



**ELECTORAL INTEGRITY:**  
ENSURING RHETORIC REFLECTS REALITIES  
IN AFRICAN ELECTORAL ASSESSMENTS  
**EDITED BY NADIA ZOUBIR**

ISBN 978-1-920446-56-7



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EISA gratefully acknowledges the financial support for this project provided by the Open Society Foundations' (OSF) Africa Regional Office (AfRO)

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Published by EISA  
14 Park Rd, Richmond  
Johannesburg  
South Africa

P O Box 740  
Auckland Park  
2006  
South Africa  
Tel: 27 11 381 6000  
Fax: 27 11 482 6163  
Email: [eisa@eisa.org.za](mailto:eisa@eisa.org.za)  
[www.eisa.org.za](http://www.eisa.org.za)

ISBN: 978-1-920446-56-7

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First published 2016

Cover design by Rachel Mariko Sandler  
Printed by Corpnet, Johannesburg

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## ACRONYMS AND ABBREVIATIONS

### GENERAL

ACDEG	African Charter on Democracy Elections and Governance
APRM	African Peer Review Mechanism
AU	African Union
AUEOM	African Union Election Observation Mission
BVR	biometric voter registration
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
COMESA	Common Market for Eastern and Southern Africa
EAC	East African Community
EACEOM	East African Community Electoral Observation Mission
ECCAS	Economic Community of Central African States
ECOWAS	Economic Community of West African States
EIAP	Electoral Integrity in Africa Project
EISA	Electoral Institute for Sustainable Democracy in Africa
EMB	election management body
EOM	election observation mission
ETRS	electronic transmission of results systems
EU	European Union
EVD	electronic voter devices
EVID	electronic voter identification devices
FPOS	Foundation to Promote Open Society
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of Racial Discrimination
ICT	information and communication technology
IDPs	internally displaced people
IEOM	International Election Observation Mission
NEPAD	New Partnership for Africa's Development
OAU	Organization of African Unity
OECD	Organization for Economic Co-operation and Development
OIF	Organisation internationale de la Francophonie
PEMMO	Principles of Election Management, Monitoring and Observation
PVT	parallel vote tabulation
REC	regional economic community
SADC	Southern African Development Community
SEOM	SADC Election Observation Mission
TCC	The Carter Center
UN	United Nations
UNDP	United Nations Development Program

## **COUNTRY SPECIFIC**

### **Burundi**

AMIB	African Union Mission to Burundi
BINUB	Integrated Office of the United Nations in Burundi
BNUB	United Nations Office in Burundi
CENI	Commission Electorale Nationale Indépendante/Independent National Electoral Commission
NCDD- FDD	National Council for the Defense of Democracy
ONUB	United Nations Mission to Burundi
RIB	Regional Initiative on Burundi

### **Congo-Brazzaville**

CONEL	Commission nationale d'organisation des élections
CNEI	Commission nationale électorale indépendante
DGAE	Direction Générale des Affaires Electorales

### **Kenya**

ECK	Electoral Commission of Kenya
IEBC	Independent Electoral and Boundaries Commission
Kanu	Kenya African National Union

### **Mozambique**

CNE	National Election Commission
MDM	Mozambique Democratic Movement
STAE	Secretariat for the Technical Administration of Elections

### **Nigeria**

APC	All Progressive Congress
CAMA	Companies and Allied Matters Act
INEC	Independent National Electoral Commission
NPN	National Party of Nigeria
NRC	National Republican Convention
PVC	permanent voter's card
SDP	Social Democratic Party

### **Tunisia**

ISIE	Instance Supérieure Indépendante pour les Elections
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NCA	National Constituent Assembly
RCD	Rassemblement constitutionnel démocratique

**Zambia**

DEC	Drug Enforcement Commission
ECZ	Electoral Commission of Zambia
ERTC	Electoral Reform Technical Committee
MMD	Movement for Multiparty Democracy
PF	Patriotic Front
UNIP	United National Independence Party
UPND	United Party for National Development

## PREFACE

The year-long research and advocacy project, the *Electoral Integrity in Africa Project*, that has resulted in the publication of this book is informed by more than a decade of experience in the field of election observation of the Electoral Institute for Sustainable Democracy in Africa (EISA). The institute deployed its first observer mission in 2000 and has been active ever since. In the course of its work EISA has developed partnerships at global, regional and sub-regional levels and through its experience and these partnerships has contributed to the development of regional and sub-regional benchmarks for the assessment of democratic elections.

The process began with the development and adoption in 2003, in partnership with the Electoral Commissions Forum of SADC Countries, of the Principles for Election Management, Monitoring and Observation. EISA was also one of the first organisations to endorse the Declaration of Principles for International Election Observation and its accompanying code of conduct at the United Nations Headquarters in 2005 and, through other partnerships, has contributed to the development and promotion of the African Charter for Democracy, Elections and Governance.

In addition to developing these benchmarks EISA has adopted their standards in its assessment of electoral processes on the continent and, through this work, has recognised that there are growing discrepancies in the quality of assessments undertaken by different observer groups and variations among regional and sub-regional election assessment instruments.

These problems led EISA to undertake a project aimed at contributing to the improvement of the assessment of electoral integrity and, in the long term, mitigating flaws that undermine democratic elections in Africa. The specific objective is to contribute to improving standards of assessing electoral integrity on the continent.

The book is limited to seven country case studies that highlight the work of continental and sub-regional inter-governmental bodies in election observation. The case studies highlight the international standards and obligations to which the countries, as sovereign states, have subscribed and the extent to which pan-African intergovernmental bodies have assessed elections in these countries based on these standards. They also highlight the contribution of international election observer reports to post-election reforms in the countries reviewed. This volume and its accompanying policy brief contain recommendations aimed at improving the quality of election assessments by pan-African groups.

A key innovative element of the project is the *Scorecard on Electoral Integrity in Africa*, which, EISA hopes, will bring more depth to election assessment initiatives on the continent. The scorecard, which is currently being tested by EISA and its partners and will continue



to be improved, will enable election assessors to reach a conclusion about the integrity of an election based on all elements of the electoral cycle.

The conclusions and recommendations contained in this volume were not only based on the research undertaken for the case studies but also on the input of members of the working group and participants in a research validation workshop.

EISA anticipates that the book will be useful to election observer groups and election practitioners who are interested in improving the content and methodology of election assessment in order to make a greater impact on democratic development on the continent.

## ACKNOWLEDGEMENTS

EISA gratefully acknowledges the generous financial support for this project from the Open Society Foundations (OSF) through its Africa Regional Office in South Africa.

EISA also acknowledges the guidance and input of the following electoral experts, members of the project working group under whose direction and supervision the research for this project was implemented: Mr Ayman Ayoub, Professor Gilbert Khadiagala, Mr Ibrahima Amadou Niang, Dr Victor Shale, Professor Alain Didier Olinga and Dr Andrea Abel van Es. We thank the members of the working group for preparing the summaries published in this book. The guidance provided by Professor John Stremlau in overseeing the finalisation of this publication is very much appreciated.

EISA thanks the following individuals for making themselves available to undertake the country research and write the full country case studies which are included on the attached CD: Ms Kalthoum Hezami Bouzaiene, Dr Adams G R Oloo, Mr Maleine Amadou Niang, Mr Guilherme Mbilana, Ms Susan Mwape, Mr Fabrice Parfait Oumba, Ms Idayat Hassan and Mr Yusuf Shamsudeen Adio.

EISA also recognises the support of its partners, who helped shape the research. These partners include: the African Union, the Economic Community of West African States, the Economic Community of Central African States, the Southern African Development Community, the Election Observation and Democratic Support Project of the European Union and The Carter Center.

The implementation of the project was made possible by the Elections and Political Processes team at the EISA head office. The support of EISA colleagues from other departments and field offices is also recognised. They include: Miguel de Brito, Lucien Toulou and Robert Gerenge.





## INTRODUCTION

**Nadia Zoubir**

### CONTEXT

In the past decade regular elections have become the norm across the African continent. Each year between 15 and 20 national elections are held in African Union (AU) member states. However, according to the annual Freedom House Survey, which categorises global regimes according to democratic performance, only nine of the 49 sub-Saharan countries surveyed, were considered 'free', while 20 were ranked 'partly free' and the remaining 20 were categorised as 'not free'. It is therefore evident that the majority of African countries lie in diminished subtypes of democracy.

Levitsky & Way (2010) have referred to competitive authoritarian and Schedler (2006) to electoral authoritarian regimes, which organise periodic elections that take place under tight authoritarian control as incumbents seek to obtain legitimacy. The classification of these countries is based not only on the regularity and overall quality of elections but also on how regimes uphold rights and freedoms between elections. The quality of elections is traditionally assessed by means of election observation missions.

Over the years election observation has become an important tool by which the AU accomplishes its goal of promoting good governance, popular participation, the rule of law and human rights within its member states. The rate at which election observation missions (EOMs) have proliferated in the global community in the past 25 years has led to nearly universal acceptance and legitimacy of EOM norms and principles exemplified in the

annual implementation meetings of those countries that have endorsed the Declaration of Principles for International Election Observation and Code of Conduct for International Election Observers (27 October 2005). The AU and the regional economic communities (RECs) systematically observe national elections across the continent. In their election assessments pan-African election observation groups use common, if clichéd, terms, such as 'free' and 'fair', and 'transparent' and/or 'credible' are also popular buzzwords describing elections that conform to international standards.

While these terms may reflect the outcome of specific observations, in general they encourage an over simplified and sometimes binary verdict. The point of departure of this research project is that an election is a conglomeration of institutions, processes and procedures which cannot be assessed with a single word or umbrella term. The assessment by election observers of electoral integrity should therefore encompass the different phases of the electoral process and be based on their importance to and impact on the expression of the will of the people.

The proliferation of EOMs, coupled with improvements in the application of international norms and standards, highlights the need to make more accurate assessments of elections by looking at their overall integrity. Pan-African intergovernmental bodies have shifted the focus of their assessments from the regular holding of elections to the overall quality and whether the elections truly reflect the will of the people. Because the aim of election observation is to improve the quality of elections by providing accurate assessments and practical recommendations, EOMs have adjusted their methodology (short-term, medium-term and long-term/citizen and international observation) and their framework by developing and strengthening benchmarks and instruments (universal, continental, and regional).

Despite these notable improvements it is important to assess the methodology and framework used by pan-African intergovernmental bodies in order to determine whether they are robust enough to enable a comprehensive assessment of the integrity of elections on the continent in a manner that will contribute to post-election reforms.

With 20 years of acquired knowledge in this field and extensive experience in election observation, the Electoral Institute for Sustainable Democracy in Africa (EISA) is cognisant of the fact that elections are technical processes undertaken within complex sociopolitical contexts. It therefore recognises the need for election assessment initiatives to take these complexities into account without compromising universally accepted principles and obligations in relation to the conduct of democratic elections.

The seven case studies in this book illustrate these peculiarities but also some common tendencies in legal frameworks, electoral structures and processes.

The concluding chapter makes 14 important recommendations drawn from both the case studies and from EISA's experience on the continent, where it has enjoyed fruitful

partnerships with the AU and the RECs in efforts to improve the role and work of pan-African election assessment institutions.

## OBJECTIVES

Electoral processes are necessary for establishing and consolidating democratic governance. In order to serve their essential legitimising function they must be conducted with both procedural and perceived integrity. While the theme of electoral integrity has, in recent years, attracted a great deal of attention among experts worldwide (Geisler 1993; Elklit & Svensson 1997; Goodwin-Gill 1994; Anglin 1998; Elklit 1999; Mozaffar & Schedler 2002; Munck 2002, 2009; Elklit & Reynolds 2005a, b; McCoy & Mustillo 2007; Lindberg 2007, 2008; Davis-Roberts & Carroll 2010; Kelley & Kiril 2010; López-Pintor 2010; Darnolf 2011; Birch 2011; Donno 2013; The Carter Center 2014; Norris 2014 and Electoral Integrity Project) this research project is exclusively focused on the African continent. It examines the subject of integrity from the perspective of international election observers and practitioners in the field, investigating to what extent pan-African intergovernmental election assessment institutions have been able to make comprehensive assessments of electoral integrity by observing elections.

More importantly, it establishes a broad definition of electoral integrity by identifying significant aspects of the electoral process. The project also challenges the notion of a strict and uniform method of assessing electoral integrity and defends the concept that some of the aspects of this comprehensive evaluation exercise are tied to a specific context and may therefore vary in their impact on the overall integrity of elections.

The case studies summarise the electoral processes, principles and performance in a politically diverse group of countries: Burundi, Congo-Brazzaville, Kenya, Mozambique, Nigeria, Tunisia, and Zambia. The selection criteria and topics framing each of the case studies are summarised at the end of this introduction.

The seven case studies provide an overview of existing trends in electoral practices in Africa, some of which pose threats to the integrity of election processes. Special attention in all cases is paid to the roles, responsibilities, recommendations and impact of AU and REC observer missions.

In demonstrating 'how' and 'whether' African intergovernmental institutions have addressed these issues adequately through comprehensive and impartial assessment of elections and by offering practical recommendations on the basis of international principles and obligations, this volume sets the groundwork for developing stronger tools and strategies for observers in the hope that they will be used by institutions to make their work more effective. The research also interrogates whether governments have followed through on the recommendations provided in election observation reports. In a concluding chapter the book makes recommendations that will better inform and

strengthen the framework of election observation by African intergovernmental bodies to further enhance their capacity to assess electoral integrity.

The two-fold strategy of the Electoral Integrity in Africa Project (EIAP), which combines research and advocacy, aims to provide information about the value of the work of EOMs and, furthermore, to assist and guide African election assessment institutions which carry out this type of work to identify electoral practices that compromise the integrity of elections and to urge them to pinpoint and document them in order to help foster democratic responses on the continent. The project was implemented by EISA with the financial support of the Open Society Foundations' (OSF) Africa Regional Office (AfRo).

EISA hopes that findings contained in the case studies will encourage African intergovernmental bodies to undertake more comprehensive, longer-term assessment initiatives. Such longer-term initiatives could also explore opportunities to provide all stakeholders with better informed and more rigorous assessments of each element of the election cycle and would thus allow for a more comprehensive and credible assessment of whether the entire electoral process has sufficient integrity to constitute a valid representation of the popular will as the foundation for legitimate national electoral mandates.

## **METHODOLOGY**

### **Selection of experts**

EISA selected six experts (See appendix I) drawn from the five regions – North, East, West, Central and Southern Africa – and an international expert from the ongoing Electoral Integrity Project based at Harvard University and the University of Sydney, to guide and oversee the case study research.

The research committee met at EISA's headquarters in Johannesburg at the end of April 2015 to decide on the objectives, methodology and research questions. Throughout the project the experts reviewed the case studies and ultimately used the data gathered by the researchers to produce a summary of the findings in a way that gives readers a comprehensive understanding of each country's unique challenges, while identifying continental patterns.

### **Selecting and conducting country case studies**

In assessing and comparing the role and impact of pan-African intergovernmental election observation missions in each of the country case studies, similar issues helped frame the studies and the suggestions and recommendations in the volume's final chapter.

The selection of the seven countries studied illustrates the range and nature of the challenges facing representatives of African countries who are deployed under the auspices of the AU and RECs to assess the integrity of another country's electoral process.

In order to ensure optimum representation of the trends and practices on the continent, the initial aim was to cover two countries per region, which would have resulted in ten case studies. However, a combination of challenges, including the unavailability of qualified researchers with both academic skills and field experience, resulted in the reduction of the number of case studies to seven.

In order to facilitate comparisons that would yield guidelines and recommendations to improve future AU and REC electoral missions, the experts used five criteria in selecting the countries to be studied:

- At least two consecutive elections had to have been held;
- The country had to have recently experienced a crucial election, making the transition from a period of repressive autocratic rule and/or deadly conflict;
- The results of the most recent election must have been largely acceptable to the country's main political factions and other important stakeholders;
- The elections must have been observed by the African Union, a regional economic body and other independent civil society observer groups, foreign and/or domestic; and
- The AU and REC observer groups must have issued reports or preliminary statements.

### **Selection of researchers**

Researchers were recruited by means of an open process involving an advertisement placed on the EISA website and the ACE knowledge platform. The applications were assessed by the Elections and Political Processes team at the EISA head office.

All researchers were selected because of their experience with elections and good governance and proven knowledge of the country they were to research. They were either nationals of the country or had had prior relevant field experience there and, therefore, used both field and desktop research.

Researchers were required to obtain and verify information from relevant stakeholders and use election observation reports and other analyses to support their findings. They commenced work in June 2015 and had the opportunity to attend an information exchange workshop at the beginning of August 2015 in order to meet the research committee and EISA staff and present their preliminary findings.

### **Research questions**

In addition to providing a general reading of the overall conduct of elections in the selected countries and determining whether the assessments made were adequate and complete, the case studies were intended to answer the following questions:



- Are there gaps in the current framework of elections in Africa?
- What kind of dilemmas do African election assessment groups face in the course of their work within the African political context?
- How do African election assessment institutions reach an overall assessment of the integrity of a four- or five-year electoral process?
- Does the current election assessment framework provide an appropriate basis for assessing electoral integrity in Africa?
- Which aspects of the processes and institutional frameworks should carry a lower rating than others? and
- What post-election reform initiatives to improve electoral integrity have been initiated on the basis of EOM reports?

### **Validations of research findings and scorecard for electoral integrity in Africa**

A validation workshop took place in Johannesburg on 23 September 2015. The workshop was attended by representatives of RECs such as the Economic Community of West African States (ECOWAS), the Economic Community of Central African States (ECCAS), and the Southern African Development Community (SADC), along with other organisations involved in Africa, such as The Carter Center, the Election Observation and Democratic Support Project of the European Union, the South African Institute of International Affairs and the Hans Seidel Foundation. An important outcome of the workshop was the contribution to and endorsement of the recommendations featured at the end of this publication.

In the course of the research it became clear that there was a need for a tool that would enable election assessment groups to weigh the importance of different elements of the electoral process to the overall integrity of the process. This led to the development of EISA's Scorecard for Electoral Integrity in Africa, a tool developed in consultation with the project working group (see Annexure 2).

The tool, which was presented and well received at the workshop, is intended to help EOMs assess the overall integrity of an election depending on the variables attributed to a specific context. It could potentially contribute to improving the quality of assessments and recommendations delivered by African EOMs.

The assessment scorecard, which is provided in Excel form, presents 20 elements of the electoral process with specific questions on each element and allows the user to select contextual variables that affect the weighting of the different elements of the electoral cycle. For instance, the delimitation of constituencies will not hold significant weighting in a proportional representation system while in a majoritarian system it will do so and will have an impact on the assessment of the fairness of the electoral process. The variables

are: electoral systems, context of the elections, nature of observer involvement and the use of technology.

### **Limitations of the study**

**Political instability:** The leadership crises in Burundi and Congo-Brazzaville complicated and constrained the research. These were the only two countries where desktop research was used despite the fact that the researchers had prior in-country experience.

**Non-deployment of EOMs and limited methodology of observation:** The research by ECCAS into the assessment of electoral integrity was particularly limited as this REC does not systematically deploy EOMs within the Central Africa region due to financial constraints. Furthermore, ECCAS's observation methodology remains limited to short-term small missions. This had a further impact on the research into Congo-Brazzaville and the Central African region in general. The research focused on work done by the AU and other international organisations, such as the Organisation internationale de la Francophonie.

**Non-publication of final EOM reports:** To date the AU is the only pan-African intergovernmental body that publishes the final report of its EOM, something it has only done since 2012. The fact that these final reports are not publicly available limited researchers to the use of preliminary statements issued by RECs. Final AU reports were consulted where these were publicly available. For elections held before 2012 the researchers were limited to consulting AUEOM preliminary statements, a limitation that affected all the case studies. In the case of Nigeria, AU and ECOWAS preliminary statements were consulted to assess the 2007 and 2011 elections, while an AUEOM report was available for the 2015 elections. In the case of Kenya, there were no final EOM reports on the 2007 elections as an AUEOM was not deployed in the country, while the EAC had published only a preliminary statement. While EISA recognises the role played in election observation by sub-regional organisations such as the Common Market for Eastern and Southern Africa (COMESA), the International Conference on the Great Lakes Region (ICGLR) and the Intergovernmental Authority on Development (IGAD), the findings of this research don't reflect the observations of these groups as their final reports are not publicly available – they have only released preliminary statements and, in some countries, such as Kenya 2013, COMESA deployed a joint mission with the EAC.

**Out of country voting (OCV) and voting by refugees and internally displaced people:** The experts highlighted this recurring topic as an important aspect to consider in the assessment of the integrity of an election. However, because of the dearth of assessments of this topic by pan-African election assessment groups and the operational and infrastructural load it imposes, the case studies and overall research project could not explore these issues.

## FORMAT

All case studies have been summarised for easy access and quick comparison and each is presented in the following format:

- Introduction;
- International commitments and legal framework;
- Threats to electoral integrity;
- Trends in the assessment of electoral integrity;
- Implementation of recommendations made by African EOMs; and
- Conclusion.

The information obtained from the case studies was analysed and summarised by members of the working group for the purposes of this book. The full versions of the studies written by the in-country researchers can be found on the CD-ROM attached to the book. The full case studies of Burundi, Congo and Mozambique were translated into English, while the Tunisia case study has been kept in Arabic.

The next chapter, 'Consolidating Principles of Electoral Integrity in Africa', provides a brief overview of the increasing involvement of the AU and RECs in the development and dissemination of electoral best practices on the continent. The third chapter, 'Valid Voting?', goes into further detail about the emergence of pan-African norms, institutions and mandates as well as the different dynamics and challenges that face pan-African election assessment institutions. It also goes deeper into the subject matter, presenting the problematic of electoral integrity and some key studies conducted thus far.

The seven case studies constitute the fourth to the tenth chapters and the concluding chapter presents a set of recommendations that were developed out of the shortcomings identified in the case studies and the discussions at the information exchange and validation workshops. The recommendations are aimed at supporting the improvement of the assessment of electoral integrity by pan-African institutions.

## CONSOLIDATING PRINCIPLES OF ELECTORAL INTEGRITY IN AFRICA

### **Nadia Zoubir**

The Organization of African Unity (OAU)<sup>1</sup> was established in 1963 in response to the continent's liberation and development challenges, its aim being to promote the unity and solidarity of African states and increase political, diplomatic and economic cooperation among its members.

While important to the advancement of regional stability, the OAU, as an alliance of sovereign states, did little to advance regional integration in terms of norms of democracy and democratisation. Its main aspirations related largely to the continent's colonial past and the transition to democratic rule, thus it focused on raising the living standards of Africans, protecting fundamental human rights and settling disputes among its members (OAU Charter and Constitutive Act).

The initiative that led to the formation of the OAU stemmed from two different schools of thought, both of which were spawned by the concept of pan-Africanism that evolved in the 1960s. While the left-wing Casablanca Group or bloc, its members primarily from North Africa: Algeria, Egypt, Ghana, Guinea, Libya, Mali and Morocco, believed African political unification would be achieved by the radical transfer of state powers to a pan-African supra-authority, the more conservative Monrovia Group or bloc (Liberia,

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<sup>1</sup> The OAU comprised 53 states. Morocco withdrew its membership on 12 November 1984 following the admission of the Sahrawi Arab Democratic Republic in 1982.

Nigeria and most of Francophone Africa, including Senegal and Cameroon) defended state autonomy<sup>2</sup> and envisaged an alliance of sovereign states. The Monrovia Group's plan for Africa ultimately prevailed.

In 1990, in response to the global shift at the end of the Cold War, the OAU adopted a 'Declaration on the Political and Socio-Economic Situations in Africa and the Fundamental Changes Taking Place in the World'. It stated that 'the possibilities of achieving the objectives we have set will be constrained as long as an atmosphere of lasting peace and stability does not prevail in Africa' (OAU 1990, Art II).

Subsequently, the organisation broadened the scope of its work, resolving to deal more intensely with human rights issues, security, democracy and peace on the continent (ECDPM 2016).

The Constitutive Act of the African Union (AU), which replaced the Charter of the OAU, was signed on 11 July 2000 in Lomé, Togo, and entered into force after two-thirds of the 53 members of the OAU ratified it, thereby becoming members of the union.

In 2001 the AU replaced the OAU and, in line with the latter's pan-Africanist vision, set stronger and clearer goals for the continent. By 2002 the Constitutive Act and complementary supportive documents had been adopted unanimously.

The supportive documents, which set out the core values to which African states aspire and confirmed their willingness to establish and consolidate democracy, included the AU/OAU Declaration on the Principles Governing Democratic Elections in Africa (2002), the Guidelines for the AU Electoral Observation and Monitoring Missions (2002), the African Charter on Democracy, Elections and Governance (2007) and the New Partnership for Africa's Development, with the concomitant Declaration on Democracy, Political, Economic and Corporate Governance.

In recent years the regional economic communities (RECs), which were established independently as early as the 1980s to accelerate economic growth in the sub-regions of the continent, have become increasingly involved in the AU's work<sup>3</sup> and have, at times, been instrumental in ensuring that member states put into practice the democratic norms embedded in the above-mentioned instruments.

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2 The notion of autonomy set the tone of non-interference, stressing the importance of the sovereignty of member states established in the OAU Charter and the Constitutive Act of the AU.

3 The relationship between the AU and the RECs is mandated by the Abuja Treaty and the AU Constitutive Act and guided by the 2008 Protocol on Relations between the RECs and the AU and the Memorandum of Understanding (MoU) on Cooperation in the Area of Peace and Security between the AU, RECs and the Coordinating Mechanisms of the Regional Standby Brigades of Eastern and Northern Africa. Article VII (Conflict Prevention, Management and Resolution) of the MoU mandates the parties to work together to implement regional and continental instruments, including the ACDEG.

The AU recognises eight RECs:

- Arab Maghreb Union (UMA)<sup>4</sup>
- Common Market for Eastern and Southern Africa (COMESA)
- Community of Sahel–Saharan states (CEN–SAD)
- East African Community (EAC)
- Economic Community of Central African states (ECCAS)
- Economic Community of West African states (ECOWAS)
- Intergovernmental Authority on Development (IGAD)<sup>5</sup>
- Southern African Development Community (SADC)

The International Conference for the Great Lakes Region (ICGLR), an intergovernmental organisation that was established in 2003 with the support of the African Union and the United Nations, functions in a similar way to the RECs, although it is not an economic cooperation body and the Economic Monetary Community of Central Africa (CEMAC), another regional economic cooperation organisation, is not officially recognised by the AU.

