SADC's 2013 Review of its Principles and Guidelines Governing Democratic Elections: Need for civil society inputs?

Dimpho Motsamai

Ms Dimpho Motsamai is a security analyst with the Conflict Prevention and Risk Analysis (CPRA) division at Institute for Security Studies in Pretoria. She publishes extensively on conflict vulnerability and governance in the Southern African Development Community (SADC) region.

Introduction

A highly significant but under profiled review exercise of the Southern African Development Community (SADC) Principles and Guidelines Governing Democratic Elections (herein refereed to as the Guidelines) and the development of a SADC Elections Handbook have been underway since April 2012 and are expected to be completed no later than June 2014.[1] The exercise, which has received little media attention probably due to the fact that it has been managed intergovernmentally, follows an unfavorable convention of SADC- that of weak modes of participatory governance in its policy processes. It also unintentionally mimics the 'top-down' approach of election observation that has characterised SADC Election Observer Missions (EOMs). The review exercise is taking place behind closed doors, notwithstanding the fact that it had been long planned and anticipated by the SADC Secretariat as early as 2011, and forms part of the Secretariat's aspiration to turn its recently inaugurated Election Advisory Council (SEAC) into a more active and relevant body for guiding regional election observation. More importantly, the exercise is to help position SEAC as a fundamental component of post-electoral democratic processes in the region.

The SEAC is the electoral advisory body of SADC inaugurated in April 2011 to enhance regional electoral standards, governance and democracy, by inter alia; monitoring and evaluating elections in SADC member states; ensuring the application and review of the SADC Principles and Guidelines Governing Democratic Elections; facilitating the development of mediation strategies to address conflicts in the pre- and post-election period; coordinating all election-related work by the SADC Organ Directorate and the SADC Election Support Unit, which serves as its administrative unit; and facilitating lessons-learning and experience-sharing on electoral processes among SADC member states.[2] It was formally constituted in August 2010 and its membership comprises country-nominated representatives from each SADC member state.[3]

While SEAC's current near-full composition may signal positive political commitment of SADC member states to its mandate and work, questions remain on the political commitment to transforming the SADC Principles and Guidelines Governing Democratic Elections into a legally binding instrument, such as a protocol. On the basis of state sovereignty, the SADC Guidelines are not binding on SADC member states, since they have no legal status. The SADC Guidelines have been subordinate to national laws, limiting SEAC insistence of their implementation. In addition, the power and capacity of SEAC to monitor the extent to which relevant authorities follow the Council's advice and recommendations post elections, has been very limited.[4] The current review exercise therefore raises a number of questions regarding SADC's commitment to institutionalizing electoral democracy in the region and to also do so on the basis of an enhanced role of civil society in its policy processes. If the beneficiaries of the revised Guidelines are understood to be not only states but also citizens, then there should be spaces to provide the latter a voice in what essentially will become public policy.

It must be borne in mind that SADC already has a string of regional frameworks for achieving democratic elections. These include the Protocol on Politics, Defence and Security Cooperation (1999) and the Harmonised Strategic Indicative Plan for the Organ (2010). Their implementation has been feeble due to weak member state compliance and an under-emphasis on participatory governance that not only puts civil society participation at its center but also helps provide checks and balances on policy implementation. It is important to also highlight similar initiatives previously not acknowledged in the SADC Guidelines for guiding democratic elections in the region. These include the SADC Parliamentary Forum's Norms and Standards for Elections in the SADC Region (2001) - an initiative of parliamentarians; and the 2003 Principles for Election Management, Monitoring and Observation in the SADC Region. The latter was an initiative of civil society organisations, under the leadership of the Electoral Institute for Southern Africa, and electoral management bodies in the SADC region better known as Electoral Commissions Forum.[5]

With these questions in mind, and against the backdrop of a seemingly state driven review exercise, already at an advanced stage, this policy brief primarily raises concerns regarding the potential role of civil society in the democratization of governance in SADC generally, and in the policy formulation of the SADC Guidelines in particular. Beyond elections, can SADC comprehensively address the broader imperatives for the institutionalization of democratic governance without adequate participation of relevant civil society stakeholders? Arguably, a belated civil society input process to the review of the SADC Guidelines initiated by the Secretariat will either be interpreted as a disguised rubberstamp attempt or at worst, have the potential to discredit the work carried out thus far and compromise popular support to the end documents themselves and their implementation.

