

Journal of African Elections

Special Issue
The Evolving Role of Elections in Africa

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CONTENTS

Housekeeping notes	v
Introduction	
<i>K J Maphunye</i>	1
Electoral Competition in Botswana: Is the Playing Field Level?	
<i>D Sebudubudu and B Maripe</i>	6
Stay in Power Whatever it Takes: Fraud and Repression in the 2011 Elections in the Democratic Republic of Congo	
<i>M E Mavungu</i>	25
Understanding Election-Related Violence in Africa: Patterns, Causes, Consequences and a Framework for Preventive Action	
<i>S Koko</i>	51
Old Wine in New Skins: Kenya's 2013 Elections and the Triumph of the <i>Ancien Régime</i>	
<i>W Shilaho</i>	89
Gender Dynamics in Elections in Africa	
<i>E Kibuka-Sebitosi</i>	120
'Why Participate in Elections if We're not Properly Represented?: Women's Participation and Representation in SADC Countries	
<i>K J Maphunye</i>	142
Revision and Reform of an Electoral Act in a Democratic Environment with Emphasis on Legality and Legitimacy: The Namibian Case	
<i>G Tötemeyer</i>	170
Contents of previous issues	180
Notes for contributors	203

HOUSEKEEPING NOTES

Regular readers of these pages will notice that this is the third issue of the journal to appear in Volume 12. They will know that, in a regular year, the *JAЕ* appears only twice.

This number is devoted to the proceedings of a colloquium held at the University of South Africa in 2013. This arrangement is the result of a series of conversations between ourselves and the incumbent of the WIPHOLD-Brigalia Bam Chair in Electoral Democracy in Africa, Professor Kealeboga J Maphunye, Guest Editor of this issue.

There are important synergies between EISA and the WIPHOLD-Brigalia Bam Chair and this issue can be seen as a conversation between like-minded friends and colleagues. It is the responsibility of the editorial board of the *JAЕ* to ensure the academic integrity of what appears in these pages. So, as is the case with each article that appears in the journal, those that follow have been subjected to the closest academic scrutiny through a peer review process.

Peter Vale
Editor

INTRODUCTION

Kealeboga J Maphunye

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The articles featured in this special edition of the *Journal of African Elections* were presented at the first colloquium of the WIPHOLD-Brigalia Bam Chair in Electoral Democracy in Africa from 29-30 May 2013 at the University of South Africa (Unisa).

The theme of the colloquium, which will be an annual feature of the chair's events, was 'The Evolving Role of Elections in a Democracy in Africa'. It highlighted the value of elections as a component of liberal democracy in Africa's quest for democratisation.

The colloquium coincided with Africa's celebration of the 50th anniversary of the Organisation of African Unity / African Union and its role in promoting change of government through democratic, transparent, free and fair elections in Africa.

Held as Unisa marked its 140th anniversary, the colloquium was inspired by South Africa's preparations for its fourth national and provincial elections, which will also mark the country's 20 years of democracy following the historic 1994 elections. Aimed at initiating meaningful dialogue leading to those elections and beyond, the objectives of the colloquium were:

- to bring together scholars, election officials, policy-makers, members of the election management community and those with keen interest in elections, electoral democracy and the role of elections in Africa's democratisation;
- to share experiences of elections and to strengthen the intersection between quality scholarship and election management best practice for promoting democracy in Africa;
- to highlight critical issues for research, legislative and policy review or amendment and for better election management practices and implementation; and
- to serve as a platform for the cross-pollination of ideas and for sharing conceptual and theoretical frameworks to stimulate excellence in practical election management in Africa.

During the colloquium participants interrogated the nature of Africa's elections and had meaningful discussions about the quality, integrity, fairness and contribution of such elections to what some regard as the era of African renaissance and unification.

A pertinent question asked during the plenary session was: 'Why do we still have violence, political intolerance and election-related skirmishes in Africa if we have the type of brain power and abilities that were reflected in the composition of the colloquium?' This question was tackled in most of the discussions and ten papers were presented, on the following sub-themes:

- Political parties and the promotion of democratic elections in Africa;
- Gender, politics and women's role in a democracy;
- Constitutionalism, election management bodies and the legal framework of elections;
- Contemporary issues relating to elections and electoral democracy;
- and
- Safety and security, peace and observer missions in Africa.

The colloquium benefited from a range of quality presentations by experienced election practitioners and researchers, all of whom examined critically the role of elections in Africa's democratisation trajectory.

Sebudubudu and Maripe analyse Botswana's elections from an unusual, but important, angle. They posit that the electoral process in Botswana belies the popular view that the country is a haven of democracy because even though there have been numerous peaceful elections since the country gained independence in 1966, all were won by one party, the Botswana Democratic Party. Thus, they contend, electoral competition in Botswana is deceptive and the country experiences 'a deficit of competitive elections, a key requisite for the consolidation of democracy'.

This raises contentious points about the quality and depth of Botswana's elections, which, they argue, do not comply with international standards of free and fair elections. In many ways this argument ties in with the view frequently cited in the literature that elections cannot be the sole barometer for measuring the tempo of democracy, especially in Africa. It also corroborates the hypothesis of Kenneth Good (2002) about the fragility of Botswana's liberal democracy.

Mavungu's article on the Democratic Republic of Congo (DRC) focuses on the issue of the disputed 2011 elections, a subject of intense debate among political parties, voters, observers, media and political analysts both in the DRC and globally. Mavungu argues that the elections were expected to be a significant

improvement on those of 2006 but that they were tarnished by grave irregularities and criticised by most observers as lacking credibility.

He further argues that, given the nature and extent of electoral fraud, the 2011 elections were a tragedy which cannot be put down to technical and accidental factors. Furthermore, he adds, there was a systematic and state-sponsored plan to rig the elections in favour of the incumbent president and party, using illegitimate and excessive violence to terrorise any protesters who challenged the fraud.

Mavungu's contention that 'the democratic project in the Congo has experienced a dramatic reversal' is a sad reminder that it might take the DRC a very long time to proceed along the path to democratisation using elections as one of the tools if such blatantly fraudulent practices as those outlined in his article are tolerated in future elections.

Sadiki's article tackles the thorny issue of election-related violence and how it has manifested itself in Africa's political landscape in the past two decades. The article underscores the current interest in election-related violence in Africa, focusing on the patterns, causes and consequences of such violence. It identifies cross-cutting commonalities in different African countries, arguing that a thorough understanding of the patterns and causes of election-related violence in Africa is a point of departure for addressing the problem. It suggests that effective prevention should embrace a multi-level approach, targeting all election stakeholders, especially political leaders, the electoral management body, civil society organisations, the general public and external partners.

Shilaho argues that Kenya's 2013 elections were significant and a test of the institutions created by the 2010 Constitution. He argues that in 2007 Kenya experienced violently disputed elections partly because of weak and dysfunctional institutions that were incapable of arbitrating political disputes impartially. The fact that Uhuru Kenyatta and William Ruto, who were elected in 2013, presented a joint presidential ticket despite having been indicted by the International Criminal Court (ICC) as being among the suspected masterminds of the 2007-8 post-election violence also complicated the situation.

Furthermore, notes Shilaho, the stakes were much higher in 2013 than during any other election in Kenya's independence history. He adds that, surprisingly, factors such as the new Constitution, some judicial reforms, the tribal alliance between the Kikuyu and Kalenjin tribes and the ICC case all ensured that the elections were relatively violence free compared to others held since Kenya's return to multiparty democracy in 1991.

Shilaho contends that the presidential contest was primarily about control of the state by expediently cobbled ethnic alliances of self-styled ethno-regional barons looking for spoliation opportunities. Thus, implementation of the

Constitution, which was intended to secure Kenya's democratisation process, was bound to be opposed by what Shilaho terms the country's oligarchy.

Kibuka-Sebitosi's article examines the critical issue of gender and elections, arguing that the relationship between them has largely been ignored despite the fact that the majority of voters tend to be women, while political leaders and authority figures are mostly men. Tackling the understanding of gender in the African context, Kibuka-Sebitosi analyses the underlying causes of what she calls the 'gender paradox'. Primarily, the article uses a multi- inter- and trans-disciplinary approach, which helps to underscore the fact that the inter-relationship between gender and elections cuts across different disciplinary boundaries.

Kibuka-Sebitosi argues that the reasons for the gender disparity in Africa's elections appear to be deeply embedded in the historical and ideological traditions within the political, economic and social dimensions of Africa's development. Hence, the article concludes with an identification of barriers to entry for women candidates and the relevant strategies for transforming gender inequity in African elections.

Maphunye's article also tackles gender-related issues with regard to elections but focuses on the extent of women's participation and representation in the politics of Southern African Development Community (SADC) countries. It argues that increased democratisation in the sub-region might imply that gender equality in SADC countries' politics is irrelevant but that women's political participation and representation remain controversial owing to gender stereotypes, rhetoric, tokenism and patriarchy.

Critically examining the political processes of SADC countries, specifically elections, gender and women's role in a democracy, Maphunye acknowledges progressive legislation and some 'successes' in a few countries, but contends that the situation of women in the politics of these countries remains unsatisfactory and requires political will and collective action to ensure substantive participation and representation in governance processes. The article argues that much more effort needs to be made to understand the hurdles women face in politics, especially political party rhetoric and patriarchy.

The article concludes by revisiting the debates over the introduction of a women's quota in political parties to improve participation and representation and recommends measures for empowering women candidates and political party members and urging women to show more interest in politics, particularly elections.

Töttemeyer's article, written from a practitioner's perspective, focuses on the revision and reform of Namibia's Electoral Act (Act No 24 of 1992). Töttemeyer states that this reform was undertaken through consultations with stakeholders at

public meetings countrywide. Through this process recommendations were made about how the country's electoral law could be improved. The article explains that electoral revision implies a re-examination of the law within the context of democracy and aims to discover and rectify errors and shortcomings.

Tötemeyer argues that electoral revision achieves reform and that the two concepts are interlinked as they both aim to strengthen the qualities of electoral legislation. Accordingly, he suggests that efficiency and the public's wishes and expectations must be taken into consideration in such a process, which must include attending to the administrative and managerial task of running elections and the normative character of an electoral process.

He identifies a number of principles related to the character of electoral justice, adding that such principles should particularly be pursued by the electoral bodies responsible for conducting elections in a democratic environment.

In conclusion, participants in the 2013 colloquium concurred that close collaboration and interaction among the different sectors that work in the field of elections, as represented at the colloquium, should be sustained. This should entail further research into matters related to African elections as this will help to sharpen the teaching and supervision of university and higher education students who are interested in studying and working in the area of elections.

Most important of all, a colloquium such as this should also enable Africans to enhance capacity building for African election management officials, especially through modules such as Unisa's Management of Democratic Elections in Africa, a home-grown attempt to close the current gaps in election management, scholarship and policy in Africa.

Finally, we acknowledge the assistance of many scholars, election practitioners and all participants, especially Prof Mogobe Ramose (Unisa), who helped with the internal editing of the articles in this Special Edition.

— REFERENCE —

- Good, K. 2002. 'The State and Extreme Poverty in Botswana: The San and Destitutes'. *Journal of Modern African Studies* 37(2).

ELECTORAL COMPETITION IN BOTSWANA

Is the Playing Field Level?

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ABSTRACT

The central thesis of this article is that the electoral process in Botswana belies the oft-cited claim that the country is a haven of democracy. Botswana has held ten successive elections since 1965, yet the same party, the Botswana Democratic Party (BDP), has been returned to power without fail. At a glance, and taking these elections into consideration, Botswana would appear to be an extraordinary country in the African context – one where democracy is in the process of consolidation. Far from it. A closer assessment shows that Botswana's electoral competition is deceptive and that there is a deficit of competitive elections, a key requisite for the consolidation of democracy. The article examines the factors that contribute to the flawed electoral competition and concludes that the country's electoral process does not satisfy international standards of free and fair elections.

INTRODUCTION

Since the term democracy was first used, in the fifth century BC (Holden 1993), unending convoluted debates about its definition have preoccupied scholars, practitioners and students of politics. What is evident from the literature is that there is no one satisfactory or acceptable definition of democracy. This remains a puzzle, if not a paradox, as there has been no unanimity in defining it (Morlino 2012; Economist Intelligence Unit – EIU 2010).

This article makes no attempt to enter that minefield. Although the definition of democracy remains vague and disputed (Morlino 2012; EIU 2010), political

scientists have attempted to proffer what they consider a 'minimal' definition of democracy, outlining certain observable topographies as crucial for a country to be regarded as a democracy (Morlino 2012). These elements are: universal suffrage, competitive and regular free and fair elections, more than one serious political party and various and alternative sources of information (Diamond & Morlino 2005; Morlino 2012, p 32).

Despite the lack of a clear definition, what is evident is that democracy 'has become the only game in town and is no longer challenged as such' (Morlino 2012, p 25). This echoes the concept of democracy as the rule or government 'of the people, by the people, for the people' (Oyugi & Gitonga 1987). It is worth noting, in summary, the words of Shivji (1989):

It is clear ... that the conception of democratic government here is largely based on the liberal democratic view of the Hobbesian individual participating in the affairs of his/her government through periodic elections to choose representatives who then constitute the government and a legislative body at the level of the state.

Thus, in modern political science discourse and practice, elections are considered the very tool by which individuals participate in the constitution of their government. In sub-Saharan Africa, the EIU (2010, 27) observed, although 'elections have become a normal occurrence', 'only in five countries in the region [were] the elections judged to be free and fair'. Botswana, which is the focus of this article, is among those five countries. The other four were Cape Verde, Ghana, Mauritius and South Africa.

Yet the EIU regards Botswana as one of eight countries considered to be 'flawed democracies', with Mauritius the only 'full democracy' in sub-Saharan Africa. This presents something of a paradox as these two positions are diametrically opposed, especially when expressed by the same source. On the one hand the EIU has adjudged elections in Botswana to be free and fair; on the other, it regards Botswana as a flawed democracy.

Although democracy is not measured solely by whether elections are free and fair, our position is that the freeness and fairness of elections is one of the necessary conditions for assessing the existence or absence of democracy. This article examines the factors that make Botswana's electoral competition flawed. It is these factors that the ruling Botswana Democratic Party (BDP) has used as a *self-preservation or protectionist tool*.

The article seeks to dispel the oft-cited view that Botswana is a paragon or the epitome of democracy in Africa and, to some extent, beyond.

THE LEGAL CONTEXT OF ELECTIONS IN BOTSWANA

Botswana, according to its Constitution (s 1) is a sovereign republic. This means that ascent to political office is determined solely by the will of the people through chosen representatives and is based on the equal opportunity principle, which, in turn, demands free competition.

The Constitution and the Electoral Act are the primary legislative bases for conducting elections in the country. The Constitution (s 67) provides for the franchise and lays down conditions for the exercise of the right to vote. Apart from the broad requirement that the Independent Electoral Commission is responsible for ensuring that elections are conducted freely and fairly (s 65A (12) (c)), the Constitution lays down no conditions for the elections being 'free and fair'.

The Electoral Act, which is the legislative vehicle for the administration of the constitutional right to vote, *inter alia* re-emphasises the conditions for the exercise of the right to vote and outlines the procedure for the administration of elections. Like the Constitution it does not contain the phrase 'free and fair', although, as noted below, some of the requirements it lays down suggest that elections must be free and fair.

Similarly, international instruments and other policy documents specifically require elections to be free and fair, without necessarily defining the concept. The Universal Declaration of Human Rights (UDHR, Article 21) declares:

Everyone has the right to take part in the government of his country directly or through *freely* chosen representatives ... The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent *free* voting procedures.

As the declaration was a statement of intent and general policy among members of the international community it did not, at least at the time it was adopted, have the necessary legal force. However, its principles have now been incorporated in various legal instruments and treaties which have binding force, and it is now generally accepted that it is binding as a matter of customary international law (Akehurst 1984).

The two most important instruments are the International Covenant on Civil and Political Rights (ICCPR 1966), which adopts Article 21 of the UDHR at Article 25, and The African Charter on Human and Peoples' Rights (1981), which adopts Article 21 of the UDHR at Article 13. Botswana is a party to both these treaties and is thus legally bound to ensure that the obligations they impose are

observed and implemented. Thus, although there is no express requirement in the country's domestic legal instruments for free and fair elections, Botswana is still bound to observe free and fair elections on the basis of its treaty obligations.

REQUIREMENTS FOR A FREE AND FAIR ELECTION

Although free and fair elections are desirable, no one has come up with a foolproof definition of what they actually entail.

Elklit & Svensson (1997), while admitting the difficulty, or impossibility, of establishing precise guidelines, opine nonetheless that some analytical distinctions are possible. For them, the fulfilment of the most common criteria (eg, greater political competition and participation) is a matter of degree. Elklit & Reynolds (2005) believe one of the foremost issues to grapple with in any attempt to measure or establish the freeness and fairness of an election is the location of the boundary when it comes to identifying relevant issues such as questions of access to the public media, delimitation of boundaries, party funding and candidate selection, among others. We are not attempting to be comprehensive in our analysis but will seek to establish what we believe are the important elements in achieving a free and fair election.

The concept of an election alone presupposes the exercise of a voluntary and free choice without compulsion or other forms of influence denigrated by law. Fairness, on the other hand, seems to import the notion of equality of opportunity and the equalisation of the 'battleground', so to speak, in such a way that none of the contestants is unduly advantaged at the expense of others. In addition, it must eschew the possibility of loss of confidence in the electoral system.

In other words, the concept of fairness is both subjective and objective. It is subjective in the sense that it depends in part on the degree of confidence of the individual in the system, determined on the basis of his or her personal observations and on the appraisal of the entire exercise. The question is: are individuals who observe the system and participate in the process as voters satisfied that the result has not been manipulated and that it represents a true picture of the people's preferences?

The concept is objective in that it depends on the appraisal of a variety of factors which are generally believed to be the basic minimum requirements for a free and fair election, some of which are required by law, others by practices that have evolved over many years. It does not depend on individual preferences as such. The question here is: does the electoral process satisfy the general minimum expected standards for a free and fair election? To this end, it has been somewhat difficult for writers on the subject to coin a definition of a free and fair election, instead they sketch what are believed to be the main elements of the

concept (Tshosa 1994; Elklit & Svensson 1997; Nsereko 2002; Elklit & Reynolds 2005; Dingake 2011). What does emerge, though, is that fairness is the sum total of several factors that need to be in place in the period before, during and after elections.

What, then, are those elements? As a start, the Inter-Parliamentary Union's Declaration on Criteria for Free and Fair Elections (Article 1) provides: 'In any State the authority of the government can only derive from the will of the people as expressed in genuine, free and fair elections held at regular intervals on the basis of universal, equal and secret suffrage.'

The Preamble to the Declaration reaffirms the principles laid down in the UDHR and the ICCPR. However, it has gone beyond these two covenants in that it determines, in some fashion, the conditions for free and fair elections. Firstly, it declares that the elections must be genuine. Obviously an election which is, to all intents and purposes, a sham does not pass the test in the definition. This would be an election, for example, where there is only one candidate and the other potential candidates have been disbarred or otherwise disqualified on the basis of considerations set out by the incumbent, or generally where the circumstances are such as to suggest that there will only be one result: victory in favour of a particular candidate.

In such a situation the only purpose of an election is the legitimisation in power of a candidate whose victory is a certainty. In sum, a genuine election is one that must offer the possibility of a change of government, however remote the chance may be. Secondly, elections must be held at regular intervals. These intervals can only be regular if they are predetermined in terms of a law that binds everybody, and should not be called willy-nilly or at the convenience of the incumbent, or where a winner then outlaws elections completely.

In saying this we are mindful of certain legal provisions that exist in many countries where elections may be called earlier than the expected date if certain conditions pertain, for example, where Parliament is dissolved, where legislators 'cross' the floor, where the president resigns or dies, and so on. These are developments that are spelt out in law and have been publicised *a priori* and should therefore not necessarily be considered to be a ploy to manipulate the political landscape.

Thirdly, an election must be based on universal and equal suffrage. The voting criteria must apply to all equally and any disqualification must be based on considerations of law and no other. All citizens residing under the government's sphere of influence must be entitled to vote. Disqualifications based on colour, sex or other discriminatory grounds would obviously not pass muster. Again, in this we are mindful of disqualifications based on law, for example, the minimum

voting age, restrictions on non-nationals or prisoners (*Sibanda v Attorney General* 2009) and other disqualifications based on the law.

Fourthly, voting must be done by secret ballot in order to ensure maximum freedom for the exercise of a choice and eliminate pressure, intimidation and other forms of influence. One author presents the scenario of 'queue-voting' in the 1988 general elections in Kenya, where voters were required to queue publicly behind their preferred candidate (Nzomo 1996, p 588). This was not consistent with a free election and showed a blatant disregard for the principle of the secret ballot, which is universally upheld as a fundamental requirement of democratic elections.

In addition to these criteria, one critical requirement for elections to be free and fair is that they are organised, managed and run by a body that is independent and impartial. The reasons are obvious. The notion of 'independence' requires that in the discharge of its responsibilities the body must not be subject to the direction or control of any external force, especially interested parties.

It must only be subject to the demands and dictates of the legal framework that establishes it and the parameters set for its operations. It must not be subject to the directions of outside forces, especially the executive. It must be subject only to the law and, ultimately, to the general public.

The notion of 'impartiality' requires that the body that runs elections must not only be fair but must be seen to be fair. It has a somewhat legal undertone where the fulfilment of the condition does not depend on what, in fact, has happened but on what perceptions arise from the process. It is rooted in public confidence.

Appearances are pivotal to an assessment of the existence or otherwise of impartiality. The election management body is not only the organiser of elections it has statutory responsibilities to fulfil, among them determining the eligibility of voters and of candidates.

Crucially, it is a referee in the sense that it determines compliance with the rules, processes, procedures and the legal requirements for elections. It has the responsibility for counting the vote and determining the outcome.

Fairness on its part is, therefore, a *sine qua non* not only for its existence but for its responsibilities, functions and operations. These requirements are accepted and used internationally.

THE SITUATION IN BOTSWANA

In line with its independence Constitution Botswana has held ten successive multiparty elections since the pre-independence elections in 1965, confirming that it is a sovereign republic in which elections are core to assuming political office.

All ten elections have been won by the ruling BDP. The last elections were held in 2009 and the next are expected in October 2014. It is indisputable that

elections are central to the functioning of a liberal democracy. In relation to Botswana, the holding of successive elections has led scholars to describe the country as the embodiment of democracy, especially in comparison to what has happened elsewhere in Africa.

Some scholars regard Botswana as 'an African Miracle' (Samatar 1999), while others, like Doorenspleet (2003, p 171), contend that it is 'the democratic exception on the continent and can be considered the "senior" democracy in Africa'. Sebudubudu & Osei-Hwedie (2006, p 35) observe that 'Botswana's multiparty democracy has been portrayed by various scholars as a shining example of a living democracy in Africa'. Sebudubudu & Molutsi (2008, p 47) state that Botswana is seen as 'a deviant democracy in Africa'.

Most of the literature on Botswana is complimentary – for most analysts the country is a source of admiration. However, some scholars have questioned Botswana's democratic credentials (see Good 1996, 1997; Taylor 2003 and, more recently, Botlhomilwe, Sebudubudu & Maripe 2011; Sebudubudu & Botlhomilwe 2012). These dissenting views are in the minority, as the dominant view is that Botswana is the repository of democracy.

Even recent surveys suggest that citizens of Botswana are satisfied with the extent of democracy prevailing in the country. Unpublished results of a survey conducted by Afrobarometer in June/July 2012 suggest that 71% of those interviewed were satisfied with Botswana's democracy. A similar survey, conducted in 2008, put satisfaction at 82%.

Of the respondents in the 2012 survey 47% suggested that Botswana was a democracy with minor problems, 15% said it was a democracy with major problems, while 32% indicated that it was a full democracy.

In 2008, 35% had believed the country was a democracy with minor problems, 6% said it was a democracy with major problems while 56% suggested that it was a full democracy and 2% indicated that was not a democracy.

The praise of commentators and the positive survey results have led to a sense of complacency, which has resulted in Botswana declining to open itself up to the African Peer Review Mechanism and other forms of democratic audit of its systems. Fombad & Sebudubudu (2007, p 125) observe that:

Perhaps the greatest problem that appears to be emerging today [in Botswana] is what can be referred to as good governance isolationism and complacency. This stems from a misconceived feeling of self-contentment about consistently being regarded as the least corrupt country in Africa, *a shining example of democracy and good governance* on the continent, and receiving similar flattering descriptions. This probably explains why, while most countries are making efforts to

upgrade their anti-corruption arsenals and adopt new and better tools to promote transparency and good governance, Botswana is quite content to refuse to reform its existing legislation and institutions.

(Emphasis ours)

This sense of complacency extends to the country's electoral competition. Assessed with a critical eye Botswana is far from satisfying international standards for free and fair elections as several factors render its conduct of electoral processes flawed. Among these are: the makeup of the electoral authority, an electoral system that marginalises the opposition, a weak culture of fairness in funding and a lack of equitable access to the media.

The makeup of the electoral authority

In most developing countries elections are organised by independent electoral management bodies – Botswana is no different. However, Botswana's Independent Electoral Commission (IEC) does not have full authority over election matters, for example, it does not determine the date of the elections. Instead, a Writ of Elections for parliamentary elections is issued by the president and one for local elections by the minister of local government.

This makes the president and minister, both of whom are politicians, players and referees in a game in whose outcome they have a clear interest, thus compromising the principle of fairness. It should be highlighted here that the accolades Botswana has received predate the establishment of the IEC, which came into existence in 1997 and has conducted only three of the ten elections that have been held in the country.

Prior to that elections were conducted first by the permanent secretary to the president and later by the supervisor of elections, both of whom were senior civil servants based in the Office of the President. Clearly, it could not be said that the elections were conducted by an independent and impartial body. Questions then do arise as to the genuineness of the accolades showered upon the system in Botswana over time.

The establishment of the IEC, although seen as a response to the criticisms levelled at the fact that elections were run from the Office of the President, has not totally pacified all existing doubts about the independence of the electoral management body. Fombad & Sebudubudu (2007, p 109), for instance, note that:

The IEC is established by 65A(1) of the Constitution, which simply provides that 'there shall be an Independent Electoral Commission'. The Constitution does not expressly guarantee the

institutional independence of the IEC nor does it give any guidance on the attributes that make it independent. It would appear that the drafters of the provision assumed that referring to the institution as 'independent' would guarantee its institutional independence. The failure to guarantee expressly the institutional independence of the IEC is anomalous in that the same Constitution expressly guarantees the independence of other democracy-supporting institutions such as the Delimitation Commission and the Judicial Service Commission. Nagging doubts about the IEC'S independence are reinforced by the fact that it is placed under the Ministry of Presidential Affairs and Public Administration in the Office of the President.

The IEC, which comprises seven members, is appointed by the Judicial Service Commission (JSC). The Head, who is designated as the chairperson, must be a judge of the High Court. One other member must be a legal practitioner and the five remaining members are selected from a list of persons who are fit, proper and impartial and are recommended by the All Party Conference, a meeting of all registered political parties convened from time to time by the Minister of Presidential Affairs and Public Administration (s 65A(3)).

Space does not permit a full discussion of the makeup of the Judicial Service Commission and its impact on the independence and/or impartiality of the IEC. Suffice it to say that it is perceived in some corners not to be independent as it is composed mainly of executive appointees. The All Party Conference is an inadequate guarantor of independence as its convocation depends purely on the exercise of ministerial discretion. The minister may not convene it at all and, indeed, for several years has not done so.

In the absence of a constitutional provision spelling out what happens when the minister has not convened the conference, the government has effectively exercised some residual powers, the source of which is uncertain, in appointing commissioners. This does not augur well for a system that aspires to be described as free and fair.

The commissioners do not serve on a full-time basis and are not salaried officers. The day-to-day affairs of the commission are run by a secretary, who is a high-ranking public official and is assisted in his or her duties by other senior officials who are also public servants. The fact that the secretary of the IEC is appointed by the president, not the commission itself, is another blight on Botswana's electoral process that has made some question the independence of the IEC and has cast a shadow on the credibility of the process.

The IEC maintains that it is an independent institution. Tsie (2003), who is a commissioner, observes that it has 'unlimited independence'. Others see

it differently. Sebudubudu (2007, 2008) doubts its independence. Interestingly, Tsie (2008) concurred with the assertion that the independence of the IEC was suspect owing to the interference in its activities of the permanent secretary to the president.

Another complaint is that the senior officials of the IEC, being civil servants, are subject to the disciplinary machinery of the executive, an interested party in the running of elections, and may, therefore, not claim any independence given the provision in section 27 of the Public Service Act on insubordination and failure to obey lawful instructions of the employer. This, too, compromises the fairness of the electoral process, as it is irrefutable that the independence of an electoral authority is of paramount importance for an outcome to be acceptable to all.

An electoral system that marginalises the opposition

It is evident from the literature that 'electoral outcomes are largely determined by the electoral system' (Osei-Hwedie & Sebudubudu 2005, p 30). Botswana has maintained the first-past-the-post (FPTP) electoral system since its first election in 1965, and the ruling BDP has resisted opposition calls for reform it. It is not difficult to find an answer for the BDP's reluctance to change the system to one that is more accommodating.

FPTP has largely benefited the ruling party as it marginalises opposition parties by awarding a simple majority winner a high percentage of seats, even if it receives a reduced popular vote. By doing so, 'the electoral system over-represents the governing BDP, [and] under-represents the fragmented opposition ...' (Elklit & Reynolds 2002, p 104). For instance, in 2009 the ruling BDP won 54% of the popular vote and 79% of the seats in Parliament.

An uneven playing field

The notion of fair contest pervades all competitions. It is even required in the worst form of contest – war. From time immemorial no war was legal unless it had been declared. In business, there are rules about fair competition, mostly embodied in competition laws; in sport rules are embodied in various sports codes; and in virtually every vocation or discipline there are rules that outlaw 'unfair competition'.

In politics, too, where elections are the epitome of the tussle for leadership, the requirement of fair competition is one that may not be and is not contested. It is required that elections be conducted on an even playing field. Levitsky & Way (2010, p 57), who submit that 'a level playing field should be treated as the defining feature of democracy', define an uneven playing field as 'one in which

incumbent abuse of the state generates such disparities in access to resources, media, or state institutions that opposition parties' ability to organize and compete for national office is seriously impaired'.

Recognising that incumbency carries with it certain advantages that are intrinsically attached to the office itself, the two scholars argue that in certain situations those advantages, which they define as routine incumbent advantages, may affect the quality of democracy but do not necessarily undermine democracy itself.

However, there is another set of advantages, which, in the authors' view, compromises democracy itself. They describe the existence of these factors as the uneven playing field, where, in large measure, there is skewed access to resources and the media.

To distinguish an uneven playing field from routine incumbent advantages, we set a high threshold. We consider a playing field uneven where: 1) state institutions are widely abused for partisan ends; 2) the incumbent party is systematically favoured at the expense of the opposition; and 3) the opposition's ability to organize and compete in elections is seriously handicapped ... The playing field may be uneven in a variety of ways, but three are of particular importance: resource disparities; unequal access to the media; and unequal access to the law.

Levitsky & Way 2010, p 58

Using this formulation of an uneven playing field we now consider the position in Botswana to determine the fairness or otherwise of elections in that country.

Resource disparities

Ideally, one of the hallmarks of fair contest is that no candidate, or political party, is advantaged, materially or otherwise, at the expense of others. The contestants must start from the same line and with nobody a foot ahead of the others. For this reason, some countries (including a worst-case Zimbabwe) have introduced funding of political parties in order, as far as possible, to minimise the disadvantages that arise because of uneven 'starting' points, which are not conducive to a free and fair election.

As the National Democratic Institute for International Affairs (1998, p 6) notes,

political parties must be supported by financial and other resources. Such resources include funds to operate the basic infrastructure of

political party institutions, as well as a wide variety of resources that support the ability of parties to communicate with the population.

Likewise, Ware (1998, p 242), recognising the crucial role of political parties in a democracy, observes succinctly that

well financed parties can provide linkage with mass electorates; a wholly publicly-funded system would prevent the distortion of party priorities in the direction of fund raising, and even partly publicly funded systems might reduce the inequalities in resources between parties and candidates.

Countries where funding exists for political parties have also simultaneously introduced mechanisms for regulating election expenditure in a bid to avoid a 'purchased', as opposed to a genuine, election result.

In a battlefield as vast as Botswana in terms of geographical expanse, reaching out to constituents or voters is a significant issue. Candidates can only do so if they have the resources, and the more resources they have, the more they are able to reach out to as many voters as possible to sell their policies and, by extension, win votes.

In Botswana, which has no system of funding political parties, one of the factors that has a negative impact on electoral competition is a lack of resources, and the government has resisted providing such resources despite the growing view that it is necessary for it to do so.

The reason is not hard to find. The BDP, which exercises the power of patronage, has never had problems attracting funding from private entities. In a small market such as Botswana, where the government is the dominant player that every business entity wants to have as a customer, private entities would want to fund the party in order to remain in government's good books and continue to do business with government.

They will not ruin that opportunity by refusing to fund the BDP, and many do, indeed, fund it, giving it an initial advantage.

It is worth noting that the Electoral Act actually does regulate election expenses. Part VIII of the Act (ss 80-89) makes various provisions for expenditure on elections. Section 87 demands that within 90 days after the announcement of results all candidates make a return of all election expenses to the secretary of the commission.

In terms of the Electoral Act (S 80), the term election expenses means:

In relation to a candidate at an election, all moneys expended or expenses incurred on account of or in respect of the conduct or

management of that election by the candidate or on his behalf or in his interest and for the purposes of this subsection, money shall be deemed to have been expended or expenses incurred in respect of the conduct or management of an election if expended or incurred after the issue of a writ in relation to that election.

This definition is so broad and elastic that it can be manipulated by candidates and political parties. For instance, a party could finance a candidate's campaign activities, or incur some financial expenditure on behalf of its candidate, and such monies would not be regarded as an expense in terms of the Electoral Act. In this sense, the Electoral Act could easily be circumvented. Section 81 puts a cap on those expenses at P50 000, which is very difficult to enforce. In fact, Part VIII in its entirety is difficult to enforce as, once the election is over, the secretary is more concerned about election petitions than about the receipt of returns from candidates. Thus the whole intention of the Act is not being realised, compromising the fairness of elections.

This view was shared by the first chairperson of the IEC, who believes that although elections in Botswana are free, the absence of funding for political parties compromises their fairness. He thus supports the proposal that there be funding for political parties (Mosojane 2011). Levitsky & Way (2010) take the same view, as do De Jager and Meintjes (2013).

Three examples illustrate this point.

- The treasurer of the BDP, who owns a chain of motor vehicle businesses which has the government as one of its major customers, routinely makes available to the ruling party a fleet of vehicles in excess of the number of constituencies.
- Prior to the 2009 elections a private educational college donated a consignment of T-shirts to the sitting minister of education for use during the election campaign. The minister of education is responsible for the supervision of all educational institutions in the country.
- Lastly, and in an open admission of the skewed access to resources, the BDP's secretary-general was recently reported to have responded to complaints that members of the BDP who had businesses were awarded government tenders from which they sponsor the party by saying: 'I always hear people complaining of how the BDP members win tenders but they seem to forget that we are in the ruling party. How do you expect us to rule when we don't have money? You should just live with it and accept that we are ruling'. (*The Voice*, June 2013).

Access to the law and state institutions

Levitsky & Way (2010) and De Jager & Meintjes (2013) posit that a skewed playing field exists when incumbents control critical state institutions whose role is to protect citizens against abuse and violations perpetrated by state agents. Such institutions include the judiciary, electoral authorities and other nominally independent institutions and the control usually arises from skewed appointment procedures like cadre deployment and packing.

These institutions are critical, as they may be called upon to arbitrate in the event of disputes arising during the electoral process. In Botswana, in the absence of a constitutional or specialised electoral court, the responsibility falls on the High Court (s 69 of the Constitution; Part X, ss 116-140 of the Electoral Act). It is therefore essential that these institutions remain impartial and be seen to be impartial.

The fairness or otherwise of the IEC has been dealt with above. Until recently the impartiality or otherwise of the judiciary was not hotly contested, but its role came under scrutiny when, in 2010, the president rejected three recommendations made by the Judicial Service Commission for appointments to the bench. No reasons were given for the rejection. This generated wide speculation about the powers of the president and the outlook of people who would, in his view, be suitable for appointment.

The Law Society of Botswana has questioned the legality of the rejection of the JSC's recommendations and has gone further, questioning the way in which judicial appointments are made. With the enactment of the Public Service Act of 2008, which allowed civil servants to unionise and bargain collectively for their terms and conditions of service, government has been at loggerheads with the unions, with the latter openly accusing the bench of being pro-government and the former accusing opposition politicians of having an influence over the unions. All these issues have a ripple effect on the perceptions of fairness on the part of the judiciary.

Lack of equitable access to the media

It is indisputable that the existence of various sources of information is critical to ensuring a free and fair election. If we agree, as we should, that a genuine election is that which results from voters having a free choice and having assessed all contestants fairly, we should agree that the medium of communication used to convey the contestants' policies is very important.

Apart from channels candidates create for themselves, generally the candidates, being individuals or parties, must enjoy equal access to the media, whether those are government or private. The private media in Botswana comprise

several print newspapers, three radio stations, one television station and social networks like Twitter, Face Book and LinkedIn. The government media comprise the *Daily News*, two channels of Radio Botswana and Botswana Television (BTV), all of which are publicly funded.

While the private stations operate on the basis of licence conditions set by the National Broadcasting Board, BTV and the two public radio stations do not operate under such licence and have resisted calls for them to be governed by licence conditions. It can be said immediately that no complaints of unequal coverage or denial of coverage have been made against the private media. However, complaints have been made against the government media concerning what has been termed biased reporting in that the government and, by extension, the BDP, has been accorded more coverage than the opposition parties.

As a government department under the direction and control of a minister who is himself/herself a politician, the control of programme content is within the minister's portfolio, and the minister is able to, and often does, exercise such control in favour of the government of the day. Government has repeatedly rebuffed calls to transform BTV and the two radio stations into public broadcasters, with independent boards to manage them.

Its refusal must be viewed in the light of the advantages it derives from the current position, to the exclusion of other parties, which advantages will be lost if the government media were to be transformed into public media. Two examples illustrate this point: government, through its functionaries, is able to control the editorial content of programmes and effectively prevent bulletins it considers critical from being aired.

Where such bulletins are aired, government may take disciplinary measures against the responsible officer. Recently the Head of News and Current Affairs at BTV was suspended for allowing a programme to be aired which portrayed the president in a bad light (*Sunday Standard*, July 2013, p1). Secondly, during the 'famous' public sector strike in 2011 BTV allowed the government more space than it did union representatives. The broadcast of the events surrounding the strike was carefully contrived to highlight the government position, thus weakening that of the unions, which, incidentally, had the backing of opposition parties.

In the case of the private media, especially the print media, apart from the *Daily News*, there is a semblance of equal access in that they are able to report on all parties and allow opinions from all perspectives. However, given the fact that the population of Botswana is limited – just over two million people according to the 2011 census – and is dominated by the state, newspapers depend for their survival on advertisements, especially those from the government. This results in a form of control, as government, although it does not directly control editorial content, is able to influence reportage by holding sway over where it places its advertisements.

In one case, government specifically withheld advertising from a particular newspaper group because it objected to the reporting on a particular issue. This move was, however, declared illegal and set aside by the High Court (*Media Publishing (Pty) Ltd v The Attorney General and Another* 2001).

The finding that the move was illegal seems to have been determined by the reasons given for withholding the advertisements. One wonders what the position would have been had the reason not been stated. For government cannot, and the judgement accepted this, be compelled to place advertisement in any particular newspaper. These examples demonstrate the extent to which the incumbent party may influence access to the media in a way that disadvantages its competitors.

The position in Botswana comes under close examination by Levitsky & Way (2010), and the authors, using pertinent examples, demonstrate the subtle but significant disadvantages suffered by the opposition. Cook & Sarkin (2010, p 475) have also, in a general sense, attempted to deconstruct the 'miracle' and cite the US State Department's Report of 2007, which expressed concern about the BDP candidates' 'preferential access to state-owned television during much of the campaign'. It is indisputable that this compromises the evenness of the playing field and leads to unfair competition.

CONCLUSION

This article dispels the oft-cited claim that Botswana is a paragon or the epitome of democracy in Africa and, to some extent, beyond. The myth seems to be based on the absence of fraud and repression in elections, which are the most visible and crude indicators of unfair competition. It seems, too, that the fact that there has been no illegal usurpation of power in the country, that general elections have been held regularly and that the opposition has never denounced the results, may have led many to believe in the existence of a level playing field in Botswana.

However, as the article has shown, there is much to say about the electoral process in Botswana which the international community may not know about. Scholars, such as Good, Levitsky & Way, Cook & Sarkin, De Jager & Meintjes and Taylor now demonstrate a changing pattern in international perceptions of the electoral process. Using the concept of the uneven playing field, and other factors, we have attempted to show how the environment in Botswana favours the incumbent party.

We have argued that these factors are a major blight on electoral competition in Botswana – thus making elections flawed and, consequently, failing to meet acceptable international standards of ensuring free and fair elections. It is inconceivable that Botswana has remained a democracy despite these challenges, which are an affront to free and fair electoral competition in that country.

