



CALL FOR EXPRESSION OF INTEREST

SHORT-TERM CONSULTANCY TO DRAFT THE SADC MODEL LAW ON ELECTIONS

TERMS OF REFERENCE (TOR)

Title: SADC Model Law on Elections

Project Purpose: Support stakeholders in SADC Member States in domesticating and implementing electoral principles, guidelines and obligations stipulated in the SADC Principles and Guidelines Governing Democratic Elections and other electoral instruments

Project Location: SADC Member States

Project Duration: 45 days

1. OBJECTIVE

The objective of the terms of reference is to guide the drafting of a comprehensive SADC Model Law on Elections for use by stakeholders in SADC Member States in domesticating and implementing electoral principles, guidelines and obligations stipulated in the SADC Principles and Guidelines Governing Democratic Elections and other electoral instruments.

2. BACKGROUND

The SADC Parliamentary Forum (SADC PF) was established in 1996 as a regional body of the National Parliaments of SADC Member States and its establishment was approved by the SADC Summit of Heads of State and Government in accordance with Article 9(2) of the Treaty¹ on 8th September 1997. The ultimate goal of establishing SADC PF was to establish a Regional Parliamentary Framework for “dialogue on issues of regional interest and concern.”²

The approval of the establishment of SADC PF confirmed the need to provide a parliamentary mechanism, at the regional level, to accelerate the process of establishing the enabling legislative, regulatory, policy, institutional and democratic environment for regional integration in the Southern African Region. It was observed that without adequate information, knowledge and relevant competencies on SADC issues both at national and regional levels, Parliamentarians and National Parliaments could not effectively execute on their mandate, in particular the legislative role for the benefit of the Region and its peoples.

The SADC PF’s mandate therefore, encompasses developing prototype instruments, including legislation, for parliamentarians and other stakeholders at national level, to assist them in

¹ P.18, Southern African Development Community, Record of Summit, 8 September 1997, Blantyre, Malawi

² *Ibid.* p. 17

executing public policy. One such method is through the development of Model laws. Regional Model Legislation provides a “template” offering the highest standards of norms that national legislators should strive to emulate or duplicate that could be used in various jurisdictions that face similar problems.

3. SADC MODEL LAW ON ELECTIONS

The Plenary Assembly of the SADC Parliamentary Forum, during its 39th Session that was held in Ezulwini, Swaziland, from 28 May to 7 June 2016, mandated the Democracy and Governance Programme, under the auspices of the Standing Committee on Democratisation, Governance and Human Rights, to expedite the development of a Model Law on Electoral Processes in the SADC Region in order to assist SADC Member States in the domestication and implementation of the various principles, guidelines and obligations on democratic elections, in particular those contained in the revised *SADC Principles and Guidelines Governing Democratic Elections*.

The Plenary Assembly underscored that the model law should cover all elements of the electoral cycle and electoral processes. It also emphasised the need for the process to be consultative and inclusive, by involving all the key stakeholders, in particular SADC Electoral Advisory Council (SEAC) and Electoral Commissions Forum of SADC (ECF-SADC).

4. CONTEXT / REGIONAL OVERVIEW

At a time when there was no document with guidelines on the conduct and management of elections on the African Continent in general and SADC Region in particular, the SADC Parliamentary Forum was the first organisation on the African Continent to develop the *Norms and Standards for Elections in the SADC Region* which was adopted on 25 March 2001. Since then, several other election instruments were adopted by various organisations, including SADC and the African Union (AU), which are aimed at strengthening the conduct and management of democratic elections. These include the following:

- i) SADC Principles and Guidelines for Democratic Elections of 2004 by SADC Summit;
- ii) SADC Protocol on Gender and Development of 2008 by SADC Summit;
- iii) Principles for Election Management, Monitoring, and Observation in the SADC Region (PEMMO) of 2003 by Electoral Commissions Forum of SADC (ECF-SADC) and Electoral Institute for Sustainable Democracy in Africa (EISA);
- iv) The African Union Declaration on the Principles Governing Democratic Elections in Africa of 2002;
- v) African Charter on Democracy, Elections and Governance of 2007 by the African Union;
- vi) Benchmarks for Democratic Legislatures in Southern Africa of 2010 by SADC PF; and
- vii) SADC PF Benchmarks for Assessing Democratic Elections in Southern Africa of 2013.