The roles and objectives of the RECs differ and they do not necessarily have within their structures a division that targets governance or democracy issues. CEN-SAD, EAC, ECCAS, ECOWAS and SADC regularly deploy election observation missions (EOMs) to member states and some have even developed their own instruments for applying the standards set by the AU to enhance the regional norms of democracy and provide guidelines for EOMs (See Annexure I, Table I).

In 2001 ECOWAS adopted the Protocol on Democracy and Good Governance, added to its structure an Electoral Assistance Division (EAD), created in 2006, and has deployed EOMs ever since.

In 2003 the Electoral Commissions Forum of SADC Countries (ECF) and EISA developed and adopted the Principles of Election Management, Monitoring and Observation (PEMMO), which entrenched norms for electoral practices within the SADC region.

In 2012 EAC established the Principles for Election Observation and Evaluation and it is currently finalising its Protocol on Good Governance. It has also put in place the EAC Forum of National Electoral Commissions, whose aim is to harmonise democratic processes and push for free, fair and credible elections in the region.

In addition to these measures, IGAD and SADC have gone so far as to set in place early warning systems in their respective regions to support the work of the Continental

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4 The UMA is not a signatory to the Protocol on Relations between the RECs and the AU.

5 In October 2013, on the sidelines of an AU Extraordinary Summit, IGAD and EAC Foreign Ministers decided to explore the possibility of merging the two RECs (see <http://au.int/en/organs/recs#sthash.781xGLVL.dpuf>)

Early Warning System, one of the five pillars of the African Peace and Security architecture of the AU Peace and Security Council.

Some of the RECs have made significant efforts to coordinate and promote electoral best practices and ensure political stability in their regions. However, there is a definite imbalance among the RECs in terms of capacity and the general state of democracy in each region mirrors this imbalance to some extent.

Some RECs have been more involved in democratisation and, as a result, have set standards for the holding of transparent and credible elections by creating regional instruments to which member states are held accountable. These instruments, which emerged at the turn of the century, emanate from the continental principles established in documents such as the OAU's African Charter on Human and Peoples' Rights (the African Commission on Human and Peoples' Rights) adopted in Nairobi on 27 June 1981 and which came into force on 21 October 1986 and international benchmarks such as the 1948 Universal Declaration of Human Rights (UDHR), the 1996 International Covenant on Civil and Political Rights (ICCPR) and the 2005 Declaration of Principles for International Election Observation and Code of Conduct for International Election Observation.

The AU and RECs share a common legal framework and refer to similar benchmarks in their assessment of elections in Africa. This framework does not, however, provide a comprehensive and harmonised approach to the assessment of the integrity of elections.

Despite the varying degrees of democratic development on the continent, most pan-African observer groups reach almost the same conclusions about all elections without highlighting the differences in quality among them. The lack of a common framework means the same election may be assessed in different ways, a problem that has arisen since the surge of EOMs on the continent.

Depending on the extent to which the conclusions and recommendations of different EOMs differ, one report might be ignored in favour of others that are more diplomatically formulated rather than attention being paid to the most constructive report.

It is an attempt to overcome the latter problem that constitutes the primary purpose of this Electoral Integrity in Africa project – to contribute to reinforcing the existing instruments and establishing standards for the assessment of electoral integrity through election observation. African intergovernmental institutions need to work side by side and hold their member states accountable to the commitments they have made to the various instruments to attain the level of democracy the continent has advocated since its unification.

## **VALID VOTING? Electoral Integrity and the Role of Pan-African Observers in Advancing Peace and Democratic Governance**

**John Stremlau**

### **PAN-AFRICAN ELECTION OBSERVATION, INSTITUTIONS, NORMS AND MANDATES**

The African Charter on Democracy, Elections and Governance (ACDEG) was adopted unanimously by the Eighth Ordinary Assembly of African Heads of State & Government on 30 January 2007. The ACDEG provides encouragement and assistance to governments as they seek to fulfil the strategic objectives and principles of the African Union. As enumerated in Articles 3 and 4 of the AU's Constitutive Act, and reiterated in the ACDEG, these include: good governance, popular participation, rule of law and human rights. It is the principal source of authority and legitimacy for pan-African election observation missions (EOMs) deployed by the African Union (AU) and the regional economic communities (RECs) and summarised in the country case studies that follow this overview chapter and the recommendations to improve pan-African EOMs presented in the concluding chapter of this volume.

The implementation of the ACDEG required national ratification by 15 member states, which was achieved in 2012, and, as of 2016, 23 of the African Union's 54 member states have ratified and are legally obliged to act in accordance with its provisions. Those states that have endorsed but not yet ratified the charter must at least weigh up the political and diplomatic costs and benefits of cooperation or defiance.



Operationally, the most prominent and pervasive measure of the charter's facilitation of pan-African collective engagement in the domestic affairs of AU members has been in the monitoring and assessment of national democratic elections.

Although resistance to foreign interference remains a potent and politically popular norm across Africa, and globally, there is evident and growing recognition among African governments that the denial of basic human and civil rights within states can have deleterious international consequences.

The African Union's Constitutive Act broke new ground in this regard, becoming the first multilateral instrument to sanction (Art 4-h) the right to intervene, pursuant to a decision of the African Union's Assembly 'in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity'. This precedent-setting commitment by the AU to the 'Responsibility to Protect', although it applies only to the most extreme abuses of human and civil rights, is now an emerging international norm that gained momentum as a result of the United Nations (UN)'s failure to prevent or halt the 1994 Rwandan genocide. It has yet to be formally adopted by the UN or other bodies and in Africa was untested until the 2015 crisis in Burundi.

The ACDEG also operates in the spirit of the 'Responsibility to Protect', but in ways more preventative than reactive, with a much less intrusive or forceful engagement in the domestic affairs of African states. Collective engagement as envisioned by the African Charter on Democracy, Elections and Governance is primarily political, rather than military. Operationally, ACDEG engagement is contingent on local terms and conditions that also typically allow for engaging civil society and other non-state actors to advance its mission to secure transparent and accountable democratic governance. The nominal consensus supporting ACDEG engagement is that democracy is the safest and surest route to the development of a politically capable state that can resolve internal differences peacefully and be a reliable and resilient partner regionally and globally.

There are, however, wide and persistent variations in the degree of resolve to respond to the goals and objectives of the ACDEG. The most frequent and widely used measure of this resolve has been and will continue to be the extent and effectiveness of pan-African missions in observing and assessing national elections, including the policy and political impact of recommendations made as a result of these missions.

When launched, the ACDEG was intended to complement a parallel AU-approved 'strategic framework' for pan-African socioeconomic development and integration, the New Partnership for Africa's Development, now known as Nepad. Nepad, which was adopted by African heads of state and government in 2001 and ratified in 2002, coinciding with the launch of the African Union, no less than the ACDEG, reflects the commitment – albeit with varying degrees of resolve and capacity – to pursue domestic policies that are more transparent, politically accountable and subject to the rule of law.

Both Nepad and the ACDEG manifest the belief that the surest, safest and most productive road to sustainable political and economic development must have its foundations in a form of democratic governance that, above all, commands the voluntary respect, allegiance and support of its citizens.

Nepad, which was provided with its own small secretariat and with a panel of eminent experts, is overseen by a Heads of State & Government Orientation Committee that reports to the AU Assembly and makes recommendations for adoption. The AU Commission (secretariat)'s Peace and Security Department administers and implements the actionable provisions of the ACDEG and reports to the AU Assembly and its Committee for Peace and Security.

A notable diplomatic innovation in both Nepad and the ACDEG is the inclusion of a peer review mechanism for measuring the progress of each country at national level so that partners acquire a better understanding of each other's internal processes, thus providing a more realistic basis for mutual assistance and sustainable cooperation and eventual integration.

Although the 34 members of the loose association of highly industrialised nations, the Organisation for Economic Co-operation and Development (OECD), have had a peer review economic process in effect for decades, the AU commitment is broader and precedent setting for the less advanced economies of the Global South. The AU commitments under Nepad and the ACDEG pose special challenges for the least developed and most conflict prone states of Africa.

There are substantial differences in the scope, nature and impact – immediate and long-term – of the two peer review processes. Under Nepad there is a voluntary comprehensive African Peer Review Mechanism (APRM), which was established in 2002. By the end of 2015, 35 of the AU's 54 members had joined the APRM process but only 17 had actually subjected themselves to country assessments by pan-African teams of leading economists.

In recent years the fall-off in participation and the lack of funding for the APRM secretariat, including from Western donors, imperilled the functioning of this important mechanism. Its revival in 2016 with strong backing from Kenya's president, as chair, and a dynamic new executive director, and better funding prospects, should give the APRM another chance to prove its value as an instrument for advancing capable self-governance throughout the AU.

Pan-African peer review processes manifest a strategic consensus and commitment among members of the African Union to seek African solutions for African problems to deter the non-African foreign intervention that cursed the continent for centuries. More positively, such commitments also reflect a commitment to deepen mutual understanding and cooperation among the AU members and the legitimacy of these complex and difficult processes.

At the same time, endeavours sanctioned by Nepad and the ACDEG are intended to complement rather than detract from various efforts to promote peace, security, economic development and cooperation within Africa's several sub-regional economic communities (RECs).

In summary, the case studies and conclusions presented in this volume all share the AU's strategic assumption that democratic governance is necessary for sustainable peace and economic development within all African nations and for productive sustainable cooperation and eventual integration among them.

Six working assumptions guided the research and analysis of pan-African election observation missions and recommendations to ensure greater electoral integrity:

- Each nation must be allowed and encouraged to adapt the universal democratic values enshrined in the AU Constitutive Act, the ACDEG and Nepad to the particular constitutional provisions, procedures and policies that will gain the voluntary respect and loyalty of their citizens across all segments of their societies.
- The holding of periodic fully inclusive, free and fair elections is a necessary, if insufficient, condition for democratic governance to develop and succeed in all AU member states.
- The integrity of African elections, including the legitimacy and authority of the results, will be enhanced by the presence of impartial, non-partisan, trained election observers.
- Observers representing AU members, organised and deployed by the African Union and the regional economic committees, carry special weight and legitimacy in fulfilling an 'African peer review' role in validating the integrity of elections for the benefit of local citizens and for the country's regional and global standing as a politically capable partner.
- Extending the depth, breadth and duration of AU and REC election observation missions, as recommended in the concluding chapter of this volume, will help host countries gain the confidence and support of their citizens, their neighbours and the international community that are essential for sustainable economic development.
- Enhanced validation of the integrity of African democratic elections by pan-African observer missions of the AU and RECs can be important affirmations of the AU's strategic commitment to seeking African solutions for African problems.

Establishing and entrenching resilient robust democratic institutions in any country is never easy, quick, linear or conclusive. And allowing, if not always welcoming, non-partisan foreign

and domestic observers is today widely viewed as essential for validating results. The purpose is to abet a peaceful and lawful process that ensures that a national government has sufficient legitimacy both domestically and internationally to govern effectively with a credible mandate from a majority of its citizens.

Less formally, non-partisan observers also typically try to encourage the victorious to govern inclusively and the vanquished to assume the important democratic functions of a loyal opposition. Virtually all African states now hold national elections regularly every four or five years, with inter-governmental observer missions from the AU invited and present, and often alongside observers from the appropriate REC.

Depending on the policies of the host government, other non-African multilateral and international non-governmental organisations (NGOs) may be invited, and often accept.

Augmenting the hundreds of international observers can also be thousands of indigenous non-partisan civil society observer groups. Given the highly political nature of elections, the terms and quality of African national elections, including the conditions under which foreign election observers may be allowed to operate, can vary widely.

NGOs are less constrained in deciding whether host government conditions are acceptable than is the case with the AU/RECs, but, because they represent international organisations to which the host country also belongs, their potential political influence and responsibilities are much greater than those representing international and domestic civil society.

The next section of this chapter attempts to provide some general background to the case studies, the rapidly changing and problematic post-Cold War African political environment that led to a strategic shift from the Organization of African Unity to the African Union, and the subsequent resolutions establishing ACDEG and REC efforts to monitor and assess democratic elections in all of their member states, an area African international organisations traditionally regarded as exclusively domestic matters.

This is followed by a brief review of the emergence, since the late 1980s, of the transnational community of election observer groups and the common practices and principles they have developed and generally adopted and applied, albeit to varying degrees, for all host countries, including the seven in this study.

The chapter concludes with several generic questions that recur in the varied national settings of the case studies, which will help to frame the final chapter's conclusions and recommendations for AU and REC election observation missions.

## **THE AFRICAN UNION'S HISTORIC MOVE TOWARDS DEMOCRACY**

During centuries of colonial repression and the relatively brief global Cold War rivalry between the United States and the Soviet Union and their allies Africans had to adapt,

and sometimes surrender to, the strategic interests and policies of outside powers. Since the early 1990s, however, the most frequent and serious danger to regional peace and security has not emanated from threats or acts of aggression from outside the continent or between and among independent African states, it has come from a proliferation of deadly conflicts within African states arising from domestic abuses of power and violent factionalism. This has led to the deployment of an unprecedented number of UN and regional peacekeeping and peace enforcement operations that have been costly and contrary to pan-African aspirations of self-determination and provided strategic justification for the establishment of the AU.

By 1994 the UN was running 17 international peacekeeping missions globally, most of them in Africa, and more simultaneously than it had done in the previous 50 years. Many of these are still in place and today 80% of all UN peacekeepers are still deployed in Africa – more than 80 000 troops and 15 000 civilians in nine countries – with the biggest missions in the Democratic Republic of Congo, Darfur (jointly administered with the AU), South Sudan, and Mali, plus smaller deployments to the Central African Republic, Sudan, Liberia, Côte d'Ivoire and the Sahrawi Arab Democratic Republic or Western Sahara.

The AU, meanwhile, leads a peacekeeping mission of 22 000 troops and police in Somalia and the Economic Community of West African States (ECOWAS) has a small mission in Guinea Bissau. Western donors still underwrite 70% of all UN peacekeeping operations, with African states only able or willing to pay for just 2.3% of the AU's peace operations budget (Renwick 2015), more reasons for African leaders collectively to seek alternative political means to prevent and resolve conflicts within troubled states on their continent.

The strategic challenge facing the AU and RECs is a familiar one: to develop stronger institutions and political resolve to prevent, mitigate and resolve deadly conflicts within sovereign states without undermining the norms, institutions and resolve that have maintained and continue to maintain peace and security between and among them. Deadly conflicts within African nations threaten interests vital to neighbouring states, undermining regional security and can no longer be regarded as purely domestic matters. Or, to quote a former UN High Commissioner for Refugees: 'Today's human rights abuses are tomorrow's refugees' (Ogata 1996).

Forceful intervention in the internal affairs of states, even under a UN or AU mandate, should always be the option of last resort; collective efforts to prevent and mitigate domestic conflicts are clearly more desirable and were among the primary motives for transforming the OAU into the AU and for launching the ACDEG.

African governments granted the AU an unprecedented power: the right to intervene in any of its now 54 member states for humanitarian and human rights reasons. Related to this, the commitment of all AU members to welcome AU election observers signals

an historic shift, from sovereign rights to human rights in Africa's international relations, albeit a shift that has to be tested and developed very carefully to be effective.

Adoption of the ACDEG signalled to the continent's 800 million people and to the international community a formal collective political commitment to promote and protect citizen rights and to seek 'African solutions for African problems', even when those problems arise within a member state. The ACDEG provides limited but vital political space for advancing the basic electoral rights of all citizens, a key building block for resolving power disputes peacefully and democratically.

The country case studies that follow all seek to illuminate the importance of AU/REC election observation principles and practices to helping member countries consolidate and render irreversible fragile domestic peace and security. They do so by encouraging the development of democratic governance on terms acceptable to a majority of each nation's citizens, beginning with democratic elections with sufficient integrity to legitimate the distribution of state power.

Adoption of the AU's electoral mandate to observe elections, augmented by the ACDEG, also signals a preference for one of two competing approaches to nation building: civic nationalism and ethnic nationalism. While one assumes there were many reasons for this choice, two events in 1994 attracted global attention and dramatically demonstrated the difference. One was South Africa's peaceful transition to constitutional democracy, civic nationalism exemplified by the rule of law. The other was the extreme case of ethnic nationalism that precipitated a horrific genocide in Rwanda, a failed effort at ethnic cleansing costing some 800 000 lives.

Struggles between civic and ethnic nationalism erupt in all regions and forces of ethnic nationalism motivated the rise of the modern European states in the 17<sup>th</sup> century. For 200 years Europe's borders shifted widely and frequently amid intense and often violent conflicts over issues of ethnic identity and self-determination until, in the aftermath of World War II, what finally emerged were mostly states comprised of one or two large ethnic groups.

In the 1860s the US fought what was then history's bloodiest war, between the ethnic nationalism of the slave states and an emerging civic nationalism in the north (McPherson 1998). The demise of the Soviet Union in 1990 also set off waves of ethnic nationalism and outbreaks of deadly violence in the Balkans and former Soviet republics.

Ethnic homogeneity, history shows, is usually much more conducive to peaceful, sustained democratic development, especially if accompanied by the financial surpluses of sustained high levels of economic growth. These were key conditions that facilitated the emergence of the European Union. To be fair to the AU, the West's experiences do not bode well for consolidating civic nationalism in mostly low income, ethnically factionalised African states.

Africa, after all, is home to the oldest and most genetically diverse people on the planet and the 20 most diverse countries in the world. Although ethnicity, like race, is a

social construct, the divisions were exacerbated in Africa by colonial and white minority divide-and-rule domination for many generations prior to liberation. The role these divisions have played, and continue to play, have been extensively documented, in country studies as well as in the landmark global assessment of ethnic diversity done by Harvard's Institute of Economic Research, coincident with the founding of the AU in 2002 (*Washington Post* 2013).

So, the democratic vision and values enshrined in the AU charter and ACDEG are, in reality, much tougher standards and more politically daunting than Europe's latter day democratisation and creation of the EU. The AU consensus in support of the ideals of transparent, accountable democratic governance has been surprisingly durable, with the union continuing to observe all democratic elections in its 53 member states. Apart from the Sahrawi Republic, elections have been held even in the most troubled countries where multilateral peace operations are underway. They have been very difficult to monitor, but consolidating peace has been the most urgent priority.

Among the diverse community of non-governmental and inter-governmental election observation groups active in Africa, the AU and RECs tend to be much more conscious of and attentive to the need to reduce and manage tensions that could rekindle or escalate serious civil strife than the more limited mandates and interests in the conduct of the elections that preoccupy international NGO electoral missions. Moreover, new security dangers imperil the more established and prosperous African states where well-established electoral practices are now threatened by violent extremists, notably in Kenya and Nigeria, where terrorist groups Al-Shabaab and Boko Haram respectively have imperilled the safety and voting rights of many citizens and the presence of international observers.

### **GRAPPLING WITH GRAMMAR AND THE LOGIC OF AFRICAN DEMOCRATIC ELECTIONS**

To paraphrase Prussian military strategist Carl von Clausewitz on the nature of war: Election battles have a grammar but no logic. Elections are a function of the political logic of those who control them. They are normally, but not always, peaceful, as power is allocated lawfully, gaining legitimacy through the voluntary allegiance of citizens and not imposed through the threat or use of force.

Monitoring, reporting and assessing accurately election grammar on the day of balloting and initial tabulation at polling stations are today relatively routine, with well-established criteria and procedures. Among a large and still growing community of domestic and international election observation organisations there are generally accepted and applied 'Global Principles for Non-Partisan Election Observation and Monitoring by Citizen Organisations' and a 'Code of Conduct for Non-Partisan Citizen Election Observers and Monitors' (UN 2005; 2012).

These were initially drafted with input from 21 inter- and non-governmental election observer groups, including EISA, which publicly endorsed both documents at the United Nations in New York on 27 October 2005. They were reaffirmed, also at the UN, on 3 April 2012, by which time the group included over 160 non-partisan election monitoring organisations in more than 75 countries on five continents.

What has become increasingly clear to all observation groups, however, is that while voting day might be perfectly satisfactory this does not mean that the overall electoral process has been free of fraud and abuse, especially on the part of the incumbent authorities.

AU and REC missions have usually reached consensus with other non-governmental and non-African inter-governmental groups monitoring voting practices in member countries. This is not always the case, however, with regard to alleged abuses at other stages in the electoral process. It is this that has motivated the deeper country assessments presented in this book.

To the extent that there can be agreement among various observer groups, that agreement should encourage greater confidence in any regime's legitimacy, both at home and abroad. At the same time, there must be greater clarity about and mutual understanding of the priorities and interests brought by different NGO and intergovernmental observer groups to the complex and often volatile local politics that could topple or sustain a regime, including the outbreak and escalation of deadly conflict.

Determining the integrity of an entire electoral process involves identifying, bringing to light and evaluating allegations and evidence of fraud and abuses of power. Those most responsible, at least initially, are usually the incumbent authorities, who have privileged access to state financial, security and patronage resources. It is these leaders and interests who have the most to lose in an election, especially in states where the rule of law and respect for constitutional constraints are weak and ineffective.

In a useful prequel to this volume, Khabele Matlosa, Gilbert M Khadiagala and Victor Shale (2010) note in their introduction to an EISA-sponsored collection of essays on election violence, that:

While in some countries the integrity of the electoral process has ensured the positive contribution of elections to democracy, peace and development, in others elections are used as a shield for authoritarian governance. The fact that elections can be used both to promote and to undermine democratic governance is a paradox, which has given rise to a lot of questions about the value and meaning of elections in Africa.<sup>1</sup>

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<sup>1</sup> Authors of the EISA study have also been credited with providing substantive input for the article 'The African Union Panel of the Wise' (IPI 2010)



Susan D Hyde explores this paradox at greater length in *The Pseudo-Democrat's Dilemma*, in which she delves into the way in which election observation became an international norm to the degree that undemocratic leaders risk international legitimacy and access to many benefits if they do not welcome international observers (Hyde 2011). The presumption is that if they are the democratic leaders they claim to be there will be nothing to hide. So the game becomes one of deception with the risk of discovery. Hence the challenges and importance of more comprehensive informed electoral observation, especially by the AU and RECs.

Non-partisan election observers, including those from the AU and RECs, can gain valuable information about previous and comparable election behaviour by accessing at least two data sets on the conduct of hundreds of elections around the world. Each has been organised within a common and comprehensive electoral process framework that allows comparisons of current electoral conduct with previous elections in the host country as well as elections of other African and non-African countries.

The oldest and less prescriptively ambitious data set was launched in 1998 under the auspices of ACE, a consortium of international observer groups, including EISA.<sup>2</sup> The other is the more recent and ambitious Electoral Integrity Project (EIP), underway since 2012 and now jointly run by Harvard University's Kennedy School of Government and the University of Sydney's Department of Government and International Relations under the overall direction of Professor Pippa Norris ([www.electoralintegrityproject.com](http://www.electoralintegrityproject.com)).

On 15 June 2015 the Electoral Integrity Project (EIP) issued its first regional report, based on surveys in 28 African countries conducted from the second half of 2012 to the end of 2014 (Electoral Integrity Project 2015). Questionnaires were sent to 1 070 'experts' (about 40 per country), with a response rate of 23%. EIP country assessments comprise surveys of experts on all phases of the country's electoral process.

Eleven issues were questioned in each of the 28 countries. They were:

- Electoral laws;
- Electoral procedures;
- Boundaries of voting districts;
- Voter registration;
- Party and candidate registration;

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2 ACE (Administration and Cost of Elections) project was established in 1998 by the International Institute for Democracy and Electoral Assistance (IDEA), the International Foundation for Electoral Systems (IFES) and the United Nations Department of Economic and Social Affairs (UNDESA). In 2006 the name was changed to the ACE Electoral Knowledge Network. It is a collaborative effort among nine organisations: IDEA, EISA, Elections Canada, the National Electoral Institute of Mexico (INE), IFES, The Carter Center, UNDESA, the United Nations Development Programme and the United Nations Electoral Assistance Division. The ACE website is an online knowledge repository that provides comprehensive information and customised advice on electoral processes.

- Campaign media;
- Campaign finance;
- Voting process;
- Vote count
- Results; and
- Electoral authorities.

Results in each category were as varied as the countries holding elections and in the 28 African countries only small numbers of experts responded to the EIP questionnaires. With regard to key questions about which of the 11 stages of an electoral process was most vulnerable to fraud and abuse and/or decisive in determining the overall judgement of the integrity of an African election, EIP leaders would only conclude that this depended on conditions in each country.

Among other general conclusions published in the Electoral Integrity in Africa report are:

- The degree of threat to electoral integrity is more severe in Africa than in the rest of the world;
- The types of problems in Africa are similar to those found in the rest of the world;
- Elections can fail long before election day, so attention should be paid to electoral dynamics and institutional quality over the entire election cycle;
- State resources for elections are important but not determinative;
- Difficulties in regulating campaign finance extend across the continent;
- The vote count is consistently the highest-rated part of the election cycle;
- Countries with good overall electoral integrity may still perform poorly in certain areas ... [and] low overall performers may excel in certain areas; and
- Two country case studies (eg, Malawi and Mozambique, which have similar levels of economic development) can reveal vastly different levels of electoral integrity.

As should be evident from this thumbnail summary, the Electoral Integrity Project can serve as a general guide for observer missions to African elections. Although EIP promises further and more in-depth reporting aimed at improving the utility of its framework, the political and institutional dilemmas facing pan-African intergovernmental observer groups are certain to continue. EISA hopes the detailed country case studies contained in this book will help fill this gap. Researchers were instructed to pay special attention to the

interests, priorities and limitations of AU/RECs missions and their impact on improving a country's electoral integrity.

Another useful reference is the inventory of election-related public international norms, laws, treaties and other instruments, such as the ACDEG, that governments have already accepted and should be following. The Carter Center has reviewed close to 200 of these items and grouped them according to 21 fundamental rights in a published and easily searchable 'Election Obligations and Standards Database'.<sup>3</sup> The Carter Center also offers to any interested individuals, institutions or electoral missions free software for computers, tablets and cell phones, called ELMO (election monitoring) that enables users to do instant electronic country-specific searches and cross-referencing and is linked to all 10 stages of an electoral cycle.

Having easy access to this information allows observers to question and evaluate government electoral policies and behaviour not in terms of some formula devised by the observers or their donors, or in accordance with a preferred ideology, but strictly in terms of that government's own prior decisions to subscribe to these principles, standards and obligations. The role of impartial observers becomes one of seeking clarity and an explanation for any apparent gaps between these principles, standards and obligations and a country's actual behaviour. The fewer and narrower those gaps are found to be, the more likely it is that the election being observed will be deemed to have had integrity and to have been essentially 'free and fair'.

Important as the ACDEG has been in opening doors for external observation of politically sensitive domestic contests for national power, lowering sovereign barriers and giving greater credence to universal human rights, the degree of greater transparency and accountability that host countries will allow and that AU/REC observers are willing and able to call for during the course of high stakes national elections, remains limited.