The article, therefore, concludes that the ruling BDP has used these factors as a *self-preservationist or protectionist tool* to enable it to continue to dominate the political landscape. There is certainly a need for reform of the system, which the opposition has been calling for and which government, for obvious reasons, is yet to embrace. It is hoped that the drive for reform will continue and that it will be embraced in an attempt to demonstrate that the country truly deserves the accolades it receives.

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STAY IN POWER WHATEVER IT TAKES

Fraud and Repression in the 2011 Elections in the Democratic Republic of Congo

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ABSTRACT

In 2011 the Democratic Republic of Congo (DRC) held its second competitive presidential and legislative elections since it gained its independence in 1960. While it was expected that these elections would reflect a significant improvement over those in 2006, they were marred by such grave irregularities that the outcome was described by most election observer missions as lacking credibility. This article draws on the reports of election observer missions, statements from key stakeholders and media reports in order to discern the most salient dynamics of electoral misconduct in the DRC in 2011. Given the nature and degree of electoral fraud, the article argues that the election debacle was not the result of technical and accidental factors but was the product of a systematic and state-sponsored design to rig the elections in favour of the incumbent president and members of Parliament from his political camp. In order to quell popular protest against stolen elections the incumbent used illegitimate and excessive violence aimed at terrorising the people and forcing actual and potential protesters into submission. This analysis suggests that the democratic project in the Congo has experienced a dramatic reversal. In order to safeguard the democratisation process it is crucial that national and international stakeholders tackle the foundations of this type of electoral authoritarianism.

INTRODUCTION

The 2006 DRC elections were sponsored by the international community but the 2011 electoral process was a test of the Congo's capacity to run an autonomous

election. In 2006 the international community funded 91% of the entire electoral process (Commission Electorale Nationale Indépendante 2012) and the UN mission in the Congo was a key partner.

By contrast, the Congolese government funded more than 75% of the elections held on 28 November 2011 (Commission Electorale Nationale Indépendante 2012) and the UN mission was not central to the organisation of the process. Of interest to observers was whether the 2011 electoral process would be an improvement, in accordance with the theory that the 'democratic' quality of elections improves over time (Lindberg 2006).

Drawing on the reports of election observer missions and statements from other independent organisations, on audio and video materials, newspaper reports and online material, this article shows that the 2011 elections were not only administratively chaotic, fraud and violence were deliberately introduced in order to ensure that the incumbent president, Joseph Kabila, stayed in power and members of his majority party would dominate the National Assembly.

In assessing the reports of the observer missions the article also highlights the vacuity of those produced by the African observer missions and the ambiguity of those drawn up by Western observer missions.

The international observer missions' weak denouncement of the electoral fraud and the international community's lack of decisiveness in confronting this blatant electoral misconduct undoubtedly strengthened the resolve of the incumbent regime to cling to political power and proceed with business as usual after the compromised electoral process.

The article also highlights the characterisation of the electoral process as 'generally peaceful, with few incidents', as reported by most observer missions and news agencies. Instead, it argues, it is precisely the deliberate and systematic deployment of state-sponsored violence and intimidation that imposed the flawed electoral outcome on the people, leaving Congo with a legitimacy crisis.

The argument is presented in four sections. It starts with a theoretical discussion of the relationship between elections and autocracy and of the political rationality of electoral fraud and violence. Some pertinent concepts drawn from this discussion guide the analysis of the 2011 electoral debacle. Secondly, it sketches the broader social and political context within which the 2011 electoral process took place. Thirdly, it discusses critically the evidence that points to systematic and state-sponsored electoral fraud. Fourthly, it analyses the aftermath of the electoral process and the nature of the violence used by the state against Congolese citizens in order to demonstrate that, far from being incidental, this campaign of terror was an integral part of the election-rigging strategy.

ELECTIONS AND AUTHORITARIANISM

The literature on elections has placed at the centre the problem of their quality, with scholars such as Elklit & Reynolds (2005) proposing a 'framework for the systematic study of the quality of elections'. In assessing the quality of elections several scholars have turned the spotlight on the problem of electoral malfeasance, which has routinely characterised countries that democratised after the fall of the communist bloc.

Of the 35 countries studied by Levitsky & Way (2010), 14, mostly from Eastern Europe, moved on to become stable democracies. However, the rest, most of which are found in Asia and Africa, simply became 'competitive authoritarian regimes' (Levitsky & Way 2010). These are countries in which democratic institutions exist and competitive elections take place regularly, but systemic electoral fraud and abuse weight the system heavily in favour of the incumbents.

Elections under these regimes are not just 'window dressing', opposition candidates can and do win, but such victories are rare (Levitsky & Way 2010). This assessment is echoed by other scholars, who have also noted the ritualistic and formalistic function elections play in many countries where autocrats embrace them for the legitimacy they bring, without exposing their regimes to the uncertainty inherent in any authentic democratic electoral process (Schedler 2002; Birch 2007; Magaloni 2010).

Magaloni (2010) refers to such regimes as, in essence, dictatorships 'hidden behind elections'. As Schedler (2002, p 37) puts it, 'the dream [of these regimes] is to reap the fruits of electoral legitimacy without running the risks of democratic uncertainty'. These regimes seek electoral legitimacy in order to maintain the unobstructed flow of foreign aid in an era where international institutions and Western countries make democratisation a key condition for aid.

Elections may also be used by authoritarian regimes in order to demonstrate their popularity to opposition groups, who are faced with the choice of joining the ruling regime or remaining stranded in the political wilderness (Schedler 2002). In the case of the Congo, as will become clear below, it seems that the need to secure foreign aid and international legitimacy has been the dominant reason why the ruling regime undertook to organise elections without the political will to submit itself to democratic uncertainty.

With such external pressures it is no wonder that the literature on elections, particularly in sub-Saharan Africa, is replete with accounts of massive and systematic vote rigging and state sponsored violence in countries such as Nigeria (Omotosho 2008; Omotola 2010), Rwanda (Reyntjes 2004), Zimbabwe (Dorman 2005), Kenya (Cheeseman 2008) and Uganda (Makara, Rakner & Svåsand 2009; Tangri & Mwenda 2010).

Elections are highly strategic political processes as they are ultimately about the conquest of power. For this reason, a number of authors have analysed them using game theory. For instance, Magaloni (2010) analyses several scenarios and various conditions under which an authoritarian regime can either decide to rig elections and manage public protest or 'tie their hands willingly not to commit fraud by delegating power to an independent electoral commission'.

According to Magaloni's analysis of electoral fraud in an electoral autocracy, the incumbent is more likely to commit fraud than the opposition. However, based on the theory of rational choice, the incumbent weighs up the cost and the gains of committing electoral fraud, particularly the cost of rigging elections and repressing protesters. Magaloni's conclusions are particularly relevant to this study. She concludes that autocrats will only leave the electoral management body free to organise fair elections if the opposition credibly threatens to contest the elections and the autocrats know they can win without fraud. She further argues that 'opposition unity and a credible threat of massive civil disobedience make it harder for autocrats to steal elections, but other factors also matter' (Magaloni 2010, p 763).

The players' strategic calculations are also shaped by structural factors, including the opposition's access to economic resources, the state's capacity to enforce fraud and the international environment, such as international observers' reports, international courts and international media. Whether or not the autocrat will commit fraud will ultimately depend on the expected behaviour of the repressive apparatus. Magaloni (2010, p 763) rightly states that 'despite a mass revolt, despots will be able to rig the elections with impunity if the military (and other regime insiders) agrees that the best course of action is to repress'.

The political system in the Congo has most of the characteristics of an 'electoral autocracy' or a 'competitive authoritarianism' (Matti 2010). Though opposition parties are given a relatively meaningful platform from which to organise and contest the ruling regime's policies and actions and civil society activists are provided with the space to voice their issues, the political structure is, by and large, built around the person of the incumbent president, who has the ultimate and unquestionable control of the security apparatus and the public treasury.

The ruling elite projects a 'democratic façade' (Booysens 2007) rather than any substantive commitment to democratic governance. As this article will show in relation to the electoral process, major institutions which are supposed to protect and deepen the democratisation process are partisan or are strongly influenced by the president and his close allies. As Magaloni's analysis suggests, such a regime, when faced with the possibility of an electoral defeat, makes use of its nastiest tricks to remain in power unless the opposition or international pressure forces

it out. Let us first consider the historical and socio-political context in which the electoral contests in Congo took place.

CONTEXT OF THE 2011 ELECTIONS

In the first post-colonial elections in Congo, in 1960, Patrice Lumumba emerged as prime minister and Joseph Kasa-Vubu as president. This initial electoral and democratic experience was overturned when Lumumba was assassinated in 1961 and the civilian government was deposed and replaced by a military regime led by Joseph-Desiré Mobutu (Mobutu Sese Seko), with the support of his Western patrons.

During the long Mobutu dictatorship there was a one-party system in which elections were organised but were never competitive. Following the demise of the Mobutu regime and the death of his successor, Laurent Désiré (Mzee) Kabila, democratic elections were planned as a means of putting an end to long years of impunity and illegitimate governance. These elections were part of a broad conflict-resolution settlement agreed upon at Sun City, South Africa, in 2002 by belligerents, unarmed opposition groups and civil society.

In 2006, under the stewardship of the international community, the Congo experienced the first competitive elections since its independence. Due to the slow progress of integrating the army and the power balance that emerged from the peace accord, the elections were contested both at the polling stations and on the battle field, with armed confrontation ensuing during the electoral process between forces loyal to the main two presidential contenders, Joseph Kabila and Jean-Pierre Bemba.

Bemba, whose military capacity was inferior and who was under intense pressure from the international community, conceded defeat after a failed court challenge. He was later arrested and transferred to the International Criminal Court (ICC) to answer accusations of war crimes committed by his troops in Central Africa. The trial is ongoing.

The 2011 elections were equally contentious, with new dynamics coming to the fore. The ruling regime hastily amended the Constitution, changing the electoral process from majoritarian to simple majority plurality. The constitutional amendment, passed in the face of controversy and protests from opposition parties and civil society, meant that to be declared the winner of the electoral race a contender needed only a simple majority.

While the presidential majority justified the amendment, citing the need to minimise the cost of elections and prevent further societal fragmentation and tension in the wake of the second round of elections, the move gave Kabila an unfair advantage.

Of the 13 candidates in the presidential race, two contenders were particularly noteworthy. The entry of the veteran politician and leader of the Union for Democracy and Social Progress (UDPS), Etienne Tshisekedi, into the presidential race took the Congolese ruling political class by surprise. Tshisekedi, who comes from Kasai region, has been a prominent politician since Congo's independence. He worked closely with President Mobutu in various capacities before mounting, together with fellow politicians, the strongest unarmed opposition to Mobutu's dictatorship.

His party was instrumental in pushing for the organisation of the national sovereign conference, from which he emerged as the country's prime minister. However, he never really managed to govern as Mobutu and his allies blocked any reforms that might cause them to lose power. Tshisekedi's party had excluded itself from the electoral process in 2006, when it boycotted the voter registration process. After the 2006 presidential election Tshisekedi retreated from active political life while he underwent medical treatment abroad.

Many believed the condition of his health and his intransigent attitude to the incumbent regime would result in a decision not to participate in the 2011 presidential race. The confirmation of his intention to run for the presidency shook the ruling political elite, prompting it to prepare for a tougher battle, given the popularity of the veteran opposition leader and the dubious record of the incumbent.

Weekly protests by UDPS supporters during the election period, violent clashes between supporters of Tshisekedi and special presidential guards at the Ndjili airport, and post-electoral unrest are only a few examples of the intensity of the political battle the Tshisekedi candidacy brought with it.

The entry into the presidential race of Vital Kamerhe, former president of the National Assembly and founder and leader of the Union Pour la Nation Congolaise, meant that Kabila might have to share votes with him in areas such as the Kivus, which, in 2006, voted overwhelmingly for Kabila, according to the results announced by the then Independent Electoral Commission (CEI). With these two candidates entering the presidential race, Kabila's re-election was not guaranteed, even if opposition parties failed to agree on a single candidate.

The constitutional change mentioned above was intended to ensure that a simple majority would secure the incumbent's victory. However, as this article shows, even Kabila's simple majority victory, announced by the Independent National Election Commission (CENI) came at the cost of state sponsored fraud and violence.

Created on 28 July 2010 to replace the CEI, the CENI acquired a new multiparty management team in March 2011 and obtained the mandate to organise the 2011-2013 cycle of elections only in April 2011, giving it a mere seven months

to prepare for the elections in a country as vast as Western Europe and devoid of basic infrastructure, particularly in the countryside. The task was daunting and many analysts considered it impossible to achieve in the time available.

The CENI only acknowledged the problem after the election: 'the late appointment and swearing in of the members of CENI have had consequences on the unfolding of the electoral process, namely the very short timeframe for the preparation and the conduct of the polling' (Commission Electorale Nationale Indépendante 2012). However, given the constitutional deadline of 6 December for the inauguration of the newly-elected president, the CENI, under pressure from the ruling political elite who sought to avoid being accused of remaining in office illegitimately after 6 December deadline, committed to doing the impossible and, as a result, delivered a disorganised, chaotic and fraudulent election.

From the start the CENI lacked transparency and did little to build trust among political parties and candidates beyond a few briefings of parties about the evolution of the electoral process. It also failed to defuse accusations of electoral fraud made long before the poll date. For example, members of the UDPS and other opposition parties protested weekly in an attempt to obtain greater transparency in the voter registration process and the voters' roll and requested access to and control of the servers that were to be used.

There was no response to their demands. The European Union Observer Mission expressed regret about the lack of transparency in the clean-up of the voters' roll, about which the CENI was unable to produce any report. The head of the CENI, Pastor Ngoy Mulunda, was presented as a member of civil society, but was widely perceived as a close ally of the incumbent president.

The pastor, who comes from Joseph Kabila's Katanga province, is believed to be one of the co-founders of the president's party and is reported to have been a member of Kabila's campaign team during the 2006 electoral process (Mission d'observation électorale de l'union européenne, July 2013). During the post-conflict transition period he presided over a non-governmental organisation called the Oecumenical Peace Program, Conflict Transformation and Reconciliation, which undertook to collect weapons from war-torn regions in exchange for bicycles and, later, \$100. This national programme operated with huge support from the Congolese government and international donors.

Though the configuration of the election management body during the 2011 electoral cycle had a clear political character, with emphasis placed on political inclusiveness, Mulunda's close connections with the ruling regime did not help to project the image of an independent body. Three months before the elections a national officer of the CENI told the author: 'I do not see how Ngoy Mulunda will sit there and declare the defeat of his political boss Joseph Kabila' (Anonymous interviewee, September 2011).

Other state institutions that played significant roles during elections were also deeply partisan and could thus not be relied upon to treat all candidates equally. This was particularly the case with the Superior Council of Audiovisual and Communication (CSAC), the Supreme Court of Justice and the security establishment (police, army, republican [presidential] guards and intelligence).

On the basis of the law of 11 January 2011 and the electoral law, the CSAC is supposed to ensure freedom of the press, guarantee the right to diverse, reliable and objective information and provide candidates and political parties with equitable access to public and private media during the election campaign. However, this institution failed to regulate impartially access to the public broadcasting station, which acted as the mouthpiece of the ruling party. In addition it arbitrarily disconnected television channels such as RLTV and Canal Futur Tv, which belonged to opposition candidates (Mission d'observation électorale de l'union européenne, 14 July).

In the absence of a Constitutional Court, the Supreme Court of Justice was the institution that adjudicated electoral disputes and certified the election results. The Supreme Court of Justice was expected to be loyal to the incumbent regime, which had appointed all the judges, making 17 other appointments shortly before the polls and delaying the establishment of the Constitutional Court, which would have required an impartial mechanism.

In August 2011 the electoral law was amended to institute an opaque mechanism of adjudication of electoral disputes. The change required a shift from public presentation of evidence and arguments to an inquisitorial system which allowed the judge to collect the information necessary to make a decision (Mission d'observation électorale de l'union européenne, 14 July).

As a result, the final arbiter of election disputes was a highly politicised and opaque organ whose crucial decisions are not even written down and distributed to the individuals involved or to the public.

As for the security forces, countless reports from the United Nations Organization Stabilization Mission in the DR Congo (MONUSCO) human rights office and other human rights organisations have shown that the army, the police and the intelligence services have not transformed into republican institutions. At the height of the political battle, as will become clear below, these forces were instruments of illegitimate violence deployed against opposition party candidates and members.

It is in this autocratic context that the 2011 elections were held. The fact that opposition candidates could freely hold public rallies and criticise fearlessly the failures of the incumbent regime should not make one lose sight of the structural politicisation of state institutions and the huge imbalances in the distribution of resources for election campaigns. Observer reports, candidates, voters and civil

society bodies denounced grave irregularities and massive fraud in the conduct of the elections.

ORGANISED AND STATE-SPONSORED ELECTORAL FRAUD

It is now common knowledge that the 2011 presidential and legislative elections in the Congo were marred by systematic irregularities that affected irretrievably the credibility of the results announced by the CENI. While, when the presidential election results were published on 9 December 2011, the fraud accusations were mainly confined to the opposition camp, after the publication of the legislative election results from January 2012, the outcome of the electoral process was criticised by both the opposition and the presidential camp as fundamentally flawed.

This inconsistency reveals the incoherence of members of the presidential camp, who defended the result of the presidential race as credible, but joined the opposition in denouncing the systematic manipulation of the results of the legislative elections, while fully aware that both elections were run concurrently by the same officials and in similar dubious circumstances.

In setting out the evidence and analysis, which point to organised and state-sponsored electoral fraud, this article draws on the observer reports of the following organisations: Carter Center, European Union (EU) observer mission, National Network of Civil Society Organizations for the Observation and Monitoring of Elections in Congo (RENOSEC), La Voix des Sans Voix, the National Episcopal Conference of Congo (CENCO), the African Union (AU), the Southern African Development Community (SADC), the International Conference on the Great Lakes Region (ICGLR), the Economic Community of the Central African States (ECCAS) and the Common Market of East and Southern Africa (COMESA).

WESTERN OBSERVER MISSION REPORTS

The Carter Center, which had a team of 74 observers, was one of the first international and independent organisations to declare that the results lacked credibility. In a report setting out the main grounds for its scepticism, the team casts doubts on the unrealistically high turnout and quantity of votes for Kabila in Katanga, one of his strongholds, and contrasts this with the national average and the low turnout and number of spoiled and lost votes in Kinshasa, a Tshisekedi stronghold.

In a public statement issued on 10 December, the Center said a number of aspects of the results lacked credibility. Notably, in Katanga, voter turnout was at or near 100% in more than a dozen districts, the number of spoiled ballots

was extremely low, the rate of collection of results sheets from polling stations was also 100% and, in four districts, vote totals for Kabila were at or very close to 100%. These factors, coupled with the loss of a significant number of polling station results, led the Center to conclude that the CENI's overall management of the results process was poor and the results lacked credibility.

The Center also noted a discrepancy in the number of voters and the number of invalid ballots between the presidential and legislative elections results:

A close reading of legislative election results leaves certain questions about the credibility of the results. The number of voters differs between the two elections in some districts, most notably for Walikale, where a difference of 28,810 was recorded between the two votes, and Malemba-Nkulu in Katanga, which recorded a difference of 5,405. The rate of invalid ballots is also noteworthy, reaching almost 10 percent in the district of Tshangu in Kinshasa. Katanga recorded the lowest rates of invalid ballots in both presidential and legislative elections. The discrepancy in the rate of invalid ballots is also noteworthy, as in the case of Tshangu district of Kinshasa where the rate reached 10 percent in the legislative poll, while the presidential ballot yielded just 3.6 percent. This difference is possibly reflective of the enormous complexity of a legislative ballot with 1,575 candidates for 15 seats. However, Kinshasa, notable as an area of Tshisekedi support, stands in contrast to Kabila's vote bank in Katanga that recorded the lowest rates of invalid ballots in both presidential (2.7 percent) and legislative elections (5.6 percent). Other patterns are evident in the district results, but more thorough analysis is impossible unless the CENI releases polling station results.

Carter Center October 2012

Further discrepancies between the presidential and legislative results were revealed by the CENI itself, when it applied for the results of the legislative elections in seven districts be cancelled, citing cases of violence, of which the Carter Center could find no independent record either in the press or elsewhere. Questions were raised about how election-day violence made it impossible to tabulate the legislative results but not the presidential results, since the two processes were simultaneous.

The Carter Center report highlights certain aspects of the results published by the CENI which defy common sense:

The results published for at least two constituencies in Katanga province were implausible because their validity would have meant

that every registered voter was able to vote on Election Day, that all voters voted for Kabila, and that all voters correctly marked their ballots.

Carter Center October 2012

Though the report falls short of characterising the process as marred by organised fraud and systematic manipulation of results in favour of the incumbent, it nevertheless mentions elements which suggest that that was the case. The report mentions the lack of transparency and active fraud by voting centre officials:

Problems ranged from general disorganization and related loss of results to the tampering of results forms by voting center officials. The Center also found there to be a lack of transparency in the tabulation process overall. Independent observers and party or candidate agents were not accorded access to all steps of the compilation process.

Carter Center October 2012

As a result of these problems, the Carter Center states in its final report that it is 'unable to provide independent verification of the accuracy of the overall results or the degree to which they reflect the will of the Congolese people' (Carter Center October 2012). Put differently, it said: 'we do not know who actually won the presidential election'. This conclusion is a retraction of the early assessment, published on 10 December 2011, which stated that the irregularities did not necessarily affect the ranking of the contenders: 'This assessment does not suggest that the final order of candidates is necessarily different from that announced by CENI, only that the results process is not credible' (Carter Center October 2012).

This statement was used by members of the majority to legitimate the outcome. It is thus unfortunate that after documenting such systematic irregularities the Carter Center could, at such an early stage, make an unfounded pronouncement which could be used by the incumbent regime to regain legitimacy in the wake of blatant electoral fraud.

The European Union Observer Mission also noted widespread irregularities, but fell short of vehemently condemning what appeared to be organised electoral fraud in favour of the incumbent regime and majority party parliamentarians. It stated in its report: 'In the light of numerous irregularities and fraud observed during the electoral process, the Observer mission of the European Union states that the results published by the CENI lack credibility.' The EU mission noted a host of problems with the conduct of the electoral process. First, the legal framework was violated in many respects. For instance, the legal time lines for

publication of the list of registered voters and the list of polling stations and the display of the voters' register in polling stations were not met.

The display of campaign posters on public buildings continued unabated. The electoral process was marked by the active participation of civil servants and state officials and the use of state resources for election campaigns. Many governors and city and municipal mayors ran for Parliament without resigning from their existing positions.

The report also notes the delay in establishing the Constitutional Court as the highest court in the land and the constitutional arbiter of electoral disputes. In its absence, the Supreme Court of Justice failed to investigate complaints about the presidential race.

With regard to the transparency and integrity of the electoral process, the EU mission noted a number of deficiencies that irreparably affected public trust in the process and, ultimately, its credibility.

Among these were the political composition of the electoral management body; the lack of an audit of the voters' roll, despite incessant demands for one from opposition parties; the opaque clean-up process of the voters' roll, for which the electoral management body was unable to produce a report; the fact that the voters' roll was revised after voters' cards were issued, which meant that individuals with multiple registrations were still in possession of their multiple cards during the voting period.

CENI allowed voting to continue in certain areas up to five days after the prescribed voting day. The mission states that it was informed that several incidents of fraud, ballot-box stuffing, violence caused by popular anger about abuses by electoral officers and acts of intimidation and attacks on polling stations took place all over the country on election day.

The high number of voters on the derogation or omission list (3.2-million – 17% of the total number of voters) raised concerns. The fact that witnesses and observers were denied access during the tabulation and compilation process at provincial and national levels did not build trust in the process and the outcome.

Despite documenting these irregularities and widespread incidents of fraud, mainly in favour of the incumbent regime, the EU observer mission's post-election statement appears soft and too diplomatic. It does not convey strong condemnation and delegitimation of the electoral process. When asked by journalists whether the electoral outcome was acceptable, the head of the mission responded: 'It is not for us to state whether these elections are acceptable, it is for the Congolese people to make such pronouncement.' This statement may be suitable as a public relations exercise, however, given the huge influence of EU countries on political outcomes in the Congo and their uncontested leverage, failure to denounce electoral fraud can be construed as implicit support for the incumbent regime.

DOMESTIC OBSERVER MISSION REPORTS

The Catholic Church in the Congo (through the National Episcopal Conference of Congo (CENCO) and local non-governmental organisations such as the Voice of the Voiceless – La Voix des Sans Voix (VSV), a reputable Congolese human rights organisation which had 261 observers deployed in seven provinces, unambiguously denounced the elections as reflecting organised fraud in favour of the incumbent regime by the very people entrusted with organising them.

The National Episcopal Conference had deployed some 6 000 observers in polling stations around the country. These observers were trained to observe elections and communicate with their coordination centre in Kinshasa using the short message service (SMS). Immediately after the voting, government ordered telecommunications companies to interrupt their SMS services throughout the national territory, a move interpreted as deliberate obstruction of independent communication of the true results.

Notwithstanding these efforts by the government to curtail free circulation of information, the CENCO managed to receive the necessary data and analysis on which to base its assessment of the election results. On 12 December 2011 Cardinal Monsengwo, the archbishop of Kinshasa, declared that ‘after analysing the results released by the CENI on Friday, 9 December 2011, it is indeed normal to conclude that they do not conform to truth or justice’ (Radio Okapi). The archbishop referred to results at the disposal of the Catholic Church observer mission and stated that these could be of assistance to the Supreme Court of Justice when it adjudicated electoral disputes.

On 11 January 2012, days after the Supreme Court of Justice confirmed the flawed results and after Kabila had been sworn in, amid national protests and international isolation, the assembly of the Catholic Bishops of Congo (Conférence Episcopale Nationale du Congo) issued an even stronger statement:

Based on the final report of the observer mission of the national episcopal commission of the Congo (CENCO) and on testimonies from various dioceses and other sources, it appears that the electoral process has taken place in many places in chaotic climate. Observers have noted several deficiencies, incidents of blatant and in all likelihood planned fraud, several unfortunate incidents leading to human death, disorder, and in certain places, a climate of terror deliberately maintained and exploited in order to stuff the ballot boxes. This is not all. What now takes place with compilation of results for legislative elections is unacceptable. It is a shame for our country.

The statement goes on to suggest that these incidents, far from being isolated, reflect a political culture and a systematic plot to go against the will of the people:

Rule of law cannot be built within a culture of fraud, lies and terror, of militarisation and blatant abuse of the freedom of expression ... In the current context, the wounded and frustrated people of the Congo powerlessly watch a process that does not reflect their will and which simply amounts in many respects to a deal making process among certain political actors.

In the statement the bishops called for the electoral management body to correct the results or resign and warned the incumbent regime against ruling in defiance of the true will of the people.

The national observer mission put in place by a coalition of NGOs under the umbrella of RENOSEC claimed to have deployed 12 350 observers around the country. After documenting a long list of incidents of irregularity and fraud, mainly committed by politicians belonging to the presidential camp (RENOSEC December 2011), RENOSEC concluded that the electoral process lacked credibility, called into question the legitimacy of political leaders and endangered the Congo's young democracy. Its report concluded:

As one can see, the electoral process in the DRC has its highs and lows. Organisation of elections within a short period of time (9 months) has had negative effects on the results. Except for the fact that elections were organised within the constitutional timeframe and for other positive elements, the organisation of elections has brought to the fore serious problems which affect the credibility of the results, the legitimacy of leaders and endangers the young democracy.

Incidents of irregularity and fraud witnessed by RENOSEC observers included: delay in the delivery of ballots, late opening of polling stations, non-existent polling stations, relocation of certain voting centres and polling stations without notice to voters, possession and free circulation of ballot papers by individuals, high profile politicians found in possession of ballot papers with their name and the name of the incumbent president pre-marked, insufficient ballot papers and even absence of electoral material, insecurity and panic in certain places on election day, violence and the destruction of voting materials by angry crowds protesting against fraud and other irregularities, panic and fear caused by intimidation and attacks by armed men, obstruction of access by witnesses and observers to voting stations and provincial and national compilation (tallying) centres, vote

buying, stuffing of ballot boxes and instances of state authorities (governors or members of Parliament) chasing away observers and forcing people to vote for them and Kabila.

The results process was chaotic, with 1.4-million ballot papers from 3000 polling stations, 2000 of them in Kinshasa, lost and lack of security in the transfer of results envelopes from voting stations to tallying centres. Results documents from polling stations were tampered with. CENI's results, distributed on a CD-ROM, deviated from the results published by electoral officials and captured by witnesses and observers at voting centres. CENI reported results from polling stations that did not exist or did not open their doors. Many of these instances are contained in the RENOSEC report.

The VSV (January 2012) confirmed the patterns of electoral fraud, concluding that:

given all the incidents of irregularities, fraud and attempted fraud which characterised the elections of the 28 November 2011 in the DRC, La Voix des Sans Voix, based on evidence drawn from the sample of its electoral observation mission, believes that these elections were not transparent and therefore lacked credibility, with the greatest loser being the Congolese people who are disillusioned and disappointed by political actors' insatiable quest for power.

The VSV emphasised the deliberate and organised character of these irregularities and cases of fraud and attempted fraud:

The VSV believes the irregularities are not a function of inexperience of the electoral management body as some political actors would like us to believe. They are rather a product of long and careful preparation from the beginning to the end in order to manipulate electoral results.

In order to support its charge of organised fraud and deliberate disorganisation of the electoral process, the VSV pointed to the strange similarity of irregularities across the country, such as insufficient ballot papers in opposition strongholds and, an oversupply in presidential camp strongholds and possession of pre-marked ballot papers by members of the presidential camp.

It is revealing that most cases of blatant fraud implicated members of the presidential camp (often electoral officers, parliamentary candidates, provincial governors, policemen and soldiers). Only CENI could distribute genuine electoral materials. Discrepancies between the declared number of voting stations and the actual voting stations and between the results displayed in voting stations and

local tallying centres and those published by the CENI on its CD-ROM point to fraud organised in favour of Kabila and his supporters by the very institution whose mandate it was to organise free and fair elections.

AFRICAN OBSERVER MISSION REPORTS

Only the African observer missions hailed the electoral process as a success. In a joint statement issued on 30 November 2011, the African Union (AU), Southern African Development Community (SADC), the International Conference on the Great Lakes Region (ICGLR), the Economic Community of the Central African States (ECCAS) and the Common Market of East and Southern Africa (COMESA)

hail the Congolese people's determination to hold the second democratic elections on 28 November 2011 ... welcomes the successful holding of the elections despite the numerous challenges which the country is confronted with and have noted the technical and logistical challenges that over shadowed the holding of the elections.

In his capacity as chairperson of the SADC Organ on Politics, Defence and Security Cooperation (Troika) and President of the Republic of South Africa, Jacob Zuma also congratulated the people of the Congo on 'the successful conclusion of the Presidential and Parliamentary elections' (The Presidency, 5 December 2011).

Citing reports from the SADC Election Observer Mission led by South African Cabinet minister Nosiviwe Mapisa-Nqakula, which included 198 observers deployed in 10 provinces, the statement insisted that 'elections in the DRC were conducted in accordance with the DRC Electoral Law, the SADC Principles and Guidelines Governing Democratic Elections and the July 2002 Durban OAU Declaration on The Principles and Guidelines Governing Democratic Elections in Africa'.

This pronouncement is a blatant misrepresentation of reality. Most of the statements from African regional bodies were issued on 30 November, while voting was still in progress in several places. These African observer missions, which are known to suffer from insufficient personnel and inadequate material resources for such complex tasks, did not bother to wait for the end of the voting process and the publication of the provisional results.

Thus it is unclear on what grounds they characterised the electoral process as 'successful'. Zuma's congratulatory statement was issued while ballot boxes were still being shipped from South Africa to Congo, even after the official election date. Some Congolese nationals claim to have seen pre-marked ballot papers at

OR Tambo airport in South Africa, ready to be transported to Congo days after election day.

Perceptions of widespread electoral fraud spurred protests by members of the Congolese diaspora in many South African cities (Mail & Guardian Online, 5 December 2011). Given these active efforts to ignore the reality of organised and state sponsored electoral fraud in the Congo, the statements of African leaders and their observer missions are not only unfounded but politically oriented.

The statements hail the apparent broad participation of the Congolese people in the elections but say nothing about the quality of the elections and the legitimacy or credibility of the outcome. For these reasons the statements of African leaders and observer missions are like a smokescreen aimed at obstructing deeper understanding of the electoral process and at propping up the fraudulent incumbent regime.

KEY PERPETRATORS OF THE ELECTORAL FRAUD

Pastor Ngoy Mulunda, head of the CENI, is believed to have orchestrated this vast electoral fraud. Politicians in both the opposition and presidential camps regarded him as the main instigator of the botched electoral process and called for him to be replaced. Donor countries also demanded his removal.

This focus on one individual was hypocritical and failed to implicate Mulunda's political masters. Jean Claude Muyambo whose party, Congolese Solidarity for Democracy and Development (Scode), was a member of the presidential camp, publicly contested the results of the legislative elections, blaming Augustin Katumba Mwake, Kabila's powerful advisor, for his failure to win a seat in the national legislature. He claims that Mwake instructed Mulunda which candidates should be elected and which excluded (www.youtube.com/watch?v=yob0jbe056w). These practices, which amount to behind-the-scenes deal-making, are what the Catholic bishops had in mind when they stated: 'what now takes place with compilation of results for legislative elections is unacceptable. It is a shame for our country.'

Interestingly, Mulunda has, according to various sources, begun to reveal his crucial role in the rigging of the elections. As a result of the plan to remove him and his team from the electoral commission he reportedly complained that he had not received sufficient gratitude for having facilitated Kabila's victory.

Unsuccessful presidential candidate Vital Kamerhe has said of Mulunda's statements:

The revelations from Pastor Mulunda have proven what we already stated at the time ... that the electoral commission was not

independent. And today Pastor Mulunda only proved what we already said at the time. We all learned that Pastor Mulunda made a remarkable statement in *Kiluba kati* and we got the French translation. He stated that he is being paid in funny money despite having facilitated the election of Joseph Kabila. He said: 'what I announced then, was false'.

www.youtube.com/watch?v=_Z8mAmVgvpE

These revelations were confirmed by another independent source, which published a letter from Nday Ngoy Matembo, president of the cultural association Baluba-I-Bukata (Balubakat), dated 8 February 2013. While reproaching Mulunda for accusing Joseph Kabila of ingratitude, the letter congratulates him on helping his ethnic brother maintain the political power originating from Laurent Mzee Kabila. Given the neo-patrimonial and ethnic character of Congolese and African politics, the political practices these sources refer to are not implausible.

THE INTERNATIONAL COMMUNITY'S TOLERANCE OF LOW QUALITY ELECTIONS IN THE CONGO

Herman Cohen, the former US secretary of state and a member of the academy of US diplomats, confirmed, in a Voice of America interview published through social media on 4 January 2012, the systematic and organised character of what he described as 'flagrant and clumsy' electoral fraud.

There are not many countries in Africa where the outgoing president accepts the risk of losing, I think of only Zambia and Ghana. There aren't many where the president can lose elections. Why is the DRC different? The problem for the DRC is that the fraud was so blatant and clumsy that donors are embarrassed. They will make a budget for the DRC for next year, and Parliament will say: there was fraud there. So they have a big problem in Kinshasa ... African presidents are also embarrassed as donors. You cannot associate with something like this.

However, Cohen goes on, in the same interview, to suggest that the incumbent regime should remain in power regardless of the stolen elections: 'I think Kabila should remain president. You cannot change now. But he must get rid of his corrupt entourage and begin a program of reform.'

Cohen's tolerance of low quality elections in the Congo and his unquestioned support for incumbency is reflective of the stance most Western countries adopted

vis-à-vis the botched elections. His condescending position on the post-electoral political configuration provides an answer to Nzongola's question: 'Congolese vote, but who decides?' (Nzongola 2012).

BLOODBATH AND TERROR

The characterisation by international observers of the electoral process as generally peaceful, with isolated violent incidents, fails to capture the volatile security environment, the high degree of intimidation and the widespread violent response of the people to electoral fraud by CENI officials or members of the presidential majority. It also fails to account for state terrorism deployed by security forces to quell protests against the rigged electoral process.

For millions of Congolese who only wanted an opportunity to elect their president and legislators, the electoral process was far from peaceful. The pre-election period was marred by frequent incidents of violent repression by the police or members of the UDPS who, by means of weekly protests, demanded transparency in the registration process, the voters' roll, the process of cleaning up the voters' roll and access to CENI's central server.

The worst acts of intimidation and excessive deadly force took place on 26 November 2011 at the Ndjili airport, when presidential guards opened fire on UDPS members, killing more than 30 people, injuring hundreds of others and picking up the dead in full view of international and national media (MONUSCO & UN High Commission for Human Rights March 2012). In a bid to soothe national and international outrage, the minister of justice stated that an investigation of the incident would be carried out. However, to date, no such investigation has taken place.

This heavy handed attack on the closing day of the election campaign was a precursor to the extensive and systematic crackdown on opposition members in the period immediately after the announcement of the election results.

After the Supreme Court of Justice certified the results, opposition parties and civil society organisations called for people to protest and demand the restitution of the truth of the polls ('la vérité des urnes'). The UDPS claimed that its leader, Etienne Tshisekedi, had won, and Tshisekedi, who had declared himself the true winner, held an inauguration ceremony at his home in Limete, where he had been put under house arrest immediately after the announcement of the results.

UDPS members organised protest marches and public gatherings and attempted to escort Tshisekedi to the 'Palais de la Nation' (the president's office). All these efforts were violently crushed by the security forces (Radio Okapi, 26 January 2012; Cheik Fita, 26 January 2012; *Jeune Afrique*, 14 December 2011).

The party also called for a strike on 30 January 2012, which was observed

in places such as Mbuji Mayi, but was less successful in Kinshasa, where daily livelihoods depend on earnings (Radio Okapi, 30 January 2012).

The Catholic Church (7 January 2012) took the lead in raising consciousness about the necessity to reject the results. Under the leadership of the National Episcopal Conference of Congo (CENCO) and the Council of the Apostolate of Catholic Lay (CALCC), the church issued strong statements rejecting the results and challenging the legitimacy of those elected.

In keeping with the activist tradition of the march of Christians on 16 February 1992 to demand the re-opening of the National Sovereign Conference, which ended in a bloodbath as a result of brutal state repression, the church planned a number of protest actions, including a mass in St Joseph Church on 7 January 2012 and a countrywide march on 16 February 2012.

Ignoring the last-minute decision by the mayor of Kinshasa, André Kimbuta, to prohibit the march (Radio Okapi, 15 February 2012), protesters gathered in their respective churches and started to march towards the central point of assembly, St Joseph Parish at Victoire-Matonge. The peaceful marchers were violently dispersed and beaten and some were arrested (Radio Okapi, 16 February 2012; *Jeune Afrique*, 16 February 2012). Those who had already arrived at the church were held there by the police until MONUSCO came to plead for them to be released (Radio Okapi, 17 February 2012).

Young sportsmen and 'kuluna' (young street criminals) were also used in several areas to beat up protesters and disperse them as they gathered in their local parishes and sought to start the march to St Joseph Parish.

Human rights and other organisations have documented widespread, systematic and deadly attacks on crowds and individuals who tried to protest against the stolen elections or who were suspected of being pro-Tshisekedi, particularly in Kinshasa, in the Kasai provinces, in Equateur and in Lubumbashi (*Congo Independent*; Human Rights Watch 21 December 2011, 2 December 2011; Amnesty 19 December 2011).

These acts of state terrorism were carried out mainly by the presidential guard (sometimes masquerading in police uniforms), by the police, the military and the National Intelligence Agency (ANR), forces that are accountable to their political patrons, who are, ultimately, the president and his cronies.

The pattern of attacks reveals the militarisation of the political sphere in the post-election period, particularly in cities, and the deliberate move to crush popular resistance to the stolen elections. First, cities were militarised. A few days before the announcement of the results military trucks (normally used on the battlefield) could be seen throughout Kinshasa. Heavy vehicles fitted with guns were placed on strategic corners or patrolled the city.

This military occupation of the city sent a strong message that attempts to protest would be suppressed violently. Hosts of individuals in military or police uniforms could be seen posted in key public places or walking the streets. In order to spread terror and quell any attempts to protest, the security forces often used live ammunition and shot indiscriminately into crowds or at individuals who crossed their path.

Instead of creating law and order, these forces pursued a political agenda: neutralising popular resistance by projecting terror through targeted and indiscriminate killings, random arrests and summary executions and a crackdown on public gatherings. The use of brute force against unarmed crowds and individuals instilled fear and ensured that people remained locked in their homes and dared not involve themselves in subversive action or even peaceful protest. Thanks to the omnipresent security machinery, the country, particularly the city of Kinshasa, resembled an occupied territory.

CONCLUSION

This article sought to outline what was specific and salient about the 2011 elections in the DRC. Organised and state-sponsored electoral fraud and repression constituted the main markers of the process.

Drawing on the reports of observer missions and media, the article sets out the material evidence of the electoral fraud. Apart from the African observer missions, whose public reports or statements are superficial, unprofessional and politically biased, Western organisations such as the European Union and the Carter Center agree with local organisations such as the CENCO, RENOSSEC and the VSV that the 2011 electoral process was marred by grave irregularities and that the results lacked credibility.

Unlike Western organisations, whose reports fell short of identifying the organised and state-sponsored nature of these grave irregularities, the national organisations strongly rejected the elections, maintaining they were fraudulent and manipulated for the sake of keeping the incumbent president and his political allies in power.

