

Electoral violence has scarred the momentous steps Africa has made in the transition from authoritarianism and despotism since the countries of the continent began to gain their independence some 50 years ago. *When Elephants Fight* chronicles contemporary trends and examines electoral conflicts and the way in which various national, regional, and international players have tried to resolve them. The title of the book captures the point that when political parties and power elites battle for power it is the ordinary people who suffer most, some losing their lives, others their homes and livelihoods. The volume brings together academics and practitioners in a unique exercise aimed at shedding light on one of the most pressing contemporary issues in African politics – the need to stem the tide of electoral conflict and violence.

The primary thesis is that as Africa undergoes yet another great transformation since independence we should learn from the institutional flaws that have produced electoral violence and transcend them by constitutional and electoral engineering.

In addition to detailed case studies of Kenya, Lesotho, Nigeria, Tanzania, and Zimbabwe, the book focuses on the role of regional African institutions in contributing to the principles and guidelines aimed at promoting orderly and peaceful political competition and the constitutional transfer of power.

*When Elephants Fight* highlights the importance of building solid political, constitutional and electoral systems that will underpin Africa's democracy. The authors recognise that while institutions, systems, rules and regulations matter in the conduct of politics so too do the political culture and behaviour of political parties and power elites.

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WHEN ELEPHANTS FIGHT

Edited by | Matlosa | Khadiagala | Shale

# WHEN ELEPHANTS FIGHT

PREVENTING AND RESOLVING  
ELECTION-RELATED CONFLICTS  
IN AFRICA



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Edited by

Khabele Matlosa | Gilbert Khadiagala | Victor Shale

FOREWORD BY FESTUS MOGAE, FORMER PRESIDENT OF BOTSWANA

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PREVENTING AND RESOLVING ELECTION-RELATED  
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# CONTENTS

<b>Foreword</b>	
<i>Festus Gontebanye Mogae</i>	vii
<b>Acknowledgements</b>	ix
<b>Abbreviations</b>	x
<b>Introduction</b>	
<i>Khabele Matlosa, Gilbert M Khadiagala and Victor Shale</i>	1
 <b>PART I: EXPLAINING CAUSES AND CONSEQUENCES</b>	
Reflections on the causes, courses and consequences of election violence in Africa	
<i>Gilbert M Khadiagala</i>	13
2 The legitimacy crisis and the resurgence of military coups in Africa: The limits of democratisation	
<i>Mwesiga Baregu</i>	23
3 Elections and conflict resolution in Africa	
<i>David K Leonard</i>	37
4 Electoral systems and conflict in Africa	
<i>Mpho G Molomo</i>	51
 <b>PART II: CONFLICT PREVENTION, MANAGEMENT AND RESOLUTION</b>	
5 The application of alternative dispute resolution mechanisms in handling election-related conflicts	
<i>Gavin Bradshaw</i>	69
6 Power-sharing as a mechanism for managing post-election conflicts in Africa: A cure or a curse?	
<i>Victor Shale</i>	81
7 Elections and violence in Nigeria	
<i>Samuel Egwu</i>	92
8 Elections and conflict in Zanzibar	
<i>Bernadeta Killian and Richard Mbunda</i>	117

9	The 2007-2008 election conflict in Kenya: Reflections on the Independent Review Commission <i>Jørgen Elklit</i>	128
10	The role of multiparty liaison committees in preventing and managing conflict in South Africa <i>Mosotho Moepya</i>	143
<b>PART III: THE ROLE OF AFRICA'S INTERGOVERNMENTAL INSTITUTIONS</b>		
11	The challenges of elections in Africa: Lessons from the African Peer Review Mechanism process <i>Afeikhena Jerome and Khabele Matlosa</i>	157
12	The role of the African Union in the prevention, management and resolution of election-related conflicts in Africa <i>Francis Ikome</i>	176
13	The role of the Southern African Development Community in mediating post-election conflicts: Case studies of Lesotho and Zimbabwe <i>Khabele Matlosa</i>	196
14	ECOWAS and election-related conflict in Guinea-Bissau and Nigeria <i>Ade Adefuye</i>	219
<b>Conclusion</b> <i>Khabele Matlosa, Gilbert M Khadiagala and Victor Shale</i>		232
<b>Bibliography</b>		237
<b>Index</b>		255
<b>Contributors</b>		263

## FOREWORD

I was delighted to learn, that the Electoral Institute for the Sustainability of Democracy in Africa (EISA) was organising and hosting its fourth symposium in November 2009 in Johannesburg, South Africa. This annual forum was attended by various stakeholders, including representatives of election management bodies, the judiciary, the legislature, political parties, civil society organisations, the donor community, development agencies, the African Union Commission, the Pan-African Parliament, the African Peer Review Mechanism, the United Nations Development Programme, the United Nations Economic Commission for Africa, regional economic communities such as the Southern African Development Community, the Economic Community of West African States and the East African Community, universities and research institutes and the media. The main purpose of the symposium was to examine the democratic value of elections by exploring mechanisms for the constructive management of election-related conflicts.