### **DEMOCRATIC DEFICITS, DECEITS AND DISCONTENT**

Other structural changes have affected the domestic politics and international relations of African states. The most pervasive has been the acceleration of globalisation, with, until recently, sharply higher global commodity prices and China's rapidly expanding presence and influence across Africa. China's involvement may well be the most positive development since decolonisation, although its political positioning, especially with regard to democracy and elections, remains ambiguous and problematic.

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3 The 21 obligations for democratic elections fall into four main categories: 1) an overarching obligation regarding genuine elections; 2) foundational obligations related to rule of law and the commitment of the state to take necessary steps to fulfil obligations and protect rights and freedoms; 3) process-focused obligations related to the election process itself; and 4) individual rights and freedoms ([www.eos.cartercenter.org](http://www.eos.cartercenter.org); Election Obligations and Standards, a Carter Center Assessment Manual).

China, the largest country in the world that does not hold periodic popular elections, has begun deploying its own election observers to at least some African elections and, in the case of Madagascar, China's observers participated along with EISA and all the other groups in debriefing the media on their findings, which were very much in line with those of the other international groups.

Regime legitimacy, Chinese Africanists could argue, accrues more from rapid growth than from popular mandates conferred via credible inclusive democratic elections. And the argument is not unique to Chinese analysts. A team of Harvard economists assessing South Africa's democratic prospects in 1990 recommended delaying any national vote as they doubted the weak economy could handle the cost of such a transition. Incumbent president F W de Klerk and his ANC challenger, Nelson Mandela, immediately rejected the proposal as politically impossible. In the years since, debates about the relative priorities and sequencing of economic and democratic reforms have intensified, recalling the late Singapore strong-man Li Kwan Yew's advocacy of Perestroika before Glasnost, or what is now touted as the Beijing Model or the Developmental State.

Whether the Beijing Model gains support among several or many AU/REC members and, if so, how this could affect their judgement about electoral integrity, is unclear, but already there does appear to be a 'rehabilitation of African authoritarian governance' underway, which, according to democracy and Africa expert Nicolas van de Walle of Cornell University, could be abetted by what he sees as signs of 'democracy fatigue' among some Western donors (Van de Walle 2016).

David Moore, a professor of Anthropology and Development Studies at the University of Johannesburg, perceives a more ominous trend, which he labels 'An Arc of Authoritarianism in Africa' (Moore 2016). Moore sees many forces shaping the arc, which, he argues, reaches from Africa's biggest economy, Nigeria, in the west, to the fourth-largest, Kenya, in the east.

Both countries, of course, face insurgencies that spawn counter-terrorism measures that are contrary to civil liberties and human rights. Examining the south-north arc Moore finds many worrying anti-democratic tendencies from Cape Town to Cairo, albeit that the signs of democratic decline in South Africa are far less threatening than the renewed autocratic governance in Egypt.

There is, according to Moore, a continental cancer that threatens African efforts to entrench democratic values and institutions,

a wide gap between those for whom 'freedom' meant the sovereign right for African leaders to do what they want, mostly phrased within the predictable patterns of anti-imperialist posturing, and cosmopolitan versions of liberalism aspiring to restrict that liberty to those who do not kill their subjects wantonly.

Moore 2016

This, of course, is not a uniquely African problem but one that may be driving up democratic deficits in countries globally, as compellingly argued by Columbia University political scientist Alexander Cooley in the headline article of the July 2015 issue of the *Journal of Democracy*, 'Authoritarianism Goes Global: Countering Democratic Norms' (Cooley 2015).

The counter-norms to liberal democracy Cooley analyses are congruent with Moore's views of Africa. They are authoritarian rationalisations that privilege state security, 'respect' for civilisational diversity and 'traditional values'. These appeals, while backed by state power, may also resonate with the more conservative male-dominant sectors of society, which favour the 'stability' of electoral autocracy and the abrogation of executive term limits that now often confirm the forceful entrenchment of these regimes.

Aging autocrats are especially prominent across Africa, but whether they herald a future or a faltering trend is as yet unclear, justifying the need for more in-depth research, as exemplified by the case studies in this volume. David E Kiwuwa of Princeton University recently published a survey tallying and comparing the ages and years in office of all current African heads of state. Several, notably incumbents in Zimbabwe, Angola, Uganda, Algeria, Cameroon and Equatorial Guinea, have been in power for decades, and the average age of Africa's ten oldest leaders is 78.1 years, compared to 52 for the world's ten most-developed economies (Kiwuwa 2015).

Paradoxically, this trend runs counter to Africa's demographics. The International Monetary Fund (IMF) estimates that by 2035 more people from Africa will enter the global labour market than from the rest of the world combined (IMF 2015). Already Africa is the youngest and fastest-growing region, with a population that is projected to grow from 800 million to over 2 billion by mid-century. Many countries are already showing signs of restiveness and frustration, risking political instability, especially where elections are seen to be fraudulent, lacking integrity and unresponsive to public demands for changes of policies and personnel at all political levels.

Kiwuwa notes that only 21%-25% of Angolans, Ugandans or Zimbabweans were even born when their leaders came to power. Whether the spark that will ignite them will be demagoguery or democracy is always the issue. In the struggles to overturn the evils of US segregation and South African apartheid it was the youth who were at the vanguard.

Extreme inequalities and the denial of social and economic rights to education, health care, basic housing and fair employment opportunities are generating pressures that may prove impossible to suppress in the absence of more democratic social contracts.

Far more than ever before, today's youth are information, communication and socially networked. In Africa the speed of the spread of personal communication devices has been stunning. In 2002 fewer than one in ten Africans in East and West Africa owned a mobile phone but today they are as common in Nigeria or South Africa as they are in the US,

with smart phones connected to the global internet increasingly common among elites, according to a recent Pew Research Center survey of the continent ([www.cima.ned.org/wp-content/uploads/2015/11/PublishingforPeanuts.pdf](http://www.cima.ned.org/wp-content/uploads/2015/11/PublishingforPeanuts.pdf)).

While these phones are used primarily for sending text messages and taking pictures or videos, they are also increasingly used for mobile banking, receiving political news and accessing social networking sites, including those dedicated to advancing government transparency and accountability. One of the earliest examples of the value of this communication technology during an election crisis occurred during the 2007 Kenyan election, which has become a model others have emulated (Ekiné 2010). As tablets with free election monitoring and reporting software become more widely available to domestic and international observers, more complex, timely and authoritative assessments of electoral integrity at all stages of the process are increasingly possible and should help observers and citizens press for greater electoral transparency and accountability by governments.

Another timely reminder of the complexities of election observation and application of global standards in particular cases of immediate concern to the AU/REC missions is the 2015 Ibrahim Index of African Governance ([www.moibrahimfoundation.org](http://www.moibrahimfoundation.org)). This is the ninth iteration since Sudanese philanthropist Mo Ibrahim launched the index in 2007 and the main conclusion of this survey of 54 African countries is that 'overall governance progress in Africa is stalling'. The accuracy and fairness of the Ibrahim numerical ranking for each country's performance under the 14 good governance categories will be endlessly debated. What it does convey to election observers, whether pan-African or from abroad, is the huge diversity and variety of governance among the 54 countries.

On a scale of 100, 70 points separates the best-performing, Mauritius, and the worst, Somalia, with the others dispersed widely across the index's scoring of good governance, with often inconsistent performances in the political, legal, economic and social categories. The Ibrahim index is a useful reference for planning and setting realistic objectives for comprehensive election observation missions. It also points to the importance of more in-depth and comprehensive monitoring and assessment of the integrity of a country's entire electoral process, a vital indicator of democracy, especially in fragile countries making the transition from conflict and authoritarian rule.

Finally, this volume should serve as a reminder of the strategic importance of building politically capable states. And it should also be noted that promoting good governance and more politically capable states has become a universal priority, one recently reaffirmed as one of the 17 goals for sustainable development endorsed by all 193 members of the United Nations in their *2030 Agenda: Transforming Our World* (UN 2015). Goal 16 is: 'Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.'

The challenges facing Africa in this regard are, however, especially daunting. Africa's still young and mostly fragile states must strive to build political capacity with scarce resources and in an era when collective action is necessary to adapt to simultaneous non-military threats to their survival. For example, African countries are least responsible for global warming and related severe weather effects yet are among the world's most vulnerable people and least well-resourced and resilient, financially or institutionally, to cope with climate change and the resultant threats of food scarcity and famine, mass forced migrations, the outbreaks and rapid spread of deadly epidemics and a proliferation of state failures.<sup>4</sup>

If there is one overarching political lesson from the 20th century it boils down to a familiar truth: Whatever democracy's deficiencies, all alternatives tested so far have proved to be much worse.

The overriding challenge facing all nations is to develop states that are more politically capable both domestically and in their partnerships with others. Africa's challenges in this regard are especially daunting. The seven case studies in this volume seek a better understanding of the problems in and possibilities of fulfilling the AU and other pan-African election assessment institutions' ambitious vision to achieve more inclusive and capable democratic governance in all 54 diverse independent African nations as the best possible foundation for sustainable pan-African peace and development.

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4 Early warnings have been issued in Ian Morris (2010). More recently and more widely read is Kolbert (2014), which spawned a considerable amount of commentary, with books forthcoming, under the broad heading of the Anthropocene, the period from roughly the mid-17<sup>th</sup> century in which humans have rapidly overpowered nature and threaten the planet's ecology and our own survival.

**Ayman Ayoub**

Based on the case study written by **Kalthoum Hezami Bouzaiene**

**INTRODUCTION**

Tunisia gained its independence from France in 1956. Until January 2011 the country was ruled by a dictatorship, which established a one-party government system characterised by political persecution and the suppression of fundamental rights and liberties. However, a peddler who, in an act of protest, set himself on fire on 17 December 2010, triggered a huge shift in the country's history, and probably in the history of an entire region, when a wave of popular protest swept the country, forcing President Zien El Abdine Ben Ali to flee on 14 January 2011.

In light of the political vacuum the government decided to apply the provisions of Chapter 57 of the 1959 Constitution, which states that where a permanent vacancy in the post of president of the republic is declared by the Constitutional Council the Speaker of the Chamber of Deputies (Parliament) shall assume the post. Thus Fouad Mebazaa was nominated as interim president for the first period of the transitional process that followed.

Following a failed attempt to maintain Ben Ali's last prime minister, Mohammed Ghannoushi, in the post, the president asked Beji Caid Essebsi (a former minister under the presidency of the first president of Tunisia) to form a government.

Meanwhile, the Tunisian people continued to demand that the existing political system be abolished and a national constituent assembly be elected to draft a new and



democratic constitution. During this period nearly 100 political parties enjoyed their first opportunity to enter the political arena, including the Renaissance Party (Al Nahdha, an Islamist party).

The old Constitution was suspended and the parliamentary assemblies, together with the Constitutional Council and the Economic and Social Council, were dissolved and the Constitutional Democratic Grouping (Rassemblement constitutionnel démocratique, RCD), the long-ruling party of Ben Ali, was disbanded by a judicial ruling. While the country engaged in a democratic transition process a presidential decree provided for the provisional organisation of public authorities, authorising the interim president to manage the country's affairs and to exercise both legislative and executive powers until the election of a National Constituent Assembly (NCA).

In the absence of an elected legislative body a high commission was created for the purpose of achieving the goals of the revolution and the democratic transition. The commission, which included representatives of all segments of Tunisian society, was able to develop critical legal texts, enacted in the form of decrees, including Decree 27/2011 of 18 April on the establishment of an independent electoral commission for the first time in Tunisia's history, as well as Decree 35/2011 on the elections for the NCA.

Elections for the NCA were held on 23 October 2011, fully organised and supervised by the newly established independent election management body (EMB), known as Instance Supérieure Indépendante pour les Elections (ISIE). A coalition government was formed, led by the Renaissance (Al Nahdha) Party, and the assembly elected Moncef Marzouki (an opponent of Ben Ali and a human rights advocate) as the first democratically elected president for a second transitional phase until a new Constitution and further elections were held.

The NCA was initially given a year in which to draft the new Constitution but this period had to be extended and it was only able to produce the Constitution on 26 January 2014, following serious political deadlocks, including the assassination of two well-known political figures.

The incumbent government immediately resigned and a government of technocrats took over and was mandated to organise legislative and presidential elections before the end of 2014, as provided for in the Constitution. In the meantime the NCA continued to perform as the legislative body of the country. In doing so, it enacted law 23/2012, which established the permanent ISIE, and law 16/2014, which detailed the organisation of elections and referenda. On 8 July 2014 the NCA passed a law setting the dates of the first legislative and presidential elections after the adoption of the new Constitution.

The second phase of the transition to a democratic system ended with the organisation of elections for the national Chamber of Deputies, which were held on 26 October 2014, and the presidential elections, held in two rounds on 23 November and

21 December 2014. Both elections were won by a newly established coalition of secular political forces and figures that aimed to counterbalance the influence of the Islamist party. The founder and leader of the coalition, Beji Caid Essebsi, was elected president.

Both the 2011 and 2014 elections were followed by the international community and observed by many international organisations and groups, including the African Union (AU), as well as a large number of domestic observers. On both occasions the elections were largely considered to be genuinely competitive and technically correct, even sound, in the case of the 2014 elections. International observers, including the AU, concluded that all elections held in Tunisia since 2011 had been conducted with transparency and integrity by an EMB that enjoyed high levels of credibility and had, for the first time, been free and fair, with results generally and peacefully accepted by all contenders.

### **INTERNATIONAL COMMITMENTS AND LEGAL FRAMEWORK**

Tunisia's commitment to the conduct of free, transparent and democratic elections stems from its ratification of the following instruments:

- The 1948 Universal Declaration of Human Rights, particularly Article 21 (the right to take part in government), ratified on 29 November 1968;
- The 1966 International Covenant on Civil and Political Rights, particularly Article 25a and b (the right to take part in the conduct of public affairs and the right to vote in periodic elections), ratified by Tunisia on 18 March 1969; The 1966 International Convention on the Elimination of All Forms of Racial Discrimination, Article 5 of which refers to electoral rights, ratified by Tunisia on 13 January 1967;
- The Convention on the Elimination of All Forms of Discrimination against Women, ratified in July 1985 (with the exception of Articles 9, 15 and 16, which relate to equality and 29, which allows parties in a dispute to refer the matter to the International Court of Justice and which were excised by Tunisia's government on 17 April 2014);
- The 2006 International Convention on the Rights of Persons with Disabilities, Article 3 of which provides for the right to full and effective participation by persons with disability, ratified by Tunisia on 2 April 2008;
- The 1981 African Charter on Human and Peoples Rights, ratified on 16 March 1983; and
- The 2004 Arab Charter of Human Rights.

Article 20 of the 2014 Constitution provides that: 'International agreements approved and ratified by the Assembly of the Representatives of the People have a status superior to

that of laws and inferior to that of the Constitution.' This means that all laws must conform to the international instruments to which Tunisia is a party.

At the same time, the Constitution itself, which is superior to such instruments, provides for a system of government and includes a comprehensive Bill of Rights that ensures a competitive electoral process and the full and equal rights of all citizens to participate. Article 35 of the Constitution provides for the free establishment of political parties as the main channel for participation. In addition, the Constitution dedicates an entire chapter to the establishment of constitutional bodies, one of which is the permanent and independent electoral management body, which, in this way, has become the first EMB in the region with a constitutional rank.

In addition to the many relevant provisions in the Constitution, the electoral legal framework is complemented by a number of laws, among them:

- The political parties decree law 87/2011, which provides for the free establishment of parties by means of a written notification to the Office of the Prime Minister;
- The general elections and referendum law 16/2014, which conforms to international obligations and standards, as provided for in the relevant international instruments ratified by Tunisia; and
- Law 23/2012 on the establishment of a permanent and independent election management body (the ISIE), as amended by law 44/2013 and law 52/2013. This law sets out guarantees for the independence and transparency of the EMB and the conditions for it to conduct elections with integrity.

The legal framework for elections in Tunisia conforms to international norms, obligations and standards and is therefore sufficient to enable the conduct of elections with integrity. Nevertheless, it could be improved, mainly in relation to enhancing women's chances of inclusion, through implementation of parity in representative posts, which is provided for in the law.

While the law establishes the principle of parity in electoral lists it limits this to vertical parity within lists and does not provide for its application horizontally. For this reason women have won only about one-third of the parliamentary seats. In addition, voting by Tunisians abroad, as well as aspects of boundary delimitation and voter registration could be improved, thus raising the level of integrity of elections.

The issue of money in politics and the efficient control of party and election campaign funding is another challenge that, although the legal framework provides some tools for its control, needs to be dealt with in order to mitigate negative effects and overcome the challenges it poses to the integrity of elections.

The proportional representation with closed lists electoral system provided for in Tunisian law has, thus far, contributed to ensuring integrity, however, a reconsideration of some aspects of the system, such as nomination requirements or the possibility of introducing open lists, may further enhance the integrity of elections, but these are aspects that should only be considered in the medium to long term, once the newly established democratic governance system has been consolidated.

### THREATS TO ELECTORAL INTEGRITY

Tunisia has clearly made remarkable progress in establishing a new democratic system of government, with genuinely democratic competitive electoral processes that are increasingly credible and attain a high level of integrity.

Nevertheless, the elections held since the 2010-2011 revolution have faced a number of challenges that should be or are being dealt with. These threats to the integrity of elections include:

- **Presidential elections:** The fact that presidential candidates must be Tunisians by birth may exclude naturalised Tunisian citizens from participating fully. At the same time, and despite the fact that the overwhelming majority of Tunisians are Muslims and that the Constitution provides for the freedom of belief and religious practice, the stricture that presidential candidates must be Muslim may exclude Tunisians who hold other religious beliefs from fully exercising their political rights as provided for in the national laws. These limitations clearly contradict the provisions of international instruments (namely Article 25 of the International Covenant on Civil and Political Rights and Article 8 of the African Charter on Democracy, Elections and Governance, ACDEG) and may have a negative impact on the integrity of elections.
- **Representation of women and youth:** Given that Tunisian law establishes the parity principle in relation to electoral lists, there is a need also to consider its horizontal application by ensuring that political parties place equal numbers of women and men at the top of their lists, thus enhancing the ability of women to be elected. In addition, the measures established to encourage political parties to nominate young candidates may need to be reconsidered to give the youth, in a society with a large young population, more opportunities to participate. The low levels of young voters who have registered clearly points to the need to deal with this matter to enhance the integrity of elections by improving opportunities for a traditionally marginalised sector.
- **Boundary delimitation:** All elections held since 2011 have been conducted based on electoral boundaries that mainly follow administrative divisions, without a serious

effort to review them or establish new criteria that might ensure a more balanced representation. In order to avoid major political conflicts during the transitional period, electoral boundaries were not tackled at all and the issue was postponed to be dealt with in future elections, despite the fact that electoral districts were, as a result, not always represented in proportion to their population size.

- **Voter registration:** Although the law provides for voluntary registration, voters' lists have also been prepared on the basis of lists obtained through the civil registry. The shortcomings that affect such a registry – inaccuracies, outdated data and the absence of some names – combined with the fact that too many voters hold national identity (ID) cards with addresses that differ from their real places of residence and that the process of obtaining new ID cards is cumbersome, may have deprived considerable numbers of potential voters of their voting rights.
- **Funding:** The law establishes campaign expenditure ceilings that are regarded by many as too low, thus leading to most contenders exceeding them unlawfully, particularly since measures put in place to discourage them from doing so are weak. This, combined with flimsy control measures and the lack of proper control over the funding of political parties, affects the ability to ensure that candidates compete on a level playing field, thus leading to situations of unequal opportunity, mainly in favour of the bigger parties (in the 2014 elections the two leading parties won a total of 155 of the 217 parliamentary seats. Nidaa Tounes secured 86 seats and Al-Nahdha 69 seats, while the third party was well behind, with only 16 seats.) This clearly has a great impact on the integrity of all elections.
- **Late enactment of laws:** As a result of political negotiations the law governing the 2014 elections was enacted only on 26 May of that year, less than five months before the election date, while voter registration for those elections started on 1 June. The late enactment of the electoral laws and regulations and tampering with legal provisions too close to the election has a negative impact on electoral integrity and should certainly be avoided.
- **Election of members of the ISIE board:** It took the legislature more than a year to complete the election of members of the board that conducted the 2014 elections. This raised suspicions that the delays were the result of lengthy political negotiations and mutual agreement among political forces to ensure the election of certain individuals, thus resulting in doubts about the impartiality of some of the members. Such a situation clearly has an impact on the credibility of the ISIE and may negatively affect its ability to deliver elections with integrity, even if only because some of its members are perceived or suspected not to be impartial. In addition, the long process left the board with even more limited time in which to prepare for and properly organise the elections.

- **Tunisians abroad:** In addition to being allowed to vote, the Tunisian diaspora can elect representatives to the national legislature. In both 2011 and 2014 a number of problems affected this process. They included registration, the grouping of communities in different countries into electoral constituencies and the distribution of seats. While the process was considered by most observers to be acceptable, given the transitional context, this might not be the case for successive elections and the process should be reconsidered and enhanced. In addition, many Tunisians have criticised the fact that elected representatives of voters abroad needed fewer votes to secure a seat in the legislature than those elected inside the country.
- **Other threats:** The failure to conduct the efficient registration of certain voters, such as those in detention facilities or in hospitals, as well as the issue of voting by security forces, including the army (who are excluded by law), are among the other threats that may have an impact on election integrity. Another is apparent attempts by religious leaders to influence the vote. According to some observers, for instance, calls were made to voters to support the Islamist Al-Nahdha party.

Effective controls are necessary to ensure the integrity of elections. Finally, better and more efficient communication by the EMB with all electoral stakeholders may greatly enhance its credibility, thus contributing to higher levels of integrity.

### TRENDS IN THE ASSESSMENT OF ELECTORAL INTEGRITY

It is generally noted that most African Union Electoral Observation Missions (AUEOMs) to Tunisia have thus far focused on the voting and counting operations that take place on election day. This was certainly the case with the AUEOM deployed for the 2011 elections, which was a short-term mission that, logically, could only focus its efforts on the electoral event itself.

In 2014 the AU was able to deploy a long-term mission, which enabled it to observe far more of the process. However, the long-term mission ceased operating after the first round of the presidential election and a short-term mission was put in place to observe the second round. This explains why the AUEOM did not issue a statement after the first round and why its final report focuses largely on observations made during the legislative elections and the lead-up to the first round of the presidential election.

It is worth noting, however, that a number of technical recommendations that featured in the AUEOM's statement after the legislative elections, which were corroborated by observations made by domestic observers and other international EOMs, resulted in improvements in both rounds of the presidential election.

The AUEOM's approach resulted in a partial assessment of the freeness and fairness of the elections. The fact that most of its findings related to voting and counting operations

meant that it failed to comment on important aspects with a potentially more serious impact on the integrity of the elections.

Despite the fact that observers of the 2014 elections did indeed address aspects beyond the voting and counting processes, their reports did not address some of the important challenges and threats highlighted above.

Addressing such aspects and making recommendations to deal with them would certainly help improve the integrity of elections, but this would require an improvement in the methodology and approach of the EOMs.

While it is easy to identify in the reports comments and observations related to aspects such as secrecy of the vote, the skills of officials, voter education, materials and the conduct of the count and even some observations about the campaign or the nomination process, it is more difficult to find much needed references to other aspects relating to some of the important threats highlighted in the previous section of this chapter.

The AUEOM was not able properly and effectively to observe aspects such as voter registration, boundary delimitation or campaign funding, which resulted in weak, if any, recommendations on these subjects.

Other aspects that may be considered a threat to the integrity of elections in Tunisia are almost completely absent from observer reports. The election of members of the ISIE board and the late enactment of relevant laws are among those aspects that were not covered, despite their potentially serious impact on the integrity of the elections.

The limitations faced by EOMs in some cases constitute another serious challenge to an effective and comprehensive assessment of elections. For example, it is problematic, if not impossible, to monitor the problems related to the voting and representation of Tunisians abroad. Nevertheless, creative solutions could be considered to deal with this type of limitation, including the possibility of cooperating and partnering with domestic observation groups or cooperating and coordinating with other credible and reputable international organisations and observer groups.

An important additional weakness relates to the nature of the AU itself as an intergovernmental organisation observing elections in one of its member states. While this fact seems to be an impediment to issuing critical reports that address real weaknesses, it could and should also be seen as a benefit that should enable the organisation to overcome a tradition of political correctness and take a more critical approach, considering that its intentions are always constructive, aiming at improving conditions and further helping to consolidate democratic governance.

Such an approach would be in line with the AU's recent history and approach to developing and adopting important regional instruments aimed at consolidating the practice of democratic governance on the continent. If the AU wishes to be an effective

club of democracies it needs to make a real effort to address weaknesses and threats in its member states, including through its EOMs.

To mention but one aspect, for reasons of cultural sensitivities or political correctness, the AU fails to address the limitations Tunisian law imposes on presidential candidates (for example, the need for a candidate to profess Islam). This is done despite the fact that such limitations contradict some of the provisions and standards in the AU instruments themselves.

Tunisia has managed very quickly to make considerable progress in building its democracy (it ranked eighth on the Mo Ibrahim Foundation index for democratic governance in Africa in 2014). It is also a country that does not carry much economic weight or political influence (although it clearly constitutes an example to be followed by many in terms of democracy- building and consolidation, for which it was awarded the Nobel Peace Prize in 2015). It is clearly in need of support, including technical support, to consolidate its young democracy. Therefore, it constitutes a perfect example of a member state of the AU whose challenges can and should be named without concessions, and weaknesses and threats noted, always with the declared aim of contributing to improving conditions and supporting incremental achievements. If this is not done in such a country, by adopting new approaches and introducing serious shifts, also in EOM methodologies, it is probable that much less will be done and achieved in other countries with greater influence on the AU's affairs and decisions, thus having a negative impact on the AU's reputation.

## IMPLEMENTATION OF RECOMMENDATIONS MADE BY AFRICAN EOMS

The African Union observation missions that followed both the 2011 and 2014 elections, together with other international missions, whose recommendations were largely similar to those of the AUEOM, made a number of relevant recommendations, of which the main ones may be summarised as follows:

- **Boundary delimitation:** A more balanced representation is still needed. Although the unbalanced representation that characterised some cases in the 2011 elections was considered acceptable due to the nature of those transitional elections, it was recommended that the system be improved, but the Tunisian authorities failed to do so for the 2014 elections, thus maintaining the same boundaries. As an example, a constituency with some 175 000 voters was assigned five seats, which represents almost twice the number of seats it was entitled to according to the general rule established to assign one seat for every 60 000 voters (the argument used to assign an increased number of seats related to the need to discriminate in favour



of some regions that had traditionally been neglected by the central government or which had been poorly represented in the past). A special law is still pending and the ISIE has taken note of this challenge, but political sensitivities that affect the consolidation of the transitional process to democracy may be behind delays in dealing with this matter.