The article also shows that the incumbent regime's plan to rig the elections included the deployment of heavy state security machinery aimed at enforcing the flawed results by means of deadly violence and intimidation. It thus appears that electoral fraud is inseparable from the ensuing repression, which aims to prevent a popular uprising, to beat actual and potential protesters into submission and to impose the incumbent regime by force.

In this context, the characterisation of the electoral process by most observers and media houses as 'peaceful' or 'peaceful despite few violent incidents' is

problematic. Such assessments downplay the seriousness of the reported acts of violence and intimidation, ignore the far-reaching impact of acts of state terrorism deployed by security forces with total impunity and fail to understand the incumbent regime's reliance on illegitimate deadly violence to enforce the flawed results.

This analysis suggests that the democratisation process in the Congo is at great risk. The current legitimacy crisis may open the way for a relapse into armed contestation for political power. To avoid this sinister scenario it is paramount that the foundations of the Congo's electoral authoritarianism be tackled. This authoritarianism has to do with, among other factors, the monopolisation by the president of political power; the politicisation of the armed forces, the security establishment and the judiciary and the monopolisation of state resources by the president and his cronies.

The current electoral reforms, which have been preoccupied solely with changing the structure and composition of the CENI, are only scratching the surface of the problem. As long as the president and his cronies have unrestricted control over the means of violence and state financial resources and as long as the international community appears to be indifferent to the abuse of human rights and principles of good governance in the Congo, elections, far from being a democratic moment, will continue to be a nightmare for the majority of the people of the Congo.

Congo's experience with the 2011 elections supports Magaloni's argument that an autocrat who fears electoral defeat will use his or her nastiest tricks, including rigging and violence, to remain in power unless he or she is forced out by a multiplicity of factors, such as the unity of the opposition, the neutrality of the armed forces and the commitment of the international community to clean elections.

In light of the 2011 election experience in the DRC there is a need to conceptualise electoral and post-electoral violence as intrinsic to 'the game of electoral fraud'. As the Congo experience has shown, electoral fraud and violence are inseparable, particularly in countries marked by electoral authoritarianism. In this context, violence is part of the rigging strategy as the means through which fraud is perpetrated and enforced.

The analysis of the 2011 elections in the DRC also shows that, contrary to Lindberg's theory that the quality of elections improves over time, particularly after more than two or three consecutive electoral cycles, one should not take this positive evolutionary trajectory for granted. Unless the system of checks and balances is consolidated and the rule of law entrenched the quality of elections is likely to degenerate and there is a risk that the citizenry will become disillusioned about the usefulness of elections.

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UNDERSTANDING ELECTION-RELATED VIOLENCE IN AFRICA

Patterns, Causes, Consequences and a Framework for Preventive Action

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ABSTRACT

From Algeria to South Africa, passing through Côte d'Ivoire, Kenya, the Democratic Republic of Congo and Zimbabwe, election-related violence has imposed itself as a full component of Africa's political landscape in the past two decades. The prevalence of such violence in Africa has led to the production of abundant literature dedicated to the matter. This research seeks to contribute to the existing academic literature by focusing specifically on the patterns, causes and consequences of election-related violence on the continent. The central argument of the article is that, although the patterns, causes and consequences of election-related violence do not necessarily follow the same trends in different African countries (due to, among other factors, inter-country historical, socio-economic and political differences), there are commonalities in the types, causes and consequences of such violence on the continent. While a thorough understanding of the patterns and causes of election-related violence in Africa constitutes an important point of departure in addressing the problem, an effective prevention strategy should embrace a multi-level approach targeting all significant stakeholders in any electoral process, including the political leadership, the electoral management body, civil society organisations, the general public and external partners.

INTRODUCTION

The changes brought about by the end of the Cold War in the late 1980s resulted in virtually all African countries gradually opening up their political systems to some principles, values and practices of liberal democracy. Innovations introduced

to this effect included, among others, the adoption of multiparty political systems and the liberalisation of the media sector.

The adoption of liberal democracy brought about the logic of periodic renewal of government leadership (at local, provincial and national levels) through elections. In this regard, two important observations need to be made in order to grasp the context of the emergence of liberal democracy in many African countries.

Firstly, the advent of liberal democracy in Africa took place against the backdrop of the single-party system that had prevailed in many countries for at least two decades. The quick change between these two almost antithetical political models meant that virtually all African citizens (both the political elite and the populace) moved into liberal democratic practices with political attitudes and mindsets reminiscent of the single-party monolithic regime and conflicting with the emerging pluralist political model.

Secondly, the new liberal democratic model in almost all countries was ushered in by the very autocrats who had been the architects of the repressive and dictatorial single-party state model, the very people Carothers (2007, p 23) considers ill-equipped to undertake this momentous task. Given the poor political and socio-economic record of the single-party state in most countries it was not an exaggeration to argue that the liberal political model adopted was in apparent conflict with the interests of those expected to work towards its entrenchment in society. In fact, as Burnell (2008, p 272) observes,

[p]olitical liberalization usually refers to a top-down process, made by political leaders aiming to maintain power for themselves and not willing to accept that institutionalized uncertainty over electoral outcomes should be the determining principle of who governs (and the possibility of alternation in office that implies).

Since 1990 elections in the majority of African countries have thus taken place within the context of societies that are yet to internalise adequately the fundamental principles, values and rules of liberal democracy and of political leaders who are inclined to bend such values, principles and rules in order to ensure their continued presence at the helm of state institutions.

One of the consequences of this state of affairs has been the resort to violence by both political leaders and ordinary citizens as a medium of political engagement and interaction. The situation is compounded by the perception of elections held by both the political elite and ordinary citizens in many African countries. Elections are generally regarded as a zero-sum game in which loss amounts not only to political exclusion but to marginalisation from the socio-economic benefits expected to accrue to those in charge of the political system.

This perception was entrenched in many African societies by the single-party regimes that used neo-patrimonialism and political clientelism – generally based on religious, regional and/or ethnic affinities – as a strategy of socio-political control and domination.

From Algeria to South Africa, passing through Côte d'Ivoire, Kenya, the Democratic Republic of Congo (DRC), Zimbabwe and Lesotho, election-related violence has, in the past two decades, imposed itself as a component of Africa's political landscape. The violence witnessed in many African countries since the advent of liberal democracy in 1990 has led many people to question the very essence of democracy and multiparty politics for societies still dominated by leaders who are ill prepared to abide by democratic rules, principles and values (Atuobi 2008, p 11).

However, it appears that the most virtuous path with regard to the issue of election-related violence in African countries does not need to be explored through the essence of democracy and multiparty politics for Africa and its people. Rather, attention should be paid to devising a comprehensive understanding of the root causes behind each instance of election-related violence, to be followed by the formulation of holistic strategies to address them.

'Until recently,' the UN General Assembly (2010, p 6) reports,

there has been little academic research on the subject of election violence. Research gaps that have been generally identified include work on causes and effects of election violence, cross-national studies, efforts to understand the specific forms or variations of violence, work that is both theoretical and case-oriented, and research on the scope, gravity and timing of election violence.

This research seeks to contribute to filling some of these gaps as far as Africa is concerned by focusing specifically on the patterns, the causes and the consequences of election-related violence on the continent. Grounded in a problem-solving approach, the study further proposes a framework conducive to preventing election-related conflicts and disputes from degenerating into violence.

The central argument of the research is that, although election-related violence is a widespread phenomenon on the African continent, its patterns, causes and consequences do not necessarily follow the same trends in different countries. Such inter-country differences are, to a large extent, dictated by the historical, socio-economic and political conditions specific to a given polity. Yet there are commonalities cutting across different countries insofar as the types, causes and consequences of election-related violence on the continent are concerned.

Before delving into the discussion of the main patterns, causes and consequences it appears essential to set the background and context to the research

by discussing the democratic developments that have unfolded in Africa since 1990.

OVERVIEW OF DEMOCRATIC DEVELOPMENTS IN AFRICA SINCE 1990

With very few exceptions, the vast majority of African states remained under single-party rule until 1990,¹ when the impact of political liberalisation in Eastern Europe and Western donors' newly-crafted aid conditionality model compelled African leaders to embrace multiparty politics.²

To date, virtually all African countries have embraced multiparty democracy and have subsequently been able to hold regular competitive elections. However, while the quantitative aspect of democracy in Africa has frequently been praised, its qualitative dimension still leaves much to be desired.

From a quantitative point of view virtually all constitutions in African countries give citizens the right to form and/or adhere to political parties of their choice. In so doing, they qualify, under conditions clearly stipulated by the law, to vote and compete for political office. Political liberalisation in Africa has also permitted the burgeoning of private media that provide an alternative voice and view to that of the government-controlled public broadcasting network.

On the social front there has been an increasing number of 'independent' labour unions, non-governmental organisations and interest groups of all kinds that not only seek to improve the socio-economic conditions of ordinary citizens but also to provide them with important channels through which to participate in decision-making processes.

The most visible quantitative manifestation of democratic practice on the African continent remains, undoubtedly, the regular elections being held in African countries. According to data from the Electoral Institute for the Sustainability of Democracy in Africa (EISA), there have been elections in at least 20 African countries every year between 2005 and 2012. In 2013, 22 African countries were set to hold elections at different levels.

1 However, it should be recalled that the vast majority of African countries achieved independence within the framework of multiparty democratic systems, generally copied from their respective colonial metropolitan models. It is only by the mid-1960s that the first post-independence sub-Saharan African leaders, starting with Ghana's Kwame Nkrumah in 1964, embarked on replacing multiparty democratic systems (accused of being divisive and even 'un-African') with single-party regimes. It should be noted, however, that Egypt's second president, Gamal Abdel Nasser, had banned multiparty politics in that country as early as 1953.

2 This research does not underestimate the contribution of internal democratic forces to the struggle for the emergence of multiparty democracy in Africa. Instead, the research emphasises that, notwithstanding the role played by national actors, it is the extensive links between the vast majority of African single-party rulers and Western powers and donors that led the former to bow quite unconditionally to international pressure and embrace multiparty democracy at the critical juncture of the end of the Cold War.

Although elections are an important component of democratic practice in individual African countries, the holding of elections does not represent the exclusive medium for measuring the consolidation of democracy. In fact, 'elections can be instruments of political control rather than devices of liberalisation' (Aalen & Tronvoll 2009, p 193) or be used as a process aimed at 'the legitimization of autocracy through the ballot box' (Good 2002, p 6).

The qualitative dimension of democracy relates to the content of democratic practices and their real significance with regard to the consolidation of democracy in individual African countries. It has been observed that the practice of democracy in many African countries remains confined to the margins of the national political system without necessarily succeeding in altering or transforming it.

This is the case, for instance, in countries where the ruling class (party) maintains tight control over the national security forces and uses them to curtail the free development of opposition political parties and 'unfriendly' interest groups, including non-governmental organisations, private media houses and so on.

The quality of democracy in Africa has equally been questioned with reference to the low level and sluggish speed of democratic development in many countries. In fact, it has been observed that not only are democratic institutions (including political parties) taking far too long to entrench themselves, even in countries that hold regular elections, national socio-political stakeholders (including government, political parties and educational institutions) are yet to devote adequate attention and resources to democratic education. The persistent failure in this regard has contributed to the emergence in many African countries of party systems devoid of adequate ideological grounding and characterised by identity-based loyalties.

Lastly, Africa's democratising states have been criticised for failing to match progress on the political and civic rights front with substantive improvements in the socio-economic rights of the citizenry (Lynch & Crawford 2012, p 23).

In their 20-year (1990-2010) assessment of the democratisation process in Africa, Lynch & Crawford (2012, pp 1-22) identify seven areas of progress and setbacks. These are: increasingly illegitimate but ongoing military intervention; regular multiparty elections and occasional transfers of power, but democratic rollback and hybrid regimes; the institutionalisation of separate powers, but ongoing presidentialism and endemic corruption; the institutionalisation of political parties and significance of issue-based politics, but widespread ethnic voting and the rise of an exclusionary (and often violent) politics of belonging; increasingly dense civil societies, but local realities of incivility, violence and insecurity; precarious political rights and pro-rich economic growth; and the donor community's mixed commitment to and, at times, perverse impact on, democracy promotion.

However, it would be misleading to assume that the above characterisation of the quantitative and qualitative dimensions of multiparty democracy in the post-Cold War era in Africa applies to all African countries in similar ways. Instead, there is a need to highlight inter-state differences and even to acknowledge the existence of several categories of states insofar as the practice of multiparty democracy in post-1990 Africa is concerned. Table 1 identifies five categories of countries in this regard.³

Table 1
The practice of multiparty democracy in Africa since 1990

Consolidating democratic states	Progressing democratic states	States in advanced transition	States attempting transition	Persistent autocratic states
Benin; Botswana; Cape Verde; Ghana; Mauritius; Seychelles; South Africa; São Tomé y Príncipe	Kenya; ⁴ Lesotho; Mozambique; Namibia; Senegal; Tanzania; Zambia	Algeria; Angola; Burkina Faso; Burundi; Cameroon; Comoros; Congo-Brazzaville; Côte d'Ivoire; Gabon; Liberia; Malawi; Morocco; Niger; Nigeria; Rwanda; Sierra Leone; Togo; Uganda	Central African Republic; Chad; Democratic Republic of Congo; Djibouti; Ethiopia; Guinea; Guinea-Bissau; Libya; Madagascar; Mali; Mauritania; Somalia (including Somaliland and Puntland); South Sudan; Sudan; Tunisia; Zimbabwe	Equatorial Guinea; Eritrea; Gambia; Swaziland

Source: Author's own compilation, taking into consideration other models, including the Ibrahim Index of African Governance, the Freedom House ratings, the Peace Index, the Economist Intelligence Unit Democracy Index and the Human Development Index of the United Nations Development Programme.

³ Just as it is difficult to agree on what democracy ultimately means, it is virtually impossible to rate countries on the very complex process of democratisation or democratic transition. The classification contained in Table 1 remains, thus, open to criticism, re-evaluation and revision.

⁴ The decision to include Kenya as a 'consolidating democratic state' may seem very controversial, as many still remember the unprecedented post-electoral violence the country experienced in late 2007 and early 2008 as a consequence of what appeared to be blatant rigging of the presidential elections in favour of an incumbent unwilling to leave office following what seemed a clear electoral defeat. But not only has Kenya since recovered from its 2007-2008 ashes, more importantly, the rigging of the 2007 elections could not erase the country's achievements in other aspects of the democratic process, including individual and public liberties and media freedom, as well as ongoing efforts to deliver on the socio-economic expectations of ordinary Kenyans.

Consolidating democratic states

Consolidating democratic states are those that have succeeded in entrenching the principles, rules and values of democratic process and where national stakeholders across the entire socio-political spectrum have repeatedly displayed commitment through their actions to upholding such principles, values and rules. Not only have countries ranked in this category proved their ability to run elections that are endorsed by virtually all national stakeholders, their successive governments have, equally, embraced an understanding of democracy that goes beyond the mere holding of periodic elections to work toward the emergence of responsive and accountable governance as well as the promotion and protection of human rights, the rule of law and individual and public liberties, among other elements.

Progressing democratic states

Such states display the majority of features applicable to 'consolidating democratic states'. However, the distinguishing feature between the two is the fact that in progressing democratic states national socio-political stakeholders do not always perceive the democratic process (in terms of both electoral management and accountable governance) as conducive to equitable participation for all parties. In this regard, incumbency represents a critical instrument employed by the ruling elite to weaken the opposition and curtail public liberties and media freedom as well as to design the democratic system (including the electoral process) so as to ensure that it remains in power.

States in advanced transition

These states base their actions on self-imposed constitutional prescriptions grounded in some of the fundamental principles and values of liberal democracy. They therefore hold regular elections, as prescribed by the Constitution, while, at the same time, delivering on the socio-economic public expectations of democracy in terms of social welfare.

However, although democratic processes (including elections) are presented as the key determinant of social orientations, the real forces in this category of state are generally the ruling political party (or coalition) and/or the security forces that seek to determine the outcome of the democratic process in advance.

In this context the incumbent regime uses money and (direct and indirect) force as important strategies to ensure the continued weakening of (perceived or real) opposition political and social groupings. But, especially in countries

emerging from protracted armed conflict, the problem may simply lie in the weakness of state institutions, which are unable to manage effectively the democratisation process and therefore allow forces formerly involved in civil violence to seek to influence the outcome of the country's democratic processes.

States attempting transition

Such states look at democracy from a quantitative perspective, seeking to please the international community so as to enjoy international acceptance. While most of the countries in this category have been engaged in the democratisation process for a long time, they fail to entrench democracy because of their obsession with designing the new system in a way that suits the incumbent leader (as opposed to the ruling party, as is the case with 'advanced transition states').

The collusion between the national security forces and the ruling elite is a dominant feature of this category of states, although some, such as Libya, Mali and Tunisia, find themselves in this category mainly as a consequence of their recent political development as countries emerging from armed conflict.

Advanced transition states and states attempting transition appear to share the characteristics of what Levitsky & Way (2005, p 20) term 'competitive authoritarian regimes'. In such regimes,

formal democratic institutions are widely viewed as the principal means of obtaining and exercising political authority. Incumbents violate those rules so often and to such an extent, however, that the regime fails to meet conventional minimum standards for democracy

Levitsky & Way 2002, p 52

This article has only identified four African countries as 'persistent autocratic states', namely, Equatorial Guinea, Eritrea, the Gambia and Swaziland. The dominant features of these countries include autocratic rule by leaders vested with extensive powers, the ongoing repression of dissent, tight control by the regime over the media and significant restrictions on individual and public liberties.

Unlike 'states attempting transition', states in this category do not concern themselves with international legitimacy sought through the deployment of a 'façade democracy'. In the case of Swaziland, for instance, the monarch has simply dismissed the very idea of liberal democracy as antithetical to 'his' people's culture and tradition.

It must be admitted that the boundaries between the five categories of states identified above are not rigid, but blur, as countries are able to swing from one category to another (both forward and backward) depending on their internal political and socio-economic developments at a particular time.

For instance, in its 2010 Freedom in the World report, the American-based Freedom House listed Mali among Africa's 'free' or full liberal democracies. However, the intensification of war in the northern part of the country, followed by a military coup in 2012, highlighted the important shortcomings in Mali's apparent progress toward democracy.

Furthermore, the five categories listed above are not scaled on a rigid linear mode, compelling a country, for instance, to move gradually from the 'persistent autocratic states' category to the 'consolidating democratic states' category. Nor is the listing of a state in a particular category regulated by time considerations. Instead, an autocratic state that embraces meaningful democratic reforms may move quickly to a more advanced democratic stage.

In similar vein, it should be borne in mind that the fact that two or several countries find themselves in the same category does not necessarily mean that their respective democratisation processes may be equated in absolute terms. Instead, it simply means that they share more features among them than any one of them would have with other countries located in categories slightly above or below them.

Lastly, it ought to be noted that all countries, irrespective of the category into which they fall, are susceptible to instances of election-related violence, as events around the continent in recent years have shown. Yet, 'the more consolidated a democratic system is the less likelihood that political violence will be employed by contenders for power as a way to retain or attain office' (Sisk 2008, p 4).

The phrase 'election-related violence' applies to

[a]cts or threats of coercion, intimidation, or physical harm perpetrated to affect an electoral process or that arises [sic] in the context of electoral competition. When perpetrated to affect an electoral process, violence may be employed to influence the *process* of elections – such as efforts to delay, disrupt, or derail a poll – and to influence the *outcomes*: the determining of winners in competitive races for political office or to secure approval or disapproval of referendum questions.

Sisk 2008, pp 5-6

Fisher (2002, p 4) defines electoral violence as 'any random or organized act or threat to intimidate, physically harm, blackmail, or abuse a political stakeholder in seeking to determine, delay, or to otherwise influence an electoral process'. As a sub-type of political violence, election-related violence is more likely to occur in societies with legacies of political and structural violence.

Election-related violence may target people and symbols directly linked to the electoral process, such as candidates, party supporters and electoral officials,

as well as voting materials, polling stations and the headquarters of the election management body.

However, it can also target symbols of government and private property. Although experience in Africa has shown that national security forces and the ruling elite play a significant role in waging election-related violence, it should be admitted that opposition politicians and other individual candidates also revert to violent tactics, either in retaliation or in an attempt to force their way into the electoral process.

But it would be a mistake to restrict the definition to physical violence. Rather, it should be extended to include indirect (psychological, ideological ...) violence, which encompasses, for instance, cases where opposition candidates are unfairly barred from contesting the elections or are denied the necessary freedom to travel in order to campaign. Nuances in patterns of election-related violence are discussed in the section below.

PATTERNS OF ELECTION-RELATED VIOLENCE IN AFRICA

The liberal democratic model that began in the early 1990s and has been adopted by the vast majority of African states is based on the multiparty political system. It entails ongoing free debate among all socio-political stakeholders about a diversity of policy proposals as well as the 'right to difference'. In this context, while politics is, in essence, competitive, the free expression of differences that multiparty democratic systems seek to advance contributes to making them even more competitive.

However, the legal guarantees and protections multiparty democratic systems provide for the free expression of differences equally contribute to reducing the likelihood that political competition will degenerate into violence. So, what may account for the instances of election-related violence that African societies have continued to experience since the return to multiparty politics in the early 1990s?

Previous literature has envisaged democratisation as a phased process (Huntington 1991; Wise & Brown 1998, p 116) involving the breakdown of the authoritarian or non-democratic regime, the transition and the consolidation.

This study follows Khathamzi's (2007, p 55) division of the democratisation process in Africa into two phases, namely, the transition and the consolidation phases. In the vast majority of sub-Saharan African countries the transition phase started in the early 1990s when the Cold War ended. It was inaugurated with the decree by the incumbent regime of a democratisation process.

It must be emphasised here that our understanding of the political transition goes beyond the restricted scope assigned to it by African governments, which,

in most cases, lasted from two to five years. Instead, the transition should be regarded as the period during which the society acquaints itself with the new democratic values and principles and establishes political, economic and social institutions consistent with the democratic system.

This process may go on for a decade or longer, depending on circumstances specific to a particular country, rather than being limited to the organisation of the first post-democratisation elections. The transition is thus the interval between the dismantling of the authoritarian regime and the emergence of a fully-fledged consolidated democratic system (Healy & Robinson 1994, p 128). The consolidation phase entails the maturation of the democratisation process. It involves not only the entrenchment of political, economic and social institutions related to democracy within society but also the embrace by the citizenry of democratic principles, values and norms.

Although this article adopts a phased approach to democratisation, there is a need to acknowledge that democratisation cannot be assumed to be merely an 'inevitable sequence of events' (Burnell 2008, p 272). Similarly, it should be emphasised that, rather than approaching the transition and consolidation phases of the democratisation process as two rigidly separated moments, there is a need to identify the 'umbilical' connection between the two (Khathamzi 2007, p 67).

Inasmuch as political liberalisation and the process of democratisation pursue the long-term goal of establishing a free society where individual and collective rights are protected and guaranteed, it would be a mistake 'to present democratisation as a unilinear movement from political authoritarianism to democracy ...' (Burnell 2008, p 269). Yet there is need to acknowledge that, as a process, democratisation brings about a feeling of uncertainty among all socio-political stakeholders in a given polity, leading them to explore an array of mechanisms for survival.

It exposes the deficit of legitimacy within the ruling regime and contributes to eroding its internal cohesion. These two factors, combined with the lack of trust among socio-political stakeholders, have the potential to increase socio-political tensions.

The fact that many countries shift their political systems towards embracing liberal democracy against the backdrop of economic decline, social hardships, past marginalisation and a contraction in the capacity of the state to deliver on its core responsibilities and project itself onto society heightens the risk that these tensions will lead to manifest crises and even overt violence.

Elections in countries undergoing a democratisation process are thus held in the context of uncertainty, the severity of which depends on the commitment of role players on all sides to managing the specific socio-economic, political and historical predicaments characterising the society at a particular juncture. This

point helps to explain the differences in the experiences of African countries with election-related violence, in spite of the fact that they share similar socio-economic, political and historical experiences. Just as the patterns of election-related violence vary from country to country, so it is helpful to analyse this violence in terms of the phases of the electoral process, before, during and after the vote.

Patterns of election-related violence prior to the vote

Much of the election-related violence prior to the vote takes place during the election campaign, as political role players attempt to convince potential voters to support their programmes or candidacies. At this stage, violence may take the following forms:

- Clashes between supporters of opposing parties: Clashes between supporters of opposing sides in the pre-vote period usually occur when parties and /or candidates are allowed by public officials to hold campaign rallies in the same area – sometimes even in the same venue. They can also erupt when one side's rally crosses into a 'stronghold' of the opposing camp, which may view the rally as a blatant act of provocation that warrants a strong response.
- Clashes between opposition supporters and state security forces: In several African countries state security forces are perceived – not without good reason – as an extension of the ruling party or elite. The fact that security forces are deployed at an opposition rally to ensure public order can, in itself, turn into a bone of contention between the deployed security force officials and party members, especially the youth. In other cases violence simply erupts because the opposition did not receive the required permission to hold a meeting in a particular place at a particular time. However, violence may also emerge as a result of biased security forces officials determined to advance the agenda of the incumbent regime against the opposition.
- Rejection of the candidacy of opposition leaders: Although it may not involve direct violence in the form of physical harm, the rejection of the candidacy of opposition leaders on dubious legal grounds should be regarded as a case of election-related violence. Not only does such rejection generally lead to direct violence between supporters of the rejected candidate and state security forces it also exposes the rejected candidate to further violence from the state, including, sometimes, house arrest, as the rejected candidate is denied free movement while his/her house is surrounded by state security forces. This was the case in Nigeria during the 2007 national elections, when the country's sitting vice-president and

presidential candidate, Atiku Abubakar, saw his candidacy rejected by the Independent National Electoral Commission. Officially, he had been accused of embezzling public funds. However, the real reason was his fall out with outgoing President Olusegun Obasanjo, starting in 2005 when Abubakar denounced Obasanjo's bid to revise the Constitution in order to seek a third consecutive term. It was only five days before the election that the Supreme Court declared that Abubakar's name should be included on the presidential candidates' list. He eventually lost the election to Obasanjo's anointed successor, Umaru Yar'Adua, in a poll described by many observers as significantly flawed.

- Organised attacks by thugs from the opposing side. It has become common in some countries in Africa, especially, but not limited to, those emerging from protracted civil wars, to witness the rise of violent 'youth groups' operating on behalf of parties and/or individual candidates during the election campaign. Those that operate covertly are generally structured like urban militias and are tasked with directing organised attacks against identified political opponents. Although incumbents and ruling parties are generally behind these violent mercenary networks, the opposition can also make use of such groups as a strategy to counter victimisation visited upon it by biased state security forces.
- Arrest and imprisonment of opposition leaders: In some African countries there have been instances of the arrest and imprisonment of opposition leaders some months or weeks before the vote. These arrests and imprisonments are generally based on trumped up criminal charges. In some cases those arrested are released just a few days prior to the poll so as to lend some sort of legitimacy to the process.
- The abduction and assassination of candidates and other political officials: In some places candidates and other political officials become targets of electoral violence. A clear indication of political intolerance and a deficit of democratic culture, the abduction and murder of candidates and political officials can serve to intimidate opposing voters or get rid of a more popular competitor.
- Preventing opposition leaders and candidates from moving freely: In many African countries during election campaigns the incumbent prevents opposition members from travelling freely around the country to interact with the electorate. These tactics are generally justified on dubious security grounds. In other cases, especially in countries with deficient communications networks, the ruling party simply books all the seats on an aircraft, leaving the opposition with no viable alternative. This was partly the case during the 2011 elections in the DRC. If some elements within the

opposition are able to mobilise private aeroplanes, the regime may counter-attack with issues relating to licences and other flight rights, to ensure that the imbalance is maintained.

- Intra- and inter-community violence and subsequent population displacement: There are also cases where political contenders target communities (or members of the community) who are perceived to support the opposing side. This takes the form of instigating intra- or inter-community violence, generally focused on issues not directly linked to the elections, including disputes over grazing land, cattle rustling, water sources and even citizenship. The objective is to sow discord within these constituencies and provoke the displacement of populations prior to the vote. Such displacement is designed to deny an opponent the total number of his/her potential voters in the area and thus improve one's own chance of success.

Patterns of election-related violence during the vote

In most cases, voting days tend to be more or less peaceful in many African countries, even when the pre-vote and post-vote periods are characterised by high levels of violence. Kenya's 2007 election is an interesting example of this. There were very few cases of violence during the pre-vote period and the voting process was overwhelmingly peaceful throughout the country. This contrasted sharply with the widespread post-election violence, triggered by the mishandling of the vote-counting process as well as the elections results, that led to more than 1 000 deaths and an estimated 250 000 displacements along with significant destruction of physical infrastructure.

Violence on voting day generally assumes the following forms:

- Attacks on voting materials and installations: Such attacks generally take place early – while voting materials are being ferried to the polling station, or late – while they are being shipped to the compilation centres. The aim is to ensure that ballot papers are destroyed or damaged to such an extent that the process of vote classification and counting becomes impossible. These attacks are often carried out by groups which doubt the fairness of the electoral process and the violence is a means of expressing their rejection of the entire process. In some cases, the target of the attacks becomes the polling stations, with the aim of preventing the vote from taking place. These attacks are expressions of anger by groups of election stakeholders who believe the electoral outcome has been decided in advance and the voting is designed as a mere formality to achieve that goal.

- Attacks on election officials: Like politicians and candidates, election officials may become targets of electoral violence. Election officials are generally attacked simply because they are perceived to represent the interest of one political group (generally the ruling party) or when they are caught attempting to alter election results in favour of a specific political grouping or candidate.
- Clashes between supporters of opposing camps: Although virtually all countries in Africa forbid any form of campaigning on voting day, political parties and candidates (especially presidential candidates) find it difficult to abide by this cardinal principle, both intentionally and unintentionally. As a result, large groups gather (generally in the vicinity of specific polling stations) either in anticipation of electoral victory or in order to denounce the electoral process. This increases the possibility of opposing camps clashing should their gatherings be held in the same area.

Patterns of election-related violence after the vote

The period following the vote represents the most uncertain moment in many African countries. As argued above, although instances of violence occur before and during the voting, it is generally after the announcement of the results that much election-related violence takes place. Some of the different factors that may trigger the violence at this stage are:

- Clashes between the losing camp and the security forces: It is common in Africa for the losing side (generally the opposition) in an election to call for public demonstrations by its supporters in order to express its disapproval of the official election results. Such demonstrations are generally held without prior permission from public officials in charge of matters relating to public gatherings as the losing side regards such officials as biased in favour of the winners (generally the incumbents). As a result, these demonstrations generally end in violent clashes between state security forces and the protesting group.
- Victimisation of those suspected of having voted for the opposing side: The announcement of the results and the disappointment it brings can also lead supporters of the losing side to target neighbours and neighbourhoods believed to be sympathetic to the winning camp. This trend was prevalent in the 2007-2008 post-election violence in Kenya. In both the Rift Valley and Kisumu areas (more favourable to presidential candidate Raila Odinga), members of the Kikuyu ethnic group were targeted for sharing an ethnic identity with President Mwai Kibaki and on the general assumption that they might have voted for Kibaki.

- Clashes between supporters of opposing camps: In these instances, violence can be triggered by the winning camp taking its celebrations into an opposition stronghold. Violence can also erupt in the street as cheering victors come across supporters of the losing side who intend to protest against the results. In most of these cases state security forces become involved as they seek to separate the two sides. Such intervention by the security forces may aggravate the matter, as they are perceived, rightly or wrongly, as favouring one particular group (generally the one close to the regime).
- Attacks on the offices of the electoral commission, government buildings and other infrastructure: Violence following the announcement of the election results can also be aimed at property. Sometimes the violence turns into random destruction, targeting anything the protestors come across. Such uncontrolled violence generally drags in criminal networks and other elements, who view the violence as an opportunity to loot shops, businesses and even private property.
- Coup d'état, armed confrontation and/or resumption of civil war: Persistent disagreements over election results in electoral processes perceived to be unfair can trigger the direct intervention of the military in politics in the form of a coup d'état. This scenario remains rare in Africa, although it materialised in Madagascar after the 2001 presidential elections. Following an inconclusive first round, opposition candidate Marc Ravalomanana succeeded in forcing the hand of the country's High Constitutional Court to proclaim him the outright winner, thanks to a favourable switch of allegiance within the national army command. In countries attempting to emerge from protracted civil war the violence can take the form of military confrontations between soldiers loyal to the two major candidates (generally former leaders of armed factions), or even degenerate into the resumption of the civil war. In Angola the rejection by opposition candidate Jonas Savimbi of the 1992 presidential election results signalled the resumption of the country's civil war. In Côte d'Ivoire the stalemate brought about by the disagreement over the 2010 election results led to widespread violence, culminating in the arrest of outgoing president Laurent Gbagbo in April 2011. In the DRC after the 2006 election there was a direct military confrontation in Kinshasa in March 2007 between troops loyal to the two presidential candidates.

As stated in the previous section, experience in Africa in the last two decades shows that no country, whatever the level of its 'democratic development', is totally spared from election-related violence. Yet it should be admitted that these

instances of election-related violence, as well as their extent, vary according to the specific conditions (historical, political and socio-economic) of a state and the nature of its electoral system.

In this regard, 'consolidated democratic states' tend to be less likely to experience instances of large-scale election-related violence due to the openness and fairness of their electoral processes. 'Persistent autocracies' are, equally, less likely to experience instances of large-scale election-related violence because of the tight control they exercise over society and, in most instances, the absence or weakness of dissenting groups.

'Advanced transition states', and especially 'states attempting transition', are thus the most likely to experience large-scale election-related violence (although Kenya seems to have proved to be an exception to this interpretation). The fact that the political and electoral systems in the majority of these states are designed to favour the incumbents contributes to creating frustrations among groups not aligned to the ruling elite. Depending on the opportunities derived from the perceived or real capacity of the state to contain the public expression of these frustrations, this can lead to widespread explosions of violence in society and even trigger a civil conflict.

EXPLORING THE CAUSES OF ELECTION-RELATED VIOLENCE IN AFRICA

Like political violence, of which it is but one form, the reasons for election-related violence are complex. Its causes are multifaceted and require a multilevel analytical approach in order to be well understood. Although instances of election-related violence are generally triggered by factors specific to a particular electoral process there can be no doubt that, in most cases, these triggers thrive on conditions and predicaments laid down in a particular society over a long period.

A thorough review of instances of election-related violence throughout the African continent in the past two decades identifies four sets of causes, namely, structural or root causes, political causes and technical and logistical causes, as well as immediate causes or triggers.

Structural or root causes

Structural or root causes are located in the social fabric of a society. They relate to the enduring characteristics of a society which predispose it and/or its components to particular political behaviour or choice. Structural causes of election-related violence can thus be located in the factors below:

Unequal political representation and socio-economic development

Societies with a legacy of unequal political representation and socio-economic development among regions are vulnerable to political violence in general and election-related violence in particular. This is mainly due to the fact that regions perceiving themselves as victims of long periods of political exclusion and economic marginalisation come to regard elections not merely as a process of selecting the country's leaders but as a precious tool to overcome their unfortunate predicament.

Such a perception of the electoral process contributes to raising the stakes and the related tensions, which, unless properly managed, can lead to highly charged emotions and conflicts that can degenerate into violence.

Like any other structural cause, unequal political and socio-economic development does not cause election-related violence. In fact, a very pro-active ruling class can actually use elections and the larger design of the political system as important building blocks for addressing some of the problems relating to unequal political representation and socio-economic development in the country.

However, in cases where the political and electoral systems are perceived as designed to entrench the existing unequal political representation and socio-economic development among regions, marginalised groups are likely to adopt strategies aimed at undermining the electoral process, including recourse to violence.

While unequal political representation denies the excluded (or under-represented) group the space to influence adequately the political and electoral systems of the country and protect itself from further exclusion by the privileged group, imbalanced socio-economic development provides the privileged group with the resources (finances, information, education, infrastructure, and so on) to monopolise power. For this reason elections tend to be regarded by the marginalised as a mere formality aimed at entrenching their marginalisation. Without much to gain from the electoral process these groups may revert to violence in order to delegitimise the entire process and voice their grievances.

Legacy of intra- or inter-community resentment

Societies with a history of resentment among their constituent communities are equally likely to become sites of episodic political violence, including election-related violence. Different communities in several African countries find themselves involved in internal disputes and/or other conflicts with their neighbours over resources, disagreements over power control at the local level, memories of past confrontations, and so on.

In societies with low levels of entrenchment of democratic culture such divisive issues have the potential to escalate during electoral seasons. In this

context the probability of election-related violence is likely to increase when major stakeholders (political parties and leaders, civil society leaders, the media, and so on) use these issues as a means of political mobilisation and recruitment.

In such circumstances elections cease to be merely a matter of dignified political competition, becoming instead a zero-sum game, an opportunity to settle long-held scores by all means available. The situation is aggravated when the electoral system is designed so the winner takes all, turning loss not only into an electoral defeat but, more importantly, into collective humiliation and the beginning of an era of marginalisation.

However, in some cases, the problem can simply lie in ethnic or sub-ethnic diversity in a country that has both a low sense of nationhood and a high level of ethnic politicisation or polarisation.

Unresolved problems relating to migration and citizenship

From northern Côte d'Ivoire to the eastern DRC, passing through central Nigeria, questions relating to migration and/or citizenship have been central to fuelling political violence in general and election-related violence in particular.

In Côte d'Ivoire significant immigration from neighbouring Mali and Burkina Faso has been turned into a crucial citizenship matter for some 'indigenous' Ivoirians terrified by the demographic weight of the immigrant population and its potential implications for the elections. The eastern region of the DRC experiences the same predicament as it hosts a large immigrant population from Burundi, but, more importantly, from Rwanda, whose demographic weight represents a significant threat to the rest of the region's ethnic communities.

In both countries the problem is exacerbated by the fact that the immigrants have joined similar populations that have been established in the host country for a long time and the host country has failed to articulate clear and effective policies on the integration of immigrants beyond simply granting some of them citizenship.

Nowhere in Africa has the collusion among immigration, citizenship and electoral mobilisation been as devastating as in Côte d'Ivoire, with the December 2010 presidential elections representing the climax and the post-election violence resulting in the deaths of an estimated 3 000 people and the displacement (both within and outside the country) of approximately 500 000 others (BBC News Africa 2011).

However, in the Plateau State of central Nigeria, as is often the case in the vast majority of African countries, internal migration represents the bone of contention. The communities (Hausa-Fulani 'migrants' and Yoruba 'indigenous') do not dispute their respective right to Nigerian citizenship, instead, the dispute is shaped by the fear triggered by a growing migrant population in the area and its political (and especially electoral) implications.

As stated above with regard to unequal political representation and socio-economic development among regions, issues relating to migration and citizenship (even when badly managed) should not necessarily lead to inter-community violence. However, it is the politicisation by stakeholders on both sides of the political spectrum of the issue of identity that contributes to turning ethnic identity into a central issue of political and electoral mobilisation.

Political causes

Political causes of election-related violence relate to state capacity as well as decisions taken by government, Parliament and other state institutions that have an implication for the electoral process, its management and, to some extent, its outcome. Such causes apply to the aspects below:

State capacity

The regular organisation of elections forms part of the duties of the government of every country. For this reason the capacity of the state has as many implications for its ability to plan and run credible elections as it has a direct impact on its ability to deliver on its core responsibilities, including the provision of security, public order and basic social services.

In this regard, the chronic weakness of state institutions in many African countries hampers the ability of many African governments to run electoral processes that are free, fair and credible enough to deserve the full support of all electoral stakeholders. As Khadiagala (2010, p 13) argues, 'while election violence reflects the subversion of rules of competition and participation, the fundamental problem revolves around the absence of solid institutions to manage the fragmented nature of African politics'.

There is thus a mutually reinforcing relationship between state weakness and election-related violence in that the state's weak institutional capacity constrains its ability to manage credible electoral processes effectively, increasing the likelihood of election-related violence, while the violence contributes to eroding the legitimacy of state institutions, thus disrupting the process of their affirmation within society.

The problem of political culture

Democratic institutions and procedures, including elections, have been introduced in virtually all African countries without the requisite meaningful transformation of the underlying structures of power in society as well as the norms governing the political system (Adolfo, Kovacs, Nyström & Utas 2012, p 1). As a result, the newly embraced multiparty politics tends to operate in many African countries on

the fringes of behavioural matrices reminiscent of the authoritarian single-party system, characterised by intolerance and total rejection of difference as well as the resort to violence as a means of political expression.

The legacy of the single-party system thus contradicts sharply the very essence of elections under multiparty democratic systems, which are competitive, conflict-prone and usually characterised by high levels of uncertainty. 'In societies where the non-violent norms of mature democracies are not [yet] fully developed,' Adolfo, Kovacs, Nyström & Utas (2012, p 2) argue, 'there is risk that the electoral context will contribute to intensifying and polarising existing socio-economic cleavages and other divisions in society.' In such contexts electoral processes are war-like periods, with protagonists on all sides resorting to any means available not only to defeat but also to humiliate and annihilate their opponents.

The stakes involved in the elections

As a legacy of the authoritarian single-party system, neo-patrimonial tendencies seem to permeate the vast majority of political regimes in African countries. The common characteristic of such regimes is the disturbing overlap between the political and economic spheres of the society, with those in charge of the state using their privileged positions to 'privatise' public goods and distribute them to those they believe are prepared to support the regime.

