



PRELIMINARY STATEMENT

BY

**HONOURABLE JOSEPH MALANJI, M.P., MINISTER OF
FOREIGN AFFAIRS OF THE REPUBLIC OF ZAMBIA**

AND

HEAD OF THE SADC ELECTORAL OBSERVATION MISSION (SEOM)

TO

THE 2018 PRESIDENTIAL ELECTION

IN

THE REPUBLIC OF MADAGASCAR

ANTANANARIVO, 9 NOVEMBER 2018

His Excellency President Joaquim Chissano, Former President of the Republic of Mozambique and SADC Special Envoy to the Republic of Madagascar;

His Excellency Ramtane Lamamra, AU Special Envoy to the Republic of Madagascar and Head of the African Union Election Observation Mission (AUEOM);

His Excellency Philippe Courard, President of the Parliament of the Federation of Wallonie Bruxelles, Head of the La Francophonie Election Observation Mission;

Ms Soraya Martinez, Representative of the European Union Electoral Observation Mission;

Mr. Max Boqwana Head of the SADC Lawyers Association Election Observation Mission to the Republic of Madagascar;

His Excellency, Professor Abdoulaye Bathily, Special Advisor of the UN Secretary General to the Republic of Madagascar;

Chairperson and Members of the National Independent Electoral Commission of the Republic of Madagascar;

Distinguished government officials here present;

All Heads of International Electoral Observation Missions here present;

Your Excellencies, Heads and Representatives of the Diplomatic Missions accredited to the Republic of Madagascar,

Distinguished Members of the SADC Organ Troika;

Esteemed Members of the SADC Electoral Advisory Council;

Mr Jorge Cardoso, Director of the Organ on Politics, Defence and Security Affairs;

Leaders and Representatives of Political Parties;

SADC Election Observers;

Representatives of International and Local Election Observers;

Religious Leaders and Members of the Civil Society;

Members of the media;

Distinguished Guests;

Ladies and Gentlemen.

I. INTRODUCTION

On behalf of His Excellency Mr. Edgar Chagwa Lungu, President of the Republic of Zambia and the Chairperson of the SADC Organ on Politics, Defense and Security Cooperation it is my honour to welcome you to this event. In accordance with the established practice to observe the national elections in Member States and following an invitation extended by the Government of the Republic of Madagascar, H.E. President Lungu constituted the SADC Electoral Observation Mission (SEOM) to observe the Presidential Election in the Republic of Madagascar,

Furthermore, the Chairperson appointed me in my capacity as the Chairperson of the Ministerial Committee of the Organ (MCO) to lead the SEOM to the Republic of Madagascar.

The Southern African Development Community Electoral Observation Mission (SEOM) observed the November 2018 Presidential Election in the Republic of Madagascar, with a total of fifty-three (53) observers who were deployed to ten regions of the country. Our Mission engaged the Government of the Republic of Madagascar, the Independent National Electoral Commission (CENI), the Human Rights Commission, the Police, representatives of the media, civil society, youth, political parties, presidential election candidates, local observers, and representatives of regional and international organisations.

As the Head of SEOM, I hereby present the SEOM Preliminary Statement which highlights the observed good practices related to the administration of the Malagasy electoral system, and the conduct of the elections. Our statement also presents areas that require improvement.

II. SUMMARY OF KEY FINDINGS

The SEOM observed the following aspects of good practice:

(i) The Political and Security Environment

The political and security environment before, during, and immediately after polling day was generally peaceful. Campaign events were mostly well attended, and concluded without any major incident.

(ii) The Legal Framework

In addition to the Constitution of the Republic of Madagascar, the 2018 Presidential Election was conducted under the various laws governing the electoral process and system, in particular, the General Laws *Governing the Election of the President*, the Independent National Electoral Commission, and the General Regime for Elections and Referenda. The Constitution emphasises the sovereignty of the people, the universality of suffrage, the equality of suffrage; the investiture, the mandate and the organisation of State Institutions. The Constitution also guarantees the status of political parties, freedom to stand as a candidate in elections, the independence of the electoral administration, and the periodicity of elections, and the application of the laws governing elections.

The Mission noted that there have been substantive improvements to the electoral system, and these also make reference to the guiding principles derived from good practices and international standards. Further, the improvements incorporate the requirements contained in many international instruments of different scope, including the SADC Principles & Guidelines Governing the Conduct of Democratic Elections.

(iii) Management of the Electoral Process

The Mission noted that the Constitution and the relevant legislation makes provision for the establishment of an Independent National Electoral Commission (CENI). The Mission noted the broad composition of the CENI includes members elected by the Bar Association, the Association of Journalists and by Civil Society Organisations working in the field of election monitoring. The Mission also noted that out of the 9 (nine) members of its Permanent Organ, one is appointed by the President of the Republic.