- **Campaign funding:** Although the AUEOM praised the establishment of ceilings for campaign expenditure and the availability of public funding as a means of ensuring a more level playing field among contenders, and the fact that the EMB maintained these measures as per the recommendations, there is a need to increase efforts to establish more efficient control. The technical and material capacities of the EMB should be increased to enable this.
- **Electoral disputes resolution (EDR) process:** After the 2011 elections it was recommended that the EDR process be opened to observers. This was implemented in 2014. In addition, copies of EDR decisions were provided by the administrative court to observers who demanded them.
- **Voter registration:** In line with the recommendations the EMB decided to use both automatic registration (based on civil registry records) to ensure the enfranchisement of all potential voters and voluntary registration in order to better distribute voters to specific voting centres, thus enabling larger number of voters to exercise their voting rights.
- **Voting rights of detainees:** Observations made about the need to enable persons in detention facilities to vote, in accordance with international standards, have not been addressed yet. Although the legal framework is clear on this matter, practical difficulties, as well as some cultural hesitation, are among the reasons behind the failure to do so.
- **Publication of voters' lists:** It was recommended that there should be more transparency and that voters should have better access to voters' lists during the publication and challenges process, but the system still needs to be improved to give all voters full and easy access to the lists. Both technical and financial difficulties may need to be addressed to resolve this issue.
- **Poor communication by the EMB with stakeholders:** Observers have repeatedly stressed the need for the EMB to be more transparent and communicate better with its stakeholders. Considerable changes have been made over time in this regard, but improvements are still needed. For example, a complete set of EMB decisions was only published in the official gazette, in one package, several months after the decisions were made. The EMB is also considering ways of opening its deliberations and meetings to observation by stakeholders.
- **Nomination process:** In line with recommendations made by observers, the EMB

made efforts to ease and improve some nomination requirements, mainly in terms of waiving the need to submit some documents as a condition for acceptance of nominations and allowing nominees to submit these at a later stage. This applies mainly to documents that have to be issued by officials and might be delayed.

- **Media and freedom of expression:** In response to recommendations made in 2011 regulatory improvements were introduced to ensure freedom of expression and freedom of information in the 2014 elections, which conformed to international and African standards as set out in relevant instruments.
- **Voting process:** The number of voting centres that opened on time was higher for the presidential election than it had been during the earlier legislative elections. There was also an improvement in ensuring the secrecy of the vote.
- **Voting officials' skills:** It was noted during the 2011 elections that voting and counting officials needed better training. As a result, for the 2014 elections the EMB doubled its efforts and designed more efficient training programmes. Most observers noted an improvement in the voting and counting operations.
- **Handicapped voters:** Observers noted that in 2011 efforts to enable handicapped voters, mainly blind voters, to vote were not systematic. For the 2014 presidential election the EMB issued braille ballot papers.
- **Tabulation of results:** The EMB failed to address the recommendation that access by party agents and observers to the tabulation and aggregation of results processes should be improved, arguing that the available facilities made that impossible. However, in the 2014 elections efforts were made to conduct these processes mostly in large open spaces that enabled observation from a distance.

In view of the fact that the independent EMB is a novelty in Tunisia and given the economic conditions in the country in this phase of democratic consolidation, it is possible to conclude that the Tunisian EMB and other authorities are taking on board most of the recommendations made by observer missions. More technical and, possibly, financial support are needed to enhance the capacity of the EMB to implement all recommendations fully.

## CONCLUSION

Tunisia, a small country, is taking the lead in North Africa in establishing a functional democracy and making a remarkable effort to consolidate democratic governance in a region that has, for many decades, suffered from dictatorships and authoritarian regimes. It is still undergoing a challenging process of transition towards democracy that needs to be supported to ensure its success. As a member of the AU it is trying to play an active role in African institutions and African efforts to enhance

democratic governance on the continent. This has been repeatedly stressed by the Tunisian authorities, to the point that the former Tunisian president, Moncef Marzouki, officially endorsed and presented to the AU his initiative to establish an International Constitutional Court.

The AU fielded a short-term observation mission to the 2011 elections and a long-term one to the 2014 elections in Tunisia. On both occasions these EOMs made an important contribution to supporting the democratisation process, a clear indication of the AU's support for Tunisia's efforts to build a democratic governance system.

Despite the fact that in 2011 the AUEOM was only able to observe the election day and make some initial recommendations, these were seriously considered by the Tunisian EMB and other authorities and some improvements were made in the 2014 elections.

The AUEOM for the 2014 elections was more solid and included a long-term team for both the legislative election and the first round of the presidential election, but its larger short-term team was only deployed for the legislative elections and the second round of the presidential election. Therefore, its report was not as comprehensive as it could have been.

On this occasion the AUEOM confirmed that it had full and free access to all aspects of the process and was able to make important observations and recommendations. The Tunisian EMB, convinced as it is of the relevance of such recommendations and their impact on improving the integrity of elections, continues to work on improvements that, *inter alia*, are aimed at addressing the recommendations, most of which have been highlighted in this chapter.

Because the Tunisian legal framework gives EOMs full access to the electoral processes and enables them to issue their observations and make recommendations freely it is important for the AU to continue to support the country's efforts, including by deploying EOMs to elections. However, these EOMs should be better structured and should coordinate better with domestic observers (as demanded by some domestic observer groups). This would enhance the AUEOM's ability to ensure a more in-depth assessment of the processes and their integrity and thus issue more relevant recommendations that address all weaknesses.

As this case study has shown, although the AUEOMs did address some of the main weaknesses and the more obvious ones, they were not able to ensure that their observations covered all aspects of the process, which may have had an impact on the integrity of the elections. Campaign funding, voter registration and boundary delimitation are but some of those aspects where increased efforts could and should be made by the AUEOMs to further confirm their added value and better contribute to enhancing the integrity of elections in Tunisia.

***Gilbert M Khadiagala***

Based on the case study written by ***Adams Godfrey Ramogi Oloo***

## **INTRODUCTION**

The environment for electoral integrity in East Africa has been shaped primarily by the experiments in democratic pluralism that have become a major feature of politics since the early 1990s. The momentum for electoral competition ushered in a period of political transformation that still informs the processes of improving election administration and management. More critically, most countries in East Africa have experimented with constitutional reforms that have strengthened the broader context in which elections have been conducted. Ultimately, electoral integrity is a product of constitutional reforms; by the same token, however, the stronger the mechanisms for electoral integrity, the sturdier the constitutional rules that, over time, underwrite such integrity.

Competitive elections started in Kenya in 1992 following the decision of the then ruling party, the Kenya African National Union (Kanu), to permit alternative parties. Under intense pressure from local and international sources Kanu reluctantly conceded to political pluralism against a backdrop of dissension and acrimony.

Since the 1992 elections election observer missions (EOMs) have been a central component of the electoral process, partly because of the significant role of donors in funding Kenya's elections and, more recently, the growing role of regional institutions such as the African Union (AU), the East African Community (EAC), and the Common Market

for Eastern and Southern Africa (COMESA) in election monitoring. The convergence of international and regional actors around elections has, in turn, created an infrastructure of EOMs that includes both local and international observers.

Although opposition parties were able to contest the 1992 and 1997 elections, profound divisions among them, as well as the existing power imbalances, guaranteed that Kanu won these elections. The main issue raised in almost all the EOM reports was that while Kenya had entered a phase of electoral pluralism the climate for free and fair elections barely existed because of the lack of significant changes to the rules in terms of which elections were conducted. In both the 1992 and 1997 elections, for instance, there were concerns about the manipulation of existing institutions, notably the electoral management body (EMB), the use of security forces in the administration of elections and, more ominously, widespread electoral violence in opposition strongholds that disenfranchised large portions of the electorate. The Kenyan government made some efforts to address some of these concerns through minor electoral reforms before the 1997 elections, but this did not change the fortunes of opposition parties.

A united opposition was instrumental in the defeat of Kanu in the 2002 elections, creating more room for and confidence among opposition forces. Both local and international election observers lauded the 2002 elections as presaging the consolidation of multiparty politics. Those elections also coincided with widespread pressure for constitutional changes to strengthen the democratic dispensation.

Despite this optimism, the 2007 elections turned out to be a major blot on Kenya's political landscape, characterised as they were by electoral violence that most observers attributed to failures in the rules for administering the elections. The 2007 elections, in fact, epitomised the reversals in an electoral integrity that had been carefully crafted since the 1990s. By the 2013 elections Kenya had made progress towards constitutional reforms, reflected in the 2010 Constitution, which put in place all the elements that are key to gauging electoral integrity.

## **INTERNATIONAL COMMITMENTS AND LEGAL FRAMEWORKS**

Electoral mechanisms in Kenya have been inspired by international and continental instruments and norms. The 2010 Constitution provides that the general rules of international law shall form part of the laws of Kenya. Thus most of the international instruments that Kenya has ratified, such as the 1948 Universal Declaration of Human Rights, the 1966 International Covenant on Civil and Political Rights, the 1965 Convention on the Elimination of All Forms of Racial Discrimination, the 1979 Convention on the Elimination of All Forms of Discrimination Against Women and the 2008 Convention on the Rights of Persons with Disabilities, are considered part of the domestic legal regime and enforceable by Kenyan courts.

At the continental level Kenya is a signatory to the 1981 African Charter on Human and People's Rights, the 2002 Constitutive Act of the African Union (AU) and the 2002 African Declaration on Principles Governing Democratic Elections. Kenya has also signed but not ratified the 2007 African Charter for Democracy, Elections, and Governance. As a member of the East African Community Kenya has signed up to the EAC Principles for Election Observation and Evaluation which establish common standards to undergird the conduct of elections.

International and regional frameworks establish expectations and benchmarks to measure adherence to regular, periodic and credible elections in East Africa, but there are severe limits to their incorporation in domestic practices. As a result, the translation of international and continental norms in electoral practices in Kenya has been slow, selective and sporadic. This is the picture that confronts the analysis of electoral integrity in Kenya: although the legal framework is theoretically geared to strengthen the integrity of elections, adherence to these normative frameworks is selective and, for the most part, there has not been widespread acceptance of international obligations. This is reflected in various phases of the electoral cycles in the country.

### **THREATS TO ELECTORAL INTEGRITY**

According to the evolving EISA Electoral Integrity Index, the significant aspects of the electoral cycle for measuring electoral integrity are: the legal frameworks around elections; voter registration; election management; polling, counting and management of election results; and appeals. Kenya has established a sound legal framework for the conduct of elections, including, among others, constitutional guarantees of basic freedoms and rights, the establishment of EMBs and the emergence of a competitive multiparty environment. However, despite these measures, threats to electoral integrity abound at all levels of the electoral process in the country.

The legal framework is underpinned by the guiding principles of the freedom of citizens to participate in politics, gender equity and universal suffrage. Despite these progressive elements, which seek to enhance electoral participation and representation, there are constitutional loopholes that undermine representation and equity. For instance, the essential pillars of representation – national legislative constituencies and country wards – vary considerably in numbers, depriving some regions of equal representation.

In the 2013 elections boundary delimitation became a highly contentious process, resulting in more than 125 formal court challenges; the courts, in turn, ruled in favour of the Independent Electoral and Boundaries Commission (IEBC) and approved the changes. Equally, while the Constitution guarantees broad representation of diverse interests and political groups via affirmative action principles for women and persons with disabilities, discriminatory practices still persist. For instance, the Constitution does not provide a clear

means through which the gender rule can be complied with in the National Assembly. In addition, some ethnic minorities remain outside the system of representation.

The voter registration phase has also faced numerous problems that have affected the integrity of elections. Registration for a national identity card and voter registration are carried out by separate institutions with very limited harmonisation. This often results in the disenfranchisement of young people who are unable to obtain an identity card in time for them to register.

In both the 2007 and 2013 elections there was widespread politicisation of the issuing of national identity cards to deny certain groups the ability to participate in the electoral process. Areas that produced the winning majorities – Rift Valley and Central Kenya – had disproportionately higher numbers of registered voters than areas dominated by opposition parties. In the lead-up to the March 2013 elections the voter registration period was limited to a mere 30 days because of delays in procuring biometric voter registration (BVR) kits; the register was not officially complete until just ten days before election day. As a result, just two-thirds of the eligible voters were registered.

Despite the revamping of the IEBC, its impartiality has come under scrutiny and been criticised in recent elections. Most observers hoped that it would gain credibility, particularly after the previous Electoral Commission of Kenya (ECK) plunged the country into electoral violence by bungling the results of the 2007 elections. In the 2013 elections the IEBC faced a host of challenges ranging from problems procuring election materials to an inability to administer the elections impartially.

Some of the criticisms from the opposition revolved around allegations that the IEBC had been infiltrated by individuals sympathetic to the government. Furthermore, concerns about electoral administration focused on the IEBC's flawed use of technology, the failure to register voters continuously and impartially, the flawed delimitation of boundaries and the inadequate enforcement of legal requirements for party nominations.

With respect to technological failures, Kenya's political leaders had insisted that the IEBC needed not only to adopt the BVR but also use electronic voter identification devices (EVIDs) for polling stations and electronic transmission of results systems (ETRS). But procuring these systems and getting them to operate led to delays and technical failures that undermined the elections. When the BVR failed to work the IEBC resorted to a paper registry. On election day the EVIDs in roughly half of the polling stations failed, raising the prospect of potential double voting. In addition, given the problems with the BVRs, there was no reliable means of checking registered citizens and confirming who and how many had voted.

Similarly, campaign financing remains a contentious issue in Kenya. For the most part, incumbent parties and coalitions have significant resources, at the expense of their

opponents. With the increasing demands from voters for money and other resources, candidates are expected to have enormous resources to be competitive. This inevitably tilts the playing field toward parties that can finance their candidates.

Although there have been some efforts to craft campaign finance laws in Kenya, in both the 2007 and 2013 general elections these laws made no difference and campaign financing was unregulated. In the 2013 elections, in particular, campaign finance legislation was not enacted prior to the elections and thus there was no restriction on the use of money. Moreover, the legal provisions for the use of state resources were wantonly violated.

Flaws in electoral governance and administration in Kenya have, in the last elections, caused acrimony, mistrust and electoral violence. In the much-publicised elections of 2007 system failures around counting and results management led to the opposition rejecting the result and the onset of electoral violence.

In the 2013 elections the system of tallying, tabulating, recording, transmitting and announcing results was poorly executed, particularly as the introduction of new technologies failed to increase confidence in the electoral process. Electoral violence remains a threat to electoral integrity in Kenya and there are fears that the manipulation of new technologies may further force aggrieved parties to resort to violence.

## **TRENDS IN THE ASSESSMENT OF ELECTORAL INTEGRITY**

Pan-African EOMs have operated in the changing continental context of norms of democracy and good governance. The AU and regional economic communities (RECs) have played an increasingly larger role in boosting the environment for constitutionalism and democratisation, with significant implications for electoral integrity. Thus, elections are observed in the wider context of acceptance of the centrality of competitive elections, respect for opposition groups and adherence to human rights.

Despite the optimism surrounding the solidity of continental standards for democracy and elections, however, election observation remains mired in lingering norms of sovereignty that prevent consistent application of common standards, self-censorship by pan-African groups with regard to acknowledging electoral abuses by governments and a dearth of resources, which precludes effective monitoring across the electoral cycle. External actors and EOMs also retain disproportionate power in election monitoring in Africa, sometimes at the expense of pan-African bodies.

Pan-African EOMs, like their counterparts from elsewhere, have reinforced existing best practices and rules found in international and regional instruments. In drawing on these instruments they have allowed states to take more responsibility for living up to their international obligations. Pan-African EOMs, therefore, have played a significant role in domesticating international norms and reinforcing universal best practices.



Consistent with these practices is the focus of most of the pan-African EOMs on building strong institutions for electoral management, particularly the role of EMBs and post-electoral mechanisms of redress. In 2007 the AU did not send observers to the election, depriving the body of an authentic report of its own. For the 2013 elections the AU fielded a mission which, for the first time, adopted a long-term observation methodology. The AUEOM made a number of recommendations in key areas:

- Kenya should adhere to the AU guidelines on elections that stipulate timely electoral reforms or amendments (at least six months prior to the election) in order not to jeopardise the IEBC's planning and conduct of elections;
- A comprehensive legal framework for party and campaign finance regulations should be passed into law by the next Parliament to ensure probity, transparency and fairness;
- A comprehensive framework for media regulation should be enacted to ensure fair and balanced coverage of the electoral process and the protection of media practitioners from arbitrary restrictions;
- In view of concerns about the flaws in technology the IEBC should establish clear check-and-balance guidelines to secure the integrity of the use of biometric, information and communications technology and manual devices interchangeably in voting and results administration;
- there should also be adequate and extensive testing of the methods over a sustained period;
- The IEBC should make adequate provision for back-up lighting at polling stations in future elections; it should also provide more polling centres;
- The IEBC should strengthen voter education initiatives for future elections;
- The IEBC should provide for registration of voters in the diaspora and conduct of elections for registered voters outside East Africa; and
- The IEBC should make arrangements for a special voting day for officials who are required to be on duty on election day.

Most of these recommendations reflected a cautious reading of the 2013 elections, a perspective that was inspired by the radical reforms Kenya had made since the 2007 elections and the absence of electoral violence. Moreover, with opposition parties resorting to legal redress to contest their grievances, the AUEOM report was able to provide a laudatory picture of Kenya, depicting increasing confidence in the mechanisms of managing electoral disputes, again a far cry from the circumstances of 2007.

## IMPLEMENTATION OF RECOMMENDATIONS MADE BY AFRICAN EOMS

After the 2007 and 2013 elections African EOMs made a wealth of electoral reform recommendations that are not very different from those made by local and foreign EOMs. It is also not very clear whether in adopting (or failing to adopt) these recommendations Kenya discriminates between African and international recommendations. For this reason the most accurate reading of the domestication of EOM reports hinges on the political willingness, institutional capacity and pressures brought by diverse local, regional and international actors.

After the 2007 elections various bodies, in particular, the Panel of Eminent Personalities (PEAP, led by Kofi Annan) and the Kriegler Commission, made significant recommendations that have constituted the bedrock of most of the institutional reforms around elections and governance. Specifically, most of these reports influenced national discourse on constitutional changes that resulted in the 2010 Constitution, which, as stated above, laid the foundation for electoral reforms, including the establishment of the IEBC, the broadening of the franchise and a new infrastructure for post-election dispute resolution.

All these reforms affected the conduct and quality of the 2013 elections. With regard to the AUEOM's 2013 recommendations, the government has made efforts to put in place legislation on campaign financing that addresses the concerns raised by the observers. But in the lead-up to the 2017 elections there is no momentum to implement the rest of the recommendations, probably because there is a stalemate among the parties in Kenya over the role of the current IEBC in the next elections.

In the immediate aftermath of the 2013 elections the IEBC promised to hold a series of stakeholder consultations aimed at identifying major reforms, particularly around voter registration, but these initiatives failed to materialise in the face of growing acrimony between the IEBC and government on one hand and major opposition parties on the other.

While opposition parties have questioned the ability of the IEBC to be an impartial arbiter of the next elections and have called for its disbandment, the government has refused to countenance any discussion of the future of the commission. A compromise was reached in July 2016 that paves the way for the resignation of the members of the current IEBC and the appointment of a new team. This compromise has partly resolved the stalemate that threatened to torpedo reforms and deepen electoral integrity as the country prepares for the 2017 elections.

## CONCLUSION

Profound lessons from the political convulsions that stemmed from Kenya's contested elections of 2007 have shaped its recent electoral processes. These

events have influenced the character and trajectory of institutional reforms of constitutional frameworks, electoral management bodies and key practices and patterns in the electoral cycle.

Electoral reforms and innovations have established structures that potentially strengthen electoral integrity and improve the legitimacy of overall electoral governance. By the same token, however, Kenya still confronts impediments to electoral quality and integrity that arise from a legacy of ethnic and regional fragmentation, weak institutions and reversals in constitutional consolidation. These two contrasting trends and dynamics constitute the wider environment for an analysis of issues of electoral integrity in the country.

Institutional reforms that promote participation and inclusion are still new and evolving, but are critical to boosting electoral integrity in the future. Recent elections demonstrate that major actors involved in election management are striving to improve current systems against a backdrop of enormous constraints. Forging national consensus and political will are ways to overcome these constraints and correct past electoral flaws. The experiences in Kenya reveal that measures to strengthen electoral integrity hinge on the sturdiness of the constitutional frameworks which have underwritten political reforms.

Despite the existence of elaborate rules for electoral integrity, their slow implementation plus the persistence of mistrust still contribute to a lack of trust in and dissension about electoral outcomes. Kenya has some of the best institutional arrangements for consolidating electoral integrity, thanks to international and local pressures that forced vital changes in the organisation of politics and the administration of competitive politics.

Kenya has also been both amenable and vulnerable to international entreaties about introducing electoral reforms that have made a difference to strengthening existing rules and bringing in new ones. For instance, it adopted new technologies to overcome problems in voter registration and vote counting but also recognised that, ultimately, technology functions in political contexts that can increase disenfranchisement. Overambitious wholesale introduction of technology in almost every aspect of the elections in the name of integrity (even if well intended to correct the past) became the very Achilles heels of the integrity of the 2013 elections. This is an issue that will need to be addressed in the lead-up to the 2017 elections.

More importantly, electoral integrity in Kenya faces the profound challenges of elite disagreements about neutral rules for political competition, the resurgence of zero-sum attitudes to political reforms and a loss of confidence by the population in political leadership and political processes. In recent years conflicts between the

government and opposition parties about revisions to the current Constitution have escalated, particularly as opposition parties have contested the broad rules that govern competition.

In an attempt to force these revisions the opposition parties started collecting signatures in preparation for a referendum on some provisions of the Constitution, but this movement, dubbed *Okoa Kenya* (Save Kenya), was nipped in the bud in mid-March 2016 after the IEBC declared that the number of valid voters' signatures presented fell short of the one million mark. The IEBC claimed that only 891 598 signatures of the 1.6 million submitted by the opposition were found to be authentic.

This move increased the tensions between the IEBC and the opposition as the latter claimed that the government had had a hand in the decision to reject the referendum move. Adding to the deteriorating environment for the upcoming elections are hints that the ruling coalition has influenced the voter registration process to the disadvantage of opposition areas.

One of the major threats to electoral integrity in the future is the loss of confidence in the IEBC following a parliamentary committee recommendation for its disbandment as a result of malpractices committed during the procurement of the BVR kits that malfunctioned during the 2013 general election. In March 2016 Parliament's Public Accounts Committee (PAC) recommended criminal investigations of all electoral commissioners over alleged procurement malpractices and proposed that the commission should be reconstituted to comprise three members to serve on a part-time basis. Now that the government and opposition groups have agreed to disband the IEBC there is hope that the process of appointing a new one will be smooth and may pave the way for a much more credible body that will run the 2017 elections

Pan-African EOMs, alongside other local and international actors, have been major players in the reform processes, helping to prescribe norms and rules that draw on universal best practices around electoral integrity. They do not, however, have a comparative advantage over other EOMs in the prescriptive arena, in fact, it is important to see their role as complementing and supplementing broad international efforts and pressures that contribute to institutional change.

In addition, like other actors, pan-African EOMs are constrained by the logic of sovereignty, elite unwillingness to embrace international norms and an absence of local skills that often hampers the domestication of recommendations from outsiders.

Nonetheless, pan-African EOMs need to be acknowledged for their significant, though modest, efforts to contribute to the mobilisation of pressures, practices

and resources that may strengthen electoral integrity. With Kenya having held competitive elections since the early 1990s strong lessons have emerged about how to conduct credible elections. These elections have furnished sufficient institutional repertoire and memory to enhance the integrity of future elections.

***Gilbert M. Khadiagala***

Based on the case study written by ***Maleine Amadou Niang***

## **INTRODUCTION**

Questions of electoral integrity in Burundi must be appraised against the backdrop of the dual and difficult legacies of civil conflict and weak institutions. Ultimately, electoral institutions mirror and reflect the tensions and contestations that pervade the broader Burundian political landscape.

Burundi's transition from a single-party to a multiparty system created a protracted civil conflict that engulfed the country from October 1993 when the democratically-elected Hutu president was assassinated by the Tutsi military. The ensuing war led to the intervention of regional and international actors under the auspices of the Regional Initiative on Burundi (RIB), the African Union Mission in Burundi (AMIB) and the United Nations Operation in Burundi (ONUB), which was succeeded by the United Nations Integrated Office in Burundi (BINUB) and the United Nations Office in Burundi (BNUB).

These actors, in turn, played significant roles in mediating the end of the civil war. After almost 15 years of regional and international engagement Burundi returned to constitutional normalcy through the Arusha Agreement for Peace and Reconciliation of 20 August 2000. This agreement allowed for power-sharing arrangements between the Hutu and Tutsi whereby the Hutu held 60% of government and parliamentary positions

and the Tutsi obtained 40%. The army was also reorganised on the basis of an equal number of Hutu and Tutsi.

The constitutional compromise prepared the country for the 2005 elections, which were organised largely by the United Nations and led to the election of President Pierre Nkurunziza. Hailed as the elections that inaugurated national reconciliation and constitutional stability, these elections were also a milestone because they included many layers of government, from national to local levels. In the lead-up to the 2010 elections, the ONUB and the newly-created UN Peacebuilding Commission exerted pressure on the government to establish a roadmap for holding the elections in a timely, well-prepared, and transparent manner. The commission recommended reforms to the electoral framework to reflect the realities of pluralism.

But the 2010 elections were boycotted by most of the opposition parties because of charges that the ruling National Council for the Defense of Democracy-Forces for the Defense of Democracy (CNDD-FDD) had started to reverse Arusha's constitutional gains. With limited UN participation in these elections, the CNDD-FDD seemed ready to run roughshod over past agreements. These major constitutional setbacks were confirmed in 2015, when President Nkurunziza ran for a controversial third term.

Efforts by regional actors to mediate the electoral stand-off between the government and opposition parties collapsed, leading to the controversial elections in which most opposition parties did not participate, preparing the ground for the current constitutional crisis and political instability.

As Burundi has descended into violence new armed groups have emerged calling for the resignation of President Nkurunziza as a preliminary step towards negotiations for the return to the principles of the 2005 Constitution. Regional and international actors have also scrambled to convince the government to accept the deployment of peacekeepers to arrest the worsening political situation.