In such societies political competition – including elections – ceases to be a mere question of selecting those who will lead the society. Instead, it becomes a matter of political and socio-economic survival, sometimes regarded as an issue of life and death.

The situation becomes even more complex in countries with a history of political allegiance and preferences following ethnic or racial lines as well as a legacy of inter-group tensions or conflicts. In such societies electoral competition turns into an inter-community struggle where defeat is not an acceptable outcome, for it brings about political exclusion and socio-economic marginalisation of the losing community.

As Sisk (2008, p 9) argues,

[a] common cause of election violence is that the stakes of winning and losing valued political posts is [sic] in many situations, especially in conditions of high scarcity and underdevelopment, incredibly high. When winning a state office is the key to livelihood not just for an individual, but for their entire clan, faction, or even ethnic group, the stakes involved in prevailing in electoral competition are incredibly high.

The delineation of constituencies

The issue of the delineation of constituencies is at the heart of the electoral process, especially in countries applying constituency-based electoral systems focused on individual candidates. Since constituencies generally tend to coincide with the existing politico-administrative boundaries of a country, they appear to bear an (ethnic) identity bias, since most of these boundaries date back to the colonial era which used identity as the main criterion in the determination of administrative boundaries. The problem is made more difficult in heterogeneous constituencies with a clear dominant ethnic group.

The nature of the electoral system

The nature of the electoral system in any electoral democracy is critical, as it has the potential to influence significantly the electoral outcome. Societies such as Burundi and Rwanda, where very disproportionate ethnic groups live in the same constituencies, cannot afford to base their electoral system on the simple majority, first-past-the-post (FPTP) model as this may lead to the total exclusion of the minority group.

Instead it has been proposed that such societies should either use proportional representation or even design a political system based on the consociational theory. In similar vein, countries such as South Africa, Namibia and Botswana, which are ruled by one dominant political party, should base their electoral system on the proportional representation model so as to guarantee inclusiveness in the country's political system.

But more interesting has been the case of the Kingdom of Lesotho. For many years the country used the FPTP system, resulting in post-electoral contestations by opposition parties. In 1998 these conflicts led to the intervention of the military and the short exile of King Letsie III to South Africa.

Although the armies of South Africa and Botswana, acting on behalf of the Southern African Development Community, were able to reverse the coup and reinstate the exiled king, the event triggered a debate over the relevance of the electoral system itself. Ultimately the country shifted to a mixed electoral system, combining aspects of proportional representation and FPTP. Lesotho has not experienced post-election conflict since the introduction of the new electoral system (Interview with a Mosotho electoral official, Pretoria, 31 July 2013).

The role of national security forces throughout the electoral process

In many African countries national security forces are perceived – often correctly – to be biased in favour of the incumbent regime. Throughout the electoral process such perceptions contribute to severing relations between national security forces

and opposition parties and their supporters. In this context, rallies organised by opposition parties tend to turn into episodes of confrontation between party supporters and the national security force teams deployed to ensure public order at these events.

In some cases the security forces are used by the incumbents and are purposely deployed to disrupt rallies and other gatherings organised by the opposition. In other cases the security forces are called upon to prevent unauthorised meetings organised by opposition parties even when the parties have been denied such authorisation in spite of having complied with all the requisite formalities.

In some instances, including in Uganda, Ethiopia and Zimbabwe, the problem of the neutrality of the national security forces arises as a result of their historical link to the ruling political elite. As was revealed in the 2008 elections in Zimbabwe, national security forces with a significant stake in the political sphere may share the fear of the ruling political elite of losing crucial socio-economic privileges and benefits as a consequence of a change in the status quo.

In order to prevent this from happening in Zimbabwe in 2008, the country's national security forces colluded with youth groups supportive of the ruling Zimbabwe African National Union–Patriotic Front to launch widespread campaigns of intimidation and violence targeting supporters and, in some cases, leaders of the main opposition party, the Movement for Democratic Change.

Technical or logistical causes

Technical or logistical causes of election-related violence, as far as Africa is concerned, relate to the actual management aspects of the electoral process.

Inexperienced electoral management bodies

There are ongoing efforts around the African continent to develop election management as an area of competence and specialisation in its own right. But at the same time there is a need to acknowledge that election management in Africa continues to be hampered by problems relating to the lack of adequate expertise among those tasked with this important activity.

The lack of experience and expertise in the area of democratic election management has its roots in the legacy of the single-party system. However, in the contemporary context it is caused by inadequate national funding for the institutionalisation of democracy.

In many African countries not only do governments not allocate sufficient financial resources to civic and democratic education, they are yet to accommodate election management bodies as full components of national institutions. This has

resulted in the flight of former electoral officials in search of better employment opportunities.

In turn, the continued renewal of electoral officials within the election management bodies around the African continent denies these institutions the accumulation of experience that is critical to better management of the electoral process.

Under-funding resulting in short cuts and delays

Elections are very costly, particularly for the majority of African countries, which already rely on foreign financial aid, including in the area of budget balancing. For instance, the international community – led by the United Nations – contributed funds to the tune of more than US\$466-million to the successful organisation of the 2006 presidential, parliamentary and provincial elections in the DRC (Kadima & Tshiyoyo 2009, pp 132-133).

The reliance by African countries on external financial aid for the organisation of elections means that the availability and timing of the disbursement of such funds – rather than simply national election needs and socio-political dynamics – become significant factors in the determination of priorities and timelines. Disagreements among stakeholders about election-related activities and timelines can contribute to heightening tensions and the possibility of these tensions degenerating into violence.

Poor planning

Cameroon held its legislative and municipal elections on 30 September 2013, more than a year after they were due (Agence France Presse 2013). The DRC will hold senatorial and provincial elections in 2014, despite the fact that the term of office of the current senate and provincial assemblies expired in 2012. These two cases, among many others in Africa, attest to the ad hoc manner in which elections are organised in some countries.

Unless electoral timelines are set well in advance and are upheld, election planning in a context of financial constraints may become a very difficult issue to handle. However, even in countries where election timelines are generally observed, planning remains an unresolved issue, as many governments wait until the election year to roll out election-related activities, including voter registration and the updating of the voters' roll.

Zimbabwe was caught in just such a scenario prior to its elections in July 2013. Poor planning, as is blatantly the case in Zimbabwe, leads to accusations among stakeholders and the loss of trust in the electoral management body – all ingredients contributing to losing parties disputing the credibility of the elections.

Material errors

Election-related violence may be caused by material errors in communicating election results. It should be noted that material errors are unintended mistakes made by election officials in the performance of their duty. They should not be mistaken for intentional falsifications undertaken by parties and intended to rig the elections.

Problems of communication and transport

The quality of the communication and transport infrastructure has a direct bearing on the electoral process and may be a factor in the eruption of election-related violence. In some African countries election materials have to travel through derelict infrastructure systems in order to reach remote, far-flung locations.

While the failure of election materials to reach such places may, in itself, lead to tensions and the possibility of violence, the challenges involved in getting election results and used election materials from these areas to the compilation centres may also become an issue of contention among the main electoral stakeholders.

Immediate causes or triggers

As argued above, immediate causes or triggers refers to aspects of the electoral system and actions undertaken by election stakeholders during the election period that may lead to violence in the short term.

Negative media reporting

Media play a significant role in influencing political processes in any society. In competitive electoral processes the media can serve as an extended arm of the propaganda machinery of particular parties and/or candidates seeking to maximise their chances of success. But as a rule of ethics, media corporations are requested to abide by high standards and the values of objectivity, fairness and accuracy as they report on election-related processes.

However, the ownership of some media organisations by politicians or politically connected individuals as well as the high stakes generally involved in elections in Africa tend to rob the media of their role as nation builders and turn them into a threat to national cohesion.

The case of Kenya during the 2007 elections is very revealing in this regard. In highlighting the negative role played by media corporations in the post-election violence, the International Criminal Court (ICC) indicted Kass FM journalist Joshua Arap Sang alongside the country's current president (Uhuru Kenyatta)

and his deputy (William Ruto) as well as former Public Service chief Francis Muthaura.⁵ Arap Sang stands accused of having used the radio platform to play a 'crucial part' – alongside two politicians from his native Rift Valley region – in planning the violence by using coded messages to collect and direct supporters (Waitatu 2010).

The nature of political mobilisation and campaigning

Virtually every electoral process is organised within boundaries set by election-related laws and principles and norms established by the electoral code of conduct forbidding specific attitudes and behaviour by the different stakeholders.

The establishment of such legal boundaries and the principles and norms are based on the understanding that, unless adequately checked, the competitive nature of elections and the emotions they evoke may easily escalate election-charged tensions into instances of large-scale violence.

Although the universal practice of regulating attitudes, speech and behaviour during the election period, as explained above, extends to Africa, there is still a gap in many African countries between legal and regulatory provisions on the one hand and the actions of socio-political leaders on the other.

Political mobilisation and campaigning in some countries in Africa still involve references to identity (ethnicity, citizenship, religion), divisive claims and, in some instances, direct incitement to violence. In countries recovering from civil wars, rebels-turned-politicians may exploit their wartime links with inadequately demobilised armed groups to lead election campaigns based on threats and even violent confrontation.

Perception of the recourse or appeal system

Elections are complex processes, making them susceptible to errors that can generate protests and objections by parties competing for political positions. In anticipation of these inevitable errors, electoral processes are generally endowed with recourse mechanisms that aggrieved parties may exploit to redress perceived or real injustices.

In this regard, a lack of trust in the recourse or appeal mechanisms poses a major challenge to the electoral process as well as to security and social peace. In most cases it is this lack of trust that leads aggrieved parties to choose street protests as the preferred means of voicing their discontent instead of following the formal judicial route.

5 The ICC dropped the case against Francis Muthaura in March 2013 after a key witness admitted lying in his incriminating testimony against Muthaura (*The Guardian* 2013)

In post-electoral settings filled with claims of electoral fraud, as was the case in Togo in 2005, Kenya in 2007-2008 and Gabon in 2008, streets protests to challenge the official election results have always led to violence, with dire consequences for human lives and for infrastructure.

Blatant rigging of election results

Election rigging on the African continent has become so sophisticated in recent years that it warrants serious academic research. It takes several forms, prominent among which are the inflation of the voters' roll, the monopolisation of the public media by the incumbent, the use of public resources by the incumbent and direct falsification of the election results (very often by the incumbent).⁶

In its worst form, election rigging can lead to the annulment of the elections by an establishment (incumbent regime acting in conjunction with the national security forces) reluctant to lose its privileges, as was the case in Algeria in 1991 and in Nigeria in 1993. The blatant falsification of election results by incumbents represents a case of political violence which is very often met with counter-violence from those on the losing side (Algeria in 1991, Nigeria in 1993, Kenya in 2007). It deepens 'the linkage between democratization, social violence and insecurity on the continent as a whole' (Adebanwi & Obadare 2012, p 40).

ELECTION-RELATED VIOLENCE IN AFRICA: ANALYSING THE CONSEQUENCES

Existing literature on election-related violence in Africa has tended to emphasise its material (physical, measurable, quantifiable) consequences, while downplaying its immaterial (non-measurable, non-quantifiable) consequences.

This article argues that, although they may seem less perceptible, the immaterial consequences of election-related violence are as destructive as their material counterparts.

As far as the material or physical consequences of election-related violence are concerned, the literature is filled with accounts of death and injury, destruction of infrastructure, population displacement (internally displaced persons and refugees), the withdrawal of foreign investment, the deterioration in the humanitarian situation and economic decline.

6 Taking into consideration the different forms election rigging can assume it becomes a very delicate exercise to identify electoral processes on the African continent that truly qualify as genuinely free and fair.

Death, injury and population displacement

As a form of political violence, election-related violence causes death and injury to human beings and also leads to population displacement, both within and outside the country in which it takes place. The case of Kenya after the December 2007 elections stands out as the deadliest instance of post-election violence in Africa in recent years (Maina 2011, p 3; Njogu 2009, p 2).

But it must be acknowledged that deaths caused by election-related violence may be the result of clashes between supporters of different candidates or parties or clashes between specific supporters and the security forces. Given its generally random nature and the responsibility often borne by government for its eruption, election-related violence seldom leads to prosecutions, leaving its victims to bear the resulting frustration for a long time.

Destruction of infrastructure

Election-related violence also destroys socio-economic infrastructure. In some cases, infrastructure may be directly targeted by protestors as it is perceived as the extension of the contested order. Government buildings, offices of the ruling party and property linked to the security forces are included in this scenario.

However, infrastructure can also be targeted randomly as uncontrolled mobs use destruction simply as a means of making a statement. During the 2007-2008 post-election violence in Kenya mobs uprooted part of the railway line linking the country with Uganda, resulting in the paralysis of activities related to the sector in both countries.

Economic decline and withdrawal of foreign investment

Election-related violence has a net negative impact on the economic activity of the societies in which it takes place. It disrupts economic activity, delaying import and export processes. The post-election violence in Côte d'Ivoire in 2010-2011 prevented the exportation of cocoa, the country's largest foreign-currency earner.

Similarly, the uncertainty brought about by post-election violence – depending on its intensity – may lead to the withdrawal of established foreign investment or delay future investment.

Deterioration in the humanitarian situation

In countries recovering from civil war and already facing a humanitarian crisis election-related violence may contribute to aggravating the humanitarian crisis.

As argued above, there is a need for further investigation of the immaterial or non-physical consequences of election-related violence in Africa. The aspects highlighted below are, therefore, designed to trigger the discussion in that regard. Election-related violence can lead to the undermining of democratic institutions and processes as well as of the legitimacy of the sitting government, the disruption of national cohesion and exacerbation of inter- and intra-community conflicts, the intervention of the military in politics and the eruption or resumption of civil war, as well as placing strains on diplomatic relations with external partners.

Undermining of democratic institutions and processes and of government legitimacy

Election-related violence represents, first and foremost, a challenge to the process of establishing democracy, especially in countries emerging from undemocratic systems. As Adolfo, Kovacs, Nyström & Utas (2012, p 1) argue, election-related violence 'not only poses a threat to peace and security on the continent, but also risks undermining the long-term sustainability of ... democratisation processes'.

It diminishes the credibility of institutions entrusted with entrenching democracy. It even serves as a barometer of the inadequate entrenchment of democracy within the society in which it takes place. But above all, it undermines the legitimacy of the government, either because it is perceived as the perpetrator of the violence or because it is unable to address it effectively.

Disruption of national cohesion and exacerbation of inter- and intra-community conflicts

In both Kenya and Côte d'Ivoire the strong imbrication between politics and ethnicity turned the post-election violence into confrontations between ethnic groups, as they were regarded as aligned to the two final presidential candidates. The result was that the two countries found themselves not only led by governments whose legitimacy could be disputed by many in the society, but also with societies that had lost their sense of unity.

Intervention of the military in politics and the eruption/resumption of civil war

Election-related violence represents a significant case of disagreement and lack of trust among the political role players. If the crisis persists for a long time it may open the door to the interference of other (internal and external) forces using the excuse of seeking to contribute to the resolution of the conflict.

For instance, the inconclusive presidential election in Madagascar in 2001 led to a stand-off between the two leading candidates, Didier Ratsiraka and Marc Ravalomanana, each mobilising his supporters. The inability of the political role players to find a solution to the crisis resulted in the intervention of the military, which, ultimately, decided to back Ravalomanana.

Yet, as recent events in Guinea-Bissau have demonstrated, intervention by the military can also be motivated by their fear of losing long-standing privileges. After a successful first-round presidential election in March 2012, won by Carlos Domingos Gomes, the military took over power and arrested Gomes as well as the country's interim president, Raimundo Pereira, thus preventing a run-off set for 29 April 2012 from taking place (CNN 2012).

The reasons given by the military to justify the coup included their dismay over a secret deal struck between Gomes and the interim president for the deployment of Angolan soldiers to the country as well as Gomes's intention to reduce the size of the army once he was in power (Reuters 2012). However, according to Abdel-Fatau-Musah (cited by Voice of America 2012), the decision by the military to seize power at this critical juncture could be explained by its determination to maintain Guinea-Bissau as a failed state in its own interests.

In countries recovering from civil war election-related violence can bring about the resumption of the war. This was the case in Côte d'Ivoire after the contested December 2010 presidential poll.

Strained diplomatic relations with external partners

Election-related violence also contributes to strained diplomatic relations between the country involved and its external partners. This may come as a result of external partners disapproving of the controversial process that led to the violence, especially in cases where the actions of the country's government are considered to be at the root of the violence.

FRAMEWORK FOR PREVENTING ELECTION-RELATED VIOLENCE IN AFRICA: A PROPOSAL

Why focus on prevention? Conflict studies and practice in the field of conflict emphasise the primacy of prevention as the most relevant strategy to deal with (violent) conflict. Indeed, conflict prevention is far more cost effective than conflict management, conflict resolution and, more importantly, conflict transformation.

With regard to election-related violence in Africa the cases of Kenya in 2007-2008 and the DRC in 2006, to mention only two, are clear testimonies to the urgent necessity for election stakeholders on the African continent to invest in prevention.

As stated above, the post-election violence in Kenya resulted in many deaths and the displacement of thousands of people within and outside the country as well as in the destruction of property and infrastructure, the disruption of socio-economic activity and strained relationships among communities.

In the DRC election-related violence took the form of direct confrontation between armed troops loyal to the two presidential contenders, President Joseph Kabila and his deputy, Jean-Pierre Bemba. This research argues that election stakeholders in Africa should focus on prevention in order to avoid the consequences described above, the implications of which no African country can afford either in terms of the financial cost or the destruction of the social fabric of societies already experiencing diverse forms of fragmentation.

The proposed preventive action should be based on a multi-level approach focusing on elections as a long-term cycle and not a single event and should target all electoral stakeholders, as discussed below.

Political leaders

National political leaders, both the opposition and the ruling elite, in any society are the primary stakeholders in an electoral process and hold the key to the success or failure of the election. For this reason it is incumbent on the ruling elite to regard the effective and efficient handling of the electoral process as one of their key areas of responsibility as a national government.

In order to achieve this, they must provide the resources necessary to enable the elections to be organised successfully. They must be prepared to accept the uncertainties inherent in elections in any multiparty competitive setting and to handle the elections in line with strict principles of transparency, fairness, inclusivity and accountability.

More importantly, the ruling elite should strive to demarcate itself unequivocally from the country's security forces, which should be empowered to perform their duties in a professional, objective and impartial manner throughout the electoral process.

Opposition leaders also have a responsibility to ensure the success of the electoral process, especially in those African countries which are yet to entrench democratic practices. Opposition leaders should approach the process as a competition limited to the selection of political office bearers as opposed to a struggle for control of the means of social mobility.

They should thus mobilise their constituencies and supporters in accordance with national and electoral legislation and in a manner that does not threaten peace, national stability or social cohesion. They should display trust in the national security forces and explore the possibility of engaging with them on issues relating to the electoral process.

Of course, it must be acknowledged that striking such a balance will always prove very difficult in countries where the national security forces are more or less an extension of the ruling party, as the case of Zimbabwe attests.

Both the ruling political elite and the opposition should display willingness and commitment to seeking inter-party convergence. They should build and maintain lines of communication and establish permanent consultation platforms as a way of defusing tensions and dispelling adversarial perceptions among their supporters and the general public. They should agree on values, principles and norms to be observed by all parties throughout the electoral process. Similarly, they should commit wholeheartedly to the electoral code of conduct established according to the electoral law. Lastly, both sides should commit to working in harmony with the election management body, while, at the same time, allowing that body ample space to discharge its responsibilities independently.

Election management body

The dominant trend in the vast majority of African countries following the third wave of democratisation has been to entrust the running of the elections to a special permanent body. Generally referred to as the electoral commission, the election management body (EMB) is the most critical institution in the electoral process.

The public's general perception of the body and its actual performance are critical elements in the attitude electoral stakeholders adopt toward the electoral process and, more importantly, the results.

There have been sustained efforts in different African countries to ensure that the election management bodies are established in an inclusive and transparent manner and acquire a high level of professionalism. Yet there is also a need to acknowledge that the complexity of running elections in unstable environments and amid dire shortages of the necessary resources, as was recently the case in Mali, means that the task of establishing fully-fledged professional EMBs throughout the African continent is far from complete.

The quest for the professionalism of EMBs cannot be separated from the broader question of their independence from the ruling political elite and their overall integrity vis-à-vis all electoral stakeholders.

As a starting point, the selection of the members of the EMB must be transparent. Their term in office should be longer than that of political office bearers. The body should establish mechanisms for permanent interaction with all electoral stakeholders. These may include consultation platforms with political parties, civil society organisations, including faith organisations, academic institutions, the media (public and private), donors and other international governmental and non-governmental partners.

Furthermore, in its interaction with the general public, the body should emphasise capacity-building initiatives and programmes. Ample resources should be dedicated to civic and voter education, including explanations of the working of the election management body.

However, it should be acknowledged that, while it is important to ensure transparency, meritocracy and inclusiveness in the recruitment of individuals to serve within the EMB, the personality of those selected to serve at the most senior levels is key to the enforcement of the independence of the body. This means that beyond regulations and legislations EMBs will only earn the respect of other election stakeholders if they are seen to be operating in a professional, impartial and objective manner. Furthermore, the need for high levels of professionalism, impartiality and objectivity should not rest with senior management alone. Rather it should filter down to all permanent and temporary electoral officers.

Civil society

Civil society has an important role to play in the process of democratic consolidation in African countries. As far as electoral processes are concerned, civil society organisations (CSOs) are expected both to contribute to the success of the electoral process and to assess whether the process conforms to national and international norms and standards.

Civil society organisations contribute to the success of the electoral process through an array of activities including civic and voter education and frequent interaction with the election management body (including submissions and proposals), political parties, and so on. CSOs should also follow every step of the electoral process and alert the EMB and all other electoral stakeholders to possible deviations, inconsistencies and other violations.

This monitoring task should be undertaken throughout the electoral cycle. Furthermore, CSOs should train their members and other ordinary citizens to serve as election observers during the voting period. The more significant the capacity of CSOs to observe an electoral process, the more likely they are to derive critical lessons that may be learnt and used in the planning of future elections.

Civil society organisations should also play a meaningful role in the area of election-related dispute prevention and resolution. To achieve this goal, CSOs can either set up their own electoral dispute prevention and resolution mechanisms or offer their services to the election management body.

However, it should be emphasised that the impact of civil society organisations on the electoral process depends, to a large extent, on their ability to unite and act as a coherent group. To this end they should set up a national civil society electoral forum (complemented by provincial or regional and local

civil society electoral forums) through which they can meet to share information and carry out concerted interventions vis-à-vis the electoral process.

The general population

In liberal democracies civil society organisations claim to speak on behalf of the people, as they generally act as the interface between government representatives and the general population. While there is relevance in this claim, its persistence may actually result in disempowerment, the very 'evil' civil society organisations seek to combat.

In this regard, while ordinary citizens will rely on civil society organisations to strengthen their capacity with regard to election-related and other issues, they also need to take the lead in their daily engagement with all election stakeholders, including the election management body, political parties and candidates, security forces and government officials, as well as civil society organisations.

Ordinary citizens acting within the framework of their respective communities should be able to establish community-based consultation mechanisms to deal with issues relating to the electoral process. The ultimate goal should be to prevent the manipulation of ordinary people by politicians, thus minimising the possibility of election-related violence.

The rationale behind the need for ordinary members of the community to assume leadership positions in electoral processes stems from the understanding that it is they who are, generally, the perpetrators and victims of election-related violence, which also often has detrimental effects on peace, harmony and stability within their communities. Citizens' empowerment is therefore regarded as the most proactive strategy for preventing election-related violence.

External stakeholders

External actors, whether governmental, inter-governmental or non-governmental institutions, play a significant role in electoral processes in many African countries.

Their contribution takes an array of forms, including financial disbursements and logistical and technical support as well as the provision of expertise in the overall process of election planning and management. As a way of ensuring that their contributions have optimal impact, external stakeholders should adopt an interventionist perspective based on an electoral cycle approach.

They should focus their actions on monitoring rather than merely observing, while, at the same time, seeking partnerships with all national electoral stakeholders (government, political parties, civil society organisations, media, security forces and so on).

CONCLUSION

The last decade of the twentieth century saw democratic rule embraced in virtually all African countries. Although this new trend was first and foremost a consequence of dramatic changes in international politics after the end of the Cold War and the re-alignment of the policies of Western powers in relation to Africa, the path to liberal democracy has emerged as an irreversible journey African people are committed to undertake.

But, as might have been anticipated, the road to democratisation has not always been smooth. This is partly because of the long-term legacy of the single-party system that prevailed in much of Africa for decades prior to the advent of democracy as well as the drive by incumbents to stay in power in spite of the changing political environment.

One of the consequences of the inadequate assumption by the citizenry, both governors and governed, of democratic principles, attitudes, values and norms in many African countries has been the resort to violence as a means of political mobilisation, competition and protest. Election-related violence is but one example of this political violence that Africa is grappling with as it moves towards entrenching democracy as the dominant political system on the continent.

Election-related violence may occur throughout the electoral process – prior, during and after the vote. Its patterns vary according to the specific historical, political and socio-economic conditions of a particular country. However, overall, it may involve clashes between supporters of different parties and/or candidates, clashes between supporters of parties/candidates and the security forces, arrest and imprisonment of opposition candidates, abduction and assassination of candidates and other political or electoral officials, inter- and intra-community violence, attacks on voting materials and installations, and so on.

Four different sets of causes of the eruption of election-related violence have been identified. They are: structural or root causes, political causes, technical or logistical causes and immediate causes or triggers. This article has sought to re-align the debate on the consequences of election-related violence on the African continent by shedding adequate light on its non-physical aspects.

In addition to causing death and injury, population displacement, the destruction of infrastructure, the withdrawal of foreign investment, economic decline and a deterioration in the humanitarian situation, election-related violence also leads to the undermining of democratic institutions and processes and of the legitimacy of the sitting government, the disruption of national cohesion, the exacerbation of inter- and intra-community conflict, the intervention of the military in politics, the eruption/resumption of civil war and strained relations between a country and its external partners.

Inasmuch as efforts have been made to resolve cases of election-related disputes and violence throughout Africa, including by adopting power-sharing models, prevention is the most cost-effective tool for dealing effectively with the challenges posed by the violence. Such preventive action should espouse a multi-level approach, focusing on elections as a long-term cycle and targeting all significant stakeholders in any electoral process, including the political leadership, the electoral management body, civil society organisations and the general public, as well as external partners.

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OLD WINE IN NEW SKINS

Kenya's 2013 Elections and the Triumph of the Ancien Régime¹

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ABSTRACT

On 4 March 2013 Kenya held transitional elections that were significant for three reasons. Firstly, they were a test of the country's institutions under the new Constitution, which was promulgated in 2010. In 2007 Kenya experienced violently disputed elections, partly because of weak and dysfunctional institutions not capable of impartially arbitrating political disputes. Secondly, Uhuru Kenyatta and William Ruto presented a joint presidential ticket despite having been indicted by the International Criminal Court as among suspected masterminds of the 2007-8 post-election violence. Thirdly, Raila Odinga, the loser of the controversial 2007 presidential election, attempted to succeed the incumbent, Mwai Kibaki, through a third presidential bid. Thus stakes were much higher in 2013 than at any other election time in Kenya's independence history. Some reforms under the new Constitution, the Kikuyu-Kalenjin tribal alliance and the ICC factor ensured that the elections were relatively violence free. However, as in the past, the presidential contest was primarily about control of the state by expediently cobbled together ethnic alliances of self-styled ethno-regional barons for spoliation opportunities. In this article I argue that the triumph of the ICC duo was a setback for reform since it ensured continued dominance of Kenya's economic and political spheres by the ancien régime. Kenyatta and Ruto could not countenance reforms because they were beneficiaries of an unreformed and centralised state. Thus they were bound to frustrate implementation of the Constitution, which was intended to secure Kenya's stability by consolidating democracy.

¹ This article was written while Dr Shilaho was attached to UJ's Centre for Social Development in Africa.

INTRODUCTION

This article analyses Kenya's 2013 elections through the prism of the country's multiparty politics and specifically within the gamut of the unfinished events of the violently disputed 2007 elections. The overarching argument is that the results of the 2013 elections constituted a democratic reversal and posed a threat to the democratic gains Kenya had made under multiparty politics.

The Jubilee Coalition, the victorious ethno-regional grouping, was an extension of a section of Kenya's political elite that contributed to divisive multiparty politics through predatory and exclusionary politics.

The elections were conducted in a political atmosphere that was not substantially different from that in which previous multiparty elections were held. In spite of the new Constitution, change was more about style than substance. A history of electoral fraud, weak institutions beholden to the president, a deeply ethnically bifurcated society and a self-replicating plutocracy stood in the way of credible elections.

The local owners of capital could not afford to lose the power critical to patronage networks. Hence, for Kenyatta and Ruto, winning the presidency was the absolute goal. There were two reasons for this: firstly, victory was imperative in order to ensure continued dominance by Kenya's primitive accumulators of the country's political and economic spheres. Secondly, as head of state and deputy, respectively, they hoped to have some leverage over The Hague-based judicial process. A loss would have rendered them more susceptible to international criminal justice.

The 2013 elections were transitional, given that the incumbent, Mwai Kibaki, was constitutionally barred from seeking a third term. Prime Minister Raila Odinga's second attempt to succeed Kibaki faced the greatest challenge of all his previous presidential bids. The seasoned opposition politician apparently compromised his position when he acceded to a power-sharing agreement in February 2008, making his chances of winning in 2013 much lower than they were in 2007.

By signing the national accord that resulted in the formation of the coalition government Odinga contributed to halting the ethnic violence that had threatened to tear the country apart.² However, with the stroke of a pen he gave Kibaki and his allies a political lifeline to consolidate power in the lead-up to the 2013 elections. It was bound to be hard for Odinga to overcome the challenge, especially having lost Kalenjin support after he fell out with Ruto in the wake of the 2007 elections.

2 For an analysis of the intricacies and nuances of the mediation process that resulted in the signing of the peace accord between Mwai Kibaki and Raila Odinga, see Khadiagala 2008.

The article begins by showing that the election results ensured the continuity of the dominant postcolonial reactionary politics and discusses the nexus between tribalism and power and how it led to the emergence of tribal barons. It then explores the role of reform in the 2013 elections. It highlights the point that, despite the reforms, the elections were essentially Kenyan elections, characterised by organisational and managerial challenges and resultant disputes.

Focusing on the issue of devolution of power and resources, the article argues that although they might address the question of zero-sum politics they could also cause a rift in the country. It underscores the vigilance of sections of civil society that insisted on accountability and respect for the rule of law through legal challenges against apparent breaches of the law. However, entrenched impunity and weak and compromised institutions trump constitutionalism.

The article brings to the fore the institutionalisation of amnesia in Kenya's social fabric. The 2013 elections showed that, as a collective, Kenya has learnt little or nothing from its history, specifically the destructive 2007-8 post election violence. Local political actors such as the clergy, sections of the media, the judiciary, Parliament, the executive and politicians and their supporters, shied away from confronting the challenges bedevilling Kenya's troubled multiparty politics.

Unresolved historical injustices, particularly those related to land and the inequitable distribution of national resources, were a threat to political stability. The peace industry that sprang up in the run-up the elections was a form of escapism from the hard questions at the heart of Kenya's viability as a cohesive nation state. Ultimately, the article highlights the overarching role of tribalism in Kenya's politics, to the extent of reducing party manifestos to a mere formality as politicians mapped differences with opponents on the basis of visceral tribalism. It cautions that tribal alliances, the staple of ethno-regional barons, pose a threat to Kenya's democratic consolidation and political stability, fostering the Balkanisation of the country along ethnic fault lines.

THE WATERSHED 2013 ELECTIONS

The 2013 elections were significant for three main reasons. Firstly, the disputed elections in 2007 had resulted in unprecedented countrywide ethnic violence that almost plunged the country into civil war (see Branch & Cheeseman 2008; Mueller 2008; Throup 2008; Shilaho 2008 for analyses of the 2007 elections and the aftermath) and, since Kenya is of geostrategic relevance and an anchor state, the international community monitored the elections closely, lest the country descend into violence again.

The second reason was the charges of crimes against humanity facing Kenyatta and Ruto at the International Criminal Court (ICC). The two politicians

exploited their predicament to whip up Kikuyu-Kalenjin tribal solidarity and stir up antipathy to Odinga and the ICC, especially its face, the then Chief Prosecutor, Luis Moreno-Ocampo, whom they blamed for their legal woes. The politics of the ICC cases, nestled in tribalism, greatly influenced the outcome of the elections.

The third reason was that Kenya's *ancien régime* was opposed to a possible Odinga presidency. Despite the fact that Odinga was a member of Kenya's oligarchy, his background in opposition politics distinguished him from the rest of the grouping, the pillars of which were Jomo Kenyatta, Daniel arap Moi and Mwai Kibaki, Kenya's first three presidents.

The *ancien régime* was self-reproductive in the sense that Moi deputised for Kenyatta, while Kibaki deputised for Moi and Uhuru Kenyatta was Moi's protégé. Its ethnic exclusiveness and predatory politics, impunity and exploitation of violence for political ends contributed to the fragmentation of Kenya's social fabric.³ The stakes had never been higher and fears of violence in the event of a dispute over the election results were not far-fetched, since tribal clashes had been the norm since Kenya's return to multiparty elections in the early 1990s.

Apart from being united by the ICC adversity, Kenyatta and Ruto represented the past, both of them being protégés of Moi. Kenyatta was the nucleus of Kenya's postcolonial oligarchy, his father having been the first president (1963-1978) during a period in which exploitation of tribalism for political and economic gain took hold in Kenya's polity.

In terms of political pedigree, however, they were poles apart. Uhuru Kenyatta is a man born with the proverbial silver spoon in his mouth. His rise to the presidency was meteoric, owing to lineage, oligarchic interests and ethnicity. He was an unknown quantity before he was thrust into national politics by Moi in the run-up to the 2002 elections (see Shilaho 2012). Ruto, who comes from peasant background, described himself during the 2013 election campaign as a 'hustler' (*The Standard*, 10 August 2013). Whether he meant he was 'an enterprising person determined to succeed; go getter' or 'a person who employs fraudulent or unscrupulous methods to obtain money; swindler' (Dictionary.com) is not clear. Politically streetwise, he emerged as an ethno-regional baron within the space of ten years, no mean feat given that he entered Parliament only in 1997. Pairing the two was a political masterstroke in a country in which voting patterns are ethnic and regional.

3 The Kenya Human Rights Commission (KHRC 2011) in its report, *Lest we Forget: Faces of Impunity in Kenya*, recorded the names of individuals in successive governments who were implicated in corruption, incitement to ethnic violence and land grabbing, among other abuses of power.

THE NEW CONSTITUTION AND THE 2013 ELECTIONS

The 2013 elections were held under the 2010 Constitution, which sought to provide both vertical and horizontal accountability with regard to the exercise of presidential powers and devolution of power from the centre (the presidency) to the periphery (the counties). Horizontally it has constitutional organs like Parliament and the judiciary and constitutionally-recognised oversight commissions; vertically there is a devolved system of government and lastly there is a normative check in the form of constitutional principles and values. It was hoped that these reforms would ameliorate the power of the executive (*Standard on Sunday*, 27 March 2011, p 29).

The new Constitution attempted to institutionalise power and curtail the arbitrary, whimsical and capricious rule which had been the hallmark of neo-patrimonial rulers under the old Constitution.

When there was a one-party state the president exercised power through informal networks. This accounted for Moi's penchant for impromptu roadside declarations that passed for government policy. Some of the president's allies, often drawn from his tribe, wielded a power that was disproportionate to their official designations. Reform was aimed at emancipating the Kenyan state from kinship ties, tribalism and regionalism and transforming the country into a nation based on strong and independent institutions, which had, in the past, been resisted by those in power (Chabal & Daloz 1999, pp 4-8).

The 2013 elections tested the strength of the fledgling Constitution and were a barometer of Kenya's commitment to the rule of law. Previous elections lacked credibility, largely because the incumbent could interfere with their management. Members of the electoral commission, judges of both the then-highest court, the Court of Appeal, and the High Court, the police and the entire security sector were beholden to the president as the appointing authority.

The electoral body could not guarantee credible elections and the judiciary could not arbitrate ensuing disputes impartially. The police took sides in partisan politics in defence of the incumbent president and his allies, resulting in the cases of torture and extrajudicial executions that marred Kibaki's tenure (Kenya National Commission on Human Rights 2008; Alston Report 2009).

JUDICIAL REFORM AS A PREREQUISITE FOR DEMOCRATIC CONSOLIDATION

In 2002 the Advisory Panel of Commonwealth Judges handed down a damning report on Kenya's judiciary, which, they found, was defined by endemic corruption and other acts of impropriety. They recommended reform. Moi and Chief Justice

Bernard Chunga ignored the report. Kenya's judiciary had deferred to the executive and often ruled in its favour in politically sensitive cases. This lack of jurisprudential independence rendered the judiciary integral to the entrenched culture of impunity in the country.

The absence of a credible judiciary contributed to the 2007-8 post-election violence because the opposition had no confidence in it and so resorted to mass action to express anger rather than file a petition against the results.

The judiciary underwent some reforms before the 2013 elections with the establishment of the Judges and Magistrates Vetting Board and the Judicial Service Commission (JSC). The former gauged the suitability of jurists in office at the time the Constitution was promulgated in 2010 to continue serving on the bench. Some were dismissed on the bases of corruption, tardiness and other professional misconduct.

Previously the incumbent president was solely responsible for the appointment and promotion of judges, based on their political loyalty and ethnic affiliation. The Supreme Court, the apex court in the land and an innovation in Kenya's criminal justice system, came into being courtesy of the new Constitution. Supreme Court judges were appointed by the Judicial Service Commission in a competitive and open interview process that was broadcast live by the local electronic media. These measures restored in Kenyans some confidence that the judiciary would safeguard the credibility of elections.

The Supreme Court had exclusive jurisdiction over petitions relating to the presidential election and had to dispose of matters within 14 days after the electoral body announced the official results. Its verdict was final and could not be appealed. What also inspired confidence in the judiciary was the appointment of Willy Mutunga as the new chief justice and president of the Supreme Court. Mutunga had not served as a judge before but was a reputable academic with a widely acknowledged track record in the struggle for reform, so the JSC could not have recommended a more qualified candidate. He was widely regarded as the personification of the desired judicial reform. Therefore, as head of the judiciary, his role in the 2013 elections was of paramount importance.

In the wake of the promulgation of the Constitution the judiciary showed some modicum of independence and, unprecedentedly, the executive lost some cases. For instance, a High Court judge ruled that the government was legally bound to arrest Sudanese president Omar Al Bashir if he visited the country (*Daily Nation*, 28 November 2011). Bashir, the subject of an arrest warrant issued by the International Criminal Court, had previously visited Kenya to attend the ceremony for the promulgation of the new Constitution. The government appealed the ruling (*The Star*, 8 December 2011).

The High Court also declared unconstitutional Kibaki's attempt to unilaterally appoint the chief justice, the attorney-general, the director of public prosecutions and the director of budget. Kibaki backed down and allowed the due constitutional recruitment processes to unfold after resistance from Odinga and civil society. Although the courts declared unlawful Kibaki appointees who went by the title 'county commissioners', because the Constitution had no provision for such posts, Kibaki ignored the verdict and, at the time of writing, these bureaucrats were still in office.

County commissioners, who owed their loyalty to the president, were considered to be an element of the central government's efforts to resist the devolution of power. They were an extension of the discredited provincial administration and a relic of the oppressive colonial state and were unpopular with many Kenyans. Almost five months into the tenure of the Jubilee government the appointees continued to serve.

THE BATTLE OVER THE ELECTION DATE

The first litmus test of the judicial reforms was the controversy surrounding the date of the elections. The new Constitution (2010, p 84) stipulated that elections be held on 'the second Tuesday in August in every fifth year'. Traditionally, Kenya held general elections every five years and the Constitution did not change that. However, at some point there was uncertainty about the date of the elections, with some politicians suggesting that they be held in December 2012 and others maintaining they should be held in August 2012.

The Commission for the Implementation of the Constitution (CIC), whose brief could be summarised as being to 'monitor, facilitate and oversee the development of legislation and administration procedures required to implement this constitution' (CIC site), argued that elections, according to the Constitution, must be held in August 2012.

The controversy over when to hold the elections was the subtext of a larger plot, in which Kibaki's succession and The Hague cases were the core issues. Kibaki arbitrarily declared 4 March 2013 as the date of the elections. The electoral management body, the Independent Electoral and Boundaries Commission (IEBC), confirmed the date, despite the fact that the Constitution removed from the president the prerogative of naming the election date. Moreover, the IEBC endorsed the date despite the fact that, in response to an objection lodged by civil society, there was a court case pending over the legal interpretation of the matter.

The case had originally been brought before the Supreme Court, but that court inexplicably referred the matter to the High Court. The lower court handed down an ambivalent ruling, which was interpreted to mean that elections could either

be held in 2012 or in 2013 provided that Kibaki and Odinga, the co-principals of the coalition government, concurred. Given the bickering and mutual suspicion that afflicted the coalition government, it was unlikely that the two would agree on such a politically sensitive issue. An appeal to the Appeals Court was rejected.

ELIGIBILITY CASE AND IMPUNITY: YET ANOTHER FALSE START

The consequences of the case at The Hague against Kenyatta and Ruto were another test of the independence of the judiciary.

