

‘THE THOUGHT IS FATHER TO THE DEED’: QUESTIONING THE ADMINISTRATION OF ELECTIONS IN SADC

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The management of the electoral process influences the way in which the rest of the world views a country's commitment to democracy and, more importantly, the extent to which a country's voters accord legitimacy to their government. The level of responsibility that rests with election administrators and their staff is, therefore, considerable. A good legal and institutional framework for the administration of elections is a vital first step in ensuring free and fair elections.¹ The organisation and execution of elections require an overall regulatory system, covering everything from the delimitation of constituencies, census, registration, the implicit or explicit codes of conduct among the contenders, to the voting process itself.

Two variables shape Electoral Commissions' health and the contribution they make to deepen democracy: the effectiveness with which they organise elections and help people to make informed choices (the active and responsible participation of ordinary people in the democratic process is central to the development of a healthy democracy) and the extent to which they can secure their independence, especially vis a vis the ruling party. On both counts, the SADC balance sheet is mixed.

In countries like Botswana, South Africa and Mauritius, Electoral Commissions have the necessary financial, logistic and human resources and enjoy relative independence in the administration of elections. In other countries Commissions find the going much tougher with reports of the executive interference in their administration. Two major factors influence this state of affairs. Firstly, the legal framework of elections administration lacks consensus on its content. The legal framework for the electoral process is contained in different instruments -the Constitution, the Electoral Act and the Electoral Commission Act - as well as in subsidiary legislation and regulations². But, most SADC countries still have and operate under constitutions and electoral systems inherited from the departing colonialists in the 1960s. Practical experience in electoral processes proves the necessity to leave some margin for the adaptation and interpretation of the relevant administrative regulations and the decisions of the electoral authority. There is, however, in most SADC countries no coherent legal framework to cover this work either in the Electoral Act or the Electoral Commission Act. It would be helpful if, without unnecessarily circumscribing the role of the Commission, the specific responsibilities in these areas were more clearly articulated.³ In SADC most constitutions give tremendous power to presidents. Ruling parties have been reluctant to introduce changes that are being asked for by the people.

¹ The section on Legislative Framework and the Electoral Management Bodies relies heavily on the International IDEA, *EPIC Research Instrument: Election Process Information Collection*, as well as the Administration and Cost of Elections, *ACE Project: The User's Guide to the ACE Project Electronic Resources* Version 0.1 January 2000.

² The Electoral Commission is empowered to make regulations in regard to the electoral process.

³ 'The Electoral Commission should be required by law to provide for a satisfactory and adequately funded voter education programme that helps voters to be acquainted with the voting procedures and other aspects of civil awareness.' SADC Parliamentary Forum, *Norms_and_Standards_for_Elections_in_the_SADC_Region*, Windhoek, The Forum, March 2001.

Secondly, the budgetary constraints that Commissions face do not help them to put in place a credible election operation. In most cases the Electoral Commissions' budget is decided upon by its respective government. Since there is just a fine line that distinguishes government from ruling party in this part of the world, budget control by the executive gives the ruling party room to influence the work of the Commission. How a Commission is funded could impinge both on its independence and its ability to carry out its mandate.⁴

Another issue of great concern is how the commissioners are nominated. In most countries it is the President's prerogative to nominate and fire commissioners. This approach has been criticised for opening up a wide scope for patronage and nepotism. Concerns have been expressed that suggest Commissions are not sufficiently insulated from the Executive to guarantee their autonomy, let alone their independence. This exposes the Commissions to interference from the executive in the administration of elections.

The lack of independence of Commissions has prompted a new assertiveness. Civil society is becoming increasingly vocal about the perceived bias of the Commissions in favor of ruling parties. It is therefore not surprising that many elections fail because one party interprets a 'technical irregularity' as politically inspired by its opponents, whereas it might be owing to administrative failures. Indeed every error in the administration of election is not politically motivated as Robert A. Pastor has argued, 'In a poor country with low levels of education, the administration of an election is no simple matter, and accidents occur at the intersection between political suspicion and technical incapacity.' The question remains how do we disentangle the technical from the political and pursue each more effectively. With the same concern Staffan Darnolf examined ways in which the region's Commissions could be made more effective. It covers a six-point strategy: identifying and prioritising the goals of the Election Administration; mapping out the Election Administration's current activities; analysing discrepancies between goals and achievements; suggestions in how cost-effectiveness can be attained; implementing agreed action; and evaluation. The legitimacy, credibility and transparency of the electoral process are further enhanced through consultation between the Commissions and electoral stakeholders, such as political parties, the media and civil society. While this is increasingly happening in the SADC, political parties continue to complain of lack of transparency in the work of the Commissions. The lack of transparency has created a general perception that ruling parties, in connivance with some Commissioners, are always involved in efforts to manipulate the election. The behaviour of the Electoral Commissions with the responsibility of organising elections creates doubt over the assertions that most electoral systems in the region were impeccable and watertight.⁵

A further source of concern is the redistribution of responsibility within the Commission between commissioners and the technical team. There is a lack of clarity about the respective powers and responsibilities of Commissioners and the Chief Executive. The fact that the Commissioners are fulltime appointments means that they inevitably get involved in the day-to-day operational activities of the organisation. This can confuse lines of responsibility and authority.

⁴ Andrea Schedler, Larry Diamond and Mark F Plattner argue that the EMB should be accountable to the National Assembly or Parliament through, for example, the Public Accounts Committee rather than a ministry and should be required to report on its activities to the National Legislature annually. It is also recommended that a multiparty committee of the National Assembly be constituted to administer and process nomination and dismissal. The appointment and dismissal procedures should be clearly articulated in the electoral laws and should be undertaken in a manner that is impartial, accountable and transparent.

⁵ Most EC in the region maintain that it is extremely difficult to rig elections in their countries.

Furthermore, the majority of the publications on electoral administration stress that governments must adequately fund the Commissions in order to deliver credible and legitimate elections. Commissions should therefore promote financial sustainability and cost-effective management of elections. This raises the question of what would be the perfect mechanism for funding Electoral Commissions?

In addition, issues around the structure and funding of Electoral Commissions, their role in voter education and the enforcement of code of conduct for political parties and media access are increasingly being raised in an effort to ensure efficient, effective, consensual and financially sustainable administration of elections. This simply means that responsibilities of Commissions need to be broadly defined in the Constitution. The electoral process is much more than just administering the mechanics of voting. The primary objective of the Commission should be to protect and strengthen multiparty democracy in order to cultivate a truly pluralistic, open, and tolerant political culture.