



STATEMENT

BY

THE OUTGOING SADC ELECTORAL ADVISORY COUNCIL (SEAC) CHAIRPERSON

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ON THE OCCASION OF THE OPENING OF

THE SEAC STRATEGIC PLANNING RETREAT

2 MARCH, 2016

JOHANNESBURG, SOUTH AFRICA

Background

I have come to the end of my term as chairperson of the SADC Electoral Advisory Council (SEAC). Thank you, colleagues, for the trust you have put in me and the support I was privileged to enjoy. It was a period of experience, of learning, sharing, and of comrade and friendship-forming.

At the end of a term of office holding, one takes stock. Firstly, what was my experience during the term in office, what have I learned and gained, and secondly, how do I see the task and role of SEAC in the times ahead. I concentrate in my presentation on the second aspect guided by the revised 'SADC Principles and Guidelines Governing Democratic Elections' (2015).

When recapturing the history of SEAC hitherto we have every reason to express our appreciation to the founding chairperson of SEAC, Justice John Tendwa of Tanzania, for all the pioneering work he has done to get SEAC operative and functioning. I personally benefitted from it. My appreciation also goes to the outgoing vice-chairperson of SEAC, Madam Advocate Orlanda Rafael Duarte, Mozambique's representative on SEAC. At all times I could rely on her and exchange thoughts with her.

SEAC has since its existence gone through several stages of role and task identification. An important stage in its task performance was reached during the elections in Madagascar when the TROIKA invited SEAC as an independent body to attend its meetings during the election period and act as advisors. Since then a close cooperation has developed between these two entities, emphasising that SEAC is not an election observation body like SEOM, but that its fundamental role is to advise.

I refer to Section 7.1.1 of the revised 'SADC Principles and Guidelines Governing Democratic Elections' stating that "the objective of the SEAC shall be to advise SADC and its electoral institutions on all matters pertaining to electoral processes and the enhancement of democracy and good governance in the SDAC region. In this regard, the SEAC shall report on these matters to the Ministerial Committee (MCO) of the Organ on Politics, Defence and Security Cooperation (OPDSC)." SEAC is therefore a co-stakeholder in contributing to regional peace and stability.

The SEAC, composed of one representative of each SADC member state, is presently constituted of eminent professional people, endowed with a lot of knowledge and experience particularly on legal but also electoral matters. Each SEAC member is a specialist in his or her own domain. From this not only the corporative body SEAC benefits but also the SADC Electoral Observer Mission (SEOM) and other stakeholders in elections. SEAC's constructive and objective contribution to the electoral process in SADC member states enjoys respect and appreciation. It is acknowledged among SADC member states. SEAC appreciates the good cooperation with SEOM, the TROIKA, the MCO and the SADC Secretariat.

When we look at SEAC's exploratory goodwill missions' pre-election reports in SADC member states, we notice an improvement in professionalism when SADC member states conduct their elections. We also notice that SEAC's goodwill mission reports have improved in quality. The latest goodwill mission reports on Tanzania and the Seychelles can be considered as profound examples of such quality. Our appreciation goes to Dr Mavis Matenge and her team for their professionalism and cooperation in compiling the goodwill mission reports.

We as SEAC members have over years gained much experience in two fields: during the pre-election goodwill missions and during the election period. Time is now opportune that we broaden our task performance in two ways: firstly, to activate our research task and secondly, to attend actively to the post-election period.

I consider both tasks as of equal relevance compared to our role during the pre-election period and then during the elections.

The Post-election period as a new task assignment

We decided that it is in principle and for the sake of continuity important to meet the stakeholders of elections more or less three months after the official election results have been announced. When performing such mission we must profoundly know what exactly our task is. In other words, we must have a clear concept, structure, programme and procedure how to go about this task. We must have a clear understanding on precisely when we want to meet the stakeholders, for what reasons and what we intend to achieve. May this retreat provide us with some answers.

Identification of stakeholders

I assume that our first task is to identify all the stakeholders in the electoral process and assign them a particular relevance. When talking about stakeholders in a given country I have in mind the electoral commission, its management body, representatives of the legal profession such as high court and/or electoral court judges, politicians, political party office bearers and administrators, community leaders, the media, the police, and other society representatives. All of them have a stake in elections. In addition, there may be others.

SADC member states as sovereign entities

When we as SEAC perform our post-election tasks we accept that SADC member states are independent entities and that we cannot interfere with their sovereignty. In our task performance we will be guided by fundamental values as reflected in the revised 'SADC Principles and Guidelines Governing Democratic Elections'. When needed and wanted SEAC can offer advice on a number of issues such as reconciliation, conflict resolution and social cohesion, thereby contributing to a peaceful and conducive environment which is needed for democratic elections. I say this because we in SEAC are concerned about the stability of a state.