The debate over whether Kenyatta and Ruto met the requirements of Chapter six of the Constitution, which deals with leadership and integrity, divided the country and ended up in court. Civil society, led by the Kenya Human Rights Commission, the Kenya chapter of International Commission of Jurists (ICJ) and the International Centre for Policy and Conflict, lodged an objection, maintaining the two were ineligible to occupy public office, arguing that because of the ICC indictment they did not meet the threshold set by Chapter six.

Just before the elections the High Court handed down a judgement, stating that it had no jurisdiction over the matter, but ruling that the two were presumed innocent and so had the right to stand for public office (*The Standard*, 15 February 2013).

Moreno-Ocampo, who stated repeatedly that the case against the two Kenyans was about culpability for the crimes against humanity committed during the post-election violence but not about the politics of the 2007 elections, said the issue of eligibility was a matter for the local courts. His opinion was confirmed by his successor, Fatou Bensouda.

Despite the new Constitution, the old order of impunity persisted. The day of the promulgation of the Constitution, 27 August 2010, a watershed moment that Kenyans hoped would mark the beginning of a new dispensation anchored in the rule of law, justice and inclusive politics, was both historic and anticlimactic.

The attendance of Omar Al Bashir was symbolic. Because he was presumed innocent of ICC charges of crimes against humanity, war crimes and genocide in the Darfur region, his presence as an invited guest highlighted the hostility of the Kenyan government to the spirit and letter of the new Constitution. It was also an expression of hostility to the ICC, which was considered to be an interloper in Kenya's internal affairs and to be encroaching on its sovereignty. The inference was that implementation of the Constitution was bound to be tempestuous and the occasion was an archetypal case of old wine in new wineskins. The promulgation of the Constitution seemed to be yet another false start in Kenya's quest for socio-economic and political renewal.

Kenyatta's insistence on running for president in spite of the ICC charges presented a formidable challenge to Odinga's third presidential attempt. However, like most Kenyan politicians, Odinga was guided by self-interest and related to the ICC issue from a political angle, flip-flopping on the matter out of political expediency. The only memorable remark attributed to him about Kenyatta's indictment, made during an American-style presidential debate, was a humorous one in which he alluded to the possible incarceration of Kenyatta, saying, 'If we say we run the government through Skype, then there will be challenges' (*BusinessDay*, 13 February 2013).

Odinga had been a member of the Cabinet and Parliament that had watered down the Leadership and Integrity Bill before it was enacted, deleting, for instance, a provision that barred public officials from involvement in gainful employment while in office. Also expunged was a clause that demanded that those aspiring to elective office declare their income, assets and liabilities. These changes allowed individuals of dubious standing to occupy public office, thus going against the spirit and letter of the Constitution, which sought to institutionalise a culture of probity and accountability. Although there were challenges in framing the Bill to prevent abuse through witch-hunts, the quest for self-preservation among the political elite trumped the national good.

Odinga was caught on the horns of a dilemma with regard to the ICC cases. On the one hand, by not campaigning vigorously against the eligibility of his opponents, he had to contend with the Jubilee Coalition, an ethno-regional grouping that the ICC cases helped to crystallise and for whom the 2013 elections were a matter of political survival. On the other hand, had he chosen to harp on about the 'ineligibility' of Kenyatta and Ruto, he would have further antagonised Ruto's Kalenjin supporters.

He could not lose Kikuyu support since the tribe had no history of voting for a candidate from a different tribe.⁴ The notion that a fraction of Kalenjin supported him was not misplaced. Some senior Kalenjin politicians remained loyal to Odinga even as Ruto's political wave swept across the community.

Significantly, Kalenjin voted overwhelmingly for Odinga in 2007 and even adopted him as their political son, giving him a Kalenjin moniker, 'arap Mibei' ('son of Mibei'), as a sign of affection. He could therefore not afford to alienate the community further by calling for the trial of Ruto in The Hague. Furthermore, such a stance would have vindicated his opponents, who claimed that Odinga had

4 In 'the little general elections' of 1966 and since the founding multiparty elections in 1992, rigid ethnic bloc voting was a preserve of the Kikuyu. In the 1992 presidential elections they voted for Kenneth Matiba and Mwai Kibaki, who came second and third respectively after Moi. In 1997 they voted for Kibaki, who came second, after Moi. In 2002 Kibaki defeated Uhuru Kenyatta to succeed Moi. In 2007 Kikuyu rallied behind Kibaki. Kenyatta inherited the Kikuyu vote in the 2013 elections.

connived with 'imperialists' to try to lock Kenyatta and Ruto out of the elections in order to have a walkover. 'Imperialists' connoted the US, United Kingdom and France, three of the five permanent members of the UN Security Council, which insisted that The Hague cases run their full course.

The politics of ethnicity weighed on Odinga's 2013 game plan. He hoped to benefit from the resentment of Kikuyu hegemony. He and his ethnic alliance, the Coalition for Reform and Democracy (CORD), counted on the rest of the tribes, including the Kalenjin, to rally behind him to stop Kenyatta, a Kikuyu, from succeeding a fellow Kikuyu.

The other tribes detested what they saw as the monopolisation of the presidency by Kikuyu. Of Kenya's four presidents since independence, only Moi had been Kalenjin. As it turned out, though, the Kalenjin were firmly behind Ruto and the community voted for Kenyatta almost to a man, despite the fact that he was facing charges of crimes against humanity for organising a Kikuyu-dominated militia to attack Kalenjin, Luo, Luhya and members of other tribes that had supported the opposition Orange Democratic Movement (ODM) in 2007. This support was eerily reminiscent of Charles Taylor's slogan during Liberia's 1997 elections, to the effect that, 'He killed my ma, he killed my pa, I'll vote for him' (BBC, 28 July 2009).

THE PRESIDENTIAL PETITION AND THE LINGERING 'TECHNICALITY' QUESTION

The IEBC declared Kenyatta winner of the presidential election with 6 173 433 votes (50.07% of the total votes cast), against Odinga's 5 340 546 (43%). Musalia Mudavadi of the Amani Coalition came a distant third, with 483 981 votes (IEBC 2013). Odinga and a local non-governmental organisation, Africa Centre for Open Governance (AfriCOG), launched an objection to Kenyatta's first-round victory, an indication of confidence in the judiciary, unlike the situation in 2007 when Odinga and his supporters sought recourse in mass action. The dispute played out before the Supreme Court and was broadcast live by the local electronic media. However, the judiciary appeared not to have broken ranks with the past.

The court admitted as *amicus curiae* (friend of the court) the attorney-general, Githu Muigai, who, since his appointment, had not distinguished himself as an impartial interpreter of the law. He was party to passage of Bills that were at variance with the letter and spirit of the new Constitution, a concern raised by the Commission for the Implementation of the Constitution. Since the government was not one of the respondents to the petition the inclusion of Muigai, the chief government legal advisor, was curious. In the course of his submission during the presidential petition hearing Muigai cited legal precedents in Nigeria and Uganda which are anything but constitutional democracies and have no history of credible

elections. The petition hearing and his performance since his appointment have portrayed him as an impediment to reform.

At the same time as admitting Muigai, the court declined an application by Prof Yash Pal Ghai, a renowned Kenyan legal mind, to be enjoined in the case in the same capacity, arguing that he was biased towards the petitioner.

The Supreme Court returned a 'unanimous' decision to uphold Kenyatta's win, arguing that the elections met constitutional requirements, although, in an apparently contradictory decision, the court also recommended that some IEBC officials be investigated for possible criminal misconduct over electoral malpractices. Moreover, the court refused to admit part of the petitioner's evidence on the basis that it was lodged late, but, in its ruling, argued that there was no evidence to prove electoral irregularities (Republic of Kenya 2013b). It was a judgement that lacked consistency and set a disturbing precedent.

The Supreme Court brushed aside its own findings after an audit of some of the election results unearthed electoral irregularities. The results at 22 polling stations which the court ordered to be recounted and scrutiny of the results from all 34 000 polling stations showed discrepancies between the number of presidential votes cast at the polling stations and those tallied at the national tallying centre (Republic of Kenya 2013).

Some of the forms the law requires be used to capture the results were full of discrepancies and some were missing.

Although upon assuming office the new chief justice had exhorted judges and magistrates to expedite court cases and had cautioned them against frustrating access to justice through technicalities, the Supreme Court ruling was consistent with previous petitions relating to presidential elections that the courts had dismissed on similar technicalities.

The Law Society of Kenya (LSK)(2013) criticised the judgement, arguing that throwing out the petition on a technicality did not augur well for justice in the country. Although Odinga accepted the ruling, he did not agree with it. He consistently criticised both the Supreme Court and the IEBC, dismissing them as being compromised by the executive, and even threatened not to participate in subsequent elections unless the IEBC was reformed. However, he stopped short of accusing the Supreme Court of judicial activism.⁵

Odinga had expressed confidence in both the judiciary and the IEBC in the run-up to the elections because they had been reformed. Even after filing the petition he maintained confidence in the Supreme Court. In fact, his ODM cited judicial reform measures such as the competitive appointment of the chief justice

5 David A Strauss, a distinguished professor of Law at the University of Chicago, argues that judicial activism refers to a situation in which a judge either overturns statutes or established precedents or makes rulings that go against popular understanding of the Constitution (*Standard on Sunday*, 6 February 2011).

and his deputy, the vetting of judges and the setting up of the Judicial Service Commission as among the party's achievements between 2007 and 2012 (ODM Manifesto 2013).

However, the fact that Odinga had once expressed confidence in these institutions did not diminish the concerns he raised about the management of the elections and the resolution of the ensuing dispute. Whether the image of the judiciary was damaged or improved by the way it handled the petition and election-related cases prior to the elections remained as divisive an issue as the elections.

The Supreme Court ruling divided Kenyans along ethno-regional lines in concert with the voting patterns of the elections. Whereas Jubilee supporters hailed the Supreme Court, their CORD counterparts condemned and dismissed it as an appendage of the executive. The merits and demerits of the cases appeared to be immaterial. What mattered was that the elections did not help heal the country. If anything, they widened rifts.

A legal analysis of judicial rulings on the date of the elections, the eligibility of Kenyatta and Ruto to run for public office and on the petitions relating to the presidential election is beyond the scope of this article. What I attempt to do is argue that despite some judicial reforms Kenya's courts had not yet embraced constitutionalism. The executive still acted with impunity and even, in some cases, ignored court rulings.

The one-party legacy robbed the judiciary of its independence, a shortcoming that could not be addressed solely by vetting judicial officers. Kenyans' confidence in the judiciary because of the appointment of Mutunga was informed by the legacy of personal rule as opposed to governance based on strong and independent institutions. Trust, in this context, was susceptible to individual foibles and systemic deficiencies in the judiciary.

The Law Society of Kenya (LSK) accused Mutunga of influencing the reinstatement of a Supreme Court judge whom the Judges and Magistrates Vetting Board had found unsuitable to continue serving because of his inefficiency. Judge Mohammed Ibrahim exploited his 'three month temporary sacking' to complete 264 cases, some of which had been pending for as long as eight years. The Chief Justice wrote a letter commending him for having expedited the cases within a record time, a move the LSK interpreted as a tacit endorsement of Judge Ibrahim's reinstatement. Ibrahim was vetted afresh and got his job back (*Sunday Nation*, 16 September 2012).

Despite the security of tenure and budgetary allocation that were intended to free the judiciary from interference by the executive, an institutional culture of deferring to the executive prevailed. According to Transparency International's Global Corruption Barometer report, released in July 2013, Kenyans ranked the judiciary, Parliament, the police and political parties as the most corrupt

institutions in the country, despite some reforms under the new Constitution (*Daily Nation*, 9 July 2013).

In the period immediately after the elections, the judiciary further degenerated into infighting over allegations of corruption that pitted the chief registrar of the judiciary against the Judicial Service Commission, led by Mutunga. The JSC accused the registrar of corruption and, in return, she levelled similar allegations against some members of the JSC.

The JSC sacked her for corruption, incompetence, gross misconduct and insubordination (*Daily Nation*, 18 October 2013). The row sucked in Parliament after the sacked registrar sought the assistance of the Jubilee-dominated House in an attempt to save her job. The saga assumed an ethnic hue as a section of Kalenjin MPs protested her innocence.

The JSC ignored a summons from the Parliamentary Committee on Justice, citing the doctrine of separation of powers, whereupon Parliament recommended the formation of a tribunal to investigate the conduct of six of the 11 members of the JSC whom the registrar had blamed for her woes (*Saturday Nation*, 9 November 2013). The conflict put yet another damper on the anticipated judicial reform and further sapped the confidence of Kenyans in the judiciary.

At the time of writing, a person described as 'a human rights activist' had filed a petition before the JSC seeking the removal of Willy Mutunga as Chief Justice, accusing him of 'incompetence and breach of the Judicial Code of Conduct' (*The Star*, 22 November 2013). It was clear that the *ancien régime* forces that had, for years, manipulated the judiciary for political and economic ends, posed a hindrance to reform.

To appreciate the manner in which the judiciary handled disputes surrounding the elections one must look at the ethnic composition of top-ranking state officials, which casts doubts on the evenness of the political playing field. Individuals of Kikuyu ancestry held influential positions in the rent-generating state apparatus. The commander-in-chief of the armed forces, the chief of the general staff, the director of national intelligence services, the head of the civil service, the director of the criminal investigations department and the governor of the Central Bank were all Kikuyu.

The first inspector general of police, a Kalenjin, succeeded a Kikuyu only days before the elections, although his predecessor had served as the last commissioner of the defunct Kenya Police under the old Constitution. The mentality of the new police boss seemed out of sync with the new Constitution. He resisted attempts to reform the National Police Service (NPS), which had been renamed, and place it under civilian oversight through the National Police Service Commission (NPSC) and the Independent Police Oversight Authority Board, as envisaged in the Constitution (*The Standard*, 29 May 2013).

The attempt to retain the status quo put the inspector general of police on a collision course with the NPSC. The rift was an indication that the police, as members of the coercion forces, were keen to resist any new ethos such as accountability in order to remain integral to entrenched impunity. The police traditionally acted at the behest of the executive and had a propensity to respond high-handedly, especially in quelling protests by opposition supporters (Amnesty International 2013). In the circumstances, the police motto, '*Utumishi kwa Wote*' (Swahili for 'Service to All') was a mere slogan, devoid of commitment to the rule of law, fair play and the pursuit of justice.

Why does the ethnic background of these individuals matter? Firstly, in a country in which tribalism was the overarching variable in the struggle for power and a lightning rod for competition over resources it was hard to gloss over ethnicity in the allocation of strategic positions in the state apparatus. The monopolisation of these positions by Kikuyu contravened the Constitution, which stipulates that appointments to the national government must reflect the regional and ethnic diversity of the people of Kenya (Republic of Kenya 2010). Secondly, for an incumbent to tamper successfully with elections in Africa and beyond, the cooperation and trust of powerful individuals in charge of legitimate instruments of violence and logistical and financial state resources is indispensable.

FRAUDULENT ELECTIONS, COMPROMISED ELECTORAL BODIES AND ENTRENCHED AMNESIA

According to the Report of the Independent Review Commission on the General Elections held on 27 December (the Kriegler Commission)(Republic of Kenya 2008a), weak laws and an institutionalised disregard for the rule of law mean that Kenya has a history of fraudulent elections dating back to the one-party state (Throup & Hornsby 1998).

All post-independence elections, apart from that in 2002, were marred, to various degrees, by irregularities and during the period of the one-party state no presidential elections were held. The 2002 elections were seen to have been free and fair for three main reasons. Firstly, Mwai Kibaki and Uhuru Kenyatta, the leading presidential candidates, were both Kikuyu, so whoever won the elections, they were bound to mark a resurgence of the Kikuyu hegemony that was halted in 1978 when Jomo Kenyatta died.⁶ Secondly, Kibaki's support was drawn from

6 According to the National Cohesion and Integration Commission, Kenya's civil service was dominated by the Kikuyu, followed by the Kalenjin, in numbers that were disproportionate to their share of the population. The Kikuyu constituted 17.7% of the population but occupied 22.3% of all government jobs. The Kalenjin, who constituted 13.3% of the population, occupied 16.7% of all civil services jobs (*Daily Nation*, 6 April 2011).

a broader ethnic alliance, making it difficult for the incumbent, Moi, to influence the results in favour of Kenyatta. Kibaki had 62% of the vote to Kenyatta's 31% (Electoral Commission of Kenya 2002). Thirdly, both candidates were *ancien régime* members, which removed the incentive to engage in electoral malpractices since, either way, it was a win-win situation for this membership.

The history of controversial elections was linked to the battle for control of the state and ownership of capital. In Kenya political power presented an opportunity for patronage. The higher the office and the more connected to the power matrix, the more lucrative opportunities there were to accumulate wealth.

Kenya's former presidents and their close allies were the leading land and property owners in the country, with commercial ventures that traversed various sectors of the economy. Therefore it was not in the political or economic interest of the *ancien régime* to reform the state to create a level political playing field. The urge to rig elections in Kenya's multiparty political system was high, since, in a zero-sum political setting where the state was used for 'primitive accumulation', election victory came with economic benefits for the president and allies, while loss of power spelled exile in an economic and political wilderness (Cowen & Kanyinga 2002).

THE INDEPENDENT ELECTIONS AND BOUNDARIES COMMISSION: A SENSE OF DÉJÀ VU

The IEBC replaced the defunct Electoral Commission of Kenya (ECK), which had been beholden to the government and contributed to the irregularities that marred the 2007 presidential elections (Republic of Kenya 2008a). An interim electoral body, the precursor to the IEBC, presided over a number of by-elections after the 2007 elections, including the 2010 Constitution referendum. These events were hailed by local and international observers, but the stakes were not high, making the 2013 elections the litmus test of the independence and preparedness of the IEBC.

The IEBC accepted Kenyatta's nomination papers and cleared him as a presidential candidate on the grounds that, at the time, the High Court was yet to rule on the eligibility case. Once the case came up before the court the judges, in turn, observed that Kenyatta and Ruto had already been cleared by the IEBC so they could not nullify their candidatures (*The Standard*, 15 February 2013). This situation brought into focus the strategic importance to the elections of the independence of these institutions.

By clearing Kenyatta and Ruto to stand the IEBC and the High Court gave their political careers a boost and gave the elections the dubious distinction of being the first in the world in which ICC indictees jointly contested the presidency

and won. Having been permitted to stand, it became almost impossible for the two politicians to lose.

The 'Kriegler Commission', which investigated issues involved in the 2007 elections, had recommended a shift to an electronic voters' register in an effort to curb irregularities such as ghost voters and ballot-box stuffing and thus to secure the credibility of subsequent elections (Republic of Kenya 2008a, p 138).

As a result, the IEBC stated that it would use a biometric voter registration (BVR) system and electronic transmission of presidential results from the polling stations to the tallying centre in Nairobi and conducted mock elections in selected constituencies, although these did not involve the BVR technology (IEBC 2012).

However, like any other electoral management body, the IEBC required political will in the form of support from government, staff and commissioners of integrity in order to deliver on its mandate. The body's apparent lack of preparedness was consistent with a sense of amnesia that afflicted Kenya's society courtesy of successive governments. Integral to the institutionalisation of this amnesia were sections of the media that supported the government of the day uncritically, the clergy, who had a close relationship with those who wielded power, a pliable and corrupt judiciary, a populace that supported fellow ethnic politicians uncritically and an oligarchy that sacrificed Kenya's stability for short-term economic and political ends.

The ubiquitous phrase in the wake of the 2013 elections was 'move on', a catch phrase used to cover concerns about the credibility of the results of the presidential election. A two-pronged peace crusade spearheaded by religious groups and amplified by the media preceded the elections and continued immediately afterwards.

On a positive note, it urged Kenyans to shun violence, cautioning them against the damage and atrocities the country had suffered five years previously, as documented in the CIPEV report (Republic of Kenya 2008b).

The flipside, however, was that the peace industry sought to entrench amnesia by glossing over salient issues at the root of the animosity and ethnic divisions in Kenya's body politic. Overemphasis on ethnic coexistence and reconciliation at the expense of the rule of law, justice and fair play could not foster peace and social cohesion in the long run. The inability to learn from Kenya's history and the idea that Kenya's pressing challenges would uncannily resolve themselves made divisive issues fester, putting the country's long-term political stability in jeopardy and creating anxieties.

Because the IEBC registered some voters using the BVR system it was assumed that an electronic register was in place, but, on election day the voter identification devices 'broke down', forcing the electoral body to revert to the manual register(s).

The transmission of the results of the presidential election through the results transmission system (RTS) initially 'worked', but later 'crashed',⁷ forcing the IEBC to count the votes manually, thus creating grounds for another disputed election. Odinga and his supporters suspected foul play, believing that the malfunctioning of the system was part of a scheme to tamper with the votes to ensure that Kenyatta secured a first-round victory.

The late procurement of the BVR devices and the abrupt shift from an electronic to a manual system during the course of the elections set the stage for a dispute. It was ironic that Kenya, a comparatively tech-savvy country and a trailblazer in cellular telephone banking, could not exploit technology to organise dispute-free elections.

The country waited for six days after voting ended before the results of the presidential election were officially announced. Immediate release of the results would have helped to defuse tensions and allay fears and accusations of election tampering and, in addition, the IEBC became embroiled in the politics of the elections and lost its impartiality.

In his petition Odinga did not focus on the significant margin of difference between him and Kenyatta. Instead he concentrated on the votes that enabled Kenyatta to obtain the 50% plus one threshold. The petition exposed the existence of multiple voters' registers, making it impossible to know the exact number of registered voters.

Odinga's request for an independent inspection to establish why the electronic devices failed was rejected by the Supreme Court. The IEBC released the final election results almost five months later, but its chairman and his fellow commissioners refused to vouch under oath for the authenticity of the results before Parliament's Justice and Legal Affairs Committee (*The Standard*, 18 July 2013). Kenya's media attributed the delay to the IEBC's inability to reconcile the presidential votes and those for the other positions. It was reported that there was a difference of more than a million votes (*The Star*, 23 May 2013).

In his submission during the petition hearing the IEBC chairman, Issack Hassan, accused Odinga of serially rejecting election results, citing elections in 1997, 2007 and 2013 (Republic of Kenya 2013a – IEBC Reply to the petition). Given that Kenya had no record of holding credible elections, previous elections were flawed and disputes were inevitable (Kanyinga, Long & Ndii 2010).

Hassan's political history did not inspire confidence in him as an impartial chairman of the IEBC. He had served as a commissioner of the Constitution of Kenya Review Commission (CKRC) under Moi and was among the com-

7 I use quotation marks because it is yet to be established why the devices malfunctioned.

missioners seen as working at the behest of Moi and the Kenya African National Union to derail the constitutional review process (Lumumba 2008, pp 131-2). He had no track record in reform and his appointment to head the IEBC seemed to be part of the *ancien régime's* efforts to retain power.

Voters going to the polls in the 2013 elections were expected to cast six ballots – for president, MP, senator, governor, councillor and women's representative. Hitherto, in general elections they had only voted for president, MP and councillor, making the 2013 elections considerably more complex. The complexity might have accounted for the high number of spoilt votes but the reason might also have been that there was insufficient civic education prior to the elections. Before the results transmission system 'collapsed', the number of spoilt votes was in excess of 300 000, but the number shrank to 221 053 when the IEBC announced the official results (IEBC 2013).

In future, perhaps, presidential elections should be held separately, to minimise logistical hitches. I hasten to add, however, that the challenges encountered in 2013 stemmed from a lack of political will and fidelity to the rule of law in Kenya's body politic rather than from the complexity of the elections per se. Additional ballot boxes, the manual register and tallying of votes in and of themselves could not have led to electoral irregularities. The IEBC did not conduct the elections competently because, like its predecessor, the ECK, it broke a cardinal rule which 'assumes that electioneering must be procedurally certain even as the outcome of that process must remain substantively uncertain' (*Daily Nation*, 12 July 2013).

In addition to effecting judicial and electoral reform it was imperative for the country to reach closure with regard to the violence that followed the disputed 2007 elections. The non-resolution of the 2007 electoral controversy did not augur well for democratisation, peace and development, as it portended political instability. Because those responsible for the electoral fraud were emboldened by impunity, their behaviour could easily become emblematic of the country's electoral process.

There was a need for the truth to be told in order to facilitate reconciliation and healing. Knowledge of what transpired with regard to the mismanaged elections in 2007 and the irregularities encountered during the 2013 elections was relevant to justice and to the reform of the electoral law. The fact that no one had been held to account for mismanaging the 2007 elections (Brown & Sriram 2012; Human Rights Watch 2011) did not inspire confidence in the transparency of the 2013 elections or of subsequent elections.

DEVOLUTION VERSUS CENTRALISATION OF POWER: THE NAGGING QUESTION

One of the salient features of the new Constitution was the creation of a devolved state, known in Kiswahili as *majimbo*, or *ugatuzi* – a contentious issue in the protracted constitutional reform process because it relates to the collection and allocation of state resources, making it an issue that is central to Kenya's elections and political stability (Ghai 2008). Under the centralised state, rent-seeking thrived among the gatekeepers.

The president, as the patron, was surrounded by close allies who were, in effect, clients in a system that permeated the entire body politic (Jackson & Rosberg 1984). Endemic and unresolved corruption scandals that affected the delivery of public goods were some of the consequences of a centralised state. The economic benefits provided by control of the state were an incentive to ethnic mobilisation in Kenya's multiparty elections. The most prominent corruption scandals were the matters of Goldenberg and Anglo Leasing, in which politicians accumulated resources for patronage in a fashion verging on felonious or criminal (Bayart, Ellis & Hibou 1999; Bayart 1993; Gastrow 2011).

In its draft constitution, which was later amended by the politicians, the Committee of Experts had proposed comprehensive devolution (Revised Harmonised Draft Constitution of Kenya 2010).

In an attempt to reduce zero-sum politics, whereby the presidency under the centralised state was the ultimate prize, the Constitution created an extra tier of government under 47 semi-autonomous administrative units, called counties, which were run by directly-elected governors. However, as the hotly-contested 2013 presidential election shows, the devolution clause does not seem to have reduced the intense competition for the presidency.

A bicameral legislature came into being with the creation of a Senate, which comprised 47 senators. Devolution, if well implemented, would promote social cohesion and spur development by chipping away at the centralised state. However, there would be challenges, primarily emanating from endemic governance shortcomings at the centre, hence, in most county assemblies, the first item on the agenda was a demand for hefty salaries and perks, luxury cars, seminars at the coast, and residences for governors. Profligacy and the abuse of public funds were some of the inadequacies of the central government. Without exemplary leadership at the centre, the periphery was likely to replicate bad governance.

Kibaki and his successor, Kenyatta, opposed devolution by hampering the operation of county governments with a reluctance to allocate funds and by retaining the provincial administration and county commissioners. Governors

were caught up in turf wars with the parallel provincial administration system and jostled for mundane facilities, like office space.

The Jubilee government tended to give greater weight to decisions taken in Parliament, forcing the Senate to fight for relevance. For instance, Kenyatta signed a controversial revenue Bill into law, slashing financial allocations to county governments, contrary to a recommendation by the Senate (*Daily Nation*, 11 June 2013). This apparent resistance to reform of the centralised state was as old as independent Kenya (Morton 1998, pp 111-18).

Hardly had the dust generated by the elections settled than a bipartisan call for a referendum among the Senate, the governors and CORD ensued. The politicians called for a plebiscite to amend the Constitution to ensure the allocation of at least 40% of funds from the national government to the counties. Senators campaigned for a referendum to give them more powers of oversight over affairs in the counties (*Sunday Standard*, 11 August 2013).

Moreover, CORD and some activists, under the aegis of the March 4 Movement (M4M), raised the referendum issue in order to amend the Constitution to change the mode of electing the president. M4M, named after the date on which the elections were held, ostensibly sought to address the Kikuyu hegemony and ensure that politicians from small and marginalised communities stood a chance of being elected president (*The Standard*, 16 August 2013).

Kenya's ethnic-census-type presidential elections made it impossible for minority tribes to produce a president. However, no sooner had the referendum campaign started than it fizzled out, as did the enthusiasm in CORD and among some Jubilee affiliated politicians, and M4M faded into oblivion as fast as it had emerged. There are two possible reasons for this. Firstly, Kenya's politicians have a knack for ephemeral pursuits for self-preservation as opposed to long-term issues in the interest of statecraft. Secondly, Jubilee deflated the referendum debate by browbeating affiliated politicians into backtracking on their support for the referendum.

The quest to neutralise the ICC cases became the *raison d'être* of the Jubilee government. Kenyatta and Ruto spared no effort in exploiting state power to mobilise support locally, continentally and even globally in an attempt to have the charges withdrawn.

THE 2013 ELECTIONS AS TYPICAL KENYAN MULTIPARTY ELECTIONS

Although the 2013 elections were devoid of the violence witnessed in 2007 they were quintessentially Kenyan elections, resembling previous elections not only in terms of disputes but also in the sense of insecurity that enveloped certain parts of the country before and after the elections. In the lead-up to the elections in

the Tana River Delta there was inter-communal violence between rival tribes of Pokomo, who were traditionally farmers, and the pastoralist Ormo. This resulted in the destruction of property and loss of lives (BBC 2012). In the wake of the elections, rampaging armed gangs injured and killed residents in parts of the Bungoma and Busia counties in the western region. The cause of the violence has not been established, but previous elections have been characterised by violence in the area (Republic of Kenya 1992, Republic of Kenya 1999, KNCHR 2008, KHRC 1998, HRW 2008a, HRW 2008b, HRW 1991).

In addition, irredentist moves by a group known as the Mombasa Republican Council (MRC) caused insecurity in the coastal city of Mombasa and its environs. The group tried to mobilise around a protest slogan, *Pwani si Kenya* ('Coast region is not part of Kenya'). The MRC tried to exploit the frustrations of indigenous tribes over years of neglect in resource allocation and a squatter problem caused by land dispossession occasioned by successive governments (Truth Justice and Reconciliation Commission 2013). The group called for the boycott of voter registration and voting as an expression of resentment of what they considered to be state sponsored marginalisation and disinheritance. On election day violence claimed 19 people, including police officers, government officials, civilians and suspected MRC members in Mombasa and Kilifi counties (Associated Press, 4 March 2013).

The primaries, popularly known as nominations, were chaotic, and some candidates defected to other political parties after losing. Gatekeepers in political parties exercised undue influence over the exercise, locking out some popular candidates in favour of either allies or relatives. In a show of defiance, Odinga's supporters in his Luo land backyard protested against what they perceived as his attempt to impose relatives on them at senatorial, gubernatorial and parliamentary levels.⁸

Some popular politicians caught up in the anomalies defected to other political parties under the same coalition, won the primaries and were eventually elected. Others were not as successful, having decamped to fringe parties in strongholds of their initial parties of choice. Party hopping, or, as it was known in the former Zaire (now the Democratic Republic of Congo) '*vagabondage politique*' (political vagrancy) was, in most cases, inspired by the spoils of the political game (Ihonvbere 2006, p 25). However, this political behaviour was not entirely antidemocratic. In fact, it could be seen as a way of fighting the undemocratic

8 Odinga became so influential in Luo politics after inheriting the community leadership from his father, who passed on in 1994, that he virtually decided who became a member of Parliament. Given that the party he led commanded overwhelming support among fellow ethnics, his endorsement in the primaries has, in the past, effectively meant automatic election. Fellow Luo politicians who tried to establish an alternative power base ended up in the political wilderness. It was this domineering influence that the supporters opposed during the primaries before the 2013 elections.

tendencies that were trying to narrow the political space. Through defection those frustrated by gatekeepers were given a chance to stand in the general elections.

Political parties that participated in the 2013 elections flouted the Political Parties Act, which was intended to inject a sense of discipline and internal democracy into the organisation and management of these entities. Parliament watered down this piece of legislation to allow for the formation of pre-election coalitions. In its original form it outlawed such alliances, since they were opportunistic, fragile and election centred.

Parliamentarians also amended the Elections Act to allow defections until two months before the elections. Previously the Act had demanded that a member be on a party list for three months before the lists were submitted to the Registrar of Political Parties (*The Star*, 5 October 5). This amendment reduced the period within which the parties had to submit their nomination lists to the IEBC, leaving no room for the resolution of disputes arising out of the primaries.

These changes illustrated the aversion of politicians to the institutionalisation of the political parties. It was the undemocratic character of the parties that stifled the entrenchment of democracy in the country. Under the new constitutional dispensation Parliament was still ineffectual owing to deficiencies such as impunity, corruption, ethno-regional political parties and sycophancy. The IEBC and the Registrar of Political Parties appeared powerless to rein in errant politicians and streamline the management of political parties.

TRIBALISM VERSUS MANIFESTOS: WHO IS KING?

The two main competing tribal alliances, Jubilee and CORD, released campaign manifestos articulating their programmes of action. As in previous campaigns there was little difference between the manifestos. CORD summed up its manifesto in a 10-point programme that encapsulated jobs, security, poverty, food security, social equity, infrastructure and land, quality education, healthcare and national cohesion (CORD site).

Jubilee's manifesto had three cardinal planks: unity, economy and openness. The issues contained in the two manifestos comprehensively covered the most pressing challenges facing the country. However, both coalitions presented these challenges in a generic sense reminiscent of the populism of the one-party state. Commitment to tangible goals within, say, the first five years, would have been a better way of presenting the manifestos. The documents were unwieldy, containing too many pledges, hence making it hard for voters to assess the parties effectively. The major inadequacy was that the coalitions did not state where they would source the funding to implement their ambitious pledges.

Realistic pledges sensitive to the state of the economy and with a direct impact on the lives of the most vulnerable and marginalised would have been a pragmatic way of framing the manifestos. For instance, a pledge to build affordable houses for low-income earners in the country's urban areas would have reflected the housing problems that account for the mushrooming of informal settlements and the lack of planning in Kenya's urban areas.

Basic but essential public goods, like the supply of potable water to both rural and urban areas and acceleration of the connection of households to the electricity grid, were other pressing needs. Other infrastructural facilities necessary if the country is to realise Vision for 2030, popularly known as Vision 2030, a socioeconomic and political blueprint, include the construction of modern schools, a modern railway network, paved roads and the modernisation of the agricultural sector, Kenya's economic mainstay.

The framing of the manifestos appeared consistent with a knack for what was described as 'grandiose plans' and an obsession with grandeur, a perennial shortcoming of postcolonial African leadership (Adebajo 2010, p 266). The pledge to supply laptops to children starting school, the main plank in the Jubilee Coalition manifesto, was a case in point. The laptop project in the context of a lack of extensive electrification, overcrowded classrooms, poorly equipped public schools and teachers who were less than enthusiastic owing to poor remuneration appeared to be a case of misplaced priorities. According to the UNESCO report, more than a million Kenyan children were not at school and education opportunities excluded the marginalised (UNESCO-Education for All Monitoring Report 2012).

The fact that the manifestos lack specifics shows that they are camouflaging a contest for political power based on tribalism. As tables 1 and 2 illustrate, support for both Kenyatta and Odinga was based on tribal affiliations and they performed abysmally in each other's strongholds. Five of the 10 counties in which Kenyatta received more than 200 000 votes – Kiambu, Murang'a, Nyeri, Nyandarua and Kirinyaga – were in the Central region, which is predominantly inhabited by Kikuyu. In the Kalenjin counties of Kericho and Uasin Gishu the electorate also overwhelmingly voted for Kenyatta. So did the electorate in Meru county, inhabited by Meru, cousins of Kikuyu. Nakuru county in the Rift Valley region is somewhat cosmopolitan but is predominantly inhabited by Kikuyu and Kalenjin and hence supported the Jubilee Coalition.

Four of the 10 counties in which Odinga received more than 200 000 votes were inhabited by his Luo tribe. In Kisumu, Homa Bay, Siaya and Migori counties he had absolute majorities. Given that Odinga's running mate was Kalonzo Musyoka, a Kamba, Odinga also had unassailable victories in Makueni, Machakos and Kitui counties, which are inhabited by Kamba. Kakamega and Kisii counties

are the ancestral homes of Luhya and Kisii respectively. The majority of voters from these tribes supported CORD and Odinga was seen as a shield against Kikuyu dominance. Like previous multiparty elections, the 2013 elections brought to the fore 'ascriptive' voting patterns whereby voters expressed tribal identity as opposed to a preference for any other ideology, other tribalism or a vision for the country.

It can therefore be inferred that even in the cosmopolitan Nairobi county voters cast their ballots in consonance with ethnic affiliation. Although the popular narrative after the elections was that there was a higher turnout of supporters in Kenyatta's strongholds than in Odinga's on election day, irregularities exposed by the presidential petition cast doubts on the claim that the presidential election results were decided entirely on this basis.

Table 1
Voting patterns in the ten leading counties that supported Kenyatta

	Kenyatta			Odinga	
	County total	County %	Turnout %	County total	County %
Kiambu	702 185	95.21	91	61 700	7.89
Nairobi	659 490	46.75	86	691 156	49.00
Nakuru	494 239	80.19	89	105 660	17.14
Murang'a	406 334	95.92	94	10 312	2.43
Meru	384 290	89.41	88	32 447	7.55
Nyeri	318 808	96.33	93	5 638	1.70
Kericho	238 556	90.74	91	17 326	6.59
Nyandarua	232 808	97.11	94	2 889	1.21
Kirinyaga	231 868	95.99	91	3 471	1.44
UasinGishu	211 438	74.26	86	60 060	21.09

Source: IEBC 2013

Table 2
Voting patterns in the 10 leading counties that supported Odinga

	Odinga			Kenyatta	
	County Total	County %	Turnout %	County Total	County %
Nairobi	691 156	49.00	86	659 490	46.75
Kisumu	337 232	96.64	90	4 630	1.33
Machakos	319 594	85.89	84	35 660	9.58
HomaBay	303 447	98.93	94	725	0.24
Kakamega	303 120	63.84	84	12 469	2.63
Siaya	284 031	98.47	92	884	0.33
Kisii	236 831	67.93	84	95 596	27.42
Makueni	228 843	90.73	85	12 652	5.02
Migori	225 645	86.38	92	26 055	9.97
Kitui	219 588	79.53	85	40 752	14.76

Source: IEBC 2013

From these tables I deduce that a manifesto and a track record in reform did not count in Kenya's presidential elections. A solid tribal backing that transformed into a broad ethnic alliance was the presidential springboard. The 50% plus one threshold institutionalised ethnic alliances.

Ironically, the framers of the Constitution had hoped that it would address ethnic mobilisation by forcing presidential candidates to appeal to as wide a diversity of Kenyans as possible on the basis of their programmes of action. The corollary of ethnic mobilisation was that whoever won the presidential election became beholden to the kingmaker(s). Failure to reciprocate hamstrung government operations and rendered the beneficiary a lame duck president. In extreme cases, reneging on this quid pro quo arrangement led to recriminations that spilled over into the wider populace, thus imperilling the country's political stability.

The traumatic events that defined Kenya's politics under Kibaki, such as the divisive 2005 constitutional referendum, the 2007 elections and the subsequent violence, and the ICC cases could be traced directly to Kibaki's failure to honour a pre-election power-sharing agreement with those who had supported him in

the 2002 elections under the National Rainbow Coalition. One of the reasons why Odinga fell out with Ruto after the 2007 elections related to a dispute over sharing of positions among ODM-affiliated tribal constituencies.

CONCLUSION

Kenya's 2013 elections entrenched status quo politics and showed how difficult it is to hold 'free and fair' elections in a country in which those who monopolise capital and political power are the same individuals who are expected to facilitate an even political playground that might result in them losing power. The new Constitution, which chipped away at the imperial powers of the presidency, provided a glimmer of hope that comprehensive reform was possible. However, Kenya's oligarchs, uncertain of their fate once they were out of power, frustrated its implementation.

This article has brought to the fore the challenges facing multiparty politics in Kenya, a deeply ethnically divided country. There is a need for comprehensive reforms to address the issues of poverty and per capita and regional inequalities in order to genuinely enfranchise the majority of Kenyans. Poverty, lack of education and the resultant economic disempowerment has reduced most citizens to pawns in a destabilising political game whose only beneficiaries are predatory politicians and their allies.

There is a clear link in Kenya among fraudulent elections, monopolisation of capital and election-related violence. The cure cannot be found in ethnic alliances, which are the very cause. Land reform, reform of the attitude of the judiciary, Parliament and other institutions, intended to act as checks against the abuse of power by the executive, are a prerequisite to the enhancement of the democratisation process.

Sustainable political stability hinges on how far changes in institutions that are intended to undergird democracy will go. Centralisation of power is responsible for the deleterious zero-sum politics and resistance to devolution which risk heightening tensions and further polarising the country.

Although Kenya has made some strides in reform since the advent of multiparty politics, further reform is required to make the government of the day more vulnerable and to make it possible for any Kenyan, regardless of ethnicity, creed, religion or social status, to stand a chance of being elected president.

There is a need for accountability and a shift from the politics of electoralism. Elections must cease to be periodic rituals and must give Kenyans an opportunity to have a genuine say in how they want to be governed. The tendency to regard elections, which are often imperfect, as the be-all and end-all of democracy, after which the citizenry is asked to 'move on' and wait for the next round, five

years down the line, has stifled Kenya's renaissance. Concerns about the lack of independence of the IEBC, coupled with threats by some opposition leaders to boycott future elections unless the electoral body is reformed, deserve attention in the interests of Kenya's democratic consolidation and political stability.