## **INTERNATIONAL COMMITMENTS AND LEGAL FRAMEWORKS**

Burundi is a signatory to the 1948 Universal Declaration of Human Rights, the 1966 International Covenant on Civil and Political Rights, the 1965 Convention on the Elimination of All Forms of Racial Discrimination, the 1979 Convention on the Elimination of All Forms of Discrimination Against Women and the 1953 Convention on the Political Rights of Women. Article 19 of the 2005 Constitution provides that: 'The rights and duties proclaimed and guaranteed, among others, by the Universal Declaration of Human Rights, the International Covenants on Human Rights, the African Charter on Human and Peoples Rights, the Convention on the Elimination of all Forms of Racial Discrimination against Women and the Convention on the Rights of the Child are an integral part of the constitution of the

Republic of Burundi.' Treaties other than those specifically domesticated by the Constitution require ratification and domestication. As a member of the East African Community (EAC), Burundi is a signatory to the 2012 EAC Principles for Election Observation and Evaluation.

### THREATS TO ELECTORAL INTEGRITY

Threats to electoral integrity in Burundi stem primarily from a political and legal context in which key government actors have selectively and slowly implemented the provisions embodied in the 2005 Constitution. This sluggishness in implementation has, in turn, affected the ability of electoral institutions to grow and provide meaningful representation and participation for the majority of the population.

The Arusha Peace Accord put in place adequate power-sharing arrangements, but as the political situation has deteriorated over the years, major institutions have become much weaker and incapable of providing the conditions for electoral integrity. Similarly, although the Constitution provides for fundamental rights and freedoms which are important to participation in the electoral process, since 2010 blatant violations of fundamental civil and political rights have limited citizen participation in the process.

Boundary delimitation processes have been criticised as arbitrary and discriminatory, with constituencies in opposition strongholds reduced to disenfranchise opposition supporters. Equally, Burundi has an outdated manual voter registration system where the names of voters are entered in pre-printed books. At the end of the registration period all records are returned to the Data Processing Centre in Bujumbura. This system lacks transparency and is prone to abuse. Compounding these problems is the prohibitively high cost of obtaining the national identity card, issued by the Ministry of the Interior, which is the main requirement for issuing a voting card. The issue emerged during the voter registration process for the 2010 elections when a significant number of potential voters could not afford the costs.

The United Nations Development Programme (UNDP) agreed to provide funding which enabled free identity cards to be distributed. This was an important attempt to allay opposition claims that the ruling party was only distributing cards to its supporters. In preparation for the 2015 elections, the Independent National Electoral Commission (CENI), the key institution for electoral administration and governance, conducted the first voter registration exercise between November and December 2014 during which those who wished to register were issued with a *recepisse* (waiting slip) and were later to be issued with a voter's card. However, by May 2015 (the initial date of parliamentary and communal elections), most of the voter's cards had not been distributed, resulting in the disenfranchisement of a large segment of the population.

Article 89 of the 2005 Constitution defines the CENI's roles. Among these are:



- to organise national level, communes and local elections;
- to ensure that these elections are free, fair and transparent;
- to proclaim the provisional results of the elections within the time defined by the law;
- to hear complaints concerning compliance with the electoral rules and to take action pursuant to them;
- to ensure that electoral campaigns do not encourage ethnic violence or violate the Constitution; and
- to ensure respect for the provisions of the Constitution relating to ethnicity and gender and to address disputes in this respect.

The CENI is composed of five people appointed by presidential decree after the members have been approved by a 75% majority of the National Assembly and the Senate. They serve for three terms but their terms can be extended. Although the CENI enjoys constitutional independence it is funded by the government and is required to provide the president and the minister of the interior with an annual financial report.

Prior to the 2010 elections the CENI suffered from a serious crisis of confidence on the part of stakeholders, especially the opposition parties. When, in December 2008, President Nkurunziza convened an extraordinary session of Parliament to approve his list of five members neither chamber of Parliament endorsed it, citing a lack of consultation and inclusiveness in the selection. It was only after negotiations interspersed with local and international pressures that both chambers finally approved the presidential list in February 2009. President Nkurunziza issued a decree at the end of March 2009 officially appointing the members Parliament had approved.

Despite the consensus reached on an inclusive CENI, the period before the 2010 elections was marked by political intolerance and violence as local authorities and groups linked to the ruling party disrupted the activities of opposition parties. In the face of the deterioration in the political climate 12 opposition parties under the umbrella of the Democratic Alliance for Change (Alliance démocratique pour le changement-Ikibiri, ADC-Ikibiri) boycotted the presidential elections in June 2010, alleging massive rigging in the first set of communal elections in May 2010.

In the 2015 presidential elections the impartiality of the CENI was challenged, particularly after two of its members (the vice-president and one commissioner) resigned and went into exile, charging inordinate government interference in its work. The fact that opposition parties boycotted both the 2010 and 2015 elections is an indictment of the CENI's inability to guarantee a level playing field for all the parties.

Legislation provides for public financing of political parties in proportion to their seats in the National Assembly but in reality this provision has not been implemented. In the

2010 and 2015 elections the government did not budget for the financing of opposition parties. During the 2010 elections most of the disputes throughout the electoral cycle revolved around opposition claims that the CNDD-FDD was exploiting the power of incumbency to disadvantage its opponents; violent intimidation, arrests, restrictions on movement of opposition parties; violent inter-party conflict; political intolerance and violent rhetoric and obstruction of opposition rallies.

Similarly, in the lead-up to the 2015 elections electoral violence became one of the major threats to electoral integrity. Youth militias linked to the ruling party intimidated opposition parties throughout the electoral cycle. The militarisation of the elections destroyed any semblance of electoral credibility, contributing to the rise of political violence and the return to civil conflict.

### TRENDS IN THE ASSESSMENT OF ELECTORAL INTEGRITY

Neither the AU nor the EAC sent observers to Burundi's 2010 presidential elections, in part because of the opposition boycott of the elections. The EAC did, however, send observers to the July 2010 legislative elections. It recommended the following:

- The CENI should explore ways of using venues other than schools as voting centres;
- The CENI should explore ways of using one ballot paper containing the names of all the candidates;
- There is a need to address the human resource constraints in the national, provincial and communal electoral commission offices to have them adequately manned to address emergencies during elections;
- There is a need to address the financial constraints of political parties to empower them to reach the people; and
- There is a need to design mechanisms for promoting civic education and to encourage all Burundians to participate actively in all the political processes.

In the 2015 parliamentary and presidential elections the AU stood down its observers, maintaining that the necessary conditions had not been met for the organisation of free, fair, transparent and credible parliamentary elections. In doing so, it joined the UN and other organisations. The EAC, however, sent an observer mission which decried the conditions that led to the opposition boycotting the election and pointed out that the electoral process fell short of the principles and standards for free, fair, transparent, and credible elections as stipulated in international, continental, and EAC norms.

The EACOM made the following recommendations, urging the government, Parliament, and CENI to:

- Pursue an all-inclusive and honest dialogue to find a sustainable solution to the political impasse prevailing in Burundi;
- Guarantee the peace and security of all citizens;
- Undertake measures to ensure that law and order is maintained in a manner that upholds the respect for human rights;
- Ensure adequate funding for the conduct of elections;
- Undertake measures to ensure the safe return and reintegration of refugees;
- Undertake capacity-building measures to strengthen and enhance the efficiency of governance institutions to promote sustainable democratic development;
- Enhance the capacity of security agencies to respect the fundamental human rights of all citizens while maintaining law and order;
- Pursue legal and institutional reforms to safeguard the independence of the CENI and the judiciary;
- Delink the registration of political parties from the Ministry of the Interior;
- Consider merging voter registration and the issuing of voter cards in order to enhance operational efficiency and minimise the challenges experienced during the 2015 electoral process; and
- Enhance voter education in collaboration with relevant stakeholders to ensure public awareness and participation in electoral processes.

### **IMPLEMENTATION OF RECOMMENDATIONS MADE BY AFRICAN EOMS**

The CENI, alongside the UNDP, embarked on various initiatives to address some of the recommendations emanating from the EACEOM's and other international reports on the 2010 elections. Specifically, responding to the need to address human resource constraints in the offices of national, provincial and communal commissions, the CENI started training its staff to strengthen the capacities of these bodies.

Similarly, to meet the objective of enhancing civic education to help all stakeholders find peaceful approaches to resolving political problems, the CENI and civil society organisations launched several programmes in preparation for the 2015 elections. These programmes were interrupted by the electoral stand-off and the curtailment of donor funding for the elections. One of the recommendations that was implemented prior to the 2015 elections was the introduction of a single ballot paper to replace the multiple ballot system. This measure, introduced through the amendment of the Electoral Code in 2014, enhanced the secrecy of the ballot as well as the overall cost of the administration of elections.

## CONCLUSION

Burundi's achievements in constitutional engineering and the consolidation of a peaceful transition to plural democracy are on the verge of collapse. In the aftermath of the 2005 elections there was optimism that power-sharing arrangements would bring political stability and amity and would help consolidate institutions for electoral integrity. However, the 2010 elections showed that the government was beginning to renege on the full implementation of constitutional rules.

These setbacks were exacerbated in the lead-up to the 2015 elections when a steady decline in national confidence in the Constitution had an adverse impact on the conditions necessary for electoral integrity. The long period of conflict and violence in Burundi has contributed to the slow pace of democratisation, which has, in turn, affected the evolution of an electoral culture and institutions for competition.

As a post-conflict country Burundi made progress in creating a constitutional framework for political stability and the reduction of violence, but it needed more time to implement reforms that would promote electoral competition. Since 2015 there has been a troubling diminution in political space and the spirit of consensus that animated the peace consolidation process. If the country lapses further into civil conflict the energies expended by regional and international actors on stabilisation and constitution-building will have been wasted.

# 6

## MOZAMBIQUE

### **Guilherme João Baptista Mbilana**

#### **INTRODUCTION**

When it gained its independence in 1975 Mozambique was ruled by one party, the Front for the Liberation of Mozambique (Frelimo). A year later, however, the country was plunged into a 16-year civil war when the newly formed and externally supported Mozambique National Resistance (Renamo) movement began to contest the political space.

In 1992 the two parties entered into a General Peace Agreement, paving the way for multiparty elections. Since 1994 the country has held five consecutive parliamentary and presidential elections, two provincial assembly elections and four municipal elections.

However, the reintroduction of multiparty politics was not preceded by the depoliticisation of state institutions, nor was it accompanied by genuine political will to reform institutions and systems. As a result, elections have generally been characterised by violent inter-party conflicts, particularly between the ruling Frelimo party and its main rival, Renamo. Renamo has refused to disarm and this has led to frequent clashes with the state security forces, including in the period leading up to the 2014 elections.

The presidential and parliamentary elections, particularly those in 2004, 2009 and 2014, have been dominated by Frelimo. However, the gap in electoral support between Frelimo and Renamo has not always been consistent. For instance, in the 2004 presidential election the Frelimo candidate, Armando Guebuza, who was running for the first time,

replacing President Joaquim Chissano, who had served two terms, obtained 63.7% of valid votes – more than double the 31.7% won by his Renamo opponent, Afonso Dhlakama. In the parliamentary election Frelimo won 62% of the votes, giving it 160 seats, while the Renamo-Electoral Union coalition won 29.7%, which gave it 90 of the 250 seats in the Mozambican Parliament, the Assembly of the Republic.

The difference between the two presidential candidates (200 000 votes) in the 1999 elections was less than the number of invalidated votes, revealing a lack of transparency in the tabulation process. This lack of transparency remains one of the major sources of the mistrust of the election management body in the country, the National Electoral Commission (CNE).

Following the presidential and parliamentary elections in October 2009 Frelimo consolidated its hegemony over Mozambique's political landscape. In the presidential election Guebuza was re-elected with 75% of the valid votes, while Dhlakama won 16%. In the parliamentary election Frelimo secured 191 seats, Renamo 51 and the Mozambique Democratic Movement (MDM), a party that had emerged from the dissolution of a coalition of some minority parties with Renamo, won eight seats.

Frelimo's dominance was, however, challenged in the 2014 elections. As in 2004 the party nominated a new candidate to succeed the outgoing president. Filipe Nyusi won the presidential election with 57% while Dhlakama won 36.6%. The third candidate, Daviz Simango of the MDM, took 6.3% of the vote. In the parliamentary elections Frelimo secured a total of 144 seats against 89 for Renamo and 17 for the MDM. The fierce campaign that preceded these elections aroused considerable local and international interest and created uncertainty about the results.

## INTERNATIONAL COMMITMENTS AND LEGAL FRAMEWORK

Mozambique has acceded to a number of regional and international instruments which assure fundamental rights and participation in politics and elections. It has largely complied with these instruments, which include:

- The African Charter on Democracy, Elections and Governance (2007) (not ratified);
- The OAU/AU Declaration on Principles Governing Democratic Elections in Africa (2002);
- The Convention on the Elimination of all Forms of Discrimination against Women (1979);
- The African Charter on Human and People's Rights (1981);
- The Universal Declaration of Human Rights (1948);
- The International Pact on Civic and Political Rights (1966); and
- The International Covenant on Civil and Political Rights (1976).

The legal framework in Mozambique guarantees fundamental rights and civil liberties for all citizens. Article 73 of the Constitution of Mozambique 2004 protects the right of Mozambicans to choose their leaders through universal, direct, secret and periodic suffrage, through referenda on major national issues and through permanent democratic participation in government affairs.

Extensive reforms brought about a number of changes in the legal framework for elections but it is debatable whether or not they have contributed to the promotion of more credible elections. The revised laws include Law No 8/2013 on the election of the president and the Assembly of the Republic; Law No 4/2013 on the election of the provincial assemblies; Law No 5/2013, which pertains to the registration of voters, and Law No 6/2013, which governs the CNE.

The changes brought about by these laws include mainly: increased representation of parliamentary parties in all structures of electoral administration, from national to polling station levels; abbreviating the complaints and appeals process against results, with disputes going directly to the Constitutional Council from the district level courts; the sharing of electronic voters' roll with political parties 45 days before the elections to ensure transparency and recounts of ballot papers at district level if this is demanded by political parties.

## **THREATS TO ELECTORAL INTEGRITY**

While African inter-governmental bodies such as the Southern African Development Community (SADC) and the African Union (AU) have given elections in Mozambique a clean bill of health (although these bodies only observed the more recent elections: either 2014 only or 2009 and 2014) considerable criticism came from non-governmental organisations such as the Electoral Institute for Sustainable Democracy in Africa (EISA) and The Carter Center and non-African inter-governmental bodies such as the European Union (EU) and the Commonwealth, which have observed elections in Mozambique since 1994 or 1999. Three aspects have generally been regarded as lacking integrity. These are the composition of the CNE, election campaigns and the transparency of the tabulation of results and management of the results process.

### ***The CNE***

The composition of the CNE is highly politicised because it has, since 1994, included appointees of two belligerent parties, Frelimo and Renamo, contrary to the constitutional provision for an impartial electoral management body (EMB). Each of these parties has insisted on being represented on the electoral commission, leading to its bloated structure. There are 17 commissioners – five from Frelimo, four from Renamo and one from the MDM (in compliance with a 50:50 ratio where Frelimo has 50% and the opposition parties

another 50%). The rest, including the chairperson, come from civil society organisations. The two deputy chairpersons are Frelimo and Renamo representatives.

The Secretariat for the Technical Administration of Elections (STAE) has nine Frelimo, eight Renamo and one MDM representative. At provincial level, the STAE has the provincial director for each province, two assistant provincial directors, three heads of department and six assistant heads of department nominated by the parliamentary parties on a 50:50 Frelimo:opposition ratio.

The problem with this approach has been that only three parliamentary parties are legally recognised and represented on the CNE and STAE, with the 31 other legally registered parties left out. As a result, the integrity of the CNE and the process over which it presides have been questioned. It can be seen from the figures above that besides its (multi)partisan nature, the CNE is dominated by the ruling party. Thus, Frelimo has always had a stronger say, through its parliamentary majority, on which members of civil society are selected, ensuring that it maintains de facto control over the EMB.

### ***Election campaigns***

Another area that clearly lacked integrity during the recent elections was the campaign process. The study shows that there were incidents of violence and intimidation across the country, mainly between supporters of Frelimo and the MDM on the one hand and between Renamo and the MDM on the other hand. While inter-party tensions are to be expected during campaigns, particularly against the background of armed conflict between government forces and Renamo fighters, what exacerbated the situation in Mozambique was the partiality of the police in dealing with contraventions of the electoral law and code of conduct.

Widespread damage was caused to campaign materials and to property, including vehicles. In some cases party rallies were disrupted by opponents, while in others municipalities simply refused to allow some parties to use public venues like halls and stadiums. Yet the police were only highly visible at Frelimo rallies and they arrested mainly opposition party supporters while taking little or no action against Frelimo supporters.

The use of state resources during the ruling party's campaign was manifest in different towns and provinces. Vehicles clearly bearing government departments' marks and with government registration plates were used either to ferry Frelimo supporters to events or by individual state officials for party campaigns disguised as official business. In direct contravention of the electoral law, some civil servants, including teachers, nurses and municipal workers, were assigned to conduct propaganda for Frelimo. All these incidents of abuse of state resources directly violated the electoral laws.

### ***Results tabulation and management***

Whereas some countries experience problems with the transmission of results this



process was generally carried out efficiently and promptly in Mozambique. The aspect of the results management process which visibly lacked integrity was the tabulation process. The lack of consistency and transparency at the various tabulation levels led to the main opposition parties alleging that the STAE was colluding with the ruling party to tamper with the results. Another issue was the unusually high turnout, sometimes over 100%, in Frelimo strongholds, which points to physical ballot box stuffing or the manipulation of results sheets.

### **TRENDS IN THE ASSESSMENT OF ELECTORAL INTEGRITY**

Some of the key issues raised by the pan-African election observation missions include the composition and transparency of the electoral commission, voter registration and voters' roll verification and violence and intimidation during the election campaign.

While noting that elections in Mozambique are conducted under the auspices of two institutions, the CNE and the STAE, the African Union Election Observation Mission (AUEOM) and the SADC Election Observation Mission (SEOM) had different views on the impact of this arrangement on the elections. For instance, the SEOM did not discuss the composition of the two institutions and its implications for elections, it simply raised the issue of the transparency of the two bodies with regard to procurement. It recommended that the CNE be more transparent in its procurement procedures and that it create a platform for stakeholder dialogue.

The AUEOM, on the other hand, noted that the integration of party representatives at national, provincial, district and polling station levels has an impact on the ability of the CNE and STAE to deliver transparent elections. It pointed out that the loyalties of party cadres to their respective parties makes it difficult for them to be neutral in the management of the elections.

The AUEOM noted that the introduction of the biometric voter registration system was a significant improvement in ensuring the integrity of the elections. However, it also noted that while the voter registration process was generally credible, concerns had been raised by some stakeholders about the possible impact of the announcement of the final voter registration figures on 3 August 2014, which was a few days after the closure of the candidate nomination process. The final registration figures not only showed an increase in the total number of voters registered but also differed from those announced earlier, in May 2014, which resulted in the redistribution of seats in some provinces. This affected the party lists in the affected provinces. Similarly, the SEOM highlighted the fact that the publication and verification of the voters' roll should always be done well ahead of the elections.

The AUEOM considered the counting of votes at the polling station to be generally slow, cumbersome and repetitive due to the meticulous and methodical methods of

election officials. It also highlighted allegations of tampering with the tabulation of results in some districts in Niassa and Zambezia provinces. It further noted the lack of clear and unified guidelines for tabulation in many districts. As a result, the tabulation process was obscured, with little clarity on how to track the progress of the count effectively, and this potentially exposed some aspects of the process to abuse or manipulation.

Another issue highlighted by the observation missions was violence during the campaign period. The SEOM recommended that the police should be better prepared to deal with contraventions of the law. The AUEOM also expressed concern over the issue of violence, stating that although the campaign environment had been largely peaceful, opposition parties had raised concerns about the role of the security forces, alleging biased treatment of opposition party supporters. Complaints about violation by Frelimo supporters of the campaign code of conduct were allegedly ignored or insufficiently addressed by the police.

The assessment by pan-African bodies of some of the components of the 2014 electoral process did not always lead to accurate conclusions because of an attempt by some of the observation missions to be politically correct. For instance, obviously downplaying concerns by some domestic and international observers about lack of transparency and access to all election operations during voting and counting, the AUEOM concluded that the CNE and STAE had displayed a 'high degree of transparency and openness in the management of the elections. Party agents, citizen observers, and international observers had access to all stages of the electoral process ...' This was neither a true reflection nor an affirmation of the integrity of the elections but a denial of a wrongdoing by the STAE, which obstructed the access of some of the observers to tabulation centers.

The AUEOM only tangentially touched on campaign financing, simply stating the legal provisions and giving no credit to Mozambique for providing campaign funds as a way of levelling the ground for fair political competition. By placing little value on this aspect of the electoral process they missed the opportunity to provide tangible evidence of the contribution the financing of parties can make to the integrity of elections. Mozambique has very few regulations for campaign financing. It does not require disclosure of private sources, nor does it impose limits on donations, or spending, but it is one of few African countries that provide public campaign funding and it does so on an equitable basis.

## **IMPLEMENTATION OF RECOMMENDATIONS MADE BY AFRICAN EOMS**

Mozambique's political and electoral history is one of negotiation and compromise. In assessing the electoral process the pan-African election observation missions were always mindful of this fact and have therefore walked the middle ground as they have sought to contribute to the improvement of electoral integrity in the country.

The pre-2014 reforms with regard to the management of the electoral process were, therefore, as much a result of some of the assessments made by these missions as they were of Renamo's demands that it be included. As indicated above, the reforms brought about a number of changes in the legal framework for elections in Mozambique.

## CONCLUSION

In the past the political context within which Mozambique's elections were held was fragile because of the armed conflict that had taken place between the government forces and Renamo fighters. Renamo, which had threatened not to participate in elections, only changed its mind after the intervention of the international community.

Because of this fragility, pan-African bodies were diplomatic in their assessment of the electoral process, choosing to ignore some aspects that they might criticise in another African country. For example, as indicated in the preceding sections, none of these bodies critically assessed the impact of the integration of political party representatives in the CNE despite the fact that it goes against regional and international best practice. If politicising the CNE was helping to keep the peace in Mozambique, the pan-African election observation missions were prepared to ignore the problem.

The assessments by the AUEOM and SEOM of less controversial aspects of the electoral process were adequate. Recommendations to the CNE and its technical arm, the STAE, as well as to government will, undoubtedly, add value to the electoral reforms if they are taken on board.

The fundamental problem with pan-African observation missions' instruments is that they are not yet capable of providing a basis for conclusions about the individual components of an election. Instead they draw their conclusions from the electoral process as a whole.

It is therefore recommended that while there are valid reasons for taking into account the particular circumstances of a country, this should not cloud the vision of the EOM because distorting the truth could lead to problems such as a lack of transparency in following elections, as is likely to be the case in Mozambique in 2019. This, in turn, may lead to a refusal by Renamo and other opposition parties to accept the results.

***Susan Mwape***

## **INTRODUCTION**

Zambia's post-independence historical and political context is the result of a transition from a one-party state to a multiparty democracy characterised by a dominant-party system, intra- and inter-party tensions and several by-elections. The country follows a British-style parliamentary democracy and holds presidential and parliamentary elections every five years.

Ten elections have been held since independence, the last six being the most contentious and competitive (1996-2015). During the first republic (1964 to 1972) two multiparty elections were held in which the United National Independence Party (UNIP) emerged victorious. In 1973 and still under UNIP, one-party rule was introduced and this system remained in force during the four presidential and local government elections held in 1973, 1978, 1983 and 1988, which were all won by UNIP.

Multiparty politics was re-introduced in 1990 and the 1991 elections were won by an opposition party, the Movement for Multiparty Democracy (MMD), with a 75.8% majority, thereby ending 27 years of UNIP rule. The subsequent elections, in 1996 and 2001, were also won by the MMD although they were mired in controversy following some changes to the Constitution which barred presidential aspirants whose parents were not both Zambian. The new provision meant that the former president, Kenneth Kaunda, could not stand again because his father was of Malawian descent. Thus, the MMD candidate, Frederick Chiluba, was assured victory without any significant challenger.

Having completed his two constitutionally mandated terms of office Chiluba attempted to run for a third term by altering the Constitution, a move that met with significant disapproval from the public and some senior members of the party.

When the bid to amend the Constitution failed Chiluba imposed his successor, Levy Mwanawasa, on the party. As a result, the MMD suffered splits, with some senior members forming their own parties. The United Party for National Development (UPND) and the Patriotic Front (PF) were formed and became the MMD's biggest political rivals. The UPND was runner-up in the 2001 general elections, while the PF took over power from the MMD in 2011. The 2001 and 2006 elections, the credibility of which was challenged by a coalition of opposition parties, were won by the MMD, but the challenges led to the establishment of an Electoral Reform Technical Committee (ERTC).

Zambia experienced the deaths of two sitting presidents, Levy Mwanawasa in 2008 and Michael Sata in 2014, precipitating unprecedented presidential by-elections characterised by intra-party succession conflicts. Rupiah Banda of the MMD and Edgar Lungu of the PF were elected to complete the terms of the deceased presidents. Banda's nomination for the 2008 by-elections was relatively smooth since he was already vice-president. However, Banda's 2015 presidential by-election candidature was fiercely contested by the MMD and he eventually succumbed to government threats to withdraw, failing which he would forfeit his benefits as a former head of state.

The PF did not have a clear succession plan and nominations for the 2015 by-elections were characterised by intra-party violence. Like Kenneth Kaunda, the vice-president (and acting president at the time), Guy Scott, could not contest due to his Scottish parentage. He therefore supported his preferred candidate, Miles Sampa, who was not equally supported by the party's central committee, which nominated the defence minister, Edgar Lungu, who was eventually confirmed by the courts after a lengthy intra-party nomination squabble.

## **INTERNATIONAL COMMITMENTS AND LEGAL FRAMEWORK**

Zambia is party to several international instruments that contain special provisions on political participation and the conduct of genuine democratic elections. It has generally been compliant with most of these instruments. They include:

- The OAU/AU Declaration on the Principles Governing Democratic Elections in Africa;
- The International Covenant on Civil and Political Rights;
- The International Convention on the Elimination of Racial Discrimination;
- The Convention on the Elimination of all Forms of Discrimination Against Women;
- The Convention on the Political Rights of Women;

- The AU Charter on Democracy, Elections and Governance;
- SADC Principles and Guidelines Governing Democratic Elections;
- The African Charter on Human and Peoples' Rights; and
- The Universal Declaration of Human Rights.