The Mission further noted that political parties and candidates standing in elections enjoy an observer status and may participate in the debates of the CENI in an advisory capacity as members of the Non-Permanent Organ of the CENI.

However, the SEOM received complaints from several stakeholders that the electoral management body is not impartial.

(a) Requirement for incumbents to step down for election purposes

The Mission observed that the incumbent President is required to resign 60 days before a presidential election if the incumbent desires to be a candidate in that election. Most of the stakeholders consulted by the Mission advised that they supported this provision as it removes the unfair advantage of incumbency, and they viewed the requirement as an example of a best practice that should be emulated. In this regard, the Mission commends the people of Madagascar for adopting this measure.

(b) Prohibition of the use of public resources

The Mission noted that the electoral framework specifically prohibits the abuse by candidates of public resources (for example, public facilities and motor vehicles) for electoral purposes. The use of public resources as well as the prerogatives of public authority for the purpose of electoral propaganda also entails the cancellation of any votes obtained by the candidate in question and attracts a prison sentence of at least two years.

(c) The Voter Registration Process

The SEOM received complaints from a number of stakeholders, particularly political parties, that the electoral list was unreliable and was full of errors. In its consultations with CENI, the Mission was advised that all the necessary steps had been taken to create a credible electoral list, and an audit conducted by the International Organisation of La Francophonie had found the electoral list to be within acceptable standard.

In addition, the Mission noted a number of good practices associated with the manner with which the electoral list is compiled, including:

- (i) Local Voter Registration Commissions are responsible for voter registration.
- (ii) Political parties, non-governmental organizations, associations or groups approved for civic education and election observation are eligible to sit as observers on these Commissions.
- (iii) Grievances concerning voter registration, such as omissions, deletions, duplications, etc. are filed with the Commissions, or if unsuccessful, with the Court of First Instance of the jurisdiction concerned.

- (iv) Objections to the improper registration of voters are not limited to individuals, the law administrative and judicial authorities, non-governmental organisations, associations or groups approved for civic education and election observation, and political parties to raise such objections.
- (v) More significantly, all cases in electoral matters are registered free of charge.

The above examples are positive provisions which enhance the transparency and credibility of the voters' register.

(d) Financing of the election campaign

A number of stakeholders, including some candidates raised allegations that some candidates had access to unexplained large amounts of money and resources that they were using to lure voters.

In this regard, the Mission observed that there are provisions in the General Regime for Elections requiring transparency and accountability in election campaign financing, as well as for the establishment of the Political Financing Control Commission. The Mission stresses that the implementation of these positive provisions would enhance the transparency of the financing of election campaigns.

(e) The Role of the Public/State Media

The Mission observed that all candidates were provided with the standard prime time coverage on public media.

(f) Role of the Military

The Mission noted the professional role that the military and other security agencies have played in this election. In particular, the security services assured the Mission that they had taken lessons from the 2009-2013 political crises. As such they were no longer involved in political activities and they were now acting in accordance with the Constitution. This is a significant shift from the pre-2013 political era.

The Mission further noted that the security forces also provided logistical support to the CENI with respect to the security and transportation of election materials.

III. OBSERVATIONS ON ELECTION DAY

On polling day the Mission observed the following at the Polling Stations that the Mission visited:

- (i) The atmosphere was orderly, calm and peaceful at all Polling Stations;
- (ii) Generally no major incidences of concern were observed;
- (iii) 80% of the polling stations opened on time, the remainder opened 30 minutes or more late due to the late delivery of materials, and administrative glitches. This eventually did not negatively affect the voting;
- (iv) 90% of the polling stations closed on time, the remainder closed after 1700hrs due to the need to process voters who were still in the queue;
- (v) Generally, opening and closing procedures were followed;
- (vi) Voters exercised their right to a secret vote, the disabled, elderly and pregnant were given priority and assistance;
- (vii) A sizeable number of women employed as polling staff and polling agents was observed;
- (viii) Local observers were present at some of the polling stations;
- (ix) Uniformed Police Officers were present at most polling stations, and they conducted themselves in a professional manner which did not interfere with the process both within and around the polling stations; and
- (x) After the close of polling, the process of counting of votes began immediately at all polling stations, and results were displayed at the polling stations.

IV. AREAS OF THE ELECTORAL PROCESS THAT REQUIRE IMPROVEMENT

Our Mission also observed the following areas of the electoral process and system that require improvement:

(a) Voter registration process

Revisions (for example, registrations, deletions, additions) to the voters' register are limited to the period between 1st December- 15th May each year. In reality the formalities for the revisions are required to be filed by 15 February of each year, hence citizens have just two-and-half months in a year to secure their status as voters. This limits the opportunities for voters to register or inspect the voters' register.