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GENDER DYNAMICS IN ELECTIONS IN AFRICA

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ABSTRACT

Gender, an important concept in African elections, has been largely ignored, yet the majority of voters tend to be women, while those who hold the authority and are elected to political positions are mostly men. This article examines the understanding of gender in the African context and analyses the underlying causes of the gender paradox. Using a multi- inter- and trans-disciplinary approach, the concept of gender is scrutinised within the election cycle. Findings about gender dynamics drawn from African nations showed that less than 30% of representatives in elected African parliaments are women. The reasons for this gender disparity appear to be deeply embedded in the historical and ideological traditions within the political, economic and social dimensions of Africa's development. The article ends with the identification of barriers to entry for women candidates in selected African countries. Strategies for transforming gender inequities in elections are discussed.

INTRODUCTION

Gender, an important concept in African elections, has been largely ignored. Despite the fact that the majority of voters tend to be women, the people who hold the authority and the elected positions are men. Gouws (2012) underscores the dearth of gender-oriented research into local government elections, while Hassim & Smith (2012) record women's lack of influence as a result of the fact that men tend to be dismissive about gender issues.

Women, as the biggest users of services, are often disadvantaged by lack of delivery of basic needs such as water, electricity and sanitation (Coetzee & Naidoo 2002). This study examines the underlying causes of this gender paradox through a multi-pronged historical and contextual approach based on case study perspectives in selected countries in sub-Saharan Africa, including Rwanda,

Burundi, the Democratic Republic of Congo (DRC), Kenya and Uganda. In order to comprehend the complex nature of gender inequity in African political circles I look at the historical causes and ideological underpinnings that might have contributed to the present status as well as at Africa's development and at elections.

Gender disparity in Africa in relation to political leadership or elections has not always favoured men. Historically, the continent has many examples of women leaders who have had power, a large inheritance and ownership of servants. In the Bible, 1 Kings 10, paras 1-13 tells the story of the Queen of Sheba who went to visit King Solomon in a great train with camels bearing 'a hundred and twenty talents of gold, and of spices very great stores, and precious stones: there came to no more such abundance of spices and these which the Queen of Sheba gave King Solomon'. She was able to speak to the king and ask questions to verify what she had heard about his wisdom, prosperity and wealth.

This ancient Queen of Ethiopia demonstrates that, at least at that level, women's status was equal to that of men. The historical perspectives on gender relations and the factors that have had an impact on African women in positions of political leadership is a complex subject.

In pre-colonial Africa women played a significant role in society. They were wealthy, owned property and held distinguished positions (Anquandah 1982). In many ethnic groups women played the role of queen – the mother who was involved in governance and served as advisor to the chief, especially during the election of chiefs. This signifies the participation and important role of women in elections in Africa. An example of such a woman was Nana Yaa Asantewaa, queen mother of Ejisu, in Ghana (Dugbazah 2012).

The division of labour in African societies in the pre-colonial era was well defined. For example, women among the Ewes in the Volta Region of Ghana were involved in food processing, marketing and distribution, while their male counterparts harvested crops, hunted and fished.

Although labour was divided according to sex, the contributions made by each sex were complementary. There were many matriarchal kingdoms in Africa and, indeed, there still are, especially in Senegal.

From this overview it seems that women had a recognised role in society and higher status during the pre-colonial era than in the colonial and post-colonial era. However, this generalised statement is not entirely correct, as many played secondary roles, only assumed power when there was no serious contention from men and, in many case, the structures that existed prevented them from attaining their full potential.

Gender, like many other phenomena, was affected by colonialism. The imposition of colonial rule by the British brought about significant changes in gender relations within African society (Dugbazah 2012) and has caused serious

debates. Colonialism had a negative impact on gender relations, affecting the status of women and their ability to contribute to society and thereby reducing their chances of success in elections. This was mainly due to the introduction of patriarchal and capitalist ideology (Bortei-Doku 1991).

The British interfered with community values, replacing them with systems of private property, wage labour, class stratification and a culture that was basically patriarchal in nature. Eurocentric systems also changed the status of women as they adopted British culture, and the introduction of English law began to reduce the status of women.

British law, both in theory and in practice, did not recognise the rights accorded to women under the customary laws of the pre-colonial era. Marriage meant the merger of the identity of husband and wife (Manuh 1992) and an inability to own property, based on the understanding that they themselves *were* property. This meant that they could not participate in political activity, as queen mothers had done in Ghana.

African men, on the other hand, were granted more decision-making powers, as the British only engaged in business with men. Women lost their strength, power and authority during that period, which delineated rural communities that had equal access to resources, production and subsistence agriculture. Colonialism, with its demand for cash crops, ushered in a new gender pattern of production (Sarfoh 1987).

This male-dominated division of labour created a sharp distinction between men and women and the gender divisions had far-reaching consequences that continue to haunt societies in Africa, where, because of their economic status, women became even more remote from decision-making.

Another factor was the demand for urban employment, which resulted in men leaving the rural areas. The introduction of Western education appears to have favoured men and ignored many women, focusing, as it did, on economic advancement for men for the benefit of the colonialists (Agbodeka 1992). Paradoxically, some colonial systems alleviated some negative conditions like customs of widowhood, female circumcision and so on. However, this relief only applied to a small minority of the population. In subtle ways the gender inequity and under development that were slowly structured into sub-Saharan African societies continue today, making it difficult for women to participate in elections as leaders.

Many factors influence the position of women in society and in politics. Socio-economic challenges such as access to resources make them vulnerable and they lack the funds to fight elections. Other constraints include difficulties with obtaining credit, the restraints of marriage, the lack of formal employment and problems with land tenure rights.

Currently there are two women presidents in Africa – Ellen Johnson Sirleaf in Liberia and Joyce Banda in Malawi – and women constitute only 20.4% of parliamentarians, although many African governments have implemented quotas to boost these numbers.

The Rwandan Constitution of 2003 requires that women occupy at least 30% of parliamentary seats and similar quota systems have been introduced in Uganda, Burundi, Tanzania and the newest country in Africa, South Sudan. However, in the 2013 elections in Kenya no women were voted into the position of governor or senator and of the 290 parliamentary seats, only seven went to women, compared to 22 in the previous Parliament, despite the fact that the country's new Constitution provides for a more even playing field..

It is against this background that this article investigates gender parity in Africa in relation to electoral democracy.

METHODOLOGY

This study analyses the factors underlying gender disparity in African elections, based on the experiences of a sample of election officials who attended the Executive Programme on Democratic Elections in Africa, an on-going programme that was initiated in 2011 and covers at least 23 countries within Africa.

The officials, who are selected from electoral bodies, form the bulk of respondents and share their experiences through focus groups, projects and questionnaires during the four-week course. The experiences, including gender aspects, of 100 respondents were drawn from direct open-ended questions. Focus group discussions were held to probe further themes such as the underlying factors driving gender imbalances in elections. Representatives of selected countries provided information about specific experiences. Respondents were asked to address the following themes:

- The gender status in their countries;
- Experiences of gender inequality in their countries;
- The gender ratios in their countries' Parliament, electoral management bodies and parties.

Data were captured in written accounts and tabulated (see table) and emerging themes were analysed.

The countries involved in the study were Kenya, Uganda, Burundi, Rwanda, Tanzania, Zanzibar, South Sudan, Ethiopia, the Democratic Republic of Congo, Botswana, Lesotho, Malawi, Zimbabwe, Zambia, South Africa, Angola, Mozambique, Seychelles, Mauritius, Cameroon, Nigeria and Sierra Leone.

Paradoxically, the gender composition of each country was initially biased towards men, indicating the gender imbalances within the commissions and electoral bodies themselves.

Written responses were also collected, for instance on factors that influenced voting for women candidates. The data were analysed and themes such as gender-based violence, barriers to women's participation in elections and the cultural and traditional influence of women's participation, among others, were documented. Other means of collecting data included document analysis, particularly from reports on elections within Africa and lessons learnt. In addition, where possible semi-structured interviews were held with the respondents.

The major limitation of the study is that fewer than half the countries in Africa were involved, since, as a result of the political unrest in the Arab north, there were no participants from this region.

THE MEANING OF GENDER IN THE AFRICAN CONTEXT

In African societies, as in most others, socially constructed roles are ascribed to men and women. These roles are deeply embedded in the culturally specific set of characteristics that identifies the social behaviour of men and women and relationships between them. These roles are learnt, change over time and vary within and between cultures, tribes and ethnic groups.

Although biological sexuality is determined by anatomy, morphology and genetic features, socially learnt gender roles are acquired and deeply influence identity. It is important to note that gender refers to men and women plus the relationship between them and the way it is constructed, as often gender is dismissed as a women's issue.

Like class, race, and ethnicity, gender is an analytical tool for understanding social processes which are deeply complex in Africa. This understanding is fundamental to understanding the factors that, for instance, make women vote for men instead of for other women. The reason might be that because of the gender socialisation, attitudes and belief systems they have been brought up with they do not see other women as being capable of leading.

GENDER-BASED ANALYSIS

Gender-based analysis is a tool used to identify the status, roles and responsibilities of men and women as well as their access to and control of resources, benefits, and opportunities. This framework is used to compare disadvantages and advantages faced by men and women in family, workplace and political system; to measure the gender effects of programmes and to consider the sexual division and outputs (benefits) of their labour.

It provides us with a systematic way of looking at the different consequences of development efforts for women and men and, for instance, how factors such as class, race and ethnicity interact with gender to produce discriminatory results. What women are mainly fighting for is the policy-gender-based analysis as a tool for understanding social processes and for responding with informed and equitable options to the many gendered problems in elections.

GENDER DISCRIMINATION

Gender discrimination is the systematic, unfavourable treatment of individuals on the basis of their gender, which denies them rights, opportunities or resources. For example, in some countries it is evident in the schooling girls receive in households in which women are expected to look after the home while boys and men are provided with education and careers. These inequities are often mirrored in election management bodies (EMBs). Responses to the questionnaires revealed that women comprise less than 10% of the membership of EMBs in Africa. The implementation of quota systems is slow in many African countries.

GENDER DIVISIONS IN LABOUR AND THEIR IMPACT ON ELECTIONS

The division of labour is reflected in socially-determined ideas and practices which define what roles and activities are deemed appropriate for women. These are so engraved in the minds of people there appear to be context-specific patterns of who does what and how it is valued. This has repercussions on the way women vote. Roles that are typically designated as female are almost invariably less valued than those designated as male. It is not surprising, therefore, that women do not vote other women into leadership positions.

THE CURRENT STATUS OF WOMEN IN POLITICS

A survey among women in SADC countries revealed that these societies are generally male dominated.

One 37-year-old female respondent wrote about the gender status in her country,

people are just beginning to see the importance of gender equality. We are beginning to see women in top government posts as permanent secretaries and chief executive officers.

Asked to describe ways in which gender inequality was manifested, the same respondent wrote,

in an environment where women hold the top post of the organisations when something goes wrong people say: 'we are not surprised, a woman can never head an organisation; women are not good leaders'.

With regard to gender ratios in Parliament, she wrote,

in our country there are only five women in Parliament and this is because we use the FPTP [first-past-the-post] system and women in most cases are not the broadly accepted candidates, that is, parties would rather have men representing them than women.

The country's EMB consisted of only one woman and six men.

The experiences summarised in the table underscore the gender approach to elections in the countries surveyed. According to the responses from Zambia,

parties do not give a chance to female members to contest elections. There is no deliberate law encouraging women to contest.

Respondents cited varying degrees of gender inequity in their countries, both more generally and within the EMBs. For instance, in South Sudan, although gender inequality has been the tradition, the position seems to be changing with the introduction of affirmative action (see table). However, girl children are still taken out of school and forced into early marriages, politics not even being an option.

In their report to a South African electoral team Southall & Mattes (2002) indicated that South Africa had one of the highest proportions of women legislators (30%). However, 43% of respondents who were asked whether they felt that there was adequate gender balance in Parliament felt there were too few women, while one-quarter (28) said there were enough, 11 % said they were too many and 18% said they did not know. A total of 68% said more women should be nominated. The reason why South Africa has such a high representation of women is that the parties took a conscious decision to nominate them. The ANC, for example, decided that women should comprise one-third of its party lists.

Gender status in selected African countries and the position of women in elections and politics

Country	Statements made by respondents	
Sudan	Respondent 1	Respondent 2
South Sudan	50-year-old female	60-year-old male
Gender status in the country	Women are getting their rights fully. The gender is treated equally as they are enjoying political rights. Right of work is guaranteed by law, based on merit	The community is highly male dominated and women are supposed to play secondary roles (this is, however, changing slowly)
An example of gender inequality	The South Sudan National Assembly has got 25% of seats allocated to women.	My sister went to school up to grade 4 only because society used to believe that women would bring dishonour to the family if they studied. They might relinquish domestic chores and therefore be considered less ladylike
Gender equality in the EMB		There are nine commissioners, of which two are women
Botswana	41-year-old male	46-year-old female
Gender status in the country	Botswana is a patriarchal society dominated by males. Males have a role as head of the family.	Gender representation in Botswana is still very low. Most high positions are held by men. There is little regard for women.
An example of gender inequality	Of the 60 members of Parliament only three are females. Plus the speaker of the National Assembly. The reason is that women are reluctant to stand for political office	Gender inequity seems very rampant. The major problem is women do not support women and always try to bring them down.
Gender equality in the EMB	Gender ratios in the EMB are, 1:5. This is because in the recruitment process people are not considered on the basis of gender but on merit. Most political players in Botswana are male	

Malawi	46-year-old male	50-year-old female
Gender status in the country	Women in Malawi have a big role to play when it comes to work at home. For example, a woman carries firewood and a baby on her back and hoes for her and her husband while the husband carries nothing.	
An example of gender inequality	I heard especially in villages the girl child does the household work whilst the boy is allowed to go to school. The parents argue that girls will get married and be supported by their husband.	
Gender equality in Parliament and the EMB	There are more men than women in our Parliament because more women are not educated. There are more men than women on our IEC board.	There are 40+ women and 150+ men. Women are not interested in politics. There are more men than women in the EMB.
Sierra Leone	39-year-old male	
Gender status in the country	Male and female have access to education but in terms of employment more men hold positions in the public service than women by far.	
An example of gender inequality	In the Sierra Leone Parliament of 121 members only 15 MPs are women. Women find it very difficult to get nominated within the parties to contest elections.	
Gender equality in the EMB	The electoral commission of Sierra Leone has 5 members; 3 of them are women, including the chief electoral commissioner.	

Zambia	50-year old- male	45-year-old male
Gender status in the country	In the Cabinet there are few (3) women out of 22 Cabinet members despite women being the largest number of voters. Otherwise gender issues are prioritised; this is why there is a Ministry of Gender and Women in Development	Both male and female have equal chances to occupy senior positions.
An example of gender inequality	Girl children in rural areas are withdrawn from school and taken into early marriages.	However, when it comes to junior secondary education females are given a lower cut-off point to go into senior secondary.
Gender equality in Parliament and the EMB	There 19 women in Parliament out of 150 elected parliamentarians. And out of eight nominated members none is a woman. The reason for few elected parliamentarians is that few women were adopted by political parties. In the EMB there are two women, one being the chairperson of the commission, and three men.	We have 18 female members of Parliament out of 158. Parties do not give chances to female members to contest elections. There is no deliberate law encouraging women to contest. We have two female members of the commission out of the five.
DRC	36-year-old male	50-year-old female
Gender status in the country	In the DRC women are allowed to do what men also do except in the traditional areas.	
An example of gender inequality	Women were not able by themselves to assume different responsibilities.	
Gender equality in Parliament and the EMB	500 seats in the Parliament; 80 women parliamentarians and 420 men. We have 7 commissioners in our EMB: 4 men and 3 women.	Females are unequal because woman are a minority in the government, senate and Parliament.

Burundi	45-year-old female	54-year-old female
Gender status in the country	In Burundi male people are considered to be the head of the family. In Burundi females who are married do not inherit the land.	Traditionally, women and men didn't have the same status. They didn't have the same work.
An example of gender inequality	Despite improving, women are not equally treated with men. Women are totally responsible for domestic work. Some people, especially in the villages, believe that girls should not go to school. During the 1960 general elections only men were allowed to vote.	Young girls were not allowed to go to school. They stayed home helping mother – women were not allowed to speak in public. During recruitment women are required to demonstrate more knowledge.
Gender equality in Parliament and the EMB	Women constitute 30%. The factors are mainly their educational status and less involvement in politics. In the EMB they constitute 50%, but many of them are from the lower ranks. The Constitution provides that there should be at least 30% women in the National Assembly.	In Parliament, for the past four general elections, the percentage increased from less than 2% to 37%. The improvement is due to the constitutional provision imposing affirmative action, which parties are trying to abide by.
Namibia	43-year-old male	
Gender status in the country	There are more females than males (census 2011).	
An example of gender inequality	Many positions in the public sector are occupied by men, however, there is an affirmative action law which provides that women should be given preference in terms of employment. Men are regarded as the head of the household. There is gender-based violence. Women do not generally vote for other women.	

Gender equality in Parliament and the EMB	There are 15 women in Parliament out of 72 members. Namibia has proportional representation – parliamentarians are elected on a party list. Two of the five commissioners are women.	
Lesotho	39-year-old female	47-year-old female
Gender status in the country	There are many roles specifically known to be played by a particular sex. Earlier gender laws were patriarchal – men were the leaders and supervisors on almost everything. Now, with affirmative action, women hold similar positions to men in organisations and earn equal salaries. In terms of traditional leadership, they lead in small numbers and only when the husband dies and the son is still young.	There are very few women in the executive structures of political parties so even when the law allows an increase in women's representation in Parliament they are not found, especially as constituency representatives. Gender is only balanced in the proportional representation part of the mixed member proportional representation system, not in the FPTP part.
An example of gender inequality	Women are the weaker sex, they cannot do man's work. Women do not have a say in their own <i>lobola</i> negotiations. Women have to be beaten by their husbands.	Women wearing mourning clothes were not allowed to vote at some of the voting stations due to the traditional belief that they would bring bad luck to the chief's place, where voting was conducted.
Gender equality in Parliament and the EMB	There are very few women. Women always choose men to be their leader because they have been culturally indoctrinated to know that men are born to lead; women work in the kitchen. There are more men than women on the IEC board.	
Angola	34-year-old male	
Gender status in the country	There is discrimination against women.	
Gender equality in Parliament and the EMB	30 % of members of Parliament are women.	

Nigeria	52-year-old Male	50-year-old male
Gender status in the country	Gender mainstreaming is actively encouraged by government and public politics.	The gender status varies according to the area you come from.
An example of gender inequality	Political parties do not have a mechanism to recruit and place women candidates for elections, despite the fact that there are many who aspire to be candidates.	In the northern part of the country, which is predominantly Muslim, there is a great imbalance in the treatment of males and females. The females are seen as second-class citizens, while the males call the shots. Girls are seldom sent to school. The females play the roles of housewives, bear children and are restricted from holding public office. In the southern part of the country males and females are given equal opportunities to compete.
Gender equality in Parliament and the EMB	Gender ratio: senate, approximately 1:12; House of Representatives 1:8; EMB ratio: 1:3 females to males	There are more men in Parliament than women. The ratio for the EMB is 1:3
Cameroon	35-year-old female	
Gender status in the country	Men and women are equal with regard to school issues in particular. In general, there is no clear line between one and the other. The general performance of a child determines what he or she gets, be it education or inheritance. There is very little gender discrimination and what there is is mostly in very remote areas. All children in almost all the parts of the country have equal opportunities to go to school. The idea of male inheritance is gradually being discouraged and many parents give their children equal opportunities to inherit their wealth.	

An example of gender inequality	Particularly among older people there is no equality when it comes to appointments.	
Gender equality in Parliament and the EMB	The ratio of female to male position holders in Parliament, government and even the EMB is about 1:4. It should, however, be mentioned that the government is doing a lot to encourage gender equality. More women appointments are seen these days.	
Uganda	34-year-old female	34-year-old male
Gender status in the country	In the elite or educated society gender mainstreaming is evident. However, in the non-elite society gender mainstreaming still requires attention. In this case, the women are marginalised.	Uganda is a gender-sensitive country by policy.
An example of gender inequality	The issue of equality has been advocated by the government and civil society organisations, but inequality still exists in some cultural circles.	In Uganda girls are sold into marriage, thus exchanged for bride price and negotiations go on without the girls' input. Women are considered to be the weak sex and thus miss out on some job opportunities.
Gender equality in Parliament and the EMB	There are no gender inequalities in particular in the legislature, the ratios should be 50/50. The gender ratio in the IEC is more unequal as you go up the ladder; there are more men in high posts than women.	Of 386 seats 135 are held by women. According to legislation each district must have a woman MP. Women must be represented in all councils at all levels, from the district to the village and those who want to do so are free to contest other direct posts. More than 40% of the staff members of the IEC are women and two of seven commissioners are women.

Kenya	45-year-old female	40-year-old male
Gender status in the country		Different communities treat women differently, but generally Kenya is a male-dominated society.
An example of gender inequality		Some Kenyans believe that certain positions in leadership are meant only for men. Other than in the emerging class of urbanites, roles like cooking and fetching water belong to women, while men look after the animals and other matters in the village.
Gender equality in Parliament and the EMB	<p>There is no real parity but the position is better than it was under the previous Constitution. There are only 47 women representatives in Parliament. The 2/3 proportion requirement for women has been amended to read, 'the 2/3 majority will be attained more progressively', meaning it will take a long time for them to reach the target of 2/3 women</p> <p>Attempts to reach gender parity in the EMB are underway.</p>	<p>The governors of all 47 counties in Kenya are men. In the senate there are 47 men and 16 women.</p> <p>The IEBC is almost balanced in gender. The chair of the commission is male, the deputy is female and of the nine directors five are women. The ratio of male to female for both the commission and the secretariat is 1:1</p>
Tanzania	52-year-old female	
Gender status in the country	There are efforts made by the government to observe gender equality. There is a ministry that deals with gender issues and gender desks have been established in some ministries and departments. Tanzania adheres to affirmative action by increasing the number of women MPs by 40% through a quota system. In some cases, for instance, appointments by the president, gender equality is observed	

An example of gender inequality	According to tradition, male children are regarded as future heads of the clan. Male children are encouraged and given priority in most things.	
Gender equality in Parliament and the EMB	Gender ratios in the Parliament are approximately 45% women to 55% men and in the EMB approximately 40% women to 60% men.	
Zanzibar	50-year-old male	
Gender status in the country	Women are treated equally with men in education and health services and have the same status as men in political parties. They are able to stand for Parliament but most are shy about taking on big positions, like MPs and ministers. They have the same rights to education, can go to university and can become professors or lecturers or doctors or nurses. Though most women belong to the Islamic cultural situation, women are respected and not abused. Although a man can marry four wives at a time he must treat them equally.	
Gender equality in Parliament and the EMB	Legally, women are given priority, with 40% of parliamentary seats going to women. They also have local government seats. There are very few women on the EMB.	

South Africa	53-year-old female	48-year-old male
Gender status in the country	Generally, there is, in theory, an understanding of the concept of gender equality. However, in practice, South Africa is still bound by traditional beliefs in terms of gender equality. Large portions of the population are still under traditional rule in rural areas. This indicates that these communities are still under the authority of traditional leaders	Women and men enjoy the same status as per the Constitution and legislation
An example of gender inequality	Gender equality is still far off. Although the legislation is favourable to gender equity, the implementation is not encouraging	Women, traditionally, are not allowed to inherit the chieftaincy
Gender equality in Parliament and the EMB	The ratio of women to men in Parliament is in the vicinity of 1:3. The gender ratio on the IEC board is about 60% women to 40% men	
Seychelles	60-year-old female	59-year-old female
Gender status in the country	In Seychelles there are several communities – we have Asians, Chinese, Muslims, descendants of the Europeans. The status of gender in each community is different, although things are changing. For example, in the past in the Asian and Muslim communities it was the father or mother who would choose the partner of the girls	There is gender equality in law, and generally in parties. All children go to school and the majority of women work
An example of gender inequality	Although political parties talk publicly about gender equality, when it comes to elections they field very few female candidates	Boys underperform at school and people still make career choices on traditional gender lines, for example, mechanics are mostly men and primary school teachers mainly women

Gender equality in Parliament and the EMB		A total of 38% of parliamentarians are women and 62% are men. In the EMB there is one woman and four men. The positions were advertised nationally and I expect the choice depends on who applied.
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It is clear from the table that gender inequity is still a big problem in Africa generally, particularly in Parliament and electoral management bodies. However, some effort is being made to address the problem through the introduction of quota systems providing for at least 30% representation for women. Many factors seem to prevent women from participating in politics and standing for election. Among these is discrimination against girl children, who are kept at home while boys are sent to school, or are pushed into early marriages. Other factors that are drivers of gender imbalance in elections are intimidation and gender-based violence.

BARRIERS TO WOMEN ENTERING POLITICS

The following reasons were identified as barriers to women participating in elections in Africa:

- Women refuse to vote for women: The primary reason for this was found to be a lack of role models and the fact that women leaders lack the necessary political education and resources and that they are forced to confine themselves to household duties. In addition, women are viewed as the weaker sex and as having little political experience.
- Illiteracy: Many women, especially those living in rural villages, are illiterate, and voter education does not cater for them. The focus group discussions revealed that low literacy levels and lack of voter education contribute to the low participation of women in elections.
- Gender-based violence (rape): According to the respondents from East Africa, rape and intimidation are used to prevent women candidates from standing for office. In South Africa this type of intimidation is frequently coupled with domestic violence and women, fearing the reaction of their spouses or partners, are unwilling to stand as candidates.
- War and conflict (particularly in the DRC): The war in the DRC continues to be a major threat to the stability of the region and contributed to post-election violence in the country. The war also further exacerbates the vulnerability of women and children, many of whom are internally displaced in areas

such as Goma. Linked to the war are war crimes like rape, which continue to escalate, making it unsafe for women to participate in elections.

- Education: Lack of education, especially political education, is a major obstacle preventing women from participating in elections as in some countries.
- Cultural roles: Traditional African societies are largely patriarchal, demanding that women be homemakers and not become politically involved. Election meetings are frequently held at night, excluding women who have to stay home to look after children. Traditional beliefs, such as superstitions about women in mourning bringing bad luck to the chief in areas where the polling stations are in the chief's territory, also hold women back from participating in politics.
- Lack of female role models: The fact that there are few leading women in politics in Africa means that there are few women role models for the younger generation, a factor that perpetuates the problem of the limited representation of women.
- Lack of adequate finance: Few political parties fund women candidates, although they are placed on party lists. This lack of funding frequently results in the failure of women to stand for or to win elections.
- Lack of affirmative action: Of the 23 countries studied, only South Africa, South Sudan, Angola, Mozambique, Tanzania, Rwanda, Burundi and Uganda appear to have affirmative action programmes in place.

STEPS TOWARDS MAINSTREAMING GENDER

There are many instruments that address gender equality, among them, the quota system, affirmative action and special seats for women in Parliament. When these instruments are used they tend to reduce the gender gap. However, women themselves do not appear to be properly empowered.

- The implementation of a quota system has been successful in countries like South Africa and this model is being replicated in other countries, South Sudan, for example, with some success.
- Affirmative action has also been used in South Africa with some success to bridge the economic gap and address past social imbalances. The result is that some women have reached senior positions in companies, but the numbers are not increasing fast enough.
- Ministries of women and children, which have been established in several countries, South Africa and Uganda among them, have turned the spotlight on the plight of women. The extent to which they have contributed to women's role in elections requires further research.

KEY DRIVERS OF GENDER INEQUALITY IN AFRICAN ELECTIONS

The following were identified during focus groups as the key drivers of gender inequality in the selected countries:

- Religion: Many Muslim women are not permitted to stand for election.
- Culture: Traditional African beliefs and patriarchal societies continue to prevent women from taking up political positions and standing for election.
- Economic status: The economic status of women is usually weaker than that of men.
- Fear of and respect for spouses/partners. Many men who were interviewed said they would not support their spouses/partners should they decide to stand for election.
- Intimidation: This comes in many forms, including rape, beating and shooting.

Political environment: Many political environments are not ready for women leaders.

There are only two women presidents in Africa, Liberian President Ellen Johnson Sirleaf and Malawian President Joyce Banda, and other countries should follow suit.

CONCLUSIONS AND RECOMMENDATIONS

Africa, post-independence, is as diverse in terms of gender equity as it is in terms of culture, but it remains a predominantly patriarchal continent on which the achievement of gender equity continues to be elusive.

In South Africa nearly 20 years after the first democratic elections great strides have been made towards gender equity. The Constitution, the Bill of Rights, various laws and the introduction of a quota system all play a role. Currently, women constitute almost half the members of Cabinet and at least 35% of members of Parliament. Trade unions and civil society prioritise gender.

However, reports on the role of women in the anti-apartheid struggle (Lewis 2004; Ramphele 1995) that show that women were not merely passive participants but gender activists who traversed their domestic roles also indicate that their activist roles have not translated into equity gains, for example, in the acquisition of equal resources.

In Lesotho and Burundi at least 30% of representatives in local government, at district level, in the national assembly and in the senate are women. The main

reason for this has been that these countries have adopted international and regional instruments relating to the rights of women.

The article has identified several barriers – cultural, social and political – that prevent women from entering politics. Overcoming these barriers requires specific programmes and a focused endeavour to support women in politics and elections. This strategy should be embraced by structures on the continent such as the African Union, the New Partnership for Africa's Development (Nepad) and individual national governments.

Instruments such as the quota system and affirmative action, as well as special seats for women, have attempted to bridge the gap. However, their implementation must be strengthened further by gender sensitive voter education.

The space has been opened up for women to enter politics despite cultural and traditionally patriarchal societies and now is the time for them to take centre stage. Further research is needed to probe the attitudes and experiences of women voters and politicians in a complex and competitive African political arena.

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‘WHY PARTICIPATE IN ELECTIONS IF WE’RE NOT PROPERLY REPRESENTED?’¹

Women’s political participation and representation in SADC countries

Kealeboga Maphunye²

ABSTRACT

Increased democratisation in Southern Africa might suggest that gender equality no longer matters in the politics of countries in the Southern African Development Community (SADC) region. Yet the political participation and representation of women remains controversial owing to gender stereotypes, rhetoric, tokenism and patriarchy. Critically examining the political processes in the SADC region, specifically elections, gender and women’s role in a democracy, the article acknowledges progressive legislation and some ‘successes’ in a few countries in the region, but contends that the situation of women in the politics of these countries remains unsatisfactory and that it requires political will and collective action to ensure substantive participation and representation in governance processes. Based on a literature review, data analysis and theoretical postulations about women’s political participation and representation, the article argues that much more needs to be done in this regard. To understand the hurdles women face in politics in the SADC region, especially political party rhetoric and patriarchy, the author explores a few theories, including the Ubuntu philosophy, and revisits the debates over women’s quotas in political parties to improve participation and representation. The conclusion suggests measures for empowering women candidates and political party members, while urging women to show more interest in politics, particularly elections.

1 The title of this article was inspired by the comments of some women political candidates during South Africa’s 2009 national and provincial elections.

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INTRODUCTION

Increasing women's participation in politics and securing their access to political life is of particular importance to democratic development and sustainability. Efforts to promote and increase women's political participation have been made all around the world and have brought together women from different political, social and cultural groups with the common aim of reaching the goal of gender equality.

IDEA 2005, p 18

Observers argue that '[a] plethora of literature exists validating the argument that the African continent has been undergoing a major democratic wave since the 1990s (Matlosa 2003, p 4, citing Ake 1996 and 2000, Hyslop 1999, Reynolds 1999, UNDP 2002, Bratton & Van de Walle 1997, Huntington 1991, Bujra & Adejumbi 2002 and Bujra & Buthelezi 2002). How this democratisation has benefited women's political participation and representation and access to decision-making positions in the legislatures and political parties in Southern African Development Community (SADC) countries is unclear.

Probably the political participation and representation of women in Africa matters much more today than it did a few decades ago, when many African countries attained political independence (EISA 2010). These countries subsequently adopted liberal democracy as their preferred system for attaining power or removing individuals from power through elections. Such participation and representation generate intense debates and interest among the region's parties, civil society and women's organisations for several reasons.

Firstly, women's access to franchise rights evokes forceful public debates globally, as such rights have been granted comparatively recently and some countries struggle to grant women full franchise rights despite mounting international pressure from women's and human rights organisations.

Secondly, excluding women from the franchise violates the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the International Convention on Human Rights, the African Human Rights Charter, the 2008 SADC Protocol on Gender and Development and the African Charter on Democracy, Elections and Governance (ACDEG 2007), all of which promote equal participation for women in the democratisation of Africa.

This author shares the view that '[t]here are as many definitions of democracy as there are writers on the subject', including the one that defines it as '... a political system that allows citizens to freely choose their government over time through fair elections; a system that accords adequate participation in national affairs ...' (Matlosa 2005, p 3). The ACDEG (ch 2 art 2, p 11) recognises that women's

participation in Africa's democratic processes promotes 'gender balance and equality in the governance and development processes' and supports 'universal suffrage as the inalienable right of the people' (Article 4.2).

Recently, SADC heads of government signed a Declaration on Gender and Development which recommends 'affirmative action measures with particular reference to women', including 'the achievement of a target of at least 30 per cent women in political and decision-making structures by year 2005' (EISA 2010, p 1). This target was increased to 'at least fifty per cent women in decision-making positions by 2015' when the Protocol on Gender and Development was adopted on 17 August 2008 (EISA 2010, p 1).

Thirdly, given Africa's recent democratisation trajectory, almost the whole world is becoming increasingly disturbed by countries in which women lack the full franchise and basic human rights, despite countless international resolutions on gender equality. Swaziland is probably among the few countries in Africa whose conservative traditional practices still undermine such rights. Women are prevented from being appointed to top public positions, although the country's Constitution allows them to vote. However, women were recently barred from nominating candidates or from standing as candidates if they were wearing 'trousers, shorts or mini-skirts at nomination centres' (makeeverywomancount.org 2013). Elsewhere in the world, the situation raises concerns as observers note that

[t]oday only a few countries do not extend suffrage to women, or extend only limited suffrage. In Bhutan there is only one vote per family in village-level elections. In Lebanon women have to have proof of education before they vote. In Oman, only 175 people chosen by the government, mostly male, vote, and Kuwait only in 2005 granted women the right to vote in the 2007 elections. Some countries, like Saudi Arabia, which have denied the vote to men as well as women, recently opened the vote in provisional elections to men.

Women in World History Curriculum 1996-2012

Fourthly, in many countries in the SADC region, although women participated side by side with men in liberation, anti-colonialist and anti-apartheid struggles, especially in Zimbabwe, Mozambique, Namibia, Tanzania and South Africa, the patriarchal nature of some liberation and nationalist movements (Hassim 2006, p 98; Geisler 2004, p 69) undermined gender equality.

In South Africa's case analysts argue that 'there is a lot that we don't know about what happened in the trenches [ie, liberation war camps]'. They insist that women faced unequal sexual power relations because sometimes '... [men] felt entitled to have sexual relations with [female colleagues ... during the struggle]'

(Gasa eNCA interview 2013). Geisler (2004, p 69) concurs that during South Africa's liberation struggle some '[male] comrades generally "took a dim view" of women challenging gender stereotypes...'

Probably inevitably, once these countries achieved political independence they began to vacillate over substantive gender equality issues. Gradually they overlooked the importance of equality, while covertly or blatantly violating the provisions of the global instruments and this trivialised women's crucial contribution to their countries' struggles.

The following significant phenomena and global instruments highlight women's unequal political position in society and help to identify weaknesses pertaining to women's political participation and representation:

- The wave of democratisation in Africa;
- The eight Millennium Development Goals, one of which emphasises gender rights
- International pressure on governments to implement the provisions of the CEDAW and the UN Declaration on Human Rights.

These instruments and global initiatives challenged patriarchal behaviour and attitudes, urging governments to implement gender equality. Given the dominance of males in contemporary Africa (despite the occasional passage of progressive legislation), some men have frequently perpetrated violence and have promoted instability and wars. Thus, women politicians and gender activists believe women's leadership to be superior to that of men (Ramphela 2013).

According to Mamphela Ramphela, a prominent South African woman politician who formed a new political party, Agang, in June 2013, women's attributes include humility, respect and dignity. The formation of another woman-led party may change South Africa's politics, although its prospects in the 2014 elections cannot be prophesied.

Both female and male gender activists continually challenge patriarchy, to which they attribute women's marginalisation in society. Thus, a prominent ANC leader recently criticised women's reluctance to contest their party's presidency (Mtintso 2012, p 21), asking: 'Why do women do a disappearing act when it is time for nominations for the highest office?'

The absence of a 'women's lobby group, even one from the ANCWL [ANC Women's League]' and the fact that '[t]he ANC is a patriarchal organisation' (Mtintso 2012, p 21) were possible reasons. Further, in South Africa, '[a]s early as the 1900s, women (especially Black Africans) took the state to task by opposing what they criticised as undemocratic and repressive tendencies that, among others, denied them their franchise rights through the pass law system' (Maphunye 2008,

p 4; ANC 2013). In some cases they openly defied the apartheid 'system', as they did in 1956 with their Women's March to Pretoria to protest the pass laws at a time when black women had no franchise rights (ANC 2013).

Elsewhere in Africa, Liberia's Ellen Johnson Sirleaf and Malawi's Joyce Banda have taken over the highest position in their countries, becoming the first women heads of state in Africa. Women have also been very vocal in national parliaments and in the Pan-African Parliament and in 2013 South Africa's Nkosazana Dlamini-Zuma was elected chair of the African Union Commission.

The article does not treat women as a homogenous group – they differ in age, race, ethnicity, religion, colour, class, those who are politically vocal and active and those who are not, and, broadly, according to socio-economic status. These dynamics are acknowledged but are understood from a gender perspective. This perspective entails careful analysis of women's and men's behavioural, attitudinal and interaction patterns, especially in terms of access to power, where such power is located, who benefits, how, where, and when. A gender perspective may help explain what enhances or undermines women's political participation and representation in SADC.

This introduction is followed by an outline of the assumptions, approach and methodology of the article. It then moves on to conceptualise and problematise women's political participation and representation; assesses the implications of the relevant data for women's participation and representation in politics in the region; the key challenges women in SADC countries face with regard to such participation and representation; women's role in electoral democracy and, finally, observations on gender, participation and representation through elections; followed by the conclusion and recommendations.

ASSUMPTIONS, APPROACH AND METHODOLOGY

The analysis in this article of women's political participation and representation in countries in the SADC region rests on the following assumptions:

- Gender inequality remains problematic and undermines the recent political strides made by women through democratic elections.
- Unequal participation and representation in politics in the SADC region undermines women's contribution as liberation fighters, voters, party supporters and campaigners.
- Patriarchy in countries in the region weakens women's political advancement through elections, including their quest for substantive equality with men. This results in rhetoric on public platforms by (mostly male) leaders with minimal commitment to gender equality.

In addition, the following working hypothesis guided the analysis: Women's increasing political participation and representation in SADC countries will increase their visibility, amplify their voice and enhance democracy in the region.

This hypothesis was not tested but merely used as a guideline to analyse the literature and secondary data. The article posits that women's political participation and representation in SADC countries can best be understood using analysis underpinned by the following factors:

The author examined the relevant literature and formulated theoretical conceptualisations and assumptions and used desktop research to assess women's role in politics in countries in the region. This assessment was complemented by relevant statistics where possible. The analysis is supported by the author's previous research into gender issues, women and bureaucracy and power and politics in Botswana, Zimbabwe and South Africa.

As gender issues permeate several disciplines the author examined theories of democracy, game theory, systems theory, rational choice theory, democratic consolidation and the Ubuntu African philosophical viewpoint. Women's political participation and representation inevitably also touch on gender issues, which are normally better articulated from a gender and feminist perspective, as discussed below.

Theoretically, women may be assumed to belong to a 'system' (political, economic, social, and so on) which affects their individual or collective participation and representation. Thus, an examination of the nature of the political system and the organisation of political competition (Goetz & Hassim 2003, p 48) may help to explain power dynamics in society that may impede women's political participation and representation. Likewise, the values and beliefs of the Ubuntu philosophy may help to elucidate attitudinal, behavioural and institutional factors to explain why there is better political participation and representation of women in some countries than in others.

Theories of democracy seek to explain the characteristics of democracy, broadly defined, and often describe the actors, systems, structures, processes and phenomena that promote or negate the establishment and persistence of democracy in particular countries. Theories of democracy and democratic consolidation also help with the analysis of individual or group behaviour in elections, political campaigns and the recruitment and appointment of women to political positions. Women's political participation and representation can be explained in terms of at least two basic variants or models of democracy, namely, direct or participatory democracy and liberal or representative democracy (Held 1993, p 15).

As an interest or pressure group women may influence policy-making as voters or party supporters, or when they elect representatives or stand for office

as party candidates and hence affect the political process meaningfully. Matlosa (2004, p 9) argues that

[i]n a representative democracy, citizens are governed by their representatives who are regularly subjected to periodic review through general and local government elections that either renew the mandate of the representatives or change such leadership through the ballot and not the bullet.

Similarly, theories of democratic consolidation analyse how democracy is entrenched and how far countries move from authoritarian rule to some form of democratic regime (Schedler 1998, p 91). Increased numbers of women participating in elections and being represented in public positions would thus suggest a significant role in the democratic process, all other variables remaining constant.

Game theory and rational choice theory can both assist in analysing political phenomena. Rational choice theory '... considers the rational decisions that the electorate makes in weighing up the costs and benefits of voting' and election management bodies would do well to '... reduce the costs of registering and voting by making procedures more efficient and effective and thereby increase turnout' (Roberts, Struwig & Grossberg 2012, p 9). In terms of gender, this may require applying gender sensitive measures in voter education, capturing gender disaggregated election data and ensuring that party messages promote gender equality. Norris (2004, cited in Roberts Struwig & Grossberg 2012, p 9) suggests that

the primary incentives for citizens to vote in elections relate to the costs of registering and voting, time and effort required to register and vote, the party choices available to voters and the degree to which casting a ballot determines the composition of Parliament and government.