This book, with its theme, 'Preventing and Resolving Election-related Conflicts in Africa', presents a stimulating and diverse collection of papers, written by renowned academics and practitioners in the field of elections, democracy and governance. Thus, the book traverses both theory and practice, making it of interest to a wide audience. It assesses the challenges of election-related conflicts in Africa and explores best practices for preventing, managing and resolving them, with a view to ensuring durable peace, consolidated democracy and sustainable human development.

It is my considered opinion that the overall strength of the book is that it not only succeeds in analysing objectively and critically issues that are often deemed sensitive in various regions of Africa, it also offers relevant policy recommendations.

While there is general consensus that the African continent has made progress in democratisation since the end of the Cold War, the contributors to this volume do not hesitate to highlight the remaining challenges that require prudent policy responses. They observe that, while elections have been held regularly in multiparty dispensations, the results have been mixed with regard to the extent to which they have helped promote democracy, peace and security in Africa.

The book shows that in some countries elections have been followed by political stability while in others the aftermath has been violence and instability. In the latter case, evidence in the book points to causes ranging from poor management of the electoral processes to shortcomings of electoral systems, to a lack of visionary leadership, among other factors. There is major concern about the resurgence of unconstitutional changes of government in the recent past in a number of African countries. However, I congratulate the African Union, its



various organs and the regional economic communities on their efforts to deal with unconstitutional changes of government and violent electoral conflicts. I am gratified that this volume also highlights these efforts. If democratic gains are to be consolidated it is incumbent upon all of us to find a means of ensuring that these worrying trends are arrested before they jeopardise Africa's development prospects.

The book combines general discussion and specific country studies, prevention, management and resolution of election-related conflicts. The richness and diversity of material makes it an invaluable contribution to African efforts to deal with election-related conflicts. It will benefit academics, policy makers and practitioners as they grapple with the problematic nexus between elections and democracy.

I commend EISA and the contributors to the book, particularly the editors (Khabele Matlosa, Gilbert M. Khadiagala and Victor Shale), for their relevant and timely contribution to the ongoing discourse about mitigating election-related conflict in Africa.

**Festus Gontebanye Mogae**  
**Former President of the Republic of Botswana**  
**(Recipient of the Grand Cross of the *Légion d'honneur* and winner of**  
**the 2008 Ibrahim Prize for Achievement in African Leadership)**

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We are indebted in the production of this book, which is an outcome of the 4<sup>th</sup> Annual EISA Symposium, held in November 2009, to the contributions of a variety of individuals all of whom deserve our gratitude. We thank Mr Leshele Thoahlane, chairperson of the EISA Board for having delivered a Keynote Address which set the tone for the deliberations at the symposium. We also appreciate the leadership and guidance of EISA Executive Director Denis Kadima and of Dr Khabele Matlosa (then EISA Director of Programmes) who conceived the symposium and saw it through to fruition, as they have done with previous EISA symposia.

We also acknowledge the critical role played by the Fourth Annual EISA Symposium Committee, led by Victor Shale and comprising Kedibone Tyeda, Maureen Moloi, Yvette Ondinga, Nkgakong Mokonyane and Dipti Bava, who ensured the smooth running of the symposium. We are also indebted to the immense contribution of EISA staff members Zahira Seedat, Irene Maboea, Ntsiki Mandita, Naphtally Sekamogeng, Anselme Nana, Anissa Izidine, Nirina Rajaonarivo and Yusuf Mayet to the success of the symposium and acknowledge the contribution of Dimpho Motsamai, who acted as rapporteur, capturing the proceedings and drafting the proceedings report. Special thanks go to Dr Jackie Kalley for overall supervision of the publication process, to Zandile Bhengu for compiling the abbreviations and bibliography for this book.

It is equally fitting to thank all the resource persons, chairpersons of various sessions and the large number of participants from election management bodies, civil society organisations, political parties, parliaments, academia, the media, and regional bodies, including ECOWAS, EAC, SADC, AU, PAP, the APRM Secretariat, UNECA and the UNDP and other international actors without whose enthusiastic participation the symposium would have been a fiasco.