Context

The significance of this review cannot be underemphasized as it comes on the heels of prior critique from civic organisations that the initial development of the principles in 2004/5 was principally, a state-centric process without the participation of other non-state actors. [6] The view was that civil society inputs provide discursive representation to interests that are likely to remain unrepresented and that essentially the implementation of the principles would also depend overwhelmingly upon state behavior and attitudes to civil society policy input and engagement. The exercise also comes against the backdrop of the perceived failure of SADC Election Observation Missions (EOMs) to better institutionalize democratic governance in-between and post elections in SADC member countries – with Zimbabwe (2008 and 2013), Swaziland (2008), Democratic Republic of Congo (2011), Angola (2012) among those flagged as cases in point. The overarching criticism coming particularly from civic organizations is that SADC and its EOMs have historically endorsed highly flawed elections and have largely failed to situate elections within the broader imperatives of substantive and developmental democracy, which by far transcends the mere holding of periodic elections. Indeed, SADC EOMs have a diplomatic rather than a technocratic bias and often appear susceptible to political pressures and partisan stakeholder interests. Both EOMs and SEAC are yet to convincingly demonstrate their plans for strengthening democratic institutions in practice and building public confidence in electoral processes. In addition, there are doubts on whether SADC EOM reports and their recommendations are comprehensive to democracy building in addition to the likelihood of their implementation. As such, SADC EOMs are limited in their effectiveness as peer review and democracy building instruments.

The context and rationale for the review of the SADC Principles and Guidelines Governing Democratic Elections according to the former Executive Secretary of SADC, Tomáz Augusto Salomão, is also noteworthy as it implicitly underscores some of the above deficits in the capacity of SADC to promote democracy and electoral governance. To him, the exercise was "informed by the experience of elections by SADC SEOMs; the major provisions enshrined in the OAU/AU Declaration on the Principles Governing Democratic Elections in Africa; the African Charter on Democracy, Elections and Governance (2007); the AU Guidelines for African Union Electoral Observation and Monitoring Missions; and relevant covenants and human rights instruments of the United Nations (UN)"[7]. He further noted that the review exercise would take into consideration civil, political, socio-economic and cultural rights to electoral democracy, good governance and development principles.[8] The foregoing are not new policy objectives for SADC. They are within the purview of strategies that SADC has long identified in the region as requisites for building democratic institutions and promoting human rights. Infact the above concepts initially fed into the vey rationale for the creation and adoption of the SADC Guidelines in 2004. These notably included the need to: establish common electoral standards in the region, including a code of electoral conduct; promote the principles of democracy and good governance; and establish a regional commission for the promotion of and respect for human rights.

A closed process?

Whether the above considerations have been given priority in the five consultative workshops convened by SEAC thus far is also speculatory for the simple reason that the exercise has been a closed SADC affair with no input from non-state actors.