Game theory sometimes develops models wherein elections are viewed as a game of winners and losers and election laws are seen as the 'rules of the game'. This would help to indicate what would happen should a woman voter or candidate contravene such 'rules'. It may also help in assessing voters' behaviour during elections as part of game-theoretic models on voting (Blais 2000 cited in Feddersen & Sandroni 2006, p 1271).

Game theory might analyse participation and representation as a kind of 'game', whose 'rules' determine who wins or loses. Circumstantial evidence from

SADC elections and parties suggests that some men perceive such 'rules of the game' to be favourably inclined towards them, given male dominance in regional legislative, executive and judiciary structures (author's informal discussions with some SADC observers during Zimbabwe's 2013 elections, Harare, 31 August 2013).

Participation and representation may also be explained as a 'rational' exercise wherein individuals seek to maximise their choices based on 'rational' thinking and behaviour as they rationalise possible roles to maximise their advantages while minimising the disadvantages. Rational choice theory and game theory help to identify the 'postulated preferences' (Ordershook 1986, p 15) or calculations voters make in deciding whether to vote for candidate A or B.

In terms of the argument in this article, such decisions may influence or be influenced by the voter's or candidate's gender. But intervening variables may sway a person's voting preference, as in the case where a woman voter avoids voting for a woman candidate for political or ideological reasons.

Systems theory may also assist in analysing the political role of women in countries in the region. It posits that all the actors in a polity may be understood as component parts of a 'system'. Thus, although women usually place unique demands on different polities they may be perceived as belonging to a system of actors such as youth, pensioners, voters, or a sub-system such as a traditional dance group, civil society, and so on, whose behaviour or thoughts somehow affect the 'system'.

Further, the author considers the relevance of African value systems, using the Ubuntu philosophy to explain gender imbalances and inequality in SADC countries. Such values include: '*Motho ke motho ka batho/ umuntu ngumuntu ngabantu*' (Mbigi 1997, p 2) (Sotho/Nguni), literally, 'a person becomes a person through other people'. One wonders how women's political participation and representation is of relevance to such value and cultural systems; whether and to what extent they accommodate the equal political participation and representation of women. Granted, each country will probably show different dynamics owing to its unique cultural practices, but the idea is to examine how African philosophy tackles gender equality, especially in terms of power or access to power.

The author also examines the effect of official policy and party regulations in some countries on women's participation and representation through elections, especially the relevance of feminist theories to this analysis. Feminist theories (particularly liberal feminism) seek to explain women's political participation and representation (or lack of it) in decision-making positions.

Gender perspectives and feminism are critical to debates over and analysis of women's political participation and representation, especially in Africa (Phillips 1991; Geisler 2004; Hassim 2006; Hicks 2011; Murray 2013; True 2013). This is

particularly true given Hassim's observation, in her study of South African women's organisations, that 'undercurrents of feminism seethed beneath the surface of women's political activities' (Hassim 2006, pp 34-5). The gender perspective particularly helps in an analysis of women's political participation and representation because 'gender challenges all our political perspectives, forcing us to examine each position and concept afresh' (Phillips 1991, p 2).

As various scholars note: 'A strong body of feminist literature has been concerned with the ways in which representative democracy might be enhanced to ensure women's equal participation' (Phillips 1991; Young 1990). This literature has shown that, for women citizens in most democracies, there is a problem of both representation and accountability (Goetz & Hassim 2003, p 85).

Scholars who study politics from a feminist perspective and attempt to explain women's political participation and representation have found that, '[w]ith the odd exception, the entire debate on democracy has proceeded for centuries as if women were not there' (Phillips 1991, p 2). In Africa, typical examples include past calls by some Southern African liberation movements for 'one man, one vote', which implied that franchise rights apply only to men.

Feminism has exposed

[t]he low numbers of women in office even in established democracies (such as the USA, where participation in Congress only recently inched close to the global average). This has led feminists to conclude that the exclusion of women is not just a 'deficit' of democracy but is indicative of fundamentally gendered conditions for political participation which are 'intrinsic to politics, not an extraneous, additional concern'.

Goetz & Hassim 2003, 49, citing Phillips 1993, p 98

Its advantages notwithstanding, it is acknowledged that '[f]eminism is not a coherent ideology, nor is its usage uncontentious among organizations committed to gender equality' (Hassim 2006, p 35).

Liberal feminism, particularly, was considered to be a tool of analysis as it is usually a common point of reference for what earlier literature on gender called 'women's national machineries', a reference to national departments and offices dealing with women's affairs or gender related matters (Gouws 2008). However, its main limitations are that it 'ignores the intersectionality of identities and how women of different classes and race groups (with specific reference to South Africa) are positioned with regard to level of education and possibilities of political participation (Gouws 2008, p 539).

CONCEPTUALISING AND PROBLEMATISING WOMEN'S POLITICAL PARTICIPATION AND REPRESENTATION IN SADC COUNTRIES

The equitable political participation and representation of women remains critical to SADC's and Africa's success. But why should women participate and be represented equitably in the politics of SADC countries? How significant is such participation and representation in local and regional politics? Can such participation and representation determine women's fundamental role in politics and, specifically, in elections?

The answers to these questions may seem easy, but require systematic and comprehensive analysis focusing on women's positions in parliaments, governments, civil society organisations, election management bodies, community structures and political parties, among others. Such analysis is, however, beyond the scope of this article, which concentrates on the situation of women with regard to elections and electoral democracy.

However, the discussion alludes to representation in the above-mentioned institutions, while highlighting women's overt political roles in such institutions. The analysis concurs with the view that for women in SADC and globally, '[p]articipation through elections and, where applicable, through referendums must therefore be respected, protected and fulfilled as a human right' (European Commission 2007, p 30).

According to Liberian president Ellen Johnson Sirleaf:

Women's presence in parliaments around the world is a reality that is impacting on the social, political and economic fabric of nations and of the world. Yet, their access to these important legislative structures, learning how to work within them, and the extent to which they impact on and through them, remain serious challenges ... A concerted effort is needed to target all stages of women's political participation, from the moment they decided that they want to run for public office, through each step till they reach that designated office, and thereafter to ensure that as members of parliaments, they have the means and needed resources to impact positively and constructively on the advancement of their nation.

IDEA 2005, p 13

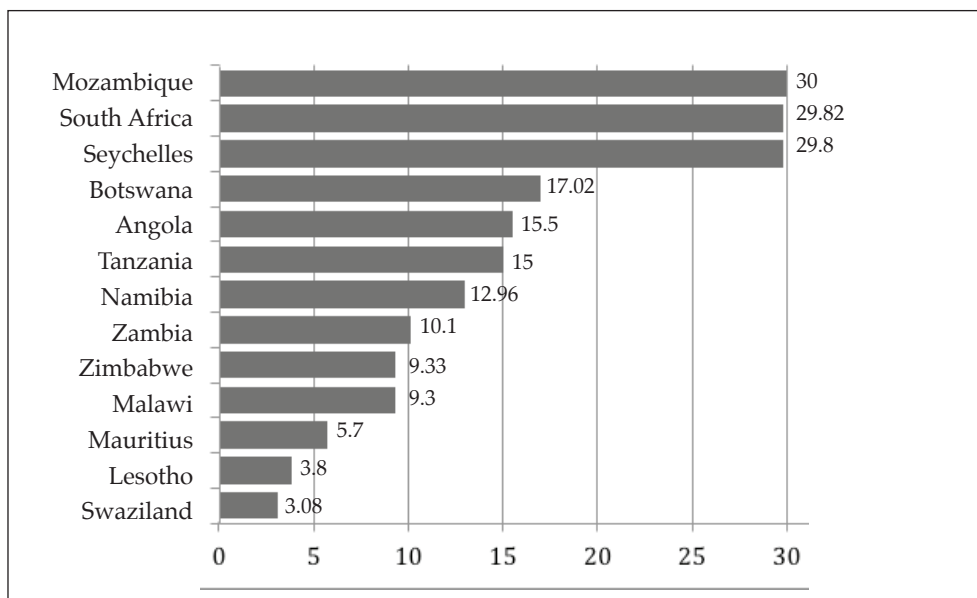
Others note that '[g]ender barriers in the [Southern African] region limit women's participation in governance and decision-making, and hence reinforce power gaps' (Akinboade 2005, p 259). Evidence reveals 'a very worrying picture of women's participation in politics and public office' in some SADC countries (Mandiyani 2012, p 86).

To problematise and understand such barriers one needs to analyse the myriad cultural norms and values that determine women's roles in SADC societies. In a manner that many women in the region might identify with, Yoon & Bunwaree (2008, p 17) describe the barriers to women's legislative representation in Mauritius.

These include '[a] low level of women's activism within political parties, an electoral system unfavourable to women, discriminatory nomination practices, coalition politics, the male-dominant culture, the lack of financial resources for women, and a gender specific education'. Similarly, elsewhere in the world women experience serious hurdles which impede their franchise rights. Recently, in an article entitled 'First woman to run for elections', the *Guardian* (1 April 2013) reported that '[f]or most women in Pakistan's war-torn and ultra-conservative frontier region, casting a vote in an election is an impossible dream, let alone standing as a candidate.'

While some countries seemingly promote the political participation and representation of women others remain 'neutral' and still others proscribe women's 'encroachment' into the hallowed seats of power and influence by limiting (overtly or covertly) women's social roles; hence the use of patronising terms like 'Mother of the Nation', or 'Queen Mother'.

Figure 1
Women in Parliament in the SADC region in 2002



Source: Inter-Parliamentary Union Website

The fundamental problem in many societies that undergirds women's participation and representation in elections and therefore in politics is access to power and resources and control thereof. Many justifications for why women cannot ascend to the highest thrones rest on this reality and are particularly relevant as African countries increasingly adopt liberal democracy as a political system of choice.

Yet, some scholars have 'argued strongly that African states do not need liberal democracy but would rather adopt social democracy or what others refer to as developmental democracy, which, compared to liberal democracy, is more participative, inclusive, representative, accountable and developmentally social welfarist' (Matlosa 2005, pp 6-7, citing Ake 1996, 2000; Lumumba-Kasongo 2002; Matlosa 2002). The context of women's participation and representation in politics and decision-making positions in SADC countries should thus take cognisance of this reality.

IMPLICATIONS OF THE UNDER-REPRESENTATION OF WOMEN IN ELECTIONS IN THE SADC REGION

The above data suggest that a decade ago women in the SADC region enjoyed a considerable amount of participation and representation in their region's politics, especially in Mozambique, South Africa and the Seychelles. It seems that countries with larger populations do better than those with smaller populations, possibly because of population size and type of electoral system.

Overall, women in the region encounter serious hurdles in terms of political participation and representation, particularly in Lesotho and Swaziland, which have the lowest numbers. Yoon (2011, p 87) recognises some 'growth in women's legislative representation [which] has also positively affected parliamentary debates and atmosphere, attitudes toward women MPs, recruitment of women into parliament, and policy outcomes in Tanzania', but also notes 'a backlash' against the country's 'special-seat system for women'. In Malawi, where the percentage of women parliamentarians has reportedly 'grown steadily since 1994', 'the overall number remains low' and the '[p]olitical participation of women in rural Malawi is even lower' (Tiessen 2008, p 199, citing Phiri 2004, p 1 and Lowe-Morna 2002, p 8).

The data reflected in Figure 1 have implications for the SADC Protocol on Gender and Development (2008), which promotes gender related equity and women's full representation in politics and national leadership structures and sets 23 progressive targets. Among the major targets are:

- For women to hold 50% of decision-making positions in the private and public sector by 2015;

- The revision, amendment and repeal by 2015 of all sex or gender-discriminatory laws;
- To ensure equal participation of women and men in economic policy formulation and implementation by 2015;
- The adoption of integrated approaches to reduce gender-based violence by half by 2015.

Sangonet 2011

In the discussions that led to the adoption of the protocol it was noted that

South Africa, which ironically has not yet signed the ratification instrument with the SADC secretariat, has the highest proportionate representation of women in Parliament at 45 percent. Mozambique is second (2nd) at 39.2 percent representation of women in Parliament; Angola is third (3rd) at 36.6 percent and the Republic of Tanzania is fourth at 36 percent.

Sangonet 2011

The Sangonet report continued:

Even though the progress by South Africa at national level is commended, the story at local level is still disappointing. Chief Electoral Officer, Pansy [sic] Tlakula, lamented imbalances at local government in South Africa's local government elections held in May 2011. In those elections, only 37 percent of the candidates were women, yet women constitute approximately 54 percent of the voters roll in South Africa. The results of the election revealed that of the successfully elected candidates, only 17.25 percent of women were women. Thus only one in every five councillors elected was a woman.

The situation in South Africa appears better than that in other SADC countries, but even there much still has to be done to improve the political participation and representation of women (Mtintso 2012, p 21).

KEY CHALLENGES

Like women in many parts of Africa those in the SADC region face unique challenges whenever they attempt to participate in elections and to be represented in national politics.

Rhetoric

The main challenge is the continual rhetoric of the mostly male political party leaders and representatives. This arises essentially as a result of the leaders' superficial commitment to gender equality within their parties.

'Ideally, all adult citizens, women and men, ought to have the rights to stand for election and to vote for a candidate or political party of their choice' (EISA 2010, p 217). Yet some party representatives and leaders seem reluctant to accept women as equals, merely paying lip service to gender equality issues while publicly suggesting that they support gender equality.

In South Africa, 'paying lip service to equity' undermines women's empowerment in the private sector too (Oakley-Smith, 2010). This probably explains the anomaly of many SADC countries having 'ratified conventions and treaties on women's rights', while failing to translate them into 'concrete deliverables for ... government participation and representation' (Mandiyani 2012, p 89).

This rhetoric is difficult to detect because even the 'women's wings' of the political parties sometimes try to conceal their leaders' vacillation or ambiguity over gender issues. Some have argued that '[n]o SADC country has achieved gender parity in parliament (the target set by the SADC Protocol for 2015' (Kadima & Booysen 2009, p 13) and it is possible to attribute this reality to party political and government rhetoric.

In some instances, women's participation and roles are 'largely tokenistic and marginal' (Hicks 2011, p 145). The attempts by some SADC countries to address women's under-representation in politics and elections are noteworthy. Among these attempts are Namibia's outreach programme on women and Malawi's '50-50 campaign', aimed at increasing women's political participation in decision-making, including efforts to make the electoral commission in the Democratic Republic of Congo gender representative (Kadima & Booysen 2009, pp 358, 235, 106). However, the rhetoric of parties and their leaders largely undermines progress and commitment to gender equality.

Deeply entrenched patriarchy?

Political parties in Africa, even those that are ideologically 'progressive', socialist or liberal democratic, have inherited the age-old practice of patriarchy and most parties in the SADC region are led by men. This situation persists despite the fact that women fought alongside men during the anti-colonial, anti-apartheid struggles in Angola, Zimbabwe, Tanzania, Mozambique, Namibia, Zambia and South Africa, performing largely similar roles (sometimes better than the men) (Hassim 2006, p 98).

Some, like Joice Mujuru (also known as Teurai Ropa Nhongo) of Zimbabwe have become influential and respected leaders. Yet the patriarchal nature of many liberation forces cannot be denied and 'women were constantly questioned about what [they] were doing in a man's world' (Hassim 2006, p 98, interview).

Despite the fact that women are gradually moving into leadership positions in some political parties, much still needs to be done to equalise their share of power, in the light of their contribution to these parties as liberation fighters, voters, campaigners and party organisers. Political parties in SADC countries need to continuously reform electoral systems to address overt or covert discrimination against women which results in a situation where, although the law provides for equal access to power, some party and government leaders do not have the political will to implement gender equity in participation and representation.

Patriarchy is reluctantly tackled in regional policy and other discourse and non-committal and indifferent attitudes often result in lack of implementation of the leaders' resolutions. Clearly, entrenched behavioural, attitudinal and institutional patriarchy threaten SADC's democracy and development and should be confronted through concerted, conscious and collective initiatives by civil society organisations and government.

Despite the role of political parties in empowering women in politics, '[s]tructurally, political parties often face disempowering electoral systems which work against the development of vibrant and stable multi-party electoral democracy' (Olaleye 2003, p 1). 'Although political parties [in SADC countries] profess to be democratic and decentralized in character, the practice in reality is to the contrary' (Olaleye 2003, p 2). Olaleye (2003, p 2) adds that '[t]he observable trend among political parties in the region is that of highly centralized organizations where all decisions come from the top downwards and their application is implemented and controlled by the rank and file.' For many women, this (usually male-dominated) centralisation poses a major obstacle to active participation and representation in politics and decision-making positions. 'Sexism accompanied by male-dominated conceptions of leadership and male-dominated political parties prevents women's full participations in political life' (EISA 2010, p 217).

At the behavioural level there are innumerable instances of women being undermined by social practices. In terms of elections, women candidates often face hostility, violence and threats of molestation if they dare challenge male candidates or campaign in so-called 'no-go areas'.

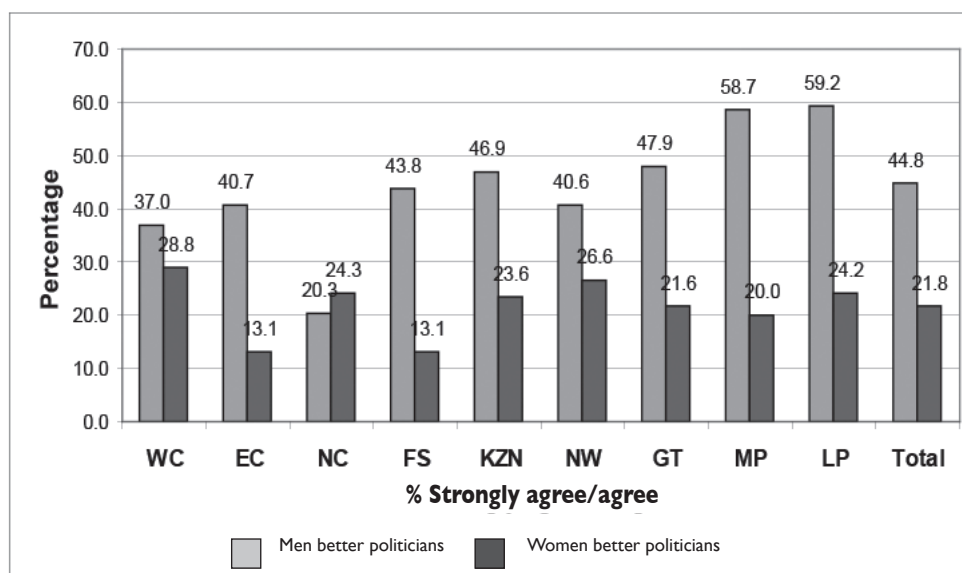
Sometimes parties insist on holding meetings or party gatherings at night, despite the fact that this may threaten the safety of women members and disadvantage those with family obligations. When women are unable to attend they are replaced by men in top positions during elections. In countries like

South Africa, where there is a 'high incidence of gender-based violence' (Vetten & Leisegang 2012, p 63), women politicians and candidates sometimes experience gender bias and abuse and are particularly vulnerable to violence. Not much seems to have changed since Randolph's comment in 1994, referring to South Africa's newly attained freedom: 'You are not free when you live in fear that you will be beaten or raped' (Randolph 1994, p 18).

As for attitudes, several negative beliefs, values and stereotypes are often used blatantly or covertly against women who dare challenge male hegemony: that they 'want to be men', are 'aggressive', and so on. These were some of the common public comments the author heard during election campaigns in the run-up to South Africa's 2009 national and provincial elections.

Such comments suggest deeply entrenched patriarchal attitudes and undermine women's political participation and representation. In a nationwide survey carried out by the Human Sciences Research Council using a representative sample of about 4 000 respondents before South Africa's 2009 elections, participants were asked whether 'Men / Women are generally "better" politicians'. The results, surprisingly, suggested that South African voters' attitudes to women party leaders or candidates are strongly influenced by gender bias or masculinity. The majority in all nine provinces indicated that men were 'better' politicians (Figure 2).

Figure 2
'Men / Women are generally "better" politicians'
'Indicate the extent to which you agree with voting for a man or woman'



Source: IEC Voter Participation Survey 2008

While these findings may not apply to all SADC countries, they reflect the effects of gender bias on women's political participation and representation in the region.

In terms of institutions, some leadership styles, structures and rigid party rules are inimical to Ubuntu values and African cultural norms of respect, humility and political tolerance and undermine women's political participation and representation. Sometimes such institutions indirectly or unintentionally promote hostility towards women. Therefore, in South Africa and other SADC countries, the answer lies in 'changing the patriarchal nature of political governance structures and approaches to policy formulation and enabling diverse views and solutions to the many challenges besetting democracy and development' (Hicks & Buccus 2012, p 61).

Women's participation, representation and succession politics

Prominent women political leaders in Malawi, Zimbabwe and South Africa have been negatively affected by their countries' succession politics, whereby the incumbent most senior successor is traditionally a male. As Masina (2012, p 19) reports, in Malawi Joyce Banda was not President Bingu wa Mutharika's anointed successor – Mutharika wanted his brother Peter to take over and Banda was fired for 'insubordination' for refusing to 'endorse Peter Mutharika as the ruling party's candidate for the 2014 presidential elections'. In Zimbabwe, Joice Mujuru's situation is not dissimilar.

In South Africa, despite the presence of powerful women leaders in the governing African National Congress (ANC) and its 'alliance partners', the Congress of South African Trade Unions and the South African Communist Party, the outcome of the December 2012 ANC Mangaung National Conference left observers and citizens concerned when the ANC Women's League did not nominate a candidate to challenge the party's male leaders for the highest seat.

This is ironic, given the comment of Hicks (2011, p i36) that '[s]ince the first democratic elections in 1994, South Africa has made great strides in establishing a constitutional and legislative framework for building a participatory democracy'. Prominent gender activist and ANC leader Tenjiwe Mtintso (2012, p 21), puzzled at the dominance of men in her party, stated that 'the comrade brothers', that is, men,

have led us gloriously in the past century, but this is also a simple, even sad, reminder that in its 100 years, the ANC has never seen fit to elect a woman president. Has there never been a politically astute, capable, competent woman of integrity ready and willing to lead the ANC in one hundred years?

This situation seems to be common in the SADC region because, as Olaleye (2003, p 1) notes, '[s]tructurally, political parties often face the disempowering electoral systems and constitutional arrangements which work against the development of vibrant and stable multi-party electoral democracy' wherein we expect women to participate as equals.

ELECTORAL DEMOCRACY: THE ROLE OF WOMEN

For decades, gender and other activists have condemned women's unequal and relatively inferior position in society, have called for attitudinal change and have urged men to accept the inevitability of gender equality. Given that many post-colonial and former oppressive regimes were led by men (despite being regarded as 'progressive' in many respects), men were frequently responsible for the violence, coups d'état and unconstitutional changes of government, wars and general promotion of instability, disunity and conflict. Consequently, gender and human rights activists have, over the years, condemned these inequalities and some have called for new methods of candidate selection to ensure that women are chosen (Murray 2013, p 305).

How far does participatory democracy in the SADC region accommodate women?

Scholars, political scientists, researchers and election practitioners are concerned about greater participation by women and the question of women's role in democracy in the SADC region (Matlosa 2005; Dahlerup & Freidenvall, 2005). Participatory democracy, as the term suggests, pertains to participation of the people in the governance system. Such 'participation' would be a sham if it failed to highlight women's political contribution – especially to elections.

Generally, in the SADC region, women participate in politics in comparatively higher numbers than men. In South Africa in 2004, for instance, women constituted a remarkable '54.82 percent of registered voters – testament to the importance women attach to the vote and to the role of formal politics in their lives' (Meintjes 2005, p 236), a noteworthy point as the country prepares for the 2014 elections, since political parties will probably be eager to collect as many votes as possible from these women.

Women in South Africa have consistently been in the majority of registered voters (Roberts, Struwig & Grossberg 2012, p 7; Hicks & Buccus 2012, p 37). Electoral data for 2000 show that more than 10-million women were registered to vote compared to a little over 8-million (8 394 532) men. Almost a decade later (2009), there was still a clear gender split in favour of women (51.68% compared to 48.32%) (IEC 2009b).

Representation, gender and elections

In terms of democratic participation through elections, representation suggests that an individual is elected or appointed to represent the interests of someone else in a public forum. This also presupposes an element of accountability and legitimacy enjoyed by those who purport to represent others. Many women in political parties, however, experience the frustration of having to 'toe the party line' (Kadima & Booysen 2009, p 29) and dare not contradict their parties' operational and policy strategies even if these clearly undermine women's rights or somehow discriminate on the basis of gender. Equitable gender representation, therefore, must be addressed at the highest levels by parties and governments.

Yoon (2011, p 84) states that '[n]umerous studies have examined whether growth in the number (or proportion) of women in parliaments makes a difference', as has been suggested by the 'critical mass theory'. Murray (2013, p 305) believes public representatives should not be elected according to old-style values of 'education, social prestige, power and influence', which reinforce masculinities, but rather according to '... proximity to people's daily concerns and shared experience and understanding of people's problems, [which] are seldom considered essential criteria when selecting candidates'.

Ironically, however, there is evidence that in some SADC countries '[t]op political leadership positions are often not open for political competition' (Olaleye 2003, p 2) for reasons explained above. Yet, some international observers state that 'in emerging democracies it is now generally accepted that special provision should be made to ensure the participation of women, while many long-established democracies still lag behind' (IDEA 2005, p 17).

This presents a dilemma for women's participation and representation in elections in Africa and in the SADC region in particular. On the one hand, it sends a positive signal to Africans that the time has come for them to examine critically women's role in society, on the other, it underscores the fact that it might still be a long time before the majority of Africans genuinely embrace the fundamental tenets of equality between women and men as an inevitable historical reality of 21st-century political systems.

It is further noted that women

represent a major group in the process of democratic consolidation through multi-party elections. Scores of political parties seriously lack representation in this regard, given that women remain marginalised in the main arena of political activity (parliament and cabinets).

Olaleye 2003, p 3

Recent data from the Inter-Parliamentary Union suggest a mixed picture of gains or progress made by some African countries in terms of women's participation and representation in parliaments.

Table 1
Women's Representation in Parliaments: World Rankings

WORLD CLASSIFICATION									
Rank	Country	Lower or single house				Upper house or senate			
		Elections	Seats*	Women	% W	Elections	Seats*	Women	% W
1	Rwanda	(9) 2008	80	45	56.3%	(9) 2011	26	10	38.5%
8	South Africa**	(4) 2009	400	169	42.3%	(4) 2009	53	17	32.1%
12	Mozambique	(10) 2009	250	98	39.2%	–	–	–	–
22	Angola	(8) 2012	220	75	34.1%	–	–	–	–
38	Lesotho	(5) 2012	120	32	26.7%	(6) 2012	33	9	27.3%
48	Namibia	(11) 2009	78	19	24.4%	(11) 2010	26	7	26.9%
58	Malawi	(5) 2009	193	43	22.3%	–	–	–	–
73	Mauritius	(5) 2010	69	13	18.8%	–	–	–	–
78	Madagascar	(10) 2010	366	64	17.5%	(10) 2010	164	20	12.2%
90	Zimbabwe	(3) 2008	214	32	15.0%	(3) 2008	99	24	24.2%
105	Zambia	(9) 2011	157	18	11.5%	–	–	–	–
116	DRC	(11) 2011	492	44	8.9%	(1) 2007	108	6	5.6%
122	Botswana	(10) 2009	63	5	7.9%	–	–	–	–

Source: IPU 2013

* Figures correspond to the number of seats currently filled in parliaments. The figures in brackets before the year signify a country's global ranking in terms of women's representation during the year in question.

** South Africa: The figures showing the distribution of seats for the Upper House or Senate do not include the 36 special rotating delegates appointed on an ad hoc basis, and all percentages given are therefore calculated on the basis of the 53 permanent seats.

The data above suggest that, apart from Botswana, and possibly Zambia, Mauritius and Namibia, SADC countries are doing better than other countries in the world, but Rwanda continues to tower above all African countries and remains a global role model in terms of women's representation in Parliament.

OBSERVATIONS ON GENDER, PARTICIPATION AND REPRESENTATION IN THE SADC REGION

In 2008 Mukasa (p 16) noted that:

Over the last decade, the SADC region has witnessed a number of notable achievements to the situation of women. In politics, there have been great strides with respect to the participation of women in decision-making. Electoral reforms in Malawi, Mozambique and South Africa have resulted in an increase in parliamentary representation over and above the required 30 per cent target set by the SADC GAD [Protocol on Gender and Development].

It appears that progress was made with regard to women's participation and representation in SADC. However, it remains unclear whether the momentum was sustained, given the region's 'ground breaking appointments of women to high level posts such as prime minister and deputy president, speakers of parliament, and ministers to cabinet portfolios that were hitherto the domain of men, such as Foreign Affairs, Finance and Defence' (Mukasa 2008, p 16).

What can the region do about the factors that undermine women's participation and representation in their countries' elections? Using the example of women in Madagascar, some election management experts suggest specific measures to empower women in politics. Among these are:

- Capacity building for political candidates;
- Policy advocacy for political parties to mainstream gender in their recruitment of candidates and candidate nomination processes and for Parliament to consider adopting gender-sensitive legislation;
- Ensuring gender mainstreaming in legislative debates and adopted laws;
- Sharing and dissemination of information on women in politics to the public at large.

While these measures have been tried elsewhere in the SADC region, for instance, in South Africa since 1994 and Zimbabwe (see Gender Links 2013), the significance of such proposals is that they are advanced by an influential, impartial and professional body with a presence on the African continent; which might assist women, not only in Madagascar, but in Africa generally.

Some propose the establishment of a 'partnership between men and women as an essential factor in accomplishing the change and impacting on politics' (IDEA 2005, p 254). Looking beyond numbers and focusing on substantive issues such as the specific contribution women make once they are elected to top political positions is another option. But 'looking beyond numbers does not mean that numbers no longer matter. On the contrary, numbers are integral to making an impact on politics' (IDEA 2005, p 255). Thus, 'there is still much work to be done to increase women's political participation' (IDEA 2005, p 255) and this applies as much to SADC countries as it does to the rest of the world.

Finally, the question of whether or not to adopt or promote electoral gender quotas for women remains controversial (EISA 2010, p 7). Some SADC countries have adopted voluntary party-based quotas for women, but these have fallen short of women's expectations as they were 'left to the goodwill of political parties to put women on their lists'; hence, some women press for legislated quotas (Tlakula 2012, p vii). Some electoral gender quotas

also touch on the current theoretical debate about 'women as a group' and draw attention to the problem of whether it is theoretically acceptable to continue saying 'we' about a single category of women [which obviously raises] several conflicting discourses on gender and electoral quotas, both in theory and practice.

Dahlerup & Freidenvall 2005, p 31

Overall, and as some quota advocates insist (Murray 2013, p 304), electoral gender quotas for women in SADC countries have appeared to boost women's political participation and representation, especially in South Africa. However, this depends on the kind of quota system adopted. Some examples include 'candidate quota systems or quotas through political parties, mandatory legislative quotas for all parties, or a designated number of reserved seats set aside for women' (True 2013, p 354, citing Krook 2010). Yet it is debatable whether women's participation and representation have improved solely as a result of such quotas, although some insist that '[e]lectoral gender quotas are key to increasing women's legislative representation' (Bauer 2008, p 350). Others feel that quota systems can 'lead to a symbolic or "token presence" of women in politics rather than to a more legitimate and substantial form of participation' (Tiessen 2008, p 200, citing Goetz & Hassim 2003, p 52).

Thus, whether quotas will work also depends upon the electoral system adopted and the political processes (EISA 2010, pp 1-6). Accordingly, Bauer argues that in her three Southern African case studies the countries 'have all increased the number of women MPs using a closed list PR [proportional representation] electoral system and voluntary political party-based quotas'. Murray (2013, p 304) adds that gender quotas for women should 'go beyond the mere feminization of politics' and assist societies to 'effect wider change and renewal'.

For women who aspire to political positions, finding time for community responsibilities despite the difficulties they may face (Tiessen 2008, p 208), greater interest in elections or politics may help to promote their political participation and representation.

LIMITATIONS OF THE RESEARCH

An attempt was made in this article to analyse each of the 15 SADC countries. However, this was not always possible given the difficulty of obtaining current and reliable empirical data on the subject. Similarly, the swing of the pendulum between achievement and regression in some countries in terms of women's representation made it difficult to identify consistent trends in the region.

CONCLUSION

The article has examined the unequal political participation and representation of women in SADC countries. In its analysis of some of the hurdles women face in politics it has explored the relevance of theories of democracy, including game theory, rational choice theory, theories of democratic consolidation and the Ubuntu philosophy.

An attempt was made to examine critically the region's political processes, especially elections, by analysing gender and women's roles in a democracy using feminist theories. It is argued that despite progressive legislation and a few 'successes' in some SADC countries (such as South Africa), overall, women's political representation in the region still raises concerns.

The situation in South Africa probably deserves much more careful analysis as the country may be regarded as the region's role model with regard to women's representation and participation in politics. According to Hassim (2006, p 259), in South Africa

[i]t is clear that in many respects women in particular have benefited from the new institutional and procedural arrangements in the state. Women are treated as a constituency with special interests that need to be represented in policy-making.

Although many political parties have gradually accepted this trend, much of the significant participation and representation of women in South Africa's politics can be attributed to the governing ANC and its largely gender responsive post-1994 approach. Yet the influence of a strong and diverse social movement (Hassim 2006, p 258), including other non-governmental and non-state actors, in sustaining pressure for women's representation and participation, cannot be overlooked, although opposition parties have not matched the ANC in this regard.

Ironically, while the main opposition Democratic Alliance's (DA) leader is a woman, she and her party were criticised in the local media when the (DA-ruled) Western Cape appointed an all-male Cabinet after the 2009 elections (*Mail & Guardian*, 26 April-2 May 2013, pp 18-19). Similarly, some SADC countries are still to meet the target of 30% of women in key political structures, whereas South Africa has adopted the 50-50 principle and seeks to implement a 'Zebra list' system, 'with women's and men's names alternated like the black and white stripes of a zebra' (Bauer 2008, p 362; EISA 2010, p 5). Some countries, among them Mozambique and Namibia, have followed this trend by adopting proportional representation electoral systems.

Generally, women's representation in South Africa's key national and provincial sectors has fared fairly well under the ANC, with more women occupying senior parliamentary, government and other public positions. Yet, it remains unclear how women's representation might change given recent proposals by some opposition parties of electoral reform (Ramphela 2013), presumably in favour of constituency-based electoral system with elements of proportionality.

The influential South African weekly newspaper, the *Mail & Guardian* (26 April-2 May 2013), has called for a 'political champion for women's rights' to ensure that the gender agenda is implemented in the country. However, it lamented the fact that South African's President, Jacob Zuma, holds 'conservative views towards women' and is reported to have said that women should be mothers; which raised a national outcry.

Overall, women's situation in politics in the region requires forceful political will, including concerted action from women in general, if their political participation and representation in the governance processes of SADC countries are to be enhanced. Advancing women's political participation and representation through a women's quota remains another option, 'not for the sake of statistics but to place women in decision-making positions so they can inform political decision-making' (Shale 2012, p 112). This undoubtedly calls for substantive participation and representation which goes 'beyond numbers' (IDEA 2005) or the 'simple feminization of politics' (Murray 2013, p 304).

In conclusion, the author suggests some measures to empower and build capacity for women candidates and political party members and highlight the

need for women to be more interested in politics, particularly elections, to enhance their participation and representation. Ultimately, women's political participation and representation in the electoral processes in the SADC region depends on the visible actions of public leaders at grassroots levels such as party branches or cells, district, provincial or other structures, which determine who to include in or exclude from final election party lists.

If party and government leaders fail to support women's genuine and equal participation and representation, or if they choose to adopt rhetoric and tokenistic measures, this will forever undermine the progress that women have so far made in many SADC countries.

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REVISION AND REFORM OF AN ELECTORAL ACT IN A DEMOCRATIC ENVIRONMENT

The Namibian Case

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ABSTRACT

Namibia is revising and reforming its Electoral Act (Act No 24 of 1992). In this undertaking stakeholders were consulted and public meetings were held throughout the country. In the subsequent report (2012) there were 59 recommendations of ways in which the Electoral Act could be improved. Electoral revision implies re-examining the Electoral Act within the context of democracy. The aim is to discover and rectify errors and shortcomings. Since electoral revision achieves reform, the two concepts are intertwined, with the intention of both being to strengthen the qualities of an Electoral Act. In this process, apart from efficiency, public desires and expectations must be attended to. In addition to the administrative and managerial task of running elections attention must be paid to the normative character of an electoral process, which is substantially determined by electoral justice. A number of principles are identified in relation to the character of electoral justice. These principles should be pursued both by stakeholders in the electoral process and the electoral bodies responsible for conducting elections in a democratic environment.

REVISION AND REFORM

Electoral revision implies a re-examination of the Electoral Act with the aim of discovering, rectifying and amending shortcomings that have been discovered, while applying the rules and obligations contained in the Act. Two interrelated concepts are at stake – revision and reform.

Electoral reform relates to revision. The intention is to set new rules for improving the entire electoral process, while strengthening the good qualities contained in the Act. Electoral reform also intends, among other things, to improve the responsiveness of electoral processes to public desires and expectations, to

rectify shortcomings discovered during the application of the Act and to improve its efficiency. Each election is a learning experience which can give reason to improve the electoral law.

Reform and revision should never be a once-off undertaking. An electoral management body (EMB) should constantly be engaged in reviewing its administrative strategies, policies, procedures and practices. If it does do so, its effectiveness and credibility may be affected, if not diminished.

According to Wall, Ellis, Ayoub, Dundas, Rukambe & Staino (2006, pp 295-296), three distinct areas of electoral reform can be identified:

- Legal reform, involving, possibly, the amendment of the constitution and definitely the electoral law(s) and/or related regulations and rules, to enhance the integrity, relevance and adequacy of the legal framework within which the electoral management body delivers its services. This can include institutional reform of the EMB itself.
- Administrative reform: the introduction within an EMB of new strategies, structures, policies, processes, procedures and technical innovations which enable it to deliver its services most efficiently.
- Political reform, involving changes that take place in the political environment in which the EMB is obliged to operate. It could imply more autonomy and authority, improving and guaranteeing the independence of the EMB and/or creating a more effective and transparent framework for its functioning and accountability.

ELECTIONS AND DEMOCRACY

Considering the relationship between elections and democracy Namibia is compelled to comply with approved international norms such as those laid down in the African Union's (AU) *Declaration on Elections, Democracy and Governance* and the Southern Africa Development Community's (SADC) *Principles and Guidelines Governing Democratic Elections*.

Both of these documents emphasise the obligation to pursue democracy, which is considered essential and a precondition for stable, social, cultural and economic developments in African states. Emphasis is put on representative democracy in a multiparty state, 'which is strengthened and deepened by permanent, ethical, and responsible participation of the citizenry within a legal framework of constitutional order' (s 1, arts 1.1.-1.3 of the AU *Declaration on Elections, Democracy and Governance*).

Article 1.4 of the AU declaration states that:

[e]ssential elements of representative democracy include, *inter alia*, respect for human rights and fundamental freedoms, access to and the exercise of power in accordance with the rule of law, the holding of periodic, free and fair elections based on secret balloting and universal suffrage as an expression of sovereignty of the people, a pluralistic system of political parties and organisations and the separation of powers and independence of the branches of government [the legislative, judicial and executive powers].

The *SADC Principles and Guidelines Governing Democratic Elections*, which were adopted in 2004 and are not legally binding on member states, are presently being revised by the SADC Electoral Advisory Council. They undertake, among other things, to:

2.1.3 Promote the holding of regular free and fair, transparent, credible, and peaceful democratic elections to institutionalise legitimate authority of representative government in addition to democratic change in government;

2.1.4 Enhance the integrity of election processes by providing a basis for comprehensive, accurate and impartial assessments of national elections and sharing of experience and information among member states about democratic development;

2.1.5 Promote electoral justice and best practices in the management of elections and mitigation of election-related conflict.

SADC Third Draft Revision April, 2013, p 3

Both declarations emphasise that elections are fundamental to any competitive democracy and are part of an important exercise in pluralism. Elections imply the reflection of democracy in action. They are about people who vote and express their opinions unhindered and whose rights are legally determined and guaranteed.

Elections contribute to a self-identification process and empower voters to play an important role in securing democratic governance. The vote is an instrument that confers power and legitimises rulers to act in the name and on behalf of those who voted them into power. They thus provide the principal link between the rulers and the ruled.

A working democracy is related to quality governance. It is a dialectic relationship. If quality governance is the goal, elections must be credible instruments for the attainment of that goal. In this process, values, norms and principles must be translated into a functioning operational framework.

Electoral management bodies have the task of ensuring that elections serve as instruments for securing quality governance within democratic parameters and conditions.

The electoral process itself can only be meaningful, functional and valuable if voters understand the essence and consequence of democracy and their role in attaining it. Voter education and information must, therefore, form an essential part of an electoral process, whether on its own or as an integral part of civic education. Voters need to be taught constantly the relevance of regular and periodic elections and what the electoral process entails.