The Zambian Constitution sets out the principles of and the foundational basis for the electoral process. It also provides for the electoral system and enactment of Acts of Parliament to give meaning and force to its provisions. Besides the Constitution, the key pieces of legislation that contain the legal and regulatory framework for the conduct of elections are:

- The Electoral Commission Act 1996;
- Electoral (Code of Conduct) regulations of 2011;
- The Electoral Act (2006);
- The Electoral (General) regulations 2011; and
- The Local Government Elections Act (1991).

These laws guide the tripartite – presidential, parliamentary and local authority – elections and are reinforced by other pieces of legislation. For example, the Public Order Act is critically important during the campaign period.

As indicated above, there are laws that ensure credible elections but enforcement is often problematic. For instance, the police are often accused, in most cases by opposition parties, of unequal treatment and by the ruling party when enforcing this Act when offences are committed during election campaigns. The administration of the Public Order Act is seen by the opposition as disadvantaging and undermining the principles of free, fair and credible elections.

A draft Bill amending the Constitution and subsidiary laws in order to address some of the key issues relating to the conduct of credible elections, including the electoral system, had not been passed by the time of the 2015 by-elections or the August 2016 general elections.

Research has shown that Zambia's constitutional and legal framework is sufficient to ensure that elections are credible. However, implementation remains a problem and this has negative implications for the integrity of the elections. The African Union Election Observation Mission (AUEOM) to the 2015 election noted that:

The institutional and infrastructural framework required as the basis for the conduct of the presidential by-election was in place and the political context was largely peaceful. However, the AUEOM noted that gaps in the legal framework such as

the adoption of a simple majoritarian electoral system which could compromise the legitimacy of the president; the silence of the constitution on the possibility of a tied outcome in a presidential election; and the absence of regulatory provisions on party and campaign finance which opens the electoral process to the undue influence of money in politics.

## **THREATS TO ELECTORAL INTEGRITY**

Four aspects of the electoral process were identified as potential threats to the integrity of elections in Zambia. These include the appointment of the election management body (EMB), party and campaign financing, voter registration and dispute resolution. These are briefly discussed below.

### ***Appointment of the EMB***

Notwithstanding the clear provisions of the law, the appointment of the commissioners by the president has been questioned, mainly by opposition parties, who argue that there is a conflict of interests when the president is responsible for appointing a commission to oversee an election which he contests. The institutional and financial autonomy of the Electoral Commission of Zambia (ECZ) is also disputed because it is assumed that the commissioners 'will not want to bite the finger that feeds them'. The opposition further argues that the vetting of the candidate commissioners by Parliament has no effect because the ruling party holds the majority of parliamentary seats and effectively uses this strength to rubber stamp the president's appointees.

### ***Party and campaign financing***

Zambia does not provide public funding for political parties and the legal framework does not regulate private funding. As a result, money has a significant influence on politics, there is no transparency and parties do not have to account to the electorate. Currently the only mechanism for addressing issues of suspicious sources of funding is the Bank of Zambia Anti-money Laundering Directives, 2004. Opposition parties complain that the ruling party has unrestricted access to public funds and other state resources.

### ***Voter registration***

Despite the fact that Zambia conducts continuous voter registration, the voters' roll is often out of date. Under Statutory Instrument 38 of 2010 the commission has the power to suspend registration whenever a general election is due, in order to update the register. Zambia has had more than 30 by-elections since the last voter registration and this means that most of these elections have been conducted using a voters' roll and information from previous elections. For instance, in 2008 and 2015, the ECZ did not conduct voter registration due to the number of parliamentary by-elections in those years,

many of which resulted either from floor-crossing, deaths or the nullification of results by the courts because of alleged corruption and other electoral malpractices. The voters' roll for the 2008 elections was last updated in 2006, while the 2015 voters' roll was last updated in 2011. As a result, many citizens who reached voting age between these years were disenfranchised.

### *Dispute resolution*

Dispute resolution processes carried out by the courts lack integrity because no time limit is specified for the resolution of disputes over the presidential election results. Section 21(3) of the Electoral Act stipulates that presidential petitions can only be referred to a full bench of the Supreme Court and that this must be done within 14 days of the winner having been sworn in. This means that by the time the court reaches its conclusion the occupant of the disputed seat may have spent years in office, so the provision serves little or no purpose. This problem was noted by the 2015 AUEOM.

## **TRENDS IN THE ASSESSMENT OF ELECTORAL INTEGRITY**

Domestic, sub-regional and regional election observer groups have looked at various aspects of the process in Zambia, including the legal framework, boundary delimitation, voter registration, election management, campaign and party financing, results management and dispute resolution mechanisms.

The trend has been to describe these processes without interrogating their implications for the integrity of the elections – a major weakness in the reports. For instance, most of the statements relating to the independence of the ECZ simply reflect stakeholder views of the appointing authority rather than examining the way commissioners are appointed and how they perform so as to assess the impact on the integrity of the electoral process. As a result, the reports do not test the opinion that a statutory body lacks integrity simply because it is appointed by the president and not because of concrete evidence that shows how this is a problem. The pan-African missions should interrogate the criteria for appointments to establish whether or not the process is transparent.

Another example of a tangential assessment of the process relates to voter registration. While the 2015 AUEOM noted the discrepancies in the voters' roll, it fell short of questioning the legality of the disenfranchisement of voters and how this affects the integrity of the elections. It simply recommends that the ECZ should register young people before the next elections. The report states:

The AUEOM noted that the 2015 by-election was conducted using the 2011 updated voter register, which was considered credible by stakeholders. The AUEOM was informed that due to financial and logistical constraints, the continuous registration



of voters as mandated in section 4(2) of the Electoral Act was not implemented. The AUEOM also noted that a significant number of citizens who turned 18 during the last three years were denied the opportunity to vote in the presidential by-election. The AUEOM, therefore, encourages the Commission to prioritise an update of the voters' register and the registration of young people ahead of the 2016 tripartite elections.

The AUEOM's assessment of Zambia's electoral process did not consider the impact of the individual elements of the electoral cycle on the whole process. For instance, while the choice of electoral system has been a divisive issue in Zambia's elections since 2003, no pan-African observation missions apart from the AUEOM touched on it. In its report on the 2015 presidential by-election the AUEOM noted that the nature of the electoral system meant that Zambia's presidents have never been elected by more than 50% of voters. It further noted that the first-past-the-post system could negate the authority and legitimacy a president would otherwise derive from the expression of the will of the majority of the people.

In relation to campaigns, the assessments have largely focused on the ability of the parties to conduct their campaign activities. What is lacking is a broader focus on factors that inhibit or enable people's participation in campaign activities. For instance, in Zambia the involvement of traditional leaders in the electoral process is problematic for most communities and Section 129 of the Constitution states that 'a person shall not while remaining a chief join or participate in Partisan Politics'. Some chiefs, however, continue to endorse candidates of certain political parties. In some chieftainship areas the endorsement by traditional leaders has led to intimidation of and violence among subjects who opt to support other parties.

Another problem with the assessment instruments is that there is no mechanism to ensure their consistent application and this renders them subject to the whims of the individuals who use them. To illustrate this point, this study shows that in almost all Zambian elections the need to regulate party financing to control the influence of money in politics and ensure transparency and accountability always ranks high.

Despite this being a topical issue among stakeholders in the country and therefore hard to miss, the SADC Election Observation Mission (SEOM) did not touch on it at all in its report. The AUEOM, on the other hand, produced an elaborate assessment, emphasising the importance of party financing and its regulation. It noted that Zambia's legal framework falls short of Article III(g) of the OAU/AU Declaration on the Principles Governing Democratic Elections in Africa, which requires AU member states to put in place a regulatory framework for party and campaign financing in order to ensure that parties are able to participate in the electoral process. Most importantly, the report succinctly states that

... the absence of party and campaign finance regulatory provisions in the legal framework open the electoral process to the unregulated influence of money. Such uncontrolled influence of money could impact on the fairness of the process by tilting the access to resources in favour of some parties to the disadvantage of others.

## IMPLEMENTATION OF RECOMMENDATIONS MADE BY AFRICAN EOMS

The study has not revealed evidence of reforms recently carried out as a result of recommendations made specifically by pan-African election observation missions in the past. However, the country has, since its return to multiparty elections, carried out some reforms, some of which are in line with recommendation which may have previously been made by observation groups. These include:

- The use of mobile voter registration to reach far-flung areas of the country;
- The use of transparent ballot boxes; and
- The participation of political parties in monitoring the printing and delivery of ballot papers.

Recommendations made by observation missions such as the SEOM and AUEOM after the 2015 elections have largely not been addressed by the electoral management body, government and legislature. The observation missions highlighted the need for the legal framework to regulate party and campaign financing, including disclosures and spending limits; an amendment to the electoral law to ensure the enforcement of the code of conduct; the need for a reform of the electoral system and the establishment of a special court to deal with election-related disputes.

## CONCLUSION

The study has shown that, notwithstanding some inter-party conflicts, the political context in Zambia is ideal for holding credible elections. The assessment and recommendations of the AUEOM on key aspects such as the legal framework, electoral system, voter registration and election management indicate that these have largely been satisfactory.

Whereas the AUEOM noted that the issue of the electoral system as it obtains in the case of presidential elections is likely to negate the authority and legitimacy of the president, the impact of other aspects of the electoral process on the integrity of the electoral process have not been adequately dealt with.

The fact that the AUEOM, in its assessment of the voter registration process, notes discrepancies in the voters' roll yet fails to question the legality of the disenfranchisement of voters and how this affects the integrity of the elections is another case in point. The AUEOM simply recommends that the ECZ should register young people before the next elections but says nothing about those who were excluded from the elections being assessed.

An examination of preliminary statements issued by various election observation missions reveals that there is no uniformity in the assessments, with some aspects being emphasised more than others. The AUEOM's assessment is more detailed than that of the SEOM and this could be attributed to the fact that the SADC observation mission tends to be a peer review exercise and is therefore more constrained than the AUEOM in assessing the electoral process in depth.

Based on the abovementioned omissions it can safely be concluded that election observation missions have not adequately addressed the weaknesses in the electoral process. It follows, therefore, that their recommendations are inadequate and do not add much value.

**Didier-Alain Olinga**

Based on the case study written by **Fabrice Parfait Oumba**<sup>1</sup>

**INTRODUCTION**

After a relatively calm transition to independence the Republic of Congo became a theatre of violent change which reached its peak with the accession to power of Marien Ngouabi and his Congolese Workers' Party (Parti Congolais du Travail, PCT). Ngouabi, military president of the republic, was assassinated in Brazzaville in 1977.

After a period of unchallenged rule by the PCT the early 1990s brought democracy and, with it, elections. Presidential elections were held in 1992, 2002 and 2009 and in March 2016. The 1992 election was significant, representing as it did, the end of the one-party system. President Denis Sassou Nguesso was replaced by Pascal Lissouba of the Pan-African Union for Social Democracy. .

In 2002, however, Sassou Nguesso was back in power. The 2009 election, which had been intended to consolidate democracy, instead consolidated Sassou Nguesso's power. The term limits set out in the Constitution meant that the 2009 election should have been the last in which Sassou Nguesso could stand but after a referendum the Constitution was changed to allow him to run again.

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<sup>1</sup> This summary was translated from the French.

Legislative and local elections took place in the same years as the presidential election, in 1992 and 2002, but since the extension of the presidential term to seven years, while the parliamentary term remains at five, there have been problems with the timing of these elections.

National and international election observers attended the polls. Among them were missions from the International Organisation of Francophonie (Organisation Internationale de la Francophonie, OIF), the African Union (AU) and the Economic Community of Central African States (ECCAS), the missions of the latter two organisations generally acting together in the field. The missions produced reports, some more detailed than others, with the aim of improving the electoral process in the country.

### **INTERNATIONAL COMMITMENTS AND LEGAL FRAMEWORK**

Congo has subscribed to various legal instruments that enshrine the relevant principles on elections and is bound by resolutions relating to elections adopted by organisations of which the country is a member, especially the United Nations and the African Union.

While the sub-regional organisations of Central Africa, ECCAS among them, have not yet adopted general guidelines relating to the organisation of elections, in 1983 Congo ratified the International Covenant on Civil and Political Rights, an instrument that guarantees the right to elections. It also ratified the African Charter on Human and Peoples' Rights in 1982, the Constitutive Act of the African Union in 2002 and the African Charter on Democracy, Elections and Governance in 2007. The last is important because it establishes certain principles with regard to electoral matters, including the right of the African Union to send observer missions to a member country's elections.

At national level, Congo's electoral law was introduced in 2001 and has been amended several times since. It also has an electoral commission, formerly known as the National Commission for the Organisation of Elections (Commission nationale d'organisation des élections, CONEL), now the Independent National Election Commission (Commission nationale électorale indépendante, CNEI). The legal framework fails to address many important aspects of the regulation of elections, notably funding of elections and of parties. It would appear that these deficiencies are designed to leave control in the hands of politicians who do not wish to be bound by detailed and comprehensive guidelines which would limit their ability to manipulate the system.

### **THREATS TO ELECTORAL INTEGRITY**

Research and observation of the situation in Congo reveal that the key challenges to electoral integrity are a lack of adherence to the constitutional strictures, the lack of consensus on the electoral law, the management of elections and the neutrality of that system, the voter registration system, the question of electoral boundaries and the issue of election financing.

As far as the organisation of elections is concerned, the fundamental law should be amended to protect the integrity of elections from the manipulation of those in power. However, the chances of this happening are slim. It is unlikely that candidates for the presidency would be in favour of changing the term limit or would be happy to have fully transparent elections which they might lose.

Recent debates about the Constitution have shown that the country is deeply divided over the electoral law. It is also divided over the question of re-delimitation and there is no consensus over the laws regulating the CNEI, which was created by decree rather than through a parliamentary debate or input from the general public.

If such a debate were to be held it would potentially clarify the institutional framework and model for regulating elections in Congo. As it is, the country has a mixed electoral management model, which combines the involvement of a body from the current administration, the General Direction of Electoral Affairs (Direction Générale des Affaires Electorales, DGAE) and an allegedly independent body, the CNEI.

The problem, is that the division of roles between the two structures is not clear and the CNEI suffers from a lack of credibility, with its neutrality being questioned by election stakeholders and even by election observers. In addition, since the structure is not permanent, its involvement in the management of elections raises doubts about its effectiveness.

Voter registration is another problem which was noted by observers from the European Union (EU) and the OIF in both the 2002 and 2009 elections. Since registration is carried out by administrative authorities whose impartiality has been challenged, the reliability of the voters' register is in doubt. Registration is not conducted biometrically, a method that might reduce the controversy surrounding the constitution of the voters' register.

With regard to the question of delimitation, the research revealed that boundaries are determined on the basis of political considerations alone, with no attention paid to either fairness or equity.

The power of the authorities entrusted with delimitation should be restricted by specific guidelines and the process should be subject to court challenges. As it is, delimitation is carried out by the government and no provision is made for appeals to the courts.

One of the major problems is the question of funding, which is not addressed in the electoral law promulgated in 2001. It is important to define transparent methods of financing public life and electoral operations in particular, in order to ensure fairness. The absence of a legal framework governing electoral financing may lead to controversy and the abuse of public assets.

## TRENDS IN THE ASSESSMENT OF ELECTORAL INTEGRITY

Since at least 2002 many missions from the OIF, the EU, international non-governmental organisations and pan-African organisations have observed elections in Congo. The most consistent and substantial reports were produced by extra-African bodies.

Key recommendations from the joint report of the African Union and ECCAS after the parliamentary elections of 2012 emphasised the need to:

- Enhance public awareness of the value of participating in elections;
- Enhance the training of electoral agents;
- Improve the voters' register by introducing biometric data;
- Implement effectively the provisions relating to the display of the voters' register;
- Strengthen the role of the election management body in the practical organisation of the elections; and
- Consider using a single ballot to ensure the availability of ballots and equal treatment of candidates.<sup>2</sup>

Overall, although pan-African organisations do address the problematic aspects of the elections they observe, their primary concern is to preserve peace and call on all parties to respect the results.

Although in 2012 African observers raised the problem of the reliability of the voters' register, the lack of authority granted to the election management body and the problem of the institution of the single ballot, they did not comment on delimitation or funding issues. By contrast, the OIF report published the day after the presidential election of 2002 stressed the need to implement a mechanism to support transparent financing and a fair method for boundary delimitation.

The AU-ECCAS report does not reflect the methodical and serious observation of the missions of other organisations, which were present before, during and after the voting. Pan-African election observation missions have a strong diplomatic dimension and their approach is that although there are certainly problems, the country is on the path to democracy. Thus, after noting many important issues during the general election of 2012, the AU-ECCAS joint mission concluded that, in light of organisational standards and guidelines for free and fair elections, without specifying which ones, 'the parliamentary elections of July 15, 2012 in the Republic of Congo were free, transparent and credible'.

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2 Congo introduced the single ballot for the first time during the presidential election of 20 March 2016.

## IMPLEMENTATION OF RECOMMENDATIONS MADE BY AFRICAN EOMS

Apart from introducing a single ballot for the presidential election of 20 March 2016, introducing a new law in January 2016 that replaced the 2011 law which had been in force and replacing the CONEL with the CNEI, Congo has not done well in implementing recommendations submitted by observation missions. A biometric system still has to be introduced for the registration process, nothing has been done to increase the credibility, independence and neutrality of the election management body and no rules on financing the electoral process have been adopted.

The government of Congo considers election observation as another diplomatic exercise in which multiple stakeholders are involved and neutralise one another (fortunately for the incumbent) through their often conflicting positions. This ultimately undermines their influence and makes it possible to ignore their recommendations.

For Congo, as for many other states, hosting observation missions is part of the game of international civility and is a way to avoid being stigmatised in the community of nations. The transformation of standards and the dynamics of institutions depends, ultimately, only on internal factors, whether those are the creation of a balance of power between political forces in Congo or the goodwill of the dominant political forces.

## CONCLUSION

Given the political influence of their position, the pan-African observer missions should take their role as catalysts for electoral change more seriously. These missions, which, unlike the extra-African missions cannot easily be accused of neo-colonialism, manipulation and undue interference in the affairs of African states, should be more meticulous in their recommendations after conducting careful observation in the field.

The recommendations should, if necessary, be accompanied by the offer of technical, legal and logistical services to support their implementation. When missions have repeatedly observed elections within the same country without having noticed the slightest change, it is dangerous to continue providing general assessments which fail to comment on critical findings that should set the alarm bells ringing.

In order for pan-African election observation missions to serve as a safeguard of electoral integrity in Africa they should give themselves, in addition to their political and diplomatic responsibility, a role that is resolute in advocating high-quality electoral processes, even if this means offering unwelcome criticism.



***Ibrahima Amadou Niang***

based on the case study written by ***Idayat Hassan and Yusuf Shamsudeen Adio***

**INTRODUCTION**

Nigeria achieved independence as a federation on 1 October 1960 and civilian rule lasted for six years (1960 to 1966). However, the federal government was quickly confronted by threats to national unity with the escalation of ethnic rivalry and the formation of regionally based political groupings and alliances. The first election organised after independence, the Federal House of Representatives poll, which took place in 1964, was marked by the vivid expression of nascent rivalries.

The first period of military rule lasted for 13 years (1966 to 1979), a period during which the country experienced military intervention, coups and civil war. In 1966 the government of Prime Minister Abubakar Tawafa Balewa was overthrown in a coup masterminded by Murtala Ramat Muhammed and the chief of staff of the army, Lieutenant-Colonel (later General) Yakubu Gowon, was chosen to head the emergent government. A supreme military council was formed, Igbo-speakers living in the north were massacred and there was a civil war in Biafra in 1967. Muhammed, who removed Gowon in a coup in 1975, forcing him into 'retirement' and exile, was assassinated in 1976 and General Olusegun Obasanjo came to power for the first time, leading Nigeria into a period of civilian rule with institutional reform and the adoption of a new Constitution.

A presidential election was held on 11 August 1979 in which Shehu Shagari of the National Party of Nigeria was elected. This second republic lasted for only four years (1979-1983) because of challenges relating to the federal government framework.

Under Shagari's leadership, the second republic was dominated by the problem of institutionalizing the framework of the federal government, alleged issues of religious extremism, corruption and economic difficulty arising from volatility in world petroleum prices at the time. Nothing substantial was done to tackle these problems. Neither the regional tensions nor the issue of corruption had been resolved. The Shagari regime was perceived to be notoriously corrupt and incompetent. Despite these problems, the NPN used its entrenched position and financial influence to return to office in a six political party contested election which took place in August to September 1983. Presiding, nevertheless, over a country that was more bitterly divided than it had been at the inception of the second republic, Shagari was deposed in a bloodless military coup, led by Maj.-Gen. Muhammed Buhari - a former military governor of Borno and federal commissioner for petroleum during 1976-78 – on December 31, 1983.

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The second period of military rule lasted for 15 years (1983 to 1998). The first military leader to exercise power during this period was General Muhammadu Buhari, who was again elected president in 2015. Despite his efforts to fight corruption, many stakeholders felt that a return to civilian rule was not part of his plans. As a result, his regime was deposed in 1985 by General Ibrahim Babangida, who ruled until 1993 and initiated the transition to democracy.

Babangida had to deal with the effects of the Structural Adjustment Programme that had been introduced in 1986 as well as with corruption and violent conflict between Muslims and Christians over the issue of the imposition of Sharia law.

Two new political parties, the National Republican Convention (NRC) and the Social Democratic Party (SDP), were imposed in the hope of smoothing the transition process. However, when the leader of the SDP, Moshood Abiola, won the majority of votes in the June 1993 presidential elections, the military regime annulled the results. This decision postponed the return to civilian rule and caused severe consequences: post-election violence, the execution of human rights activist Ken Saro-Wiwa, among others, and the resignation of General Babangida in 1993.

Chief Ernest Shonekan assumed power after Babangida resigned, but soon resigned himself. In what was regarded by many as a coup, General Sani Abacha took over from Shonekan, holding power from 1993 to 1998. After his death in 1998 a transitional

government led by General Abdusalami Abubakar prepared the 1998 parliamentary elections and the 1999 presidential election before handing power to president-elect General Olusegun Obasanjo.

Since the end of the transition in 1999 four parliamentary and presidential elections have been held – in 2003, 2007, 2011 and 2015. Although the current period of civilian rule is the longest in Nigeria's history (currently 16 years) and there has been an improvement in the promotion of electoral integrity (an increase in the power of the Independent National Election Commission – INEC and improved democratic culture and participation) there are still notable challenges that continue to have a negative impact on the integrity of elections. Among these are: electoral corruption, the absence of key provisions in the legal framework governing participation and intraparty democracy, the lack of technical capacity among electoral officials and the uncontrolled/unregulated use of money in politics.

Election periods have proven to be times of fluidity during which various national and international actors have access to information and data that allows them to assess the vitality of democracy and the extent to which the system (individuals, institutions, laws and government) protects integrity. The Nigerian case study commissioned by the Electoral Institute for the Sustainability of Democracy in Africa (EISA)(see the CDROM that accompanies this volume) clearly highlights the contributions of election observer missions (EOMs) to the progressive improvement of the level of electoral integrity in Nigeria, which helps restore citizens' trust in institutions. However, regrettably, the final EOM reports from the Economic Community of West African States (ECOWAS) are still not made available to the public in order to serve as a strong basis for comparative studies of improvements in electoral management.

## INTERNATIONAL COMMITMENTS

Principles of political and electoral rights are contained in declarations, conventions, protocols and other international instruments adopted by the United Nations, the African Union, the ECOWAS and the Commonwealth (Alayinde 2016). Nigeria has ratified the following international instruments:

- The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which stresses that 'all appropriate measures shall be taken to ensure to women on equal terms with men without any discrimination: (a) The right to vote in all elections and be eligible for election to all publicly elected bodies; (b) The right to vote in all public referenda; (c) The right to hold public office and to exercise all public functions. Such rights shall be guaranteed by legislation. States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public

life of the country and, in particular, shall ensure to women, on equal terms with men, the right: (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies; (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government; (c) To participate in non-governmental organisations and associations concerned with the public and political life of the country.'

- The Universal Declaration of Human Rights, which states that everyone has the right to freedom of peaceful assembly and association. Furthermore, '(1) everyone has the right to take part in the government of his country, directly or through freely chosen representatives. (2) Everyone has the right of equal access of public service in his country. (3) The will of the people shall be basis of the authority of government: this will shall be expressed in period and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.'
- The Convention on the Political Rights of Women, which states: 'Women shall be eligible for election to all publicly elected bodies, established by national law, on equal terms with men, without any discrimination. Women shall be entitled to hold public office and to exercise all public functions, established by national law, on equal terms with men, without any discrimination.'
- The African Charter on Human and Peoples' Rights holds two principles dear: 1) 'Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law; 2) Every citizen shall have the right of equal access to the public service of the country; (3) Every individual shall have the right of access to public property and services in strict equality of all persons before the law.'
- The International Covenant on Civil and Political Rights recognises the right of peaceful assembly. 'No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interest of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.'
- The African Charter for Democracy Governance and Elections.
- The ECOWAS Protocol on Democracy and Good Governance, which was adopted in December 2001 by the Heads of State and Government as supplementary to the Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security (1999).

## LEGAL FRAMEWORK

### **Nigeria's 1999 Constitution (as amended)**

Issues relating to electoral process such as the electoral body in charge of organising elections and the courts and tribunals to rule on complaints arising from the conduct of elections have their foundations in the nation's Constitution, which is the supreme law of the country. Section 1(3) of the Constitution makes it clear that if any law is inconsistent with the provisions of the Constitution it shall be void to the extent of the inconsistency. The courts have upheld that section in countless decisions. For this reason alone any law dealing with elections that contradicts the provision of the Constitution will be of no effect.

The Constitution also states very clearly that neither the government nor any part of it shall be governed or controlled by any person or group of persons except in accordance with the provisions of the Constitution. In other words, no one can occupy an elective office at local, state or federal level unless he or she has been elected in accordance with the provision of the Constitution or any law made in accordance with the Constitution. The Constitution prescribes certain criteria that those vying for offices recognised or created by the Constitution must meet before they can participate in elections to those offices (Alayinde 2016).

### **Electoral Act 2010 (as amended)**

In line with its constitutional power to make laws for the peace, order and good government of the Federation or any part of it, the National Assembly enacted the Electoral Act of 2010. This Act is not the first of its kind, it was built on the provisions of the Electoral Act of 2006, which it repealed. Its provisions included some marginal improvements over the 2006 Act, but those are not sufficient to bring about an overhaul of the electoral system in the terms recommended by the Uwais Panel on Electoral Reform (2008). This was not totally unexpected – the Electoral Reform Committee led by Justice Mohammed Uwais wanted electoral integrity to be dealt with holistically. The committee recommended that candidates be permitted to stand as independents. It also called for the trial and sentencing of electoral fraudsters. The committee also advised the government to establish new legislative bodies to deal with the problem of election rigging and irregularities.