Nothing prevents us in SEAC to assess the political strength of a particular state politically, how democratic it is, and how well it is organised and administrated. For this we must have a common understanding of what we expect of a sovereign and independent state. Or to put it differently, which criteria determine a proper working state that is committed to democracy and first of all, how do we define the concept state?

The concept state

We are all conversed with the concept state, an entity that is marked by a self-governing political community occupying its own territory with recognised border lines. This applies to all SADC member states. We may, however find that some SADC politicians, among them government leaders, tend not to differentiate between a strong state and an **authoritarian** state. By an authoritarian state I mean a state where respect for state authority is of greater relevance to political leaders than individual liberty, which by implication neglects democratic principles and practices. It could be a state concentrating on power politics and in this process neglecting or even undermining democratic rules.

Democratic governance rejects authoritarian rule such as one-person dominance in running the state, alternatively claiming that only the ruling party can determine the rules norms and practices how the state should be run. We know of examples in SADC member states where a ruling party puts itself on the same footing as the state or even claims to be superior to the state.

Where a dominant party rule is applied, it cannot claim to be the sole owner of democracy. Although elected by the majority it is obliged to seek cooperation with all the citizens, and not predominantly with the elite to the disadvantage of the ordinary citizen.

Practising democratic governance implies the rejection of authoritarian rule, thus one-person dominance in running the state believing that only the ruling party can set norms and practices how democracy should be interpreted and practised and how the state should be run. As believers in constitutional democracy we do not support political supremacy over constitutionalism.

As democrats we believe in cooperative and consultative democracy which should be practised to its full consequence. This, among others, implies to pursue consequently the principles of equality, equity, liberty, honesty and fairness. When SADC member states became independent it set in motion an increase in political consciousness, political participation and a commitment to egalitarian values. A common interest developed in political democracy, economic growth and social cohesion. There generally is a demand to apply social and economic justice.

A truly democratic state knows that it cannot overstep its authority and that it has to function within clearly defined rules. We are aware that some states overstep the

designed limits of power, states which arbitrarily interfere with the subsystems of society such as the economy, culture, science, the social system and private spheres. Such interference cannot but weaken a state and question its credibility. Such state could be susceptible to undermining practices reflected in corruption and mismanagement, thus consequently prone to political instability.

We in SEAC are fundamentally concerned about political stability in SADC member countries as only a stable democratic state can assure that elections are free, fair, credible, honest, fair and transparent. We acknowledge the power of the vote and why it is so important to promote, protect and empower the vote. Equally important in this respect is to us the principle of free choice when casting the vote.

How must we in SEAC react when democracy is undermined in a SADC member state? I refer to Section 7.1.1 of the SADC Principles and Guidelines Governing Democratic Elections which state clearly that SEAC is tasked to contribute to the enhancement of democracy and good governance in the SADC community.

Democratic principles

Let me share a few thoughts about democratic principles. The other day I noticed that a SADC country claimed that only the ruling party can determine what democratic rule and democratic principles mean and how they should be interpreted and applied. I consider this as a very short sighted and restrictive attitude.

A ruling political party cannot claim that it only represents the interests of those who voted for it. It must represent the interests of the whole nation. This includes those who voted for the opposition. If the ruling party should adhere to restricted democracy, excluding the opposition from governance, it is misunderstanding or at least misinterpreting the principles and practices of democracy.

We in SEAC are interested how the ordinary citizen is empowered and capacitated to **experience** democracy, in how far he or she has taken co-ownership of democracy and internalised it. Democracy obliges to rule with the people, thus strengthening the principle of inclusivity. Elections must be people-centred and people-owned. Not that we are saying that the outcome of an election must be the dictatorship of the people. It is the co-responsibility aspect that we emphasise.

Democratisation, related to cooperation and co-responsibility, is a never-ending process. It obliges to constantly revisit democratic values and objectives to achieve optimum results. Democracy is as strong as one can defend it.

Elections as an instrument to exercise democracy

We in SEAC acknowledge that elections play a very important role in upholding democracy. We are aware that they take place in a particular social, economic and political environment. Every political party taking part in an election has its own manifesto constituted of many ideas and promises. We in SEAC do not question

these ideas and promises as long as they comply with democratic rules and principles. It is our obligation to test their value and contribution to a democratic society.

Elections are not a momentous exercise, a once-off occasion. They must have a permanent value. That is why we in SEAC are interested in the orderly preparation and running of elections as well as in the outcome of elections. We are concerned about the independent status of electoral bodies, the proficiency and quality of electoral officials, the infrastructure needed for a professionally run election and other technical issues. Equally of interest to us is the impact elections have on the stability of a political system.