The Mission noted that it was apparent that a number of potential voters discovered their status to vote during the election campaign period, which was too late for any remedial action to be taken.

(b) Voter education

The Mission noted that a number of legal developments contributed to the collective body of information that voters require to know in order to exercise their political rights. These developments relate to the adoption of the new electoral law in April 2018 and the subsequent litigation, and decisions of the High Constitutional Court (HCC). In this regard the Mission noted that, although CENI was constrained with respect to time, a lot more could have been done to design and deliver voter education throughout the country, particularly with respect to the provisions of the new electoral laws and the import of the decisions of the HCC.

(c) Electoral administration

The Mission observed that in some polling stations the state of readiness on election-eve was not apparent. Late on 6th November 2018, some polling stations (in Diana, Atsimo Andrefana, Haute Matsiatra regions) had not received voting materials. In Vakinankaratra region, the Mission observed election materials being transported by people on foot. The Mission noted that there is need for CENI to ensure that all polling stations are adequately equipped to receive voters, and election materials are delivered on time.

(d) Non-harmonisation of the Presidential and Legislative Elections

The Law on the General Regime on Elections provides that Presidential and Parliamentary elections must be held on separate dates. The rationale provided is to avoid overlapping election campaigns and corresponding elections. However, the Mission observes that this split of elections has implications on election budgets, logistics, and political stability in particular, for the situation where the President is elected without a parliamentary majority, or the Prime Minister is from a different parliamentary group.

(e) Electoral Code of Conduct

Despite references being made to an Electoral Code of Conduct for Candidates and Political Parties, the Mission noted that there is no such code in place. Instead there is a non-binding Charter that was signed by some, but not all, of the Presidential Candidates.

(f) Electoral Dispute Resolution

The High Constitutional Court has exclusive jurisdiction on any disputes relating to the Presidential and Parliamentary Elections. The Mission notes that there is no Special Electoral Court in Madagascar which could serve to expediently dispense with electoral disputes, when Parliamentary and other elections are held.

(g) Political Parties

The Mission noted that the culture of sustainable political parties is not apparent in Madagascar. Instead, there is a culture of political movements that are personalised around specific individuals. There is therefore a deficit of political institutions and processes with strong and transparent internal democracy. Such institutions are key to sustainable national democracy.

V. RECOMMENDATIONS

In light of the above observations, and considering the issues highlighted by the various stakeholders, the SEOM proposes the following recommendations for the improvement of the electoral process in the Republic of Madagascar:

- (i) Harmonisation of Elections:** The Government to consider revising the legal provisions pertaining to elections in order to

harmonise the Presidential Election with other key elections at national and sub-national levels.

- (ii) **Voter registration:** The Government and CENI are urged to amend the law in order to provide for the continuous registration of voters by permitting such to be done throughout the year, subject to the requirements of suspending the process close to election periods.
- (iii) **Voter education:** CENI and CSOs involved in electoral issues are urged to design and deliver intensified voter education, in particular, regarding the present framework which applies for a limited period within a year, and the procedure for filing complaints about voter registration or the lack of.
- (iv) **Electoral administration:** CENI is urged to ensure that election materials are delivered within the stipulated time to enable voting to take place without delays on Election Day.
- (v) **Election Campaign Financing:** The Government is urged to ensure that the rules on election campaign finances are adequately enforced, in particular, by enhancing the operations of the Political Financing Control Commission.
- (vi) **Electoral Code of Conduct:** There is need for the development, adoption and enforcement of An Electoral Code of Conduct for electoral stakeholders, including, candidates, political parties, agents, media and observers. This code of conduct should be made into a legally binding document signing of which would be obligatory for candidates standing for election. The enforcement of the Code of Conduct should be part of CENI's mandate/responsibilities.
- (vii) **Political Parties:** Political movements are urged to develop themselves into strong political institutions such as political parties with clear internal democracy procedures and processes, and move away from the culture of personalised politics.

VI. CONCLUSION

In conclusion, as a Preliminary Statement, the SADC Electoral Observation Mission observed that the 2018 Presidential Election was conducted orderly, professionally and within the requirements of the legal framework of the Republic of Madagascar.

The SEOM commends the CENI, the Government, and the Malagasy people for conducting themselves in an exemplary manner during this election period.

In accordance with the revised *SADC Principles and Guidelines Governing Democratic Elections* (2015) our Final Report will be issued within ninety (90) days of this Preliminary Statement.

Thank you very much

Muito Obrigado

Merci beaucoup

Misaotra tompoko