Against this background the Electoral Act 2010 (as amended) was passed by the National Assembly after much deliberation and debate. Some of the provisions of the Act, such as those on continuous registration, the oath of neutrality by election officials and the prohibition of double nominations, among others, were merely lifted from the 2006 Act. One new provision prohibits political parties from substituting candidates except in cases of death or resignation.

The bulk of the provisions of the 2010 Act relate to procedural issues that were

already covered by the 2006 Act. The current Act is divided into nine parts, with 152 sections and three schedules. The Act also repeals the INEC Act, re-establishing INEC, creating an INEC Fund and guaranteeing the commission's independence. Increasing the powers, resources and technical capacity of INEC is a cornerstone of electoral integrity. However, the functions, powers, revenue base and other matters connected with INEC and its staff remain essentially the same.

The provisions of the 2010 Act in respect of the registration of voters, registration officials and offences are more or less the same as those in the 2006 Act, with some juggling of figures.

As for election procedures, the only major change was that the order in which the various elections are to be held has been prescribed in s 25(1). Like its predecessor, the 2010 Act provides for a continuous voter registration system. Section 10(2) stipulates that applicants for registration must appear in person at the registration venue with proof of identity, age and nationality. Apart from eliminating registration by proxy, the innovation helps to establish the true identity of voters and prevent voting by non-human objects, as happened in the 2007 elections in Ondo State. On that occasion because of the irregularities the Ondo State Elections Petitions Tribunal nullified the election of Governor Olusegun Agagu and declared Olusegun Mimiko, the Labour Party candidate, the winner (Sahara 2008).

Other adjustments were designed to prevent the frustration associated with litigation arising from the conduct of elections, as well as the enforcement of internal democracy in selecting party candidates. The changes were essentially intended to ensure more credibility and reduce the acrimonious intra-party crises often associated with the choice of a party's flag bearers. Aside from this, the Act imposes stiffer punishments for culprits who buy and sell voters' cards (Alayinde 2016). In practice, this measure proved to be successful in deterring fraud and contributed to a slight change in the behaviour of political party leaders and supporters.

### **Case law**

Case law refers to that body of laws which, over the years, has been formulated or pronounced upon by the courts as governing specific legal situations. Although the primary law-making body is the legislature, there is a place for the courts, particularly in relation to electoral laws. Nigeria now has a fairly extensive electoral jurisprudence, which has been well documented (Alayinde 2016). Two examples relate to the jurisprudence of election petitions and the will of the Supreme Court as the basis of government.

### **Electoral guidelines**

Section 153 of the Electoral Act, 2010 (as amended) gives INEC the power to issue regulations, guidelines or manuals for the purpose of giving effect to the provisions of

the Electoral Act and for its administration. Consequently, the commission usually issues guidelines and regulations for general elections, as it did for the 2015 general election. The guidelines are intended to be strictly adhered to by officials involved with the electoral process (Alayinde 2016).

## THREATS TO ELECTORAL INTEGRITY

Two sets of factors pose a challenge to electoral integrity in Nigeria.

### Political factors

#### *Negative campaign tactics*

It is reported that during the 2015 presidential campaign politicians adopted negative campaign tactics by attacking the personalities of the candidates and prominent members of rival parties. Rather than focusing on issues of national significance, the attempt to ruin the reputations of rival candidates gathered momentum as election day drew closer.

In a documentary titled *The Real Buhari*, for instance, Buhari was presented as a mean and wicked man who was the first military leader to sentence a woman to death by firing squad. For their part, the APC accused Goodluck Jonathan of incompetence and complacency and for having allowed the Boko Haram insurgency to fester, causing the deaths of more than 15 000 Nigerians and the displacement of more than three million others in the past six years (Enietan-Mathews 2015).

Campaigning on ethnic or religious lines can also have a negative impact on voter behaviour, which is an important element in the integrity of the election as a whole.

### Procedural factors

#### *Unclear/conflicting procedures for the management of the electoral process*

The research stresses that there are notable contradictions within the Electoral Act itself. Some clauses in particular reduce the effectiveness and purpose of others within the same Act. Section 87, which deals with intra-party democracy, becomes meaningless when it is compared with ss 31-38 and 78-102. Specifically, s 87(4)(c)(ii) clearly states that the candidate with the highest number of votes shall be declared the winner of the party's primaries and that the candidate's name shall be forwarded to INEC. Section 31(1), however, states that the commission shall not reject or disqualify candidates even where the party decides to submit the names of persons who lost primaries or did not contest them at all. These two provisions clearly work directly against each other.

#### *Campaign finances*

In Nigeria the laws pertaining to campaign finances are not respected by political parties and their candidates. For example, more than N21 billion was donated to finance the re-election

bid of the former president, Goodluck Jonathan (<http://allafrica.com/stories/201412293038.html>). This contravenes section 38(2) of the Companies and Allied Matters Act and other legal provisions. There is also the issue of the apparent inability of INEC to carry out its monitoring and enforcement roles in relation to campaign financing, with political parties and donors devising innovative ways of bypassing the laws.

### ***Access to the electoral process (as voter or candidate)***

Nigeria's legal framework does not provide for Nigerians living in the diaspora either to register or to vote, despite various calls over the years for the law to be changed. In addition, although prisoners are permitted to register, logistical issues have kept them from exercising this right. During the registration for the 2015 elections no prison was designated a polling unit. Election workers can only vote where they were registered. Those providing special services, such as medical and security personnel, also face challenges in registering and voting.

Gender does not occupy a central position in either the Electoral Act or the Constitution. Apart from the provisions of s 51 of the Electoral Act, which designates separate queues for men and women where culture does not permit the sexes to intermingle, there is no provision targeting women's participation in elections. Youth are in a similar situation.

### ***Inequitable delimitation***

In September 2014 INEC shelved its plans to delimitate new constituencies because no consensus could be reached by stakeholders involved in the consultations that began in 2012. A scheme to create an additional 30 000 polling units across the country ahead of the 2015 general elections was initiated to bring the total number of polling units in the country to 150 000. The commission's decision was criticised as favouring the north against the south.

## **TRENDS IN THE ASSESSMENT OF ELECTORAL INTEGRITY**

Identifying trends among pan-African EOMs in assessing electoral integrity has been problematic. While the African Union EOM to the 2015 general elections issued a final report, no final report has come from the ECOWAS, which sends its reports to governments, who then decide in which way to use the recommendations. This makes it difficult to compare the assessments. As a result, the researcher analysed EOM reports from non-African bodies such as the European Union, the International Republican Institute (IRI) and the National Democratic Institute (NDI) to gain a better understanding of the real challenges facing electoral integrity in Nigeria. These reports are: the IRI 2015 election observation report on Nigeria elections, the EU 2011 and 2015 EOM reports, the NDI 1999 and 2011 EOM reports.



### **Legal framework**

A number of important shortcomings in the legislative framework still need to be addressed to bring it fully in line with the universal and regional standards for elections to which Nigeria has committed itself. In particular, the lack of provision for independent candidacy fundamentally undermines the right to stand for election and there are weak transparency requirements for the publication of results (thereby limiting de facto access to information).

Other shortcomings are the lack of an effective monitoring mechanism for internal party democratic processes for candidate nomination, INEC's inability to reject nominated aspirants who do not fulfil the legal requirements, the absence of provisions empowering INEC to sanction campaign violations, the absence of provisions for security personnel working away from home on election day to vote or to provide fully for the secrecy of the vote, the failure to give the right to vote to millions of Nigerians living in the diaspora (AUEOM final report 2015, p 18).

### **Election administration**

Because INEC's powers are restricted it cannot challenge the actions of political contenders effectively and it also has problems with administering elections. A lack of transparency increases the risk of weak and possibly biased service delivery, the fact that the INEC chairperson and the 12 commissioners are appointed by an institution does not allow for cross-party consensus, the absence of an effective internal communication system prevents a timely and reliable two-way flow of information among INEC's national, state and local government offices and an absence of training manuals means that temporary polling and collation staff are undertrained.

### **Delimitation**

The current delimitation of constituencies dates back to 1996. Delimitation is regulated only by the Constitution, with the Electoral Act containing no further specifications and INEC not issuing any administrative regulation. There are profound inequalities in the size of constituencies, which is not consistent either with equity or constitutional requirements. INEC still uses 2006 census data as the basis for any new delimitation exercises.

### **Voter registration**

Voter registration is still a major challenge for a number of reasons: the lack of reliable identification documents, very limited population registration, the absence of systematic recording of births and deaths, low collection rates of voter cards (according to the EUEOM in 2015, 16.8 million cards were not collected) and the poor quality of biometric data captured during registration in 2010 and 2014.

**Party primaries and the registration of candidates**

There is insufficient legal regulation of party primaries and INEC has no powers of enforcement. In addition, independent candidates are not allowed to contest elections. Furthermore, the dominant role of money in politics is a huge issue. Finally, 'zoning', whereby elected positions rotate among different geographical areas within a constituency, is still applied, thereby excluding some potential candidates at local level. The electoral commission also lacks the authority to reject nominations made by political parties (AUEOM 2015, p 22).

**Campaigning**

Election campaigns are still characterised by violence. INEC has no powers to enforce campaign regulations and no mechanisms for monitoring and sanctioning non-compliance (EUEOM 2015, p 20). As a result, violations remain largely unaddressed.

**Campaign financing**

There are insufficient and ineffectual legal provisions aimed at enhancing transparency and accountability with regard to campaign financing, with no ceiling established for donations to parties. In addition, parties do not submit their audited campaign expenses to INEC within six months after the elections, as required by law, and despite the fact that INEC has established a campaign finance tracking system, no reports about financing are made public (EUEOM 2015, p 22).

**Media**

The national media continue to favour the incumbent government despite notable improvements in the legal framework.

**Polling, counting and results**

Numerous security incidents and interference by security forces, local and central government officials and leaders of the ruling party are reported during elections. Cases of more votes being cast than the number of registered voters at some polling stations, vandalism, snatching of materials and the failure to use card readers are still common. In some cases, polling unit results are not posted. In addition, there are notable problems with the results management process: parties do not observe the collation process, information about results is not available at a central point, numerous constituencies have to re-vote and at some collation centres results do not arrive intact in tamper-proof envelopes.

**Electoral disputes**

The law does not provide for any administrative complaint mechanisms so election-related

disputes are resolved only by the judiciary. This can pose serious problems with regard to access to electoral justice, especially if judges are not independent of executive power.

## **IMPLEMENTATION OF RECOMMENDATIONS MADE BY AFRICAN EOMS**

Despite the ubiquitous shortcomings listed above, some key recommendations made by EOMs have been implemented. These are:

- The introduction of permanent voters' cards and card readers to increase the reliability of the voter register and reduce the opportunities for fraud;
- Mandatory permanent voters' cards allowing internally displaced people (IDPs) to vote;
- The introduction of biometric measures to inhibit the multiple voting prevalent in earlier elections;
- The introduction of various innovations and additional safeguards, most notably biometric card readers and the publication on the internet of polling unit results forms;
- Special arrangements whereby IDPs in the three north-eastern states most affected by Boko Haram insurgency can vote in alternative locations within their state of origin;
- A clause in the Constitution granting INEC the power to submit to the National Assembly a report on the accounts of all political parties, to give direction to parties regarding the recording of financial transactions, to examine all such records and to monitor political campaigns and adopt rules and regulations;
- The establishment in 2014 of a campaign finance tracking unit and training for parties in tracking campaign finances;
- The 2011 Freedom of Information Act, which provides for easier access to information about government expenditure on elections, donors to political parties, and so on, in accordance with international standards; and
- The fact that the courts no longer grant interim orders in relation to election disputes, instead offering defendants the opportunity to participate in hearings.

Other more important and relevant recommendations made by EOMs are still to be implemented, but the rate of implementation will depend on the ability of election observer missions to move beyond their traditional approach in order to put more pressure on decision-makers.

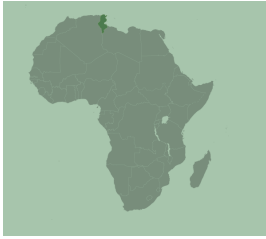
## CONCLUSION

Since the elections in 1999 that marked the end of the transition period in Nigeria important moves have been made towards protecting electoral integrity. The positive outcome of the 2015 presidential election is a consequence of corrective measures taken throughout the various electoral cycles and an improvement in the quality of citizen participation. However, there are still significant challenges which must be addressed in the post-election period through in depth reforms.

Election observer missions have played an unprecedented role in promoting and protecting electoral integrity, in line with Nigeria's international commitments and legal framework. Nonetheless, if there is a will to make more rapid and deeper changes in order to strengthen electoral democracy, EOMs will need to change their approach. One of these changes is that ECOWAS should be encouraged to make its final EOM report available in order to help electoral assistance institutions and civil society organisations to advocate and support electoral reform.

Although EOMS continue to identify key challenges to electoral integrity, their recommendations are not always available to the public. As a result, they generally fail to be translated into reforms. As it stands, traditional election observation does not enable sufficient protection of electoral integrity despite the continental norms adopted.

Governments have little incentive to improve the quality of the process as a whole as long as the elections are declared free, fair and peaceful. New mechanisms should be designed to put additional pressure on governments and election management bodies in order to protect electoral integrity. One of these mechanisms at sub-regional level could be an election management grading system.



## CONCLUSION AND RECOMMENDATIONS

This collection of case studies has brought to the forefront the main challenges faced by the AU and RECs in promoting democratic advancement through election observation. The challenges are the result of weaknesses in the framework for election assessment and the methodology of election observation.

The first and second chapters of the book examine the existing standards and benchmarks for democratic elections which serve as pillars for election observation by pan-African inter-governmental bodies and recognise the lack of a harmonised or comprehensive approach for assessing the integrity of elections.

The absence of a clear frame of reference for assessing electoral integrity has excused the non-compliance with or enforcement of regional and sub-regional standards or has allowed EOMs to turn a blind eye to principles embedded in fundamental texts. An example is the case of Tunisia, where EOM reports were silent on the religious requirements for candidates wishing to stand for office. While these are a clear infringement of basic human rights and principles enshrined in the UDHR, ACDEG and the ICCPR, it appeared that the AU and RECs that observed the election condoned it. In addition, EOMs conducted by pan-African intergovernmental bodies are faced with the dilemma of maintaining peace and stability at the expense of denouncing serious violations of electoral integrity.

With regard to the methodology of EOMs, the case studies highlight the different aspects of the electoral process of each country which fail to meet standards of integrity. Boundary delimitation, voter registration and campaign funding are threats to the integrity of elections in all the countries studied. Among these common denominators are phases

which are largely ignored in pan-African EOM reports mostly because they require longer-term observation and, more importantly, technical skills. A comprehensive cycle-based approach is essential to the assessment of electoral integrity, hence the development of the Scorecard for Electoral Integrity in Africa to enable assessors to analyse all aspects of the electoral cycle.

The findings of the country case studies provide a basis for the formulation of the following recommendations, which are geared to improving the ability of pan-African inter-governmental EOMs to fulfil the relevant broader democratic goals and objectives enshrined in the AU Constitutive Act and the ACDEG, which have been formally endorsed by member states.

The recommendations can be classified in two main clusters. Some focus on improving the work and role of EOMs conducted by the AU and RECs, others concentrate more on the relationships of pan-African EOMs with other groups involved in election observation.

## RECOMMENDATIONS

- ❑ **Strengthen synergies among the RECs and the AU** There should be closer cooperation and coordination between the sub-regional and continental bodies. The case studies demonstrate that it is not uncommon for the AU and the RECs to assess the same election in different ways. The AU and the RECs should systematically harmonise their reports and echo each other's recommendations to ensure that they are addressed by the stakeholders in order to guarantee improved electoral practices on the continent. Their work should be complementary and, while the AU could benefit from a relationship with a knowledgeable resource body (provided that the REC is strong and functional), the RECs could also use additional backup and support from the AU. This explains why the AU's Peace and Security Council has recently stressed 'the need for the Commission to build and ensure greater synergies, cooperation and collaboration with the Regional Economic Communities and Regional Mechanisms for Conflict Prevention, Management and Resolution' (Communiqué of the 573rd meeting of the PSC on elections in Africa, held on 8 February 2016). In this regard, there is a need for regular methodology review meetings at which technical teams from relevant units or departments of the AU and RECs and electoral experts meet to review their assessment of different elements of specific elections to understand how conclusions were reached. RECs such as ECOWAS and EAC already have such post-election review meetings but such reviews need to be extended to include the AU and other RECs that observed in the countries being reviewed.

- ❑ **Invest in the RECs (building capacity)** The RECs play a central role in maintaining the political stability of their member states. As the Burundi case study shows, the EAC's presence was critical when the AU based on the provisions of the ACDEG, did not observe the undemocratic presidential election, which took place on 21 July 2015. Although the AU's decision was politically motivated and necessary, the EAC, as a regional institution, who had been involved in the mediation process could not afford not to observe that election. Most Central African states, as highlighted in the Congo-Brazzaville case study, could benefit from a stronger and more influential REC. Indeed, the limited impact made by the ECCAS as a regional institution explains, in part, the deplorable state of democracy in the region. Building the capacity of the different RECs and making them the primary influence on and implementers of principles of electoral integrity is hence fundamental.
  
- ❑ **Rationalise costs (quality versus quantity)** More and more election assessment institutions have recognised the importance of conducting long-term election observation missions and have opted to do so. Since 2013 the AU has conducted 12 long-term missions (in Kenya, Zimbabwe, Mali, Guinea [Conakry], Madagascar, Guinea-Bissau, Malawi, Mozambique, Tunisia, Lesotho, Nigeria and Ethiopia). The AU is mandated to send observer missions to every member state, however, short-term observation is much less costly and, therefore, remains the norm. The RECs undertake medium- to short-term election observation missions and occasionally, as in the case of the EAC, conduct a pre-election assessment mission, but do not invest in longer-term or cycle-based observation<sup>1</sup>. Given that the integrity of an election cannot be assessed or based solely on election day, which is only an event and a marginal aspect when considering the integrity of the entire process, it is advisable to extend the length of time missions spend in the country. EISA notes commendably the progress made in implementing the mandate to monitor all African elections and the time may have come to reassess the overall effectiveness of this process in terms of the special needs of upcoming elections. A cost-effective exercise, presumably led by the AU Democracy and Electoral Assistance Unit (DEAU) in consultation with the RECs, at the start of each calendar year, could enable the production of a budget for the varying scale and duration of elections scheduled for the upcoming 12 months.
  
- ❑ **Prioritise cycle-based approach to election assessment** International observers can and should play an important role in contributing to the process

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<sup>1</sup> Cycle-based observation includes, pre-election assessments, long term observer deployment during the election period, post-election reviews or follow-up missions and fact-finding missions in-between elections.

of confidence-building by making their methods more objective, with verifiable elements that enable them to make credible and efficient recommendations for improvements. The main focus should, therefore, be on assessing to what extent the integrity of the conduct of the election had been measured. The cycle-based approach should include the deployment of a pre-election assessment mission ahead of the elections, an EOM during the campaigns and voting, follow-up missions after the election and fact-finding missions in between elections.

- ❑ **Professionalise election observation** Election observation requires analytical and technical expertise, so the recruitment of experts should match the needs of the mission. Specific recruitment criteria should be stated in the regional guidelines for EOMs. The AU has been moving in that direction, by including core teams, in the long-term EOMs, composed of legal and election analysts. The RECs are yet to systematically incorporate the deployment of core teams in their missions. In addition, the deployment of experts should not be restricted to long-term missions, they are also needed in short-term missions. Drawing on the findings of this research, pan-african EOMs should include expertise in the following areas: boundary delimitation, voter registration, use of technology and political finance as these aspects have received limited assessments by pan-african EOMs.
- ❑ **Recognise the right of out of country voters (as an issue of inclusion and a fundamental right to choose leaders)** Out of country voting (OCV), a recurring issue, was brought up in the different case studies and in the discussions with the working group for this project. The increasing trend of migration (diasporas) on the continent, particularly forced migration (refugees, IDPs), which results from political instability, has led experts involved in this project to question OCV in the context of electoral integrity. The issue of the inclusion of such segments of the population, especially in post-conflict elections, is highly relevant to the integrity of elections. While this aspect remains crucial to the assessment of electoral integrity, the costs (logistical and financial) of such operations make it difficult to rebuke governments that do not make provision for OCVs and to determine whether disenfranchising these citizens was a deliberate act. This relevant and important aspect of electoral integrity should be explored further and deserves to be a project of its own.
- ❑ **Retain joint meetings among EOMs** to standardise assessments and avoid incongruent conclusions The AU and RECs can play a credible leadership role in the community of international election observation missions (IEOMs). The AU has already demonstrated its leading role on the continent by convening and hosting important meetings among the IEOMs, intergovernmental and international



non-governmental organisations, in order to share experiences and concerns. The EOMs are and must remain independent of each other; all the significant missions have endorsed the set of principles and benefit from these exchanges, which we recommend should continue, and deal with aspects of electoral integrity other than simply the voting on election day.

- ❑ **Increase the EOMs' engagement and consultations with citizen observers** Meetings among IEOMs should be complemented by international and citizen observation. International observation missions should develop better and more systematic mechanisms of cooperation to support one another's recommendations. A logical complementary process would be to engage the increasingly important local civil society monitoring groups, closest to the ground and with obvious advantages of access, familiarity and inclusiveness. Citizen groups have proliferated in many African countries, including those featured in the case studies (especially Kenya and Nigeria) and civil society organisation (CSO) monitoring networks have sprung up and are increasingly capable of sustaining grassroots networks of observers, with extensive polling station coverage. CSOs, again particularly those in Kenya and Nigeria, are also showing an ability to undertake parallel vote tabulation. The IEOMs, including the AU and the RECs, should verify their results and maintain regular communication with CSOs in order to advise on the use and release of such information. Such relationships help make election observation more inclusive and enhance the authority of common findings. Information and communications technology (ICT) (cellular, in particular) has become ubiquitous throughout Africa, which means that CSOs can be linked electronically in order to report any threats or use of violence, thus enabling security forces to respond quickly, as long as they are seen to be non-partisan and apolitical.
- ❑ **'Depoliticise' election observation** The AU and RECs face the dilemma of fulfilling a dual mission of promoting rule-bound and legitimate processes of 'dispute resolution' through non-violent political (i.e. electoral) means, while also striving to prevent, mitigate and help resolve election-related violent conflicts, which have all too frequently escalated into regional conflicts. Unlike extra-continental organisations and NGOs, the AU and RECs carry the weight of ensuring peaceful elections for the sake of the region and, therefore, have more leverage than other EOMs. However, in their willingness to guarantee peaceful elections, the AU and RECs often risk producing election reports that obscure or ignore flagrant abuses committed during those elections. The implementation of the 'do-no-harm' approach in such cases is counterproductive, because the mission reports are not totally accurate and do not necessarily reflect the reality of the conduct

of the elections. Pan-African observation groups should separate their mediation roles from their election assessment role. While both roles were recognised in the course of this project they are not mutually exclusive and a decision should be made about whether mediation would have an impact on election assessment reports, which are different from diplomatic statements. If EOMs were to submit more probing and constructively critical reports than routine endorsements of the host country's activities it would benefit both parties. This important issue was highlighted in the Communiqué of the 573rd meeting of the Peace and Security Council (PSC) on elections in Africa that was held in February 2016 (<http://www.peaceau.org/uploads/psc-573br-elections-in-africa-8-2-2016.pdf>) when the PSC recommended a comprehensive review of AU election observer missions and methodology. Furthermore, there is a need to dissociate the observation role from the intricacies of political processes that may otherwise limit the capacity of intergovernmental organisations such as the AU to make objective/credible and useful/helpful assessments. Assessments made and recommendations presented should be seen as aiming to contribute to and improve the effort to consolidate democracy at the national level. Although the importance of independence of the EOMs has been stressed, experts have suggested that there should be closer collaboration between the AU and the RECs working on the basis of the African Peace and Security Architecture (APSA). The Peace and Security Council of the AU has recently highlighted the importance to the avoidance of possible electoral risk factors through 'early warning and timely briefings by the Continental Early Warning System' in order to 'enable the Council to make timely and appropriate responses' (Communiqué of the 573rd meeting of the PSC on elections in Africa, February 2016). As highlighted in Article 15 of the 2010 Assessment Study of APSA, there is also a need for improved inter-departmental collaboration within the AUC, specifically, between the Departments of Political Affairs (DPA) and Peace and Security (PSD).

- ❑ **A uniform approach to assessing electoral integrity** There is a need for standardised definitions and applications of principles governing elections. In addition to approaching elections in their cyclical dimension and not as disconnected events it is important to adopt a new system that is directly linked to the electoral cycle and analyses its different components and phases. Such a system should be established to serve an objective assessment, whose conclusions may be easily verified and contrasted with reality, thus helping observers to move away from methodologies and assessments that depend, to a large extent, on subjective opinions.

- ❑ **Adopt guidelines and a specific methodology for the assessment of the integrity of the election.** The methodology should focus on specific thematic issues that are either not directly observable or may require particular technical expertise. Examples are party and campaign financing, voter registration, boundary delimitation and the use of technology. Current election assessment frameworks should be reviewed to harmonise them with other international benchmarks and incorporate international best practices in these thematic areas. The UN Human Rights Commission is showing increasing interest in working with IEOMs on this and detailed templates have been developed by The Carter Center's Democratic Elections Standards Project (<http://electionstandards.cartercenter.org>). The case studies demonstrate the importance of having all pan-African EOMs agreeing to follow a flexible, yet common, set of standards. This project served as a basis for the design of a tool, '*the Scorecard for Electoral Integrity in Africa*', which the pan-african observer groups could use to assess, specifically, the integrity of elections. While this tool is in its pilot phase and is still being tested for further development, it should be used in conjunction with strengthened benchmarks that need to feature in existing instruments. See Annexure I for the 'Scorecard for Electoral Integrity in Africa'.
  
- ❑ **Follow-up and follow through** EOMs should be able to implement an effective follow-up to assess how identified challenges and failures are being dealt with and how recommendations can be translated into practical measures to improve the level of electoral integrity. Successive observation reports should be linked so that progress can be tracked incrementally and persistent failures may be addressed more efficiently, both by the concerned national institutions and actors and by international support programmes that build on and benefit from observer reports. In addition, through greater information-sharing and communication at all stages of the electoral process, pan-African institutions that are unable to extend their stay in a country could explore the possibility of drawing on the longer-term missions of others and follow up on the implementation of the recommendations.
  