Elections are fundamental and instrumental in a competitive democracy. They are an important exercise in pluralism. Not that we consider them as an all-embracing guarantee for a working democracy. Equally important is what follows after an election. This is one of the reasons why we in SEAC have the important post-election task to ensure that democracy is not restricted to the electoral process. We have an equal keen interest in the implementation phase when the political stakeholders, particularly political parties as represented in the law making bodies, are expected to apply their promises.

With the assistance of our research section in SEAC we would like to know whether political parties comply with the promises they have made during the election campaign to strengthen democracy. All of them claim that they believe in democracy and its inherent values, although some of them may interpret the concept differently. The democratic principles and practices we as SEAC have in mind are those that are reflected in the constitutions of all SADC countries and in the SADC Principles and Guidelines Governing Democratic Elections.

Not complying with such principles and practices cannot but have a negative effect on the credibility of a political party, on voter participation in future elections, and the elections themselves.

Stakeholders in democracy

How best can we test whether democracy is applied in its full consequence? We have to be inquisitive. For example, we could test whether the democracy practised in our sister countries is people-based, people-owned and people-driven.

Every citizen is a sovereign in the state he/she lives and the most important shareholder in a constitutional democracy. We accept the principle that every eligible citizen has the right to vote. It is part of her/his fundamental right. To exercise this right, a political environment and atmosphere that is conducive to equality, freedom of choice, the secrecy of the vote and that guarantees respect for human dignity, is a precondition

The citizenry must never forget that it is co-responsible for the orderly running of the state, thus having a control function. It should be constantly made aware that it is the foremost carrier of the state. It is in the end the citizen who legitimises the state.

Some other SEAC tasks

SEAC cannot command a SADC member state to uphold democratic practices, but can remind it, can advise and make higher authorities, such as the MCO, aware that according to the SEAC's opinion, democratic rules and practices are not adhered to. Nothing prevents SEAC to assess whether a SADC state has the powers, the necessary institutions and sufficient resources to practise democratic governance in its fullest consequence.

SEAC is an advisory institution that commits itself to undertake in-depth studies on applied democracy in a member state. Some may call it a kind of watchdog or check-and-balance function. But we can also refer to it as a caring function, particularly when we are concerned that certain democratic principles and practices are not sufficiently adhered to or even violated.

We are interested in what mechanisms exist in our sister countries to comply with the demands of a working democracy. This includes what institutional control is practised, what effective check and balances exist to avoid the misuse of power and whether a strong and independent judiciary is operative. We are equally interested in well-functioning parliaments and a well-run administration. This brings us to the legality and legitimacy of elections.

The legality and legitimacy of elections

We believe that whatever a state does must have a strong legal foundation and justification. But it must also be legitimate. Both, legality and legitimacy, go hand in hand and are not separable. Legitimacy refers to ethical, thus moral values. Elections are not only a technical exercise by applying the rules of an Electoral Act, they are also an act of morality and of ethical behaviour which compels to abstain from illegal practices such as the buying and 'auctioning' of votes, intimidation of voters or other means undermining the credibility and thereby the moral basis of elections.

Thus, besides the technical part of elections we as SEAC are also principally concerned about the normative character of an electoral process and that electoral justice is applied. The technical part of elections is only one part of our interests. Equally fundamental to us are normative issues such as electoral justice which should relate to both the operative legal framework according to which elections are conducted and the legitimate execution of rules and regulations. Electoral justice is normatively related to free, fair, honest, legitimate, credible, peaceful and transparent elections. We as SEAC as an SADC agency reflect these norms in the SADC Principles and Guidelines Governing Democratic Elections.

What are SEAC's fundamental interests?

SEAC's foremost interest is whether democracy benefits from elections. Have elections improved the life and the well-being of society? Has quality governance (some refer to it as good governance) been achieved, is a bottom-up cooperative approach applied and not a top-down and imposing approach? How effective is the democratic principle of co-governance and multi-party democracy applied?

Section 4.1.1 of the SADC Principles and Guidelines Governing Democratic Elections, states that one of our tasks should be to "encourage the full participation of all citizens in democratic and development processes". This, to my esteem, does not only apply to elections but also to governance in between elections. As I indicated earlier on, our interest in SEAC must include the effect of elections on democratic governance thereafter.

There are many other issues that contribute to the strengthening of democracy and determine its quality in a given state. On the other hand, prevalent are also democracy undermining factors which put governance in a challenging situation. We witness them in most of the SEAC members states These include not only economic factors such as grinding poverty, escalating unemployment, an ever widening gap between rich and poor, but also selfishness, weak leadership, struggle against complacency, personal aggrandisement (e.g. self-enrichment), corruption, favouritism, state capture practices (= parasitism), nepotism, ethnocentrism, tribalism, flawed education, social and economic inequality, insufficient medical care, the scourge of HIV/AIDS, and gender inequality. These issues affect the dignity of the state and its community.