An explanation to this may be that the review is perceived by the SADC Secretariat to be highly politically sensitive. As such, consensus from member states, which otherwise can lead to a collapse of the process altogether, was given priority. This may have worked given that there is now a draft of the Revised Principles and Guidelines (which will lead to the crafting of the SADC Elections Handbook), which have the backing of member states. This draft is expected to be shared with non-state actors for their inputs in coming months, although the format of this engagement is currently unclear. [9] The possibility that the period of time given for civic input is inadequate for any meaningful contributions to take place cannot be ruled out. At this point, the most basic expectation from the SADC Secretariat from civic groups is to establish better communication mechanisms and sensitization of the Review process. Surely adhoc – and last minute civic consultations – are bound to have a negative political reverberation on the acceptability and popular support of these revised principles. It goes without saying that despite the official mandate and terms of reference for the review, the draft may ultimately reflect the interests of SADC member states; a development that may harm the effectiveness of future SADC EOMs by: failing to enhance public confidence in SADC EOMs; missing opportunities to nurture and support bottom-up and sustainable modes of democracy promotion; and broaden and deepen the region's democratic polity. It may also help legitimize undemocratic regimes; enable government manipulation of the electoral process; and stifle activities of viable opposition during electoral cycles.

Issues that have emerged so far from consultations

The consultations have been closed thus far and as such, there is no available information on the nature of internal deliberations themselves.

Some of the many expectations from such an exercise would be that it leads to a significant change of approach of SADC EOMs to election observation generally and democracy promotion in SADC member states in particular. With the process nearing its completion, it may be best to narrow focus on some time worn but deep-rooted challenges that should be put to the urgent attention of SADC and SEAC upon the public release of the Revised Guidelines. These include:

- The lack of joint/combined civil society and member state EOMs: SADC EOMs are entirely represented by state actors and members of political parties from various SADC countries and there are no combined EOMs with delegates from civil society;

- The weak interface between the SADC Secretariat and the non-state entities of its member states: This is a general problem but more acute during electoral cycles of member states where the policy implementation circumstances, challenges and the types of support and assistance each member state requires is uncertain;

- Uneven and at times, nonexistent SADC National Committees (SNCs): The SNCs are supposed to comprise government, civil society organisations and the private sector and serve as SADC-civil society interface mechanisms and those for SADC policy coordination, implementation and evaluation. Current research on SNCs points to them being either dysfunctional or non-existent in some countries; and

- The SADC measures for ensuring compliance and adherence to the Revised Guidelines: The fundamental question here is whether the review will lead to better policy implementation and enforcement and create new incentives and punitive measures for non compliance.

Owing to these systemic problems, various civil society organisations have widely critiqued the existing Guidelines and their inadequate implementation, also cautioning against policy processes concerning the Guidelines that are the exclusive preserve of member states with little, if any, participation from civil society organizations in SADC.[10] Some recommendations to improve the effectiveness and legitimacy of the Guidelines from CSO include attending to[11]:

- The narrow timing and duration of EOMs and their coverage: Current Guidelines only provide that EOMs should be deployed at least two weeks before the voting day. Arguably, this timeframe is inadequate for thorough assessments of developments in countries' electoral cycles and for comprehensive geographic coverage;
- The role of the SADC Organ on Politics, Defence and Security Co-operation in assuming the responsibility for ensuring that SADC countries measure up to these standards by doing an audit of national laws to assess compliance to the principles; and
- The legality of the Guidelines, suggesting that they should be made legally binding on all SADC states. It was also submitted that the SADC Guidelines oblige state parties to the SADC Treaty to repeal or amend domestic laws that are inconsistent with the Guidelines and remedy inconsistencies to regional and international treaties.

Conclusion

These developments among many other examples of linear and closed SADC policy development processes reinforce the need for a paradigm shift in the relationship between SADC and regional civil society. Indeed, the reasons for how the exercise has been managed thus far are likely more complex than shown herein.

However, there should be a conscious understanding by the SADC Secretariat that SADC policy should also appeal to a very wide civil society governance reform agenda. SADC could be more inclined to give a premium to openness and transparency on the on-going review. More research and stronger civic advocacy and engagement into the Review process could in fact add value to the work already undertaken and enhance the prospects towards a positive outcome of the exercise. To counteract the tendencies of closed policy formulation exercises by SADC however requires greater attention to policy processes from regional non-state actors beyond the existing limitations to their relations with the SADC Secretariat.