The development of the above instruments coincided with a growing interest in multi-party politics and regular elections among SADC countries, since the end of apartheid, colonialism, one-party-state era and the cold war. The embracing of open and competitive plural politics among SADC Member States has witnessed the adoption of best practices in the conduct and management of elections.

While the development of various election instruments within SADC was a positive step, the majority of them are not legally binding and therefore non-enforceable. The proliferation of

election instruments also means that there is no harmonised approach amongst stakeholders. It is thus not surprising that there exists a wide gap between policy and practice in this regard. Domestication and implementation of the electoral principles, guidelines and obligations that are contained in the different instruments therefore, remains a major challenge.

The recent review and subsequent adoption of the revised *SADC Principles and Guidelines Governing Democratic Elections* by the Ministerial Committee of the Organ on Politics, Defence and Security Cooperation on 20 July 2015, in Pretoria, South Africa, is a landmark development towards the creation of a unified and binding election instrument in the SADC Region. The new document comprehensively addresses some of the major shortcomings of the 2004 version, including the following: a) provision of mechanism for compliance by Member States, b) procedure for dealing with instances of non-compliance, c) making it obligatory for Member States to invite a SADC Election Observation Mission, d) broadening of the composition of SADC Election Observer Missions to include Parliamentarians and non-state actors, and e) the requirement for SADC countries to undertake participatory and inclusive post-election reviews.

5. OBJECTIVE AND SCOPE OF CONSULTANCY

The objective of this consultancy is to draft a SADC Model Law on Elections that will serve as a yardstick and as an advocacy tool for stakeholders in SADC Member States, in particular Election Management Bodies (EMBs), policy makers, legislative drafters, legislators, political and political parties etc., in the domestication and implementation of electoral principles, guidelines and obligations stipulated in the revised *SADC Principles and Guidelines Governing Democratic Elections* and other electoral instruments.

The SADC Model Law on Elections will cover the entire electoral cycle and capture all the electoral issues, systems, stakeholders and processes in a comprehensive manner. The Model Law will also assist Member States to address all the relevant areas in need of legislative reform without usurping the authority of national legislatures.

6. CONSULTANCY METHODOLOGY

The methodology to be employed will include inter alia:

- i) Desk study (primary and secondary sources) on regional and international best practices on election management;
- ii) Desk review of relevant SADC PF documents on elections such as the 39th SADC PF Plenary Assembly Session Resolution on the Development of the SADC Model Law on Elections, and the Report of the Regional Consultative Meeting on the SADC Model Law on Elections;
- iii) Review both primary and secondary data related to elections and relevant legal instruments with the view of determining their relationship with the development of the SADC Elections Model Law in SADC;
- iv) Desk study of the revised *SADC Principles and Guidelines Governing Democratic Elections* and other regional, continental and international electoral instruments, including the *Norms and Standards for Elections in the SADC Region*, *Benchmarks for Assessing Democratic Elections in Southern Africa*, *SADC Protocol on Gender and Development*, *Principles for Election Management, Monitoring, and Observation in the SADC Region*, *AU Declaration on the Principles Governing Democratic Elections in Africa*, *African Charter on*

Democracy, Elections and Governance, and Benchmarks for Democratic Legislatures in Southern Africa;