The former South African President Nelson Mandela once said that democracy is about people's daily struggles against poverty. It is about ordinary people's yearning for decent houses, for better and quality education, for the effective delivery of services that include clean water and sanitation, among others. The credibility of democracy is related to finding satisfactorily solutions to daily hardships.

We in SEAC must be willing listeners to what our brothers and sisters tell us what according to their opinion could discredit democracy. We in SEAC have the opportunity to share with our brothers and sisters in SADC the experience that we gained in different SADC countries. We should not keep it to ourselves but share it with the SADC family members.

It is a dialogue situation, exchanging ideas and beliefs. Our task is to reach out, show empathy and understanding as well as giving advice if so requested.

Let me specifically come back to our post-elections tasks – one of them relates to democracy in between elections.

Democracy in between elections

How best can SEAC assist in strengthening democracy **in between** elections? As I said in the beginning, we accept and underwrite that SADC states are sovereign state entities and that we have no right to interfere or prescribe how a SADC member state should be governed. But we have the right, if not the obligation, to evaluate how democracy is successfully practised in our sister countries.

No state, thus also no SADC state, is perfect. We should be open-minded on shortcomings and problems that we encounter and not just condemn them. We should take them as challenges. We may find that some SADC family members have a different understanding of democracy. It is our task to find common denominators from which we all can benefit and which can bind us as a democratic community.

As I said, we are aware of authoritarian rule and egocentric leadership practised in some SADC member states. We may even find that in a particular sister country customary law and practices are considered as more important and normative than multi-party democracy. We may come across sister countries where freedom of the media and the unhindered activity of particular organisations are suppressed, where thus limited democracy is practised. These examples, and there may be others, tell us about deficiencies in the application of democracy in SADC member states. It should be our task as SEAC to at least identify and report issues that affect according to our opinion the proper working of democracy in sister countries. We could also advise if so requested.

Section 4.1.2 of the stated SADC document says that one of our tasks, and this definitely does not only apply to an election period, is to “ensure (that) all citizens enjoy fundamental freedoms and human rights, including freedom of association, assembly and expression”.

Let me finally exchange some thoughts on the concept **freedom** as one of the most important ingredients of democracy. A truly democratic state promotes freedom instead of curbing it.

Freedom is as much of relevance as equality before the law. Freedom reflects more than a value. It is also instrumental. Freedom is an imperative. People as judicial objectives have the right to be free and practise their freedom in a constructive and responsible way.

Personal freedom relates amongst others to freedom of speech and opinion as I mentioned earlier. Any oppression of such freedom undermines and abuses the right to a personal decision. This would be in contradiction to democratic behaviour and practices. To constructively object is part of a democratic right. This can even include taking to the streets and protest when personal freedom is violated. Such action cannot be considered as undemocratic behaviour. It has a utility purpose if practised

in a responsible way. The reaction to such behaviour should not be the institution of a security state and the suppression of freedom. That would be the end of a constitutional democracy and the end of unhindered freedom. At the same time we are fully aware of the complex relationship that exists between constitutionalism and democracy.

Freedom is contractual and allows for a dialectical play, applied within the borders of a state entity. It is not an exclusive singular value. It relates to other accepted and applied values and practices in a state community. One of them is justice. Unfortunately, also in the SADC context, we are confronted by divided societies where justice is put to test. Justice must prevail at all times. If not fully applied peace is at stake. Should there be injustice, it would affect national unity and would also impact reconciliation.

Where does SEAC's task end?

Let me repeat: it is not the task of SEAC to condemn undemocratic processes and practices when we become aware of them, but we are entitled and obliged to be critical and to report our findings to higher authorities. Our task is to find common ground of perception and understanding of issues at stake and under dispute in any of our sister countries. With the legal knowledge capital SEAC is bestowed with, it could play an eminent role in conflict mediation and resolution.

Concluding remarks by way of a summary

It is our task as SEAC to strengthen applied democracy in our sister countries. We in SEAC not only want to promote democratic elections in SADC member states but also the constant practice of proper and efficient democracy in daily life. We are also challenged to contribute to the unification of democratic ideals and practices in the SADC community. We in SADC want to be an example to the rest of the continent where democracy is suffering in many countries.

We in SEAC do not claim that we have all the knowledge, all the quality of being wise, and all the answers, but at least we can be willing listeners, communicators, mediators, bridge builders and advisers. Our credibility as SEAC must not only rest on honesty based reflection, how well SEAC member states pursue democratic values and practices, but also on our willingness and commitment to assist where and when we are needed and wanted. With the knowledge we already have and continuously gain we can serve others constructively. This should be our offer and also an obligation. It confirms the seriousness and urgency of our task and expected performance.

I wish SEAC well in its role and task performance.

Thank you for your attention.