The tight deadlines in producing this book put considerable pressure on our copy editor and design and layout team as well as on the printer. For this we sincerely thank Pat Tucker, Sue Sandrock and Andrew Mayer.

Finally, neither the fourth annual EISA symposium, which sought to explore ways in which election-related conflict can be better prevented, managed and resolved, nor this book, would have been possible without the generous financial assistance of the Swedish International Development Agency (Sida), the Department for International Development (DFID) and the Royal Danish Ministry of Foreign Affairs (Danida). Their invaluable contribution made the symposium memorable and a huge success.

**Khabele Matlosa, Gilbert M Khadiagala and Victor Shale**

## ABBREVIATIONS

ABC	All Basotho Convention
AC	Action Congress
ACP	Alliance of Congress Parties
AD	Alliance for Democracy
ADR	alternative dispute resolution
AG	action group
ANC	African National Congress
ANPP	All Nigeria People's Party
APRM	African Peer Review Mechanism
ASP	Afro-Shiraz Party
ASU	Afro-Shiraz Union
AU	African Union
AUC	African Union Commission
BAC	Basutoland African Congress
BCP	Basutoland Congress Party
BNP	Basotholand National Party
CAN	Christian Association of Nigeria
CCL	Christian Council of Lesotho
CCM	Chama Cha Mapinduzi
CEWS	Continental Early Warning System
CMS	conflict management systems
CPLP	Community of Portuguese Language Countries
CSAR	Country Self-Assessment Report
CSO	civil society organisations
CSSDCA	Conference on Security, Stability, Development and Cooperation
CUF	Civic United Front
DEAF	Democracy and Electoral Assistance Fund
DEAU	Democracy and Electoral Assistance Unit
DFID	Department for International Development
DRC	Democratic Republic of Congo
EBID	ECOWAS Bank for Investment and Development
ECK	Electoral Commission of Kenya
ECOMOG	Economic Community of West African States Monitoring Group
ECOWAS	Economic Community of West African States
EFCC	Economic and Financial Crimes Commission
EISA	Electoral Institute for the Sustainability of Democracy in Africa
EMBs	election management bodies
ERC	Electoral Reform Commission
EU-EOM	European Union Electoral Observer Mission
FPTP	first-past-the-post

GNP	gross national product
GNU	government of national unity
GPA	Global Political Agreement
HSGIC	Heads of State and Government Implementation Committee
ICC	International Criminal Court
IDASA	Institute for Democracy in Africa
IDEA	Institute for Democracy and Electoral Assistance
IDP	internally displaced persons
IEC	Independent Electoral Commission
INEC	Independent National Electoral Commission
IPA	Interim Political Authority
IPAC	Inter-Party Advisory Council
IPG	Inter-Party Parliamentary Group
IREC	Independent Review Commission
JDPC	Justice, Development, and Peace Commission
JOCS	Joint Operation Committee
JOMIC	Joint Monitoring and Implementation Committee
KANU	Kenya African National Union
KBS	Kenya Broadcasting Services
KEDOF	Kenya Elections Domestic Observer Forum
KICC	Kenyatta International Conference Centre
LCD	Lesotho Congress for Democracy
LDF	Lesotho Defence Force
LGE	local government elections
LPC	Lesotho's People's Congress
LWP	Lesotho Workers' Party
MDB	Municipal Demarcation Board
MDC	Movement for Democratic Change
MDC-M	Movement for Democratic Change – Mutambara
MDC-T	Movement for Democratic Change – Tsvangirai
MCO	ministerial committee organ
MDGs	Millennium Development Goals
MFP	MaremaTlou Freedom Party
MMP	mixed member proportional
MOU	memorandum of understanding
MP	member of Parliament
MSU	Mediation Support Unit
NACOREV	National Campaign on Reduction of Electoral Violence
NAPEP	National Program on Poverty Eradication
NBA	Nigerian Bar Association
NCNC	National Council of Nigerian Citizens
NEPAD	New Partnership for Africa's Development
NGO	non-governmental organisation
NIP	National Independence Party