- v) Review the existing Election related legislation and frameworks with the aim of establishing their inclusiveness and or exclusiveness in addressing emerging issues in elections in the Model law;
- vi) Prepare an Inception Report outlining the framework and thematic issues for the Model Law for consideration by the SADC PF Technical Working Group on Elections;
- vii) Participating in drafting meetings (telephonic and physical) with various stakeholders, including meetings with Technical Working Group, Legislative drafters, SADC PF Standing Committees, SADC PF Plenary Assembly Session and any other activities pertinent to the development of the Model Law as required;
- viii) Develop a position paper discussing issues relevant to the SADC Model Law on Elections;
- ix) Draft a SADC Model Law on Elections with full commentaries and references;
- x) Incorporating proposals and amendments made during deliberative session;
- xi) Undertake consultations with all relevant stakeholders including civil society, youth etc. through meetings, workshops and other appropriate forums as agreed, some of which may arise in future that might be deemed necessary in the development and formulation of the process; and
- xii) Support the post-adoption engagement in Member States on the Model Law through presentation as requested.

7. EXPECTED OUTPUTS / DELIVERABLES

The consultant is expected to produce the following deliverables:

- i) An Inception Report;
- ii) An annotated outline of the Model Law;
- iii) A position paper;
- iv) A comprehensive draft SADC Model Law on Elections with references.

8. TIMELINES

The assignment is for a period of 45 days as follows:

ACTIVITY /MILESTONE	TIMEFRAME
i) Desk review of key primary and secondary documents	5 days
ii) Inception Report	2 days
iii) Drafting of the comprehensive Draft SADC Model Law on Elections	35 days
iv) Position Paper on SADC Model Law on Elections	2 days
v) Presentation of the Draft SADC Model Law on Elections to the Technical Working Group	1 day

9. REQUIRED SKILLS, EXPERIENCE AND QUALIFICATIONS

- i) Postgraduate degree in Political Science, International Relations, International Law, Management or related field;
- ii) Over 15 years' experience in legislative drafting within the SADC jurisdiction;
- iii) Substantial experience in election management and/or observation;
- iv) Familiarity with the political and socio-economic issues in the SADC Region;

- v) Demonstrable knowledge of election instruments including the revised SADC Principles and Guidelines Governing Democratic Elections, Norms and Standards for Elections in the SADC Region, Benchmarks for Assessing Democratic Elections in Southern Africa and *SADC Protocol on Gender and Development*, as well as other normative frameworks governing elections, including the African Union Charter on Democracy, Elections and Governance, and other AU and UN instruments governing elections;
- vi) Demonstrable knowledge of the electoral systems in SADC Member States;
- vii) Strong writing, training, facilitation and cross-cultural communication skills; and
- viii) Proven track record of work with electoral stakeholders in the SADC region including Electoral Management Bodies (EMBs);

10. REPORTING ARRANGEMENTS

The Consultant will report to the Secretary General of the SADC Parliamentary Forum through SADC PF Technical Working Group, led by Mr Sheuneni Kurasha, Programme Manager for Democracy and Governance at the SADC PF.

11. COPYRIGHT

Copyright for the work produced as part of this consultancy shall be vested in the SADC PF Secretariat. All acts covered by the copyright shall be taken jointly by the SADC PF Secretariat and these partner organisations except that either party may itself reproduce or publish the text or, after consultation with the other party, a revised version of the text. While the individual(s) or institution(s) ultimately contracted to conduct the consultancy mentioned in the Terms of Reference will be acknowledged, that individual or institution shall not have any copyright claim with regard to the any document produced as part of the consultancy.

12. COMPENSATION

Estimated maximum 45 days of work at an all-inclusive daily rate commensurate with experience of selected consultant will be paid by the SADC PF. Incidentals (e.g. long distance phone charges, internet costs, printing, etc.) will not be reimbursed by SADC PF. Payments in relation to this work will be made in several parts upon satisfactory delivery of intermediary products.

13. DEADLINE AND CONTACT DETAILS

Submissions for expression of interest must be received by Tuesday 18 April 2017. Interested candidates should send their CVs, fee structure and availability to: skurasha@sadcpf.org / kurashas@gmail.com and copy ymungandi@sadcpf.org and indicate "SADC Model Law on Elections Consultancy" in the email's subject line.