Recommendations

To the SADC Secretariat:

- To strive to be an impartial manager of the review exercise that takes societal interests into account by improving communication on the exercise and on the appropriate consultative procedures for civil society input;
- To pro-actively promote cooperation with non-state actors on politics and security policy formulation and implementation as a demonstrable consideration of civil society in SADC policy processes as defined in the SADC Treaty; and
- To better institutionalise policy coordination and implementation of the SADC Guidelines.

To regional civil society:

- To robustly explore different and more useful modes of civil society involvement in the ongoing Review exercise and make proposals toward more extensive consultation with civil society in SADC countries;

- To conduct their own review of the Guidelines and frame the issues that they deem important for inclusion, and to later mobilize around their inclusion; and

- To promote democratic accountability in SADC as a regional governance institution by exploring the possibility of proposing an operational framework underlying 'General principles and minimum standards for the consultation of civil society' for guiding future policy consultation processes.

Notes

1 Author interviews with respondents at the SADC Secretariat who wished to stay anonymous.

2 See, the Harmonised Strategic Indicative Plan for the Organ (SIPO II), Southern African Development Community, Maputo, Mozambique, 2010, at http://www.sadc.int/documents-publications/show/SADC_SIPO_II__Final.pdf (last accessed 25 June 2013)

3 A full SEAC seating would comprise 15 members in total. At the time of writing there were 12 representatives out of the total 15; Madagascar, Swaziland and South Africa were yet to sent their representatives to SEAC.

4 See Motsamai, D. (2013), 'The SADC Electoral Advisory Council's support to democratic elections needs to be improved', Institute for Security Studies, at http://www.issafrica.org/iss-today/the-sadc-electoral-advisory-councils-support-to-democratic-elections-needs-to-be-improved (last accessed 15 October 2013)

5 For a comprehensive discussion on this see Matlosa, K. (2005), 'Democratisation at the Crossroads Challenges for the SADC Principles and Guidelines Governing Democratic Elections', ISS Paper 118

6 Ibid

7 See Statement Delivered by SADC Executive Secretary, Dr. Tomáz Augusto Salomão, Workshop on the Review of SADC Principles and Guidelines Governing Democratic Elections and the Development of SADC Elections Handbook June 6-7, 2013, Gaborone, Botswana

8 Ibid

9 Author interviews with respondents at the SADC Secretariat who wished to stay anonymous.

10 See, The Southern Africa Development Community Council of Non Governmental Organizations, 'the SADC we want: Acting together; ensuring Accountability' 9th Southern Africa Civil Society Forum, 10-14 August 2013, Lilongwe, Malawi; SADC-Lawyers Association Election Observation and Monitoring Manual 2013; Zimbabwe Elections Support network, 'A critique of SADC Principles and Guidelines Governing Democratic Elections and Election Observation missions' at http://webcache.googleusercontent.com/search?q=cache:Hg5lXSYn0v4J:www.zesn.org.zw/publications/publication_31.doc+&cd=1&hl=en&ct=clnk&gl=za (last accessed 21 October 2013); Dzinesa, GA and Zambara, W. (2011), 'SADC's Role in Zimbabwe: Guarantor of Deadlock or Democracy?', OpenSpace, 1 (June): 63–68

11 Ibid

The IGD is an independent foreign policy think tank dedicated to the analysis of and dialogue on the evolving international political and economic environment, and the role of Africa and South Africa. It advances a balanced, relevant and policy-oriented analysis, debate and documentation of South Africa's role in international relations and diplomacy.

The IGD strives for a prosperous and peaceful Africa in a progressive global order through cutting edge policy research and analysis, catalytic dialogue and stakeholder interface on global dynamics that have an impact on South Africa and Africa.

3rd Floor UNISA Building263
Nana Sita Street
Pretoria South Africa

PO Box 14349
The Tramshed,
0126
Pretoria South Africa

+27123376082
+27862129442
info@igd.org.za
www.igd.org.za