



## **STAKEHOLDERS' WORKSHOP ON GOVERNANCE AND DEMOCRACY IN THE SADC REGION**

**ORGANISED BY THE SADCLA & KAS  
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### **I. Introduction**

In the wake of the recent general elections that were held in the SADC region, SADCLA and KAS under its Rule of Law Program for Sub Saharan Africa convened a two-day stakeholders' conference with the main aim of contributing towards strengthening of elections, governance and democratization infrastructure in the region. The forum sought to review the national and regional legal instruments governing elections with the view to recommending best practices for the development of a sound legal environment for elections, democracy and governance.

The workshop brought together participants representing electoral management bodies, electoral courts, bar associations, civil society organizations, media and academia from the SADC region.

### **II. Strategies for developing and maintaining Democratic Electoral Processes**

Principles of inclusivity, transparency and accountability were identified as key to developing and maintaining democratic processes in the region. Madagascar, which, after overhauling its legal framework with elections being anchored in a participatory constitutional referendum, was cited as a good example towards achieving participatory, transparent and accountable

elections. The key to the successful and peaceful elections was attributable to the consensus reached amongst political parties and the people.

The Kingdom of Swaziland, which operates under the principle of fusion of powers, with all power being derived from the King was cited as a country in need of legal reform that will support democratic elections in the country particularly as regards the formation and participation of political parties as well as creation of strong independent institutions that can support the same.

For Malawi there was a call for electoral law reforms to *inter alia* reduce the role of political parties in appointments of the Electoral commissioners, granting financial autonomy to the electoral body, development of a speedier dispute resolution procedure and granting the Supreme Court absolute jurisdiction with regard to election petitions.

Ambiguous provisions of the law (sec. 93(2)(a) and sec.92(c) of the Constitution) as regards the effect of corruption on elections in Zambia were cited as one of the greatest impediments towards the attainment of democratic elections hence the need for clarity in law on the applicable standards. The time limit of 1 year for prosecution in these matters was also found to be too short therefore making the collection of evidence strenuous and diminishes the effectiveness of this consequence.

However, for some countries such as Zimbabwe which already has democratic principles and practices codified in law, the challenge is respecting and upholding those principles. For instance there is lack of consultation of the citizenry when amending laws, and general partiality and undermining of key democratic institutions<sup>1</sup>. The key to any successful democracy lies in well-resourced and impartial institutions lest their independence and ability to perform is adversely affected.

### **Role of Electoral Management Bodies, Civil Society and Regional Bodies in Strengthening Democratic Processes**

Intervention of Electoral Management Bodies in the law making process was said to be contingent on two main factors; the principles on election management and the situation; whether their intervention would make them appear partisan. What seems to be the general practice with regard to this is that they are consulted before reforms are made and can make recommendations. Their role was however deemed to be inadequate. It was recommended that they take a more pro-active role and spur legal reform

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<sup>1</sup> Such as; removing politics from appointments and having secure funding.

where possible. The efficiency of EMBs could also be enhanced through collaboration with civil societies in ventures such as voter education.

The influence and growth of acceptance of civil society intervention was also noted. This was attributed to a change in attitude towards CSOs as well as the likelihood that having Civil Societies collaborations would appeal to prospective donors. The shortcomings of the CSOs were that they act in competition with one other, do not share resources and do not have unified goal or stance, thus making it difficult to put across an effective message.

The role of regional bodies, particularly the AU was looked at with respect to ratification of Charters and their implementation or rather the lack thereof. This is specifically with respect to the African Charter on Democracy, Elections and Governance, which is aimed at improving the democratic governance and management of democratic elections in Africa.

With 4 SADC Members States and 23 of 54 African Countries having ratified the Charter, the strategy of mutual consent through signing of treaties was not rejected entirely, but rather deemed inadequate with questions being raised as to whether a mere signature constituted consent; these being forerunners for the discourse on causes of implementation apathy. The prima facie reasons would be; lack of capacity and fear of sovereignty being undermined. However, the deeper reason is that there is neither an obligation to take it seriously nor an adequate implementation or domestication framework.

The orthodox procedure of sign, ratify and domesticate was found to overlook the micro level of implementation, that is; at the individual, legal (constitutional and local by-laws), political and socio-cultural level. There are no standards to ensure effective implementation, nor is there any monetary commitment to the same. It was therefore recommended that a systematic monitoring and evaluating system be put in place, consequences of non-compliance should be outlined along with clear implementation plans and procedures, and EMBs, youth bodies, political parties, women organizations and CSOs should be pro-actively engaged with governments, SADC and AU diplomats to popularize it, and therefore increase chances of implementation at the micro as well as macro levels.

### **Conclusion**

As articulated by Dr. Bernd Althusmann in his keynote remarks, *'Elections are the festival of every democracy and it is not without reason that Election Day is often a holiday'*.

The need for legality, that is; legal text on paper, corresponding with reality; public participation in the amendment and drafting of laws, particularly electoral laws; establishment of impartial independent institutions such as the legislature to make good laws, judiciary to serve as the last line of defense against impunity and electoral management bodies to ensure the will of the people is carried out were cited as the key to democracy, and thereby democratic elections in the region and indeed on the continent.

There was also call to put to an end the complacency that leads to the belief that peaceful elections is the highest standard of achievement for African elections. One point rings true: African democracies are imperfect and to perfect them the true meaning of democracy must be understood. "It is more than a parliamentary form of government; it is a philosophy that has roots in the very concept of human dignity, the value and inalienable rights of every single human being – in the political, economic and cultural sphere."<sup>2</sup>

It is to this standard that African democracies must be raised, through the understanding of what a democracy is and for whom it functions.

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<sup>2</sup> Words by Konrad Adenauer, the founding father of the CDU in Germany