The building of democracy includes not only the pursuit of political values and political attitudes that uphold democracy but must also attend to fundamental issues. These include the efficient organisation of democratic elections, the guarantee of sound voter registration, the overseeing of an orderly electoral campaign and the application of the best-possible voting system.

Electoral bodies are entrusted with a supervisory and disciplinary role. They are obliged to act and intervene when the credibility and fairness of democratic elections are threatened. Threatening issues such as corruption, bribery, favouritism, political violence, intolerance, and intimidation must, consequently, be dealt with immediately. In a democratic environment within which elections are conducted, the values of electoral justice must be respected.

The AU and the SADC statements consider legality and legitimacy to be equally important in a democratic electoral process. It has become evident that legitimacy, thus the ethics and morality of elections, is often not assigned the same relevance, value and status as legality. Both legality and legitimacy are integral elements of electoral justice.

ELECTORAL JUSTICE

There may be different interpretations of the concept of electoral justice and its relevance in the electoral process. Electoral justice is, in the first instance, related to free and fair elections. It is argued that the two qualities 'free and fair' do not fully cover the comprehensive character of elections.

The SADC Electoral Advisory Council (SEAC) has deliberated on some additional concepts that would give a more comprehensive character to elections. In addition to free and fair, elections should be *credible* (in the sense of trustworthy / genuine), *peaceful* (non-violent) and *transparent*.

The question arises whether elections are only a purely technical and material exercise? This assumption is arguable, as equal importance must be paid to normative aspects. For example, on what premise and value system are elections based? What are the morality and ethics behind elections? How much attention is paid to normative electoral justice?

Electoral justice relates to both the operative legal framework and the legitimate execution of rules and regulations. In an electoral process the concepts of legality and legitimacy are intertwined. Each is, however, entitled to its own right.

A functional electoral law is a critical factor for the orderly and responsible running of an election. Equally important is the way it is applied. It is at this point that issues such as humility, empathy, ethics and moral responsibility come strongly to the fore. To apply only a positivistic attitude to the electoral process is insufficient.

Electoral management bodies should not, like judicial bodies, concentrate predominantly on positivism, operating on the assumption that truth is completely represented by observable phenomena and scientifically verifiable facts.

The intention of electoral justice is to go beyond the letter of the law and add a human element to legal prescriptions, procedures and processes. In other words, it should humanise electoral laws and practices. The focal point is the integrity of the total electoral process, including normative aspects, not merely its technical and administrative aspects.

In 2011 an international 'Election Integrity Group' gathered in Ghana and devised the *Accra Guiding Principles for Elections*. These are of particular value and relevance to an electoral process and can serve as a directive and a norm for elections in SADC countries.

The emphasis in the Ghana declaration is on applied electoral justice, which not only protects fundamental human rights, such as political rights and the entitlement to vote and to stand for election, gender rights, freedom of association and affiliation, the right to express personal opinions, access to security, and the democratic right to participate actively in public affairs, but also guarantees and safeguards normative rights such as freedom of opinion, freedom of speech, the right of unhindered assembly, no discrimination and intimidation, the right to freely communicate and inform and the right to seek justice. Together they form important and principal objectives in an election.

The intention of electoral justice is thus to go beyond the letter of the law. It addresses inclusively the integrity and legitimacy of the total electoral process. The Ghana group identified specific principles which underlie electoral justice and should be adhered to in an electoral process. To these, some others can be added.

The principles related to electoral justice include lawfulness (the rule of law), integrity (eg, honesty, accountability), voter participation (eg, voter registration and voting), impartiality (eg, equal treatment of all voters), fairness (related to credibility), professionalism (eg, of electoral bodies), independence (eg, structural independence of electoral bodies), neutrality (of electoral bodies), transparency (openness of and accessibility to electoral officials), timeliness (eg, punctuality in the performance of electoral tasks), non-violence (peace and no intimidation of

voters), regularity of elections (periodic elections), acceptance of voting results (as part of a voting culture), efficiency of electoral officials (quality assurance) and service mindedness (quality and adequate performance).

MATTERS RELATED TO THE REVISION AND REFORM OF THE NAMIBIAN ELECTORAL ACT (ACT NO 24 OF 1992)

Revision and reform often relate to the failure of EMBs to deliver expected goods and services. Wall, Ellis, Ayoub, Dundas, Rukambe & Staino (2006, p 297) identify a number of possible failures:

- Absence of stakeholder confidence in the EMB;
- Government and/or political influence on EMB decisions;
- A partisan approach by the EMB;
- A lack of professionalism in the EMB; and
- EMB incompetence and/or financial impropriety.

A compelling reason for revising and reforming the Namibian Electoral Law was a statement by the Namibian High Court on 14 February 2011 expressing dissatisfaction with the present state of the law. High Court judges J P Damaseb and Dr J Parker stated, among other things, that the law

... is very scattered. We had ourselves to wade through a myriad of amendments to ascertain what the applicable provisions are. That is an unsatisfactory state of affairs and something must be done as a matter of urgency and before the next round of elections, to consolidate the electoral law of Namibia.

Rally for Democracy and Process and Progress & Others vs Electoral Commission of Namibia & 5 Others, paras 325 and 326, p 160

The reform and revision of the Namibian Electoral Act are guided by the democratic norms, values and practices to which the Namibian state is legally and morally bound. They are reflected in the Namibian Constitution. In addition to revision and reform, the Namibian Electoral Act was guided by the spirit, norms, practices and rules applied in other SADC countries.

The Revision and Reform Report on the Namibian Electoral Act

The final version of the report, which was compiled in 2012, reflects, among other things, the outcome of consultations with those who have a direct stake in the Namibian electoral process. Public meetings were held in all 13 regions of Namibia.

It soon became evident that distrust and scepticism prevailed on a number of electoral issues. Little confidence was expressed in the EMB, which comprises the Electoral Commission (EC) and its executive agency, the Directorate of Elections, particularly in the way they conduct the electoral process before, during and after elections. The EMB was accused of not performing its role efficiently, professionally, diligently, trustworthily, responsibly and effectively. Its competence and capacity as well its impartiality were questioned.

The EMB was not considered to be a neutral, autonomous and independent body.

Other matters the research team addressed were whether Namibia's political environment is conducive to free, fair, transparent, trusted, responsible and credible democratic elections and whether the EMB, as the guarantor of democratic elections, performs its task free of any pressure or coercion from outside, thus not being exposed to external interference and intervention.

The enquiry also had to assess whether the principles of electoral justice, integrity, lawfulness, impartiality, professionalism, transparency and voter friendliness are adhered to, considering that they must be applied in a dominant/hegemonic one-party state. Also, whether democratic norms and values form an integral part of the electoral process and are adhered to.

A multitude of elections since Namibia gained its independence in 1990 have given a clear indication of issues that must be addressed to improve the electoral process. They are not only related to the technical processes of how elections are best run but also to the institutional framework.

During the public meetings concern was repeatedly expressed about the independence and credibility of the Electoral Commission and the Directorate of Elections. There were complaints about the selection process of the commissioners and the way in which they are appointed. The composition of the selection committee was questioned, as was the selection procedures it follows. The public feels that it is not sufficiently consulted and is underrepresented in the selection process.

There was a general feeling that the members of the EMB should not be appointed by the president. The criticism was not directed as much against the office of the president per se as it was related to concerns that the president's choice could be influenced by his position as both the head of state and president of the ruling party.

In the late Nineties the responsibility for the EMB was transferred from the office of the prime minister to the office of the speaker, which was considered a more neutral entity. It became the responsibility of the speaker to submit the annual report of the Electoral Commission to the National Assembly, but, when it came to introducing the annual vote on the EMB in the National Assembly, the speaker's

limited knowledge of its activities became evident. A definite shortcoming is that because of his independent status the speaker may not introduce a new Bill or amendments to an Act.

The report therefore recommends that the Ministry of Justice take care of all legal issues pertaining to electoral matters and the Ministry of Finance should present and defend the annual budget of the EMB in the National Assembly.

The report recommends a clear separation between the tasks and responsibilities of the Electoral Commission and the Directorate of Elections. It has become evident that the commission should exercise stricter control over the responsibilities and activities of the Directorate of Elections and that it must prevent the directorate from bypassing directives it issues.

The report pays attention to expanding the tasks of the EC to make it an even more responsible body. The practice in many SADC countries of dividing the EMB into sub-divisions, each taking on particular responsibilities and forming an active link with the director of elections, is recommended for Namibia.

Other policy issues addressed in the report are whether the present electoral system complies with the expectations and quality of elections at all levels of governance. Does it serve the purpose expected of it?

The report makes recommendations on improving electoral mechanisms such as the registration of voters, the voting process and the counting procedures. Also addressed is the issue of voters who are absent on election day from the constituencies in which they are registered. The question is raised whether a postal or any other kind of absentee vote system should be introduced, as the present tendered vote system is not satisfactory.

Questions were raised about eligible voters who are abroad, the police and army on duty on election day, prisoners and the physically handicapped.

The possibility of introducing an electronic registration and voting system was hotly debated. An electronic system will be used for the 2014 national and presidential elections.

In view of the vast expanse of the country, the report recommended further decentralisation of EMB responsibilities at management and administration level. Such decentralisation might include voter registration and voter education.

A definite shortcoming in Namibia is the absence of a separate body to adjudicate electoral disputes. This has resulted in prolonged court cases after nearly every election since independence. The institution of an Electoral Court for a period before and after elections is therefore highly recommended.

Other issues addressed in the report include the relationships between the EMB, registered political parties and the public and how these can be improved. The issues of fair access to radio and television, the ruling party's use of government transport during election campaigns, and related favouritism are also mentioned.

Another concern is what legal controlling mechanisms can be introduced to oversee political party financing and auditing, and what codes of ethics should be devised for election officials, political parties, observers, the media and other entities that play a role in the electoral process and how they can be enforced to make them more credible.

Other issues raised during the consultations with the public and, in particular, with stake holders such as political parties, are the introduction of a ward system at local governance level, the way electoral officials are selected and trained and the need to define the roles and tasks of party representatives at registration points and polling stations.

Opinions were divided on the amalgamation of the Delimitation Commission (in some SADC countries called the Border Commission) with the Electoral Commission.

Another issue of concern addressed in the report was fair gender representation at all levels of governance and in the permanent appointment of electoral officials at headquarters and temporary appointment during election periods. The same gender parity should be applied when observers and party representatives are appointed at polling and counting stations.

Other matters that were addressed during the public hearings and meetings included whether voting should be restricted to one day only; the improvement of the quality and efficiency of electoral officials and the abolition of registration of voters via sworn statements. A personal identity document should be the only valid means of identification both for registration and on polling day.

CONSEQUENCES

The public hearings and meetings with stake holders have brought to the fore the relevance of assigning to the public, political parties and community organisations a greater say in the operation of the electoral process and the functioning of electoral institutions.

The gap between the EMB and the public, including the media, needs to be narrowed and common interests should be harmonised. It is important that the electorate takes full ownership of the electoral process and identifies with it.

Elections are an important signpost in Namibia's still young democracy. For this reason communication between electoral bodies and the public at large should be improved.

The report addresses extensively, in addition to institutional aspects and the electoral process itself, how democracy in Namibia can be enhanced through quality elections. In making elections in the country technically and administratively more proficient and more qualitative, and therefore meaningful,

relevant, trustworthy, transparent and credible, there is always room for improvement. To be constructive in contributing to a better electoral system, management and process is a better option than criticising and condemning without offering other options.

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TABLE OF CONTENTS

JOURNAL OF AFRICAN ELECTIONS VOL 1 NO 1

Ballots or Bullets: Elections and Conflict Management in Southern Africa <i>Khabele Matlosa</i>	1
Electoral Sustainability and the Costs of Development <i>Carl W Dundas</i>	17
Making Sense of the 'Coloured' Vote in Post-Apartheid South Africa: Comparing the 1994 and 1999 Provincial Results in the Western Cape <i>Sean Jacobs</i>	23
The Unfinished Referendum Process in Western Sahara <i>Terhi Lehtinen</i>	37
How Political Parties Finance Electoral Campaigning in Southern Africa	53
<i>Tom Lodge</i>	
Parliamentary Elections in Zimbabwe, 2000 <i>David Pottie</i>	61
Les Elections Ivoiriennes de L'An 2000 <i>Maître Françoise Kaudjhis-Offoumou</i>	71
A Summary of the Parliamentary and Presidential Elections in Mozambique, 1999 <i>Vicky da Silva</i>	97

TABLE OF CONTENTS
JOURNAL OF AFRICAN ELECTIONS VOL 1 NO 2

Lesotho 2002: Africa's first MMP elections <i>Jørgen Elklit</i>	1
Looking at the management of the 2001 Zambian tripartite elections <i>Claude Kambuya Kabemba</i>	11
Multi-stage monitoring and declaring elections 'free and fair:' The June 2000 Zimbabwe election <i>Susan Booyesen</i>	27
Reflection on the activities and contributions of the Coalition of Domestic Election Observers (CODEO) to the success of Ghana's 2000 elections: lessons for other African countries <i>E. Kojo Sakyi and Franklin Oduro</i>	55
Constitutional constraints on South Africa's electoral system <i>Glenda Fick</i>	69
Roles and performances of regional election observation delegations in the SADC region <i>Denis Kadima</i>	79
From African Renaissance to NEPAD ... and back to the Renaissance <i>Chris Landsberg</i>	87

TABLE OF CONTENTS
JOURNAL OF AFRICAN ELECTIONS VOL 2 NO 1

La Guerre, la Paix et la Démocratie au Congo <i>Georges Nzongola-Ntalaja</i>	1
Aperçu Historique de la Pratique Electorale en Republique Démocratique du Congo Depuis son Accession a L'indépendance <i>Adrien Mulumbati Ngasha</i>	12
Choosing an Electoral System: Alternatives for the Post-War Democratic Republic of Congo <i>Denis K Kadima</i>	33
Intra-Party Democracy and the Inclusion Of Women <i>Bookie Monica Kethusegile-Juru</i>	49
Electoral Choice & Practice and the Democratic Process in Mozambique <i>Obede Baloi</i>	63
How the South African Electoral System was Negotiated <i>Tom Lodge</i>	71
The Electoral Process and Democratic Governance in Lesotho: Lessons for the Democratic Republic of Congo <i>Khabele Matlosa</i>	77
Problematiche du Dénombrement et de L'identification Démographique Pre-Electoraux <i>Arsène Waka-Sakrini</i>	99
La Carte Géographique et les Elections <i>Matezo Bakunda</i>	105
The Electoral System and Democratisation in Zimbabwe Since 1980 <i>Lloyd M. Sachikonye</i>	118
Electoral Reform in Namibia: Challenges and Constraints <i>Joram Kumaapirua Rukambe</i>	141
The Role, Functions and Performance of Botswana's Independent Electoral Commission <i>Balefi Tsie</i>	145

TABLE OF CONTENTS
JOURNAL OF AFRICAN ELECTIONS VOL 2 NO 2

Factional Intrigues and Alliance Politics: The Case of NARC in Kenya's 2002 Elections <i>Shumbana Karume</i>	1
Legitimising Electoral Process: The Role of Kenya Domestic Observation Programme (K-DOP) in Kenya's 2002 General Election <i>Wole Olaleye</i>	14
Elections in Nigeria: Is the Third Time a Charm? <i>A Carl Levan, Titi Pitso, Bodunrin Adebo</i>	30
Nigeria: Can the Election Tribunals Satisfactorily Resolve the Disputes Arising out of the 2003 Elections? <i>Kaniye S A Ebeku</i>	48
The Electoral System and Conflict in Mozambique <i>Luís de Brito</i>	67
Adapting to Electoral System Change: Voters in Lesotho, 2002 <i>Roddy Fox and Roger Southall</i>	86
Missing Cadres? List Voting and the ANC's Management of its Parliamentarians in the National Assembly, 1999-2003 <i>Geoffrey Hawker</i>	97
Reviews	
<i>Compendium of Elections in Southern Africa</i>	116
<i>One Woman, One Vote: The Gender Politics of South African Elections</i>	118
<i>Security and Politics in South Africa: The Regional Dimension</i>	123

TABLE OF CONTENTS

JOURNAL OF AFRICAN ELECTIONS VOL 3 NO 1

Making Democracy Work in Africa: From the Institutional to the Substantive <i>Eghosa E Osaghae</i>	1
Traditional and Modern Political Systems in Contemporary Governance in Africa <i>Dani W Nabudere</i>	13
Party Systems in the SADC Region: In Defence of the Dominant Party System <i>Shumbana Karume</i>	42
Governance and Human Rights in the SADC Region <i>Chaloka Beyani</i>	62
The Broader Context: Mainstreaming Gender in Public Institutions of Governance and Democracy <i>Koki Muli</i>	81
The Dominance of the Swazi Monarchy and the Moral Dynamics of Democratisation of the Swazi State <i>Joshua Bheki Mzizi</i>	94
Post-Conflict Elections, Peacebuilding and Democracy Consolidation in Sierra Leone <i>Abdul Rahman Lamin</i>	120
Zimbabwe: Constitutionalism, the Electoral System and Challenges for Governance and Stability <i>Lloyd M Sachikonye</i>	140
Local Elections in the SADC Countries: A Comparative Analysis of Local Electoral Institutions <i>Christof Hartmann</i>	160
Reviews <i>South Africa's Second Democratic Election 1999: An Annotated Bibliography</i>	185
<i>From Cape Town To Congo: Southern Africa Involving Security Challenges</i>	187

TABLE OF CONTENTS
JOURNAL OF AFRICAN ELECTIONS VOL 3 NO 2

Under Strain: The Racial/Ethnic Interpretation of South Africa's 2004 Election <i>Thabisi Hoeane</i>	1
Political Party Funding in the 2004 Election <i>Dirk Kotzé</i>	27
Why the IFP Lost the Election in KZN <i>Shauna Mottiar</i>	47
Women's Representation: The South African Electoral System and the 2004 Election <i>Amanda Gouws</i>	59
Democracy, Hiv / Aids And Citizen Participation: Focus on the 2004 South African Election <i>Khabele Matlosa</i>	77
The Election Result and its Implications for Political Party Configuration <i>Laurence Piper</i>	97
The Dominant Party System: Challenges for South Africa's Second Decade of Democracy <i>Heidi Brooks</i>	121
Post-election South Africa: The Continuing Case For Electoral Reform <i>Roger Southall</i>	154
The ANC After the 2004 Election <i>Tom Lodge</i>	166
Review <i>Contemporary South Africa</i>	175

TABLE OF CONTENTS

JOURNAL OF AFRICAN ELECTIONS VOL 4 NO 1

Multiparty Democracy and Elections in Namibia <i>Debie LeBeau</i>	1
Botswana's 2004 Elections: Free and Fair? <i>Bertha Z Osei-Hwedie and David Sebudubudu</i>	27
Malawi's 2004 Elections: A Challenge for Democracy <i>Wiseman Chijere Chirwa</i>	43
Justice and Electoral Disputes In Mozambique <i>Gilles Cistac</i>	61
Post-Election Prospects for Burundi <i>Joseph Topangu</i>	90
The 2005 Lesotho Local Government Elections: Implications for Development and Governance <i>Victor Shale</i>	100
The Electoral Reform Process in Mauritius <i>L Amédée Darga</i>	117
The Formation, Collapse and Revival of Political Party Coalitions in Mauritius: Ethnic Logic and Calculation at Play <i>Denis K Kadima and Roukaya Kasenally</i>	133
Transitional Politics in the DRC: The Role of the Key Stakeholders <i>Claude Kabemba</i>	165
Review <i>State of the Nation South Africa 2004-2005</i>	181
Contents of Previous Issues.....	184
Notes for Contributors	190

TABLE OF CONTENTS
JOURNAL OF AFRICAN ELECTIONS VOL 4 NO 2

South Africa and Zimbabwe: Democracy in the Littoral Zone <i>Peter Vale</i>	1
Moods Of Bitterness: How Political Polarisation has Influenced Zimbabwean Elections <i>Norman Mlambo</i>	15
Zimbabwe's Land Politics and the 2005 Elections <i>Sue Mbaya</i>	37
Political Parties and the 2005 Elections in Zimbabwe <i>Lloyd M Sachikonye</i>	63
The Politics of the 2005 Parliamentary Elections in Zimbabwe <i>Choice Ndoro</i>	74
Persistent Inequalities: Women and Electoral Politics in the Zimbabwe Elections in 2005 <i>Bertha Chiroro</i>	91
An Examination of the Role of the National Youth Service / Militia in Zimbabwe and its Effect on the Electoral Process, 2001-2005 <i>Martin R Rupiya</i>	107
Zimbabwe's 2005 Parliamentary Elections: Lessons for the Movement for Democratic Change <i>Sehlaire Makgetlaneng</i>	123
Review <i>Zimbabwe: Injustice and Political Reconciliation</i>	142
Contents of Previous Issues.....	148
Notes for Contributors	155

TABLE OF CONTENTS

JOURNAL OF AFRICAN ELECTIONS VOL 5 NO 1

Afro-governance: Continentalism and Africa's Emerging Democratic Regime <i>Chris Landsberg</i>	1
Resolution and Transformation of Election Related Conflicts in Africa <i>Karanja Mbugua</i>	22
Legislation and the Electoral Process: The Third-term Agenda and the Future of Nigerian Democracy <i>Jibrin Ibrahim</i>	36
Election Management in Cameroon: Progress, Problems and Prospects <i>Thaddeus Menang</i>	60
Independent Candidature and the Electoral Process in Africa <i>Churchill Ewumbue-Monono</i>	74
The Dilemmas of Opposition Political Parties in Southern Africa <i>Bertha Chiroro</i>	100
Reviving A Failed State: The 2005 General Elections in Liberia <i>Said Adejumobi</i>	126
Elections, Gender and Governance in Mauritius <i>Sheila Bunwaree</i>	152
Partisan Realignment in Cape Town 1994-2004 <i>Jeremy Seekings</i>	176
Irish Electoral Politics <i>Tom Lodge</i>	204
Review <i>Electoral System Design: The New International IDEA Handbook</i>	217
Contents of Previous Issues.....	221
Notes for Contributors	229

TABLE OF CONTENTS
JOURNAL OF AFRICAN ELECTIONS VOL 5 NO 2

Editorial	
<i>David Sebudubudu</i>	1
From Pre-Colony to Post-Colony: Continuities and Discontinuities in Political Power Relations and Governance in Botswana	
<i>Monageng Mogalakwe</i>	5
Democracy and Botswana's Electoral System	
<i>Mpho G Molomo</i>	21
Beyond the State: Botswana's Democracy and the Global Perspective	
<i>Patrick Molutsi</i>	41
Elections and Parliamentary Oversight in Botswana	
<i>Onkemetse B Tshosa</i>	52
The Role and Status of the Independent Electoral Commission	
<i>Mogopodi H Lekorwe</i>	62
Civic Participation and Voting Patterns in Botswana	
<i>Adam Mfundisi</i>	81
Youth and Politics in Botswana	
<i>Tidimane Ntsabane and Chris Ntau</i>	99
A Failure to Unite Means a Failure to Win: The Leadership Challenge for Botswana's Opposition	
<i>Kaelo Molefhe and Lewis Dzimbiri</i>	114
Opposition Politics and the Challenges of Fragmentation in Botswana	
<i>Onalenna Doo Selotwane and Victor Shale</i>	122
Enhancing Intra-Party Democracy: The Case of the Botswana Democratic Party	
<i>Zein Kebonang and Wankie Rodrick Wankie</i>	141
Gender and Elections in Botswana	
<i>Zitha Mokomane</i>	151
Election Observation and Monitoring in Botswana	
<i>David Sebudubudu</i>	165
Building Social Capital and Political Trust: Consolidating Democracy in Botswana	
<i>Mpho G Molomo</i>	181
Trends In State-Civil Society Relations In Botswana	
<i>Monageng Mogalakwe and David Sebudubudu</i>	207
Review	
<i>40 Years of Democracy in Botswana 1965-2005</i>	225
Contents of Previous Issues	233
Notes for Contributors	242

TABLE OF CONTENTS

JOURNAL OF AFRICAN ELECTIONS VOL 6 NO 1

What Future for Electoral Studies?: A Critique <i>Peter Vale</i>	1
Democracy and Security in West and Southern Africa <i>Albert Domson-Lindsay</i>	17
Contemporary African Political Parties: Institutionalisation for the Sustainability of Democracy <i>Sulaiman Balarabe Kura</i>	41
Opposition Party Alliances and Elections in Botswana, Lesotho and Zambia <i>Victor Shale</i>	91
A Preface to an Inclusive African Electoral System Reform Agenda <i>Mohamed Salih and Abdalla Hamdok</i>	118
Electoral Reform in Southern Africa: Voter Turnout, Electoral Rules and Infrastructure <i>Norbert Kersting</i>	134
Voting Behaviour in the SA Local Government Elections of 2006 With Specific Reference to the Youth <i>Maxi Schoeman and Charles Puttergill</i>	152
The Political Economy of Democracy in Tanzania <i>Ernest T Mallya</i>	174
Measuring the Support for Democracy in Namibia: Intrinsic or Instrumental? <i>Lesley Blaauw</i>	189
Founding Elections in the Democratic Republic of Congo: A Highly Fragmented Party System <i>Patrick Vander Weyden</i>	203
Review	219
Contents of Previous Issues	221
Notes for Contributors	232

TABLE OF CONTENTS
JOURNAL OF AFRICAN ELECTIONS VOL 6 NO 2

Editorial	
<i>Emmanuel O Ojo</i>	1
Elections: An Exploration of Theoretical Postulations	
<i>Emmanuel O Ojo</i>	4
Nigeria's 2007 General Elections and Succession Crisis: Implications for the Nascent Democracy	
<i>Emmanuel O Ojo</i>	14
Electoral Laws and the 2007 General Elections in Nigeria	
<i>E Remi Aiyede</i>	33
A Review of the Campaign Strategies	
<i>Isaac Olatwale Albert</i>	55
Independent National Electoral Commission (INEC) As An (Im)Partial Umpire in the Conduct of the 2007 Elections	
<i>Uno Ijim-Agbor</i>	79
Building Democracy Without Democrats? Political Parties and Threats of Democratic Reversal in Nigeria	
<i>Said Adejumo and Michael Kehinde</i>	95
Party Formation and Electoral Context in Nigeria: Labour Party and the 2007 Election in Ondo State	
<i>N Olufemi Mimiko</i>	114
Godfathers and the 2007 Nigeria General Elections	
<i>J Shola Omotola</i>	134
Electoral Violence and Nigeria's 2007 Elections	
<i>Osisioma B C Nwoli</i>	155
Vote Buying in Nigerian Elections: An Assessment of the 2007 General Elections	
<i>N D Danjibo and Abubakar Oladeji</i>	180
Public Perceptions of the 2007 Nigerian General Elections	
<i>P F Adebayo and J Shola Omotola</i>	201
Appendices	217
Professor John Barratt: A Tribute	
<i>Peter Vale</i>	220
Reviews.....	225
Contents of Previous Issues.....	230
Notes for Contributors	242

TABLE OF CONTENTS

JOURNAL OF AFRICAN ELECTIONS VOL 7 NO 1

Editorial	
<i>Khabele Matlosa</i>	1
The 2007 General Election in Lesotho: Abuse of the MMP System?	
<i>Jørgen Elklit</i>	10
The 2007 General Election in Lesotho: Managing the Post-Election Conflict	
<i>Khabele Matlosa</i>	20
Party Alliances and Political Coalitions During the 2007 General Election in Lesotho	
<i>Francis K Makoa</i>	50
Prospects for the Promotion of a Culture of Political Tolerance in Lesotho	
<i>Sehoai Santho</i>	66
How Parties Fared in the 2007 Election: A Theoretical Exploration of the Outcome	
<i>Fako Johnson Likoti</i>	75
Electoral System Reform and Implications for Gender Equality	
<i>Khabele Matlosa</i>	95
The Challenge of Political Legitimacy Posed by the 2007 General Election	
<i>Sofonea Shale</i>	109
The Role and Position of Civil Society Organisations in Lesotho's Democratisation Process	
<i>Motlamelle Anthony Kapa and Lira Theko</i>	124
The Impact of Floor Crossing on Electoral Politics and Representative Democracy in Lesotho	
<i>Khabele Matlosa and Victor Shale</i>	138
The Socio-Economic Cost of the Post-Election Conflict	
<i>Masilo Philemon Makhetha</i>	153
The Media and Electoral Politics in Lesotho Between 1993 and 2007	
<i>Nthakeng Pheello Selinyane</i>	164
Review	174
Contents of Previous Issues	179
Notes for Contributors	192

TABLE OF CONTENTS
JOURNAL OF AFRICAN ELECTIONS VOL 7 NO 2

Editorial	
<i>Gilbert M Khadiagala</i>	1
Forty Days and Nights of Peacemaking in Kenya	
<i>Gilbert M Khadiagala</i>	4
Kenya's 2007 Elections: Derailing Democracy Through Ethno-Regional Violence	
<i>Rok Ajulu</i>	33
The Legal Framework of the GNU and the Doctrine of the Separation of Powers: Implications for Kenya's National Legislative Assembly	
<i>Korwa G Adar</i>	52
Ethnicity and Political Pluralism in Kenya	
<i>Shilaho Westen Kwatamba</i>	77
The 2007 General Elections in Kenya: Electoral Laws and Process	
<i>Felix Odhiambo Owuor</i>	113
The Role of the Kenyan Media in the 2007 Elections	
<i>Fredrick Ogenga</i>	124
'We've been to hell and back ...': Can a Botched Land Reform Programme Explain Kenya's Political Crisis? (1963-2008)	
<i>Samuel Kariuki</i>	135
Review	173
Contents of Previous Issues.....	188
Notes for Contributors	202

TABLE OF CONTENTS
JOURNAL OF AFRICAN ELECTIONS VOL 8 NO 1

Overview	
<i>David K Leonard</i>	1
Elections and Democratisation in the Democratic Republic of Congo	
<i>Denis Kadima, David K Leonard and Anna Schmidt</i>	14
The Political Economy of Democratisation in Sierra Leone: Reflections on the Elections of 2007 and 2008	
<i>David K Leonard and Titi Pitso with contributions from Anna Schmidt</i>	49
The Political and Institutional Context of the 2007 Kenyan Elections and Reforms Needed for the Future	
<i>David K Leonard and Felix Odhiambo Owuor with contributions from Katherine George</i>	71
Nigerian Elections Since 1999: What Does Democracy Mean?	
<i>Sam Egwu, David K Leonard, Khabele Matlosa</i>	108
Contents of Previous Issues	145
Notes for Contributors	160

TABLE OF CONTENTS
JOURNAL OF AFRICAN ELECTIONS VOL 8 NO 2

Direct Democracy in Southern and East Africa: Referendums and Initiatives <i>Norbert Kersting</i>	1
The Key to One-Party Dominance: A Comparative Analysis of Selected States: Some Lessons for South Africa? <i>Phillip Mtinkulu</i>	23
The Role of the Southern African Development community in the Management of Zimbabwe's Post-election Crisis <i>Khabele Matlosa</i>	46
Do Elections Matter in Zanzibar? <i>Bernadeta Killian</i>	74
Africa's Disappearing Election Results: Why Announcing the Winner is Simply Not Enough <i>Kevin S Fridy</i>	88
Civil Society Organisations, Incompetent Citizens, the State and Popular Participation in Tanzania <i>Ernest T Mallya</i>	102
Review	123
Contents of Previous Issues	126
Notes for Contributors	142

TABLE OF CONTENTS
JOURNAL OF AFRICAN ELECTIONS VOL 9 NO 1

Public Participation: The Political Challenge in Southern Africa <i>Roger Southall</i>	1
The State, Elections and Hidden Protest: Swaziland's 2008 Elections <i>Hamilton S Simelane</i>	16
Mozambique's 2009 Elections: Framing Democratic Consolidation in Context <i>Adriano Nuvunga and M A Mohamed Salih</i>	34
A Critical Stock Take of Malawi's 19 May 2009 Elections: Processes, Outcomes and Challenges <i>Blessings Chinsinga</i>	54
Party Opposition Perpetually on the Verge of Promise: South Africa's Election 2009 <i>Susan Booysen</i>	80
The Role of Civil Society in Elections: The KwaZulu-Natal Democracy and Elections Forum – Reducing Conflict Dynamics and Promoting Peace <i>Shauna Mottiar</i>	110
A Note on the Namibian National Assembly Elections of 2009 <i>Lesley Blaauw</i>	128
Prelude to Tanzania's 2010 General Elections: Reflections and Inflections <i>Benson A Bana</i>	141
Review	169
Contents of Previous Issues	171
Notes for Contributors	188
JAE index vols 1-8	191

TABLE OF CONTENTS
JOURNAL OF AFRICAN ELECTIONS VOL 9 NO 2

Introduction: The significance of the 2009 elections <i>Mcebisi Ndletyana</i>	1
Party support and voter behaviour in the Western Cape: Trends and patterns since 1994 <i>Cherrel Africa</i>	5
Congress of the People: A promise betrayed <i>Mcebisi Ndletyana</i>	32
Evaluating election management in South Africa's 2009 elections <i>Kealeboga J Maphunye</i>	56
Elections: Extinguishing antagonism in society? <i>Vanessa Barolsky</i>	79
Future imperfect: The youth and participation in the 2009 South African elections <i>Ebrahim Fakir, Zandile Bhengu and Josefine K Larsen</i>	100
The African National Congress's unprecedented victory in KwaZulu-Natal: Spoils of a resurgent Zulu ethno-nationalism <i>Mcebisi Ndletyana and Bavusile B Maaba</i>	123
Durable or terminal?: Racial and ethnic explanations of the 2009 elections <i>Thabisi Hoeane</i>	142
Surveys: Scientific predictions or navel gazing? <i>Joseph Kivilu and Ronnie Mmotlane</i>	156
Contents of previous issues	178
Notes for contributors	196

TABLE OF CONTENTS

JOURNAL OF AFRICAN ELECTIONS VOL 10 NO 1

Southern Sudan Referendum on Self-determination: Legal Challenges and Procedural Solutions <i>Francesca Marzatico</i>	1
Mauritius: The Not So Perfect Democracy <i>Roukaya Kasenally</i>	33
Les Elections de 2010 au Burundi: Quel Avenir Pour la Democratie et la Paix ? <i>Eva Palmans</i>	48
Ten years of Democratic Local Government Elections in South Africa: Is the Tide Turning? <i>R D Russon</i>	74
Democratisation in Nigeria	
Public Perceptions of Judicial Decisions on Election Disputes: The Case of the 2007 General Election in Nigeria <i>Emmanuel O Ojo</i>	101
The Judiciary and the Survival of Democracy in Nigeria: Analysis of the 2003 and 2007 Elections <i>David U Enweremadu</i>	114
Throwing Out the Baby With the Bath Water: The Third-Term Agenda and Democratic Consolidation in Nigeria's Fourth Republic <i>Christopher Isike & Sakiemi Idoniboye-Obu</i>	143
Political Corruption, Democratisation and the Squandering of Hope in Nigeria <i>Dhikru Adewale Yagboyaju</i>	171
Electoral Reform and the Prospects of Democratic Consolidation in Nigeria <i>J Shola Omotola</i>	187
Contents of previous issues	208
Notes for contributors	227

TABLE OF CONTENTS
JOURNAL OF AFRICAN ELECTIONS VOL 10 NO 2

Housekeeping Notes	v
Editorial: West Africa in Context: Elections and the Challenges of Democratic Governance <i>Abdul Rahman Lamin</i>	1
Côte D'Ivoire's Post-electoral Crisis: Ouattara Rules but can he Govern? <i>David Dossou Zounmenou and Abdul Rahman Lamin</i>	6
Ghanaian Elections and Conflict Management: Interrogating the Absolute Majority Electoral System <i>Jasper Ayelazuno (Abembia)</i>	22
The 2011 Nigerian Elections: An Empirical Review <i>Ben Simon Okolo and R Okey Onunkwo</i>	54
The 2011 Presidential Election in Benin: Explaining the Success of One of Two Firsts <i>Issaka K Souaré</i>	73
The Tension Between Militarisation and Democratisation in West Africa: A Comparative Analysis of Niger and Guinea <i>Khabele Matlosa and David Dossou Zounmenou</i>	93
Contents of previous issues	115
Notes for contributors	135

TABLE OF CONTENTS

JOURNAL OF AFRICAN ELECTIONS VOL 11 NO 1

Housekeeping Notes	v
Open Forum: Kole Omotoso	vi
Editorial: The Politics of Electoral Reform in Nigeria, 2007-2011	
<i>Emmanuel Remi Aiyede</i>	1
The Legal and Constitutional Framework of the 2011 Elections in Nigeria	
<i>Dauda Abubakar</i>	8
Federalism, Power Sharing and the 2011 Presidential Election in Nigeria	
<i>Emmanuel Remi Aiyede</i>	31
Political Participation and Voter Turnout in Nigeria's 2011 Elections	
<i>J Shola Omotola and Gbenga Aiyedogbon</i>	54
Gender Politics and the 2011 Elections	
<i>Antonia Taiye Okoosi-Simbine</i>	74
Gender, Political Parties and the Reproduction of Patriarchy in Nigeria: A Reflection on the Democratisation Process, 1999-2011	
<i>A Irene Pogson</i>	100
Security Arrangements for the 2011 Elections	
<i>Osisioma B C Nwolise</i>	123
The Cost of the 2011 General Elections in Nigeria	
<i>Emmanuel Remi Aiyede and Omo Aregbeyen</i>	136
Monitoring and Observing Nigeria's 2011 Elections	
<i>Olubukola Adesina</i>	153
Contents of previous issues	171
Notes for contributors	192

TABLE OF CONTENTS
JOURNAL OF AFRICAN ELECTIONS VOL 11 NO 2

Housekeeping Notes	v
Open Forum: Pansy Tlakula	vi
Introduction <i>Amanda Gouwus</i>	1
A Vote of Confidence: Gender Differences in Attitudes to Electoral Participation and Experience in South Africa <i>Benjamin Roberts, Jarè Struwig and Arlene Grossberg</i>	7
Gender Equality and Local Government Elections: Gender Mainstreaming, Party Manifestos, Party Lists and Municipal Planning <i>Janine Hicks and Imraan Buccus</i>	37
Partying Along in Silence: Violence against Women and South African Political Party Manifestos for the Local Government Elections of May 2011 <i>Lisa Vetten and Alexandra Leisegang</i>	63
The Marginalised Majority: Zimbabwe's Women in Rural Local Government <i>David Mandiyanike</i>	75
Transforming Women's Role in Local Government in Lesotho Through a Women's Quota <i>Sofonea Shale</i>	93
The Rights-Based Approach to Local Government Development and Service Delivery: Putting Women (back) in the Centre of Attention <i>Carla Ackerman</i>	116
Contributors	140
Contents of previous issues	142
Notes for contributors	164

TABLE OF CONTENTS

JOURNAL OF AFRICAN ELECTIONS VOL 12 NO 1

Housekeeping Notes	v
Obituary: John Makumbe	vi
Democracy and States' Compliance with Regional and Sub-Regional Election Benchmarks in Africa: The 28 November 2011 Elections in the Democratic Republic of Congo in Retrospect <i>André Mbata Mangu</i>	1
Congolese Elections 2011: Mostly a Problem of Global Governance and Negative 'Soft Power', not Resources <i>Timothy B Reid</i>	34
The 2012 General Elections in Lesotho: A Step Towards the Consolidation of Democracy <i>Tlohang W Letsie</i>	65
Party-Voter Linkage in Senegal: The Rise and Fall of Abdoulaye Wade and the Parti Démocratique Sénégalais <i>Anja Osei</i>	84
Party Institutionalisation in Mozambique: 'The Party of the State' vs the Opposition <i>Adriano Nuvunga and Eduardo Siteo</i>	109
International Justice vs Public Opinion: The ICC and Ethnic Polarisation in the 2013 Kenyan Election <i>Thomas P Wolf</i>	143
Briefing: Continuity or Reform in Zimbabwean Politics?: An Overview of the 2013 Referendum <i>Lloyd M Sachikonye</i>	178
Contents of previous issues	186
Notes for contributors	209

TABLE OF CONTENTS
JOURNAL OF AFRICAN ELECTIONS VOL 12 NO 2

Introduction: Ghana Defies the Odds Again: The December 2012 Elections in Perspective <i>J Shola Omotola</i>	1
The Institutional Framework of the 2012 Elections in Ghana: Consolidating or Reversing Democratic Achievement? <i>E Remi Aiyede, Idris Eramah and Tosin Orimolade</i>	13
The Electoral Commission of Ghana and the Administration of the 2012 Elections <i>J Shola Omotola</i>	34
Making Democracy Work?: Quasi-Public Entities and the Drama of Elections in Ghana <i>Richard Asante</i>	56
The Nature of Ideology in Ghana's 2012 Elections <i>Franklin Obeng-Odoom</i>	75
The Youth and Party Manifestos in Ghanaian Politics: The Case of the 2012 General Elections <i>Ransford Edward Van Gyampo and Emmanuel Debrah</i>	96
Oil and Ghana's 2012 Presidential Elections: Reinvigorating the 'Resource Curse'? <i>Charles Nyuykonghe and Keitumetse Letsoalo</i>	115
Sustaining Peace and Stability: Appraising the Role of the National Election Security Task Force in the 2012 Elections <i>Festus Aubyn and Mustapha Abdallah</i>	132
Film review: Watching an African Election <i>Tom Lodge</i>	154
Contents of previous issues	164
Notes for contributors	187

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