunga, SADC principles and guidelines governing democratic elections analysis: A bird's eye view', Paper prepared for the PEPSA Expert Meeting, Parktonian Hotel, Johannesburg, 28 February - 1 March 2005.
20 <http://allafrica.com/stories>
21 SADC. Principles and guidelines governing democratic elections, Gaborone, Botswana, 2004.
22 Ibid.
23 Ibid.
24 Ibid.
25 P. Kagwanja, Rethinking Zimbabwe's election: A conflict prevention agenda, Paper prepared for the EISA Democracy Seminar Series, 17 March 2005.
26 AU. Zimbabwe: Report of the fact-finding mission, African commission on human and peoples' rights, Addis Ababa, Ethiopia, 2002.
27 Ibid.
28 P. Kagwanja, op cit.
29 Mail & Guardian, 18 - 24 February 2005.
30 Ibid.
31 C. Maroleng, Zimbabwe's 2005 elections: Overture or finale?, Institute for Security Studies (ISS) Situation Report, 10 March 2005.
32 Financial Times, February 2005.
33 <http://allafrica.com/stories>
34 The Star, 16 February 2005.
35 SADC. Principles and guidelines governing democratic elections, Gaborone, Botswana, 2004.
36 Sunday Times, 20 March 2005
37 The Star, 21 March 2005
38 German Bundestag, Motion on the application of the SADC electoral guidelines as the standard for free and fair elections, including in Zimbabwe, 16 March 2005.
39 ZESN. March 2005 parliamentary elections: Preliminary report, Harare, 2005. C. Ndoro, Zimbabwe election update No. 1, EISA, March 2005.
40 P. Kagwanja, op cit; C. Maroleng, op cit.
41 SADC, Assessment report: SADC election observer missions, Gaborone, Botswana, 2004.
42 SADC, SADC election observer mission preliminary statement on the Zimbabwe parliamentary elections held on 31 March, SADC Secretariat, Gaborone, Botswana, 2005.

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About this paper

This paper discusses the democratisation process in Southern Africa with special attention on elections. It focuses specifically on the relevance and significance of the principles and guidelines governing democratic elections recently adopted by SADC Heads of State and Government. Since the African Union (AU) adopted its guidelines on elections during its inaugural summit in Durban, South Africa in 2002, the first Regional Economic Community (REC) to emulate the continental body at the sub-regional level is the Southern African Development Community (SADC). SADC adopted an AU-inspired declaration around principles and guidelines for democratic elections during its summit held in Mauritius on the 17th August 2004. This is a significant political development broadly for the region's quest for institutionalised democratic governance and specifically for the inculcation of best election management practices and eradication of violent political conflicts.

About the author

DR. KHABELE MATLOSA is the Director for Research, Publications and Information Department at the Electoral Institute of Southern Africa (EISA), in Johannesburg, South Africa. He is a governance specialist and has researched and written widely on various governance topics such as electoral system reform, political parties, conflict management, election administration, voting behaviour, election observation and monitoring and parliament. He has observed elections in various SADC countries including Mozambique (1999 & 2004), Zimbabwe (2000 & 2002), Namibia (2004) and South Africa (1994, 1999 & 2004). His latest publications include "Caught between transition and democratic consolidation: Dilemmas of political change in southern Africa" in Landsberg C. & Mackay, S. (eds) *Southern Africa post-apartheid? The search for democratic governance*, (IDASA: Cape Town).

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