- ❑ **Foster a network of experts ready to advise on developments (mail blasts and online platforms)** Pan-African election assessment institutions should use their networks of experts to acquire knowledge and expertise. Experts can intervene in any situation ranging from basic information about a country's election process to an in-depth political analysis of a crisis situation about which urgent expert advice is needed. A network of experts can be coordinated and maintained through simple mail blasts or online platforms.

- ❑ **Publish and disseminate EOM reports** In order to improve future elections it is critical that EOMs produce full reports containing practical recommendations that the relevant stakeholders can implement. The Nigeria case study demonstrates the drawbacks of not making EOM reports available. ECOWAS only publishes preliminary statements and these do not provide sufficient detail or analysis to help improve the conduct of future elections. Furthermore, the AU Democracy and Electoral Assistance Unit should publish and disseminate all EOM reports to the AU member states and country EMBs and RECs, highlighting, in all cases, the host country's legal obligations under the AU Constitutive Act, UN treaties, the African Charter on Democracy, Elections, and Governance (ACDEG) and other relevant instruments, and draw attention to any gaps between avowed principles and electoral performance. Member states that have not yet ratified the ACDEG should be encouraged to do so.

**Annexure I**  
**Overview of Election Assessment Instruments in Africa**

<b>Institution</b>	<b>Benchmark</b>	<b>Year passed</b>
Global benchmarks	UN Universal Declaration of Human Rights	1948
	International Covenant on Civil and Political Rights	1966
	Declaration of Principles for International Election Observation and Code of Conduct for International Election observation	2005
Continental	AU Declaration of Principles Governing Elections in Africa	2002
	Guidelines for African Union Electoral Observation / Monitoring Missions	2002
	African Charter on Democracy, Elections and Governance (ACDEG)	Adopted in 2007 and came into force in 2012
Southern Africa	SADC Principles and Guidelines Governing Democratic Elections	Adopted in 2002 and revised in 2015
	SADC-Parliamentary Forum Norms and Standards for Elections in the SADC Region	2001
	SADC Protocol on Gender and Development	2008
	SADC Electoral Commission Forum, Principles and Guidelines on the Independence of Election Management Bodies in the SADC Region	2008
	SADC Electoral Commission Forum and EISA, Principles on Election Management, Monitoring and Observation in the Southern African (PEMMO)	2003
West Africa	ECOWAS Protocol Relating to the Mechanism for Conflict Prevention, Management and Resolution Peacekeeping and Security	1999
	ECOWAS Supplementary Protocol on Democracy and Good Governance	2001
East Africa	The Treaty for the Establishment of the East African Community	1999
	EAC Principles for Election Observation and Evaluation	2012
	Protocol on Good Governance	Yet to be adopted

Central Africa	Treaty for the establishment of ECCAS  (12ème conference des Chefs d'Etat et de Gouvernement) Déclaration sur l'appui au processus electoral dans les Etats Membres de la CEEAC	1984  2005
Other sub-regional instruments relating to democracy and elections	COMESA:  The COMESA Treaty	1994
	The COMESA Election Observation Guidelines and Code of Conduct	2013
	ICGLR: Dar-es-Salaam Declaration On Peace, Security, Democracy And Development In The Great Lakes Region	2004
	IOF: Déclaration de Bamako	2000

## Annexure 2

### Scorecard for Electoral Integrity in Africa

Please select from drop downs below before completing the scorecard				
Thematic issues	Reference points	Rating from 1-6 (1 = worst, 6 = best)	Relevance	
<p>1 Legal Framework</p> <p>Boundary delimitation / electoral system</p> <p style="text-align: center;">Mixed</p> <p>PR</p> <p>Post-conflict/transition</p> <p>Diaspora/ethno-religious minorities</p> <p>Focus of persons with disabilities</p> <p>Closed society</p> <p>Post conflict election</p> <p>High-stake/critical election</p> <p>Open society</p> <p>Fully automated</p> <p>Partially automated</p> <p>Not applicable</p>	<ul style="list-style-type: none"> <li>* Guarantee of rights and freedoms in the Constitution</li> <li>* Presidential tenure limit in the constitution</li> <li>* Legal framework contested by major segments of population</li> <li>* An independent election management structure established by the Constitution</li> <li>* Provisions for affirmative action on women participation and representation</li> <li>* Provision for regular conduct of elections</li> <li>* Electoral system stipulated in the constitution</li> <li>* Provisions for amendment or review of the constitution stipulated and complied with</li> <li>* Provide for election observers to observe the electoral processes</li> <li>* Provide effective mechanisms and remedies for compliance with the law and the enforcement of electoral rights, defining penalties for different offences</li> <li>* Powers and functions of EMB stipulated</li> <li>* Independence of EMB guaranteed financially and politically</li> <li>* Procedures for conduct of elections stipulated</li> <li>* Includes regulatory provisions on political finance (ceilings and disclosure)</li> <li>* Provisions of state funding to parties</li> <li>* Regulations concerning the utilisation of public assets and funds</li> <li>* Party and campaign finance laws are fairly applied to all contesting parties/candidates</li> <li>* Electoral legislation establishes a specific time frame for results announcement</li> <li>* Electoral legislation clearly indicates authority responsible for result announcement</li> </ul>	High		

2 Electoral System	<ul style="list-style-type: none"> <li>* Electoral system is understood by electoral stakeholders</li> <li>* Electoral system is inclusive and ensures representation of minority interests</li> </ul>	Medium
3 Party and Campaign Finance	<ul style="list-style-type: none"> <li>* Public funding available for political parties with support*</li> <li>* Political parties submit verifiable financial accounts to EMB</li> <li>* There is equity in the utilisation of public resources</li> </ul>	Medium
4 Election Management	<ul style="list-style-type: none"> <li>* Government provides adequate funding for EMB</li> <li>* Election management is cost efficient and sustainable</li> <li>* Manner in which Commissioners are appointed ensures financial independence and impartiality</li> <li>* Appointment and dismissal procedures are well articulated, impartial and transparent</li> <li>* Fiscal autonomy of EMB guaranteed</li> <li>* Reporting lines are clearly defined and ensure transparency</li> <li>* EMB institutionalises selection criteria for recruitment of polling staff and performance management process</li> <li>* EMB fully responsible for managing the counting process</li> </ul>	High
5 Voter Registration	<ul style="list-style-type: none"> <li>* Registration process ensures participation of all eligible voters</li> <li>* Registration facilities are easily accessible</li> <li>* Sufficient time for registration, public voter roll inspection, objections and adjudicating appeals</li> <li>* Party agents authorised to monitor voter registration process</li> <li>* Process is open to independent observers</li> <li>* Voters roll is free and accessible to political parties</li> <li>* Voting rights considerate of citizenship, residency requirements, legal age of majority and other grounds for disqualification</li> <li>* Voter registration process is accessible to minorities and vulnerable social groups</li> <li>* Voters roll is clean and up to date, accurate and complete at the time of registration</li> </ul>	High
6 Boundary Delimitation	<ul style="list-style-type: none"> <li>* Sufficient technical skills to manage the process</li> <li>* Independent, impartial body that is reflective of society manages the process</li> <li>* Criteria for delimitation enables fair representation</li> <li>* Process is consultative</li> <li>* Electoral boundaries determined in a non manipulative manner that does not favour particular groups or political interests</li> </ul>	High



7 Procurement and Operations	<ul style="list-style-type: none"> <li>* Process of acquiring election materials is transparent</li> <li>* Security provided is suitable for specific environment</li> </ul>	Medium
8 Civic and Voter Education	<ul style="list-style-type: none"> <li>* Co-ordination between EMB and civil society</li> <li>* Civic and voter education is continuous, independent, co-ordinated and consistent</li> <li>* Government funds civic and voter education programmes</li> <li>* Civic and voter education promotes participation of youth, women and rural voters</li> <li>* Presence of civil society group support</li> <li>* Existing forums utilized to disseminate information</li> <li>* Political parties collaborate with EMB</li> </ul>	Medium
9 Candidate registration	<ul style="list-style-type: none"> <li>* Nomination and registration process is transparent</li> <li>* Non-restrictive registration procedure</li> <li>* Nomination and registration process takes place over sufficient time period</li> <li>* Sufficient time for public candidate nomination list inspection, objections and dispute resolution</li> <li>* Political parties candidate nomination list promotes women participation</li> <li>* Nomination and registration procedures are democratic and fully representative of all interests</li> </ul>	Medium
10 Conduct of Election Campaigns	<ul style="list-style-type: none"> <li>* Adequate time allocated for campaigning taking into account the type of election, size and context of the election</li> <li>* Parties and candidates adhere to the electoral code of conduct</li> <li>* Fairness of the campaign process</li> <li>* Campaigns conducted in an environment without violence and intimidation</li> </ul>	High
11 Polling and Counting	<ul style="list-style-type: none"> <li>* Polling stations are accessible</li> <li>* Adequate number of polling stations provided</li> <li>* Layout of polling station allows easy flow of voters</li> <li>* Polling stations open on time</li> <li>* Empty ballot box is displayed before security</li> <li>* Secrecy of ballot is guaranteed</li> <li>* Ballot design is user friendly</li> <li>* Persons on the queue at closing time are allowed to cast their votes</li> <li>* Provisions are made for people living with disabilities to vote</li> <li>* No intimidation and campaigning at the polling station</li> <li>* Presence of security personnel at polling stations</li> <li>* Procedure for counting is understood by all authorised to be present during the count</li> <li>* Counting process occurs immediately after close of voting in the polling station</li> <li>* Voting station has adequate lighting, communication systems and security</li> <li>* EMB election report contains detailed information on registered eligible voters and voter turnout</li> <li>* Immediate public announcement and posting of results following the counting process</li> <li>* National result centre exists and is open to the public</li> <li>* Timeframe exists for result announcement and seat allocation</li> <li>* Results are managed in a manner that favours the acceptance of results</li> </ul>	High
12 Results management	<ul style="list-style-type: none"> <li>* National result centre exists and is open to the public</li> <li>* Timeframe exists for result announcement and seat allocation</li> <li>* Results are managed in a manner that favours the acceptance of results</li> </ul>	High

13	Inclusion and participation of women	<ul style="list-style-type: none"> <li>* Direct or indirect interventions should be employed to promote women's representation</li> <li>* The electoral system utilised promotes the participation of women</li> <li>* Women are able to freely participate in the management and practice of elections</li> </ul>	High
14	Inclusion and participation of minorities, PLWD's and vulnerable groups	<ul style="list-style-type: none"> <li>* Interventions employed to promote minorities, PLWD's and vulnerable groups</li> <li>* Electoral system promotes participation of minorities, PLWD's and vulnerable groups</li> <li>* Special measures taken to enable easier access to voting procedure</li> <li>* Targeted civic education programmes</li> </ul>	High
15	Role of the media	<ul style="list-style-type: none"> <li>* Equal coverage to all contesting parties and candidates</li> <li>* Press freedom guaranteed and enforced</li> <li>* Independent media authority continuously monitors and regulates the media</li> <li>* Coverage of elections adheres to an enforceable code of conduct that promotes fair reporting</li> <li>* No unreasonable censorship of the media</li> </ul>	High
16	Role of the security agencies	<ul style="list-style-type: none"> <li>* Agencies are neutral in providing election security</li> <li>* Security agencies adhere to their mandate</li> <li>* Presence of security forces does not intimidate voters</li> <li>* Regular consultation and collaboration with EMB pertaining to security and logistics arrangements during election period</li> </ul>	High
17	Role of CSOs	<ul style="list-style-type: none"> <li>* CSO's are free to participate in the electoral process</li> <li>* Adherence to code of conduct and legal framework for elections</li> <li>* CSO's are autonomous</li> </ul>	Low
18	Involvement of election observation groups	<ul style="list-style-type: none"> <li>* Pre-election assessment mission deployed in advance prior to election day</li> <li>* Timeous preparation for election observation and monitoring</li> <li>* Election observation groups ensure that participants declare any conflicts of interests</li> <li>* Election monitoring and observation missions have adequate knowledge of the regional and national context of host state</li> <li>* Timeous invitation of election observer groups issued by EMB or relevant authority responsible for providing accreditation</li> <li>* Accredited process is speedy, efficient and non-discriminatory</li> <li>* Accredited observer groups are provided the same legal protection received by citizens of the host state</li> <li>* Observer groups interact with key stakeholders involved in the electoral process</li> <li>* Observation missions produce and distribute impartial, credible and professionally written reports on the electoral process</li> <li>* Election observation reports are produced timeously</li> <li>* Electoral code of conduct enables observer groups to perform their duties freely</li> <li>* An enforceable code of conduct governs the behaviour of observation groups</li> </ul>	High
19	Management of complaints and appeals	<ul style="list-style-type: none"> <li>* Clear provisions for appeals and complaints</li> <li>* Conflict management structures established in addition to recourse to the appropriate jurisdiction operate in the post-election period</li> <li>* Complaints and appeals are handled timeously</li> <li>* User friendly technology</li> <li>* Ensures secrecy of the vote</li> </ul>	High
20	Use of technology		High
<b>Total</b>			Score /100
			0.00

## APPENDIX I

### The Project Working Group

**Mr Ayman Ayoub** is a Spanish lawyer and political scientist of Syrian origin who specialises in programmes that support democracy-building and democratic governance. Mr Ayoub, who has had more than 22 years of relevant experience, has worked for various international bodies and organisations including the United Nations system, the European Union, the Spanish Cooperation Agency, the United Kingdom Department for International Development, the United States Agency for International Development, the International Foundation for Electoral Systems, Gesellschaft Technische Zusammenarbeit/ Deutsche Gesellschaft für Internationale Zusammenarbeit and the International Institute for Democracy and Electoral Assistance (IDEA), as well as other bilateral cooperation agencies. From March 2011 to February 2015 he served as the Regional Director for West Asia and North Africa for International IDEA. During his years in the field of democracy-building he has worked in Europe, the Middle East and North Africa, Asia and West Africa and has participated in numerous research initiatives and contributed to publications including those of the Global Commission on Democracy and Security led by Kofi Annan on electoral integrity. He is currently a freelance expert consultant in elections, constitution-building and other democratic governance support fields.

**Dr Victor Shale**, founder and lead consultant of Shalestone Elections & Governance Consultants, is the former Zimbabwe Country Director of the Electoral Institute for Sustainable Democracy in Africa. He has carried out assignments for the Southern African Development Community (SADC), the Commonwealth, the African Union and many election management bodies. Dr Shale, who holds an MPhil in Conflict Transformation from the University of Port Elizabeth and a Doctorate in Politics from the University of South Africa, is an expert on governance and elections, with more than 15 years' experience in providing strategic direction, leadership and coordination of donor funded projects across Africa. He has vast experience in hands-on management, direction and advice on the implementation and budget administration of complex, multi-donor funded programmes dealing with governance, elections and human rights issues. He has researched, published and provided training to international non-governmental organisations, civil society organisations, governments and the media in 17 African countries on electoral processes, including conflict management, civic and voter education, poll-watching, election observation, election campaigning and public outreach, as well as political party coalitions and intra-party democracy and has trained more than 1 000 election observers in the

SADC region ahead of parliamentary and presidential elections. He has also reviewed articles for accredited journals such as the *Journal of African Elections*, the *Journal of Peacebuilding and Development*, the *Review of African Political Economy* and the *Journal of Sociology Studies*. He is co-editor of the books *When Elephants Fight: Preventing and Resolving Election-related Conflicts in Africa* and *The Impact of Floor Crossing on Party Systems and Representative Democracy*. He is also a regular political commentator for various media houses in South Africa.

**Mr Ibrahima Amadou Niang** holds an International Baccalaureate, a BA in International Relations and Economics from the University of Reading (England), a Maitrise in International Public Law and a Master's in International Governance from the Cheikh Anta Diop University (Senegal), where he completed a PhD thesis on political transitions in Africa. He heads the Guinea country office of the Open Society Initiative for West Africa (OSIWA). Prior to joining OSIWA he worked with the International Institute for Democracy and Electoral Assistance as the West Africa Programme Officer, based in Accra, Ghana. He also worked with the Gorée Institute, managing the democracy, elections and political processes programme. While there he was in charge of conceptualising innovative tools and methodologies for election observation, advocacy and capacity-building. He is a prolific political scientist, researcher and writer for various democracy-building and literary publications and is a Building Resources In Democracy, Governance and Election expert facilitator. He has provided direct technical assistance to election management bodies in many regions of Africa and has supported the capacity-building of various civil society organisations and political parties. His areas of expertise include transitions to democracy, electoral processes, capacity building, civil society, political parties, interparty dialogue and the economics of development and advocacy.

**Professor Gilbert Khadiagala** is the Jan Smuts Professor of International Relations and Head of the Department of International Relations at the University of the Witwatersrand, Johannesburg, South Africa. He has previously taught comparative politics and international relations in Kenya, Canada, and the United States. Professor Khadiagala holds a Doctorate in International Studies from the Paul H Nitze School of Advanced International Studies, a division of Johns Hopkins University, Washington, DC. His research focuses on governance, leadership, conflict management, mediation and negotiations in Eastern Africa, Southern Africa and the Great Lakes region. He is the author of *Allies in Adversity: The Frontline States in Southern African Security* and *Meddlers or Mediators? African Interveners in Civil Conflicts in Eastern Africa*; co-author of *Sudan: The Elusive Quest for Peace*; the editor of *Security Dynamics in Africa's Great Lakes Region* and co-editor of *African Foreign Policies: Power and Process and Conflict Management* and *African Politics: Ripeness, Bargaining,*

*and Mediation*. He has, over the years, been a consultant to the World Bank, the United Nations Development Programme, the United Nations Economic Commission for Africa, the Asian Development Bank, the African Union, the Common Market for Eastern and Southern African States and Humanitarian Dialogue.

**Prof Alain Didier Olinga** is a Public Law professor and Head of the Department of International Law at the International Relations Institute of Cameroon of the University of Younde II, Cameroon. His main research areas are: Constitutional Law, Electoral Law, Human Rights Law, International Human Rights Law and International Public Law. He is also the main author of various scientific articles on the abovementioned areas of research.

**Dr Andrea Abel van Es** is a Senior Research Fellow of the Electoral Integrity Project (EIP), based at the Department of Government and International Relations at the University of Sydney and the John F. Kennedy School of Government at Harvard University. She is also the Programme Manager of the EIP's initiative on Money, Politics and Transparency. She has lectured in the Ford Dorsey Program in International Policy Studies at Stanford University. She received her PhD in Political Science from Stanford University in 2011. Her dissertation was on civil society and interest groups during regime transitions, with a focus on the communist transition in East and Central Europe. A co-founder of the IPRE Group, she consults for local and international development and aid organisations, particularly in the field of design and implementation of impact evaluation projects, as well as quantitative analysis more generally. She has consulted for Kofi Annan on his Global Commission for Elections, Democracy and Security (a joint initiative with International IDEA), Oxford's Humanitarian Innovation Project, the United Nations High Commissioner for Refugees and the Danish Refugee Council, as well as local San Francisco-Bay Area organisations such as Samasource and Village Enterprise. An engineer by training, with both Bachelor's and Master's degrees in Aerospace/Mechatronic Engineering from Sydney University, she is a strong advocate and practitioner of quantitative evidence-based decision and policy-making.

## **The country researchers**

### **Tunisia**

**Ms Kalthoum Hezami Bouzaiene**, a lawyer within the Tunisian Bar Association, who is currently an advisor to the Tunisian Parliament, was appointed Director-General to the Tunisian National Assembly and Special Assistant to the office of the President of the Assembly in January 2016. She spent three years on secondment to the Chief of Staff of the Tunisian government. In her capacity as director she coordinated the World

Social Forum held in Tunisia in 2015. She was subsequently nominated as Managing Director in Charge of Civil Society to the minister responsible for relations with the constitutional bodies and civil society. After the Tunisian revolution and the dissolution of the two parliamentary chambers Ms Bouzaiene put her expertise at the disposal of the Independent High Authority for Elections, in charge of the organisation of elections for the National Constituent Assembly. This experience allowed her to take part in several election observation missions with the African Union (Burkina Faso, Guinea Bissau, Cameroon, and Congo-Brazzaville). During the parliamentary and presidential elections in 2014 Ms Bouzaiene worked with the European electoral assistance team to Tunisia, conducting several training workshops for judges and lawyers involved in the resolution of electoral disputes. She was one of the first core executives who established the House of Councillors (Tunisian Senate) and spent six years as an advisor to the General Secretariat. She started off her career as an advisor to the Tunisian Chamber of Deputies.

### **Kenya**

**Mr Adams G Oloo** obtained his BA degree from the University of Nairobi, Kenya, in 1991. He subsequently obtained graduate degrees in Political Science from the University of Nairobi (MA 1995) and the University of Delaware (MA 2001, PhD 2003). He also has an LLB from the University of Nairobi (2014). He is currently a senior lecturer and Chairman of the Department of Political Science and Public Administration at the University of Nairobi, Kenya. His current areas of ongoing research include the electoral process, constitutions and constitutionalism, devolution and governance. During his professional career, which has spanned 20 years, he has received various awards. Since 1996 he has taught at the University of Nairobi, Kenya, the University of Delaware (USA) and the National Defense College, Defense Staff College and the National Intelligence Academy, all in Kenya. He has written numerous chapters for books and articles for refereed journals. His areas of academic interest and specialisation include International Relations, Public Policy, Political Economy, Comparative Politics and Global Governance.

### **Burundi**

**Mr Maleine Amadou Niang** is currently a researcher at the University Cheikh Anta Diop of Dakar, working on the fiscal policies of the member states of the West African Economic and Monetary Union. He also provides support to the African Union's work in other countries through training, long-term election observation and fact finding/assessment missions. He is a dedicated professional with a broad background in public policies and experience ranging from political affairs to economic development. Within Senegal Mr

Niang has worked in parliamentary assistance, civic engagement, constitutional reform and the introduction of result-based management in the public administration and has conducted training in election observation with the African Union. He is also an academic who has contributed to several research projects linked to democratic transitions and public finances and an AU legal/political expert trained by the Department of Political Affairs.

### **Mozambique**

**Mr Guilherme Mbilana**, who has a Master's degree in Constitutional Law and Public Administration and a post-graduate degree in Juridical Science, is a professor of Electoral Law, Constitutional and Electoral Claims at various Mozambican universities and Executive Director of the Observatory of Human Rights and Legality of Mozambique. He has consulted with the Mozambican Parliament on revising the Electoral Bill and has trained and provided legal assistance to national and international observer missions. He has substantial experience in leading civil society organisations working in the fields of election observation, mediation of electoral conflicts at national and international level, producing electoral codes of conduct for various stakeholders involved in electoral processes and monitoring governance at local and central level. He has coordinated various publications and research work on electoral processes and has taken part in national and international seminars and training sessions which have resulted in the production of tools that have had a national, regional and international impact.

### **Zambia**

**Ms Susan Mwape**, Executive Director of Common Cause Zambia, has served in different capacities with various local and regional organisations and has worked in the field of Democracy and Governance since 2006. She has extensive experience in project management and programming for elections and electoral processes and in gender, human rights, social accountability, transparency and civil society coordination. An elections expert who has served on numerous local and international election observer missions in Africa as a short-, medium- and long-term observer, she is co-founder of the Zambian Bloggers Network and the Pass it on Foundation, a Zambian charity.

### **Congo-Brazzaville**

**Mr Fabrice Parfait Oumba** who holds a PhD in Law and is an internationally recognised expert in International Law, is currently a lecturer at the Catholic University of Central Africa, where he co-directs the Master's programme in Human Rights and

Humanitarian Action and gives courses in International Environmental Law at the University of Yaoundé II, Cameroon. He is a member of the Network of Francophone lawyers in Environmental Law and participated in the creation of the *African Journal of Environmental Law*. He was Co-Director of the Interdisciplinary Centre for International Law for many years and a laboratory member of the Faculty of Social Sciences and Management of the Central African Catholic University. He also supported the coordination of collaborative multiannual research projects. With Professor Jean Didier Boukongou he co-directed a scientific project on *The Effectiveness of Human Rights in Central Africa*; this collaboration continues in the framework of the *African Book Review of Human Rights*. His research into various cross-cutting issues in International Law has resulted in the publication of several books and a number of scientific articles and he has also acquired expertise in research administration.

### **Nigeria**

**Ms Idayat Hassan** is currently Director of the Centre for Democracy and Development, West Africa, based in Nigeria.

**Mr Yusuf Shamsudeen Adio** obtained his Bachelor's and Master's degrees in Political Science from Lagos State University and the University of Ibadan and is an alumnus of the Leading in Public Life Programme of the Graduate School of Development Policy and Practice, University of Cape Town, South Africa. He is also an alumnus of the West Africa Peacebuilding Institute, Ghana. Currently he is a Senior Programmes Officer at the Centre for Democracy and Development, Abuja, Nigeria. Has worked for more than five years on electoral issues in Nigeria and other countries in West Africa.



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## ABOUT EISA

EISA was established on 28 June 1996 as the Electoral Institute for South Africa. EISA extended its area of work to the Southern African Development Community (SADC) region and changed its name to reflect its outreach to the SADC region on 15 December 2000. EISA undertook a further name change to reflect its extended geographic outreach to the entire African continent on 23 April 2010 when it registered the name 'The Electoral Institute for the Sustainability of Democracy in Africa' and in 2011 amended its name to the 'Electoral Institute Sustainable Democracy in Africa'. The acronym EISA has been used throughout.

EISA envisions an African continent where democratic governance, human rights and citizen participation are upheld in a peaceful environment. It strives for excellence in the promotion of credible elections, citizen participation and the strengthening of political institutions for sustainable democracy in Africa.

EISA has deployed continental observer missions for the past ten years including missions to Angola (2008), Botswana (1999, 2004, 2009), Central African Republic (2010, 2011), Democratic Republic of Congo (2005 referendum, 2006 elections), Egypt (2011, 2012, 2014, 2015), Ghana (2008, 2012), Guinea Conakry (2010), Lesotho (1998, 2002, 2007, 2012, 2015), Liberia (2011), Madagascar (2005, 2007, 2013), Malawi (2004, 2009), Mauritius (2000, 2005, 2010), Mozambique (1999, 2004, 2009, 2013, 2014), Namibia (1999, 2004, 2009), Senegal (2012), Seychelles (2011), South Africa (1999, 2004, 2009, 2014, 2016), Tanzania (2005, 2010), Uganda (2011, 2016), Zanzibar (2005, 2010), Zambia (2005, 2008, 2011, 2015, 2016), and Zimbabwe (2000, 2002, 2008). The final reports on these missions can also be found on its website [www.eisa.org.za](http://www.eisa.org.za)