NOA	National Orientation Agency
NP	National Party
NPC	Northern Peoples' Congress
NPN	National Party of Nigeria
NPOA	National Plan of Action
NPP	Nigerian Peoples Party
NSCIA	Nigerian Supreme Council for Islamic Affairs
NURTW	National Union of Road and Transport Workers
OAU	Organisation of African Unity
ODM	Orange Democratic Movement
OPDSC	Organ for Politics, Defense and Security Cooperation
PAFMECA	Pan-African Freedom Movement of East and Central Africa
PAIGC	African Party for the Independence of Guinea and Cape Verde
PFZAPU	Patriotic Front Zimbabwe African People's Union
PDP	People's Democratic Party
PLASIEC	Plateau State Independent Electoral Commission
PLC	party liaison committee
PNU	Party of National Unity
POA	plan of action
PR	proportional representation
PRP	People's Redemption Party
PRS	Social Renovation Party
PSC	parliamentary select committee
PSC	Peace and Security Council
RECs	regional economic communities
ROs	returning officers
ROC	results operations centre
RPT	Togolese People's Rally
SADC	Southern African Development Community
SANDF	South African National Defence Force
SAPs	structural adjustment programmes
SSS	State Security Service
TANU	Tanganyika African National Union
TEMCO	Tanzania Election Monitoring Committee
TMG	Transitional Monitoring Group
UFC	Union of the Forces of Change
UNDP	United Nations Development Program
UNEAD	United Nations Electoral Assistance Division
UNOGBIS	United Nations Peacebuilding Support Office in Guinea-Bissau
UPN	Unity Party of Nigeria
USA	United States of America
WACSOFF	West African Civil Society Forum
ZANU-PF	Zimbabwean African National Union-Patriotic Front
ZCTU	Zimbabwe Congress of Trade Unions

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ZEC	Zanzibar Electoral Commission
ZEC	Zimbabwe Electoral Commission
ZFC	Zanzibar Freedom Committee
ZNP	Zanzibar Nationalist Party
ZPPP	Zanzibar Pemba People's Party
ZUM	Zimbabwe Unity Movement



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# INTRODUCTION

**Khabele Matlosa, Gilbert M Khadiagala and Victor Shale**

This volume is a contribution to the ongoing discourse on contemporary trends of democratisation in Africa. At the heart of the discussion in the chapters that follow is the question whether democratic governance in Africa is consolidating or in reverse gear. The key indicator we use to make this assessment is the problematique of electoral conflict.

We recognise that elections are not new in Africa, but competitive elections are only about two decades old, products of the vital political events of the 1990s that ushered the wave of multiparty democracies. In the same vein, while electoral violence has been a dominant characteristic of most elections on the continent, it is only in recent years that its prevalence has engendered enormous interest among policymakers and academics. It is worth noting that the 14th Session of the Human Rights Council of the United Nations General Assembly, held on 21 May 2010, focused its attention on election-related violence and killings.

The report of Philip Alston, the special rapporteur on extra-judicial, summary or arbitrary executions, which was tabled during this meeting notes that:

Until recently, there has been little academic research on the specific subject of election violence. While there has been a tremendous amount of writing on elections generally, and on political violence generally, there has been little on the intersection of these two fields: election-related violence. Research gaps that have been generally identified include work on causes and effects of election violence, cross-national studies, efforts to understand the specific forms or variations of violence, work that is both theoretical and case-oriented, and research on the scope, gravity and timing of election violence.

UN General Assembly 2010, p 6

This book, therefore, is an attempt to address some of the gaps in the existing literature on elections and violence in Africa. Undoubtedly, one of the most daunting challenges facing democratic governance on the continent today relates to the extent to which elections promote democracy, stability, peace and security, all of which are so crucial to socio-economic development.



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.

Recent elections in Kenya, Nigeria and Zimbabwe have highlighted the debilitating effect of electoral violence on democratisation, peace and security. In addition, these cases have generated interest in finding ways to deal with such violence and consolidate the democratisation processes in Africa. In order to provide a conceptual anchor for the subsequent chapters this introductory chapter will concentrate on clarifying the two key concepts – elections and conflict – that run through the volume, forming a thread that weaves the whole story together. The chapter is concerned with the intersection between elections and political violence, which we use synonymously with the notion of violent conflict.

## **THE INTERFACE BETWEEN ELECTIONS AND CONFLICT**

An election denotes a process through which people exercise their sovereign right to choose their leaders, giving them a democratic mandate to run public affairs on behalf of the electorate. Conflict can be defined as a real or perceived divergence of interests, beliefs and values among two or more people (parties to the conflict). This incompatibility among conflicting parties leads to the realisation that the interests of party A can only be achieved at the expense of parties B and C. Conflict can manifest itself in many forms, some of which may be violent and inflict pain and suffering on all parties to the conflict and spill over to affect people who may not be directly involved.

Elections are a key ingredient of democratic governance. While elections and democracy are so inextricably intertwined, the causal relationship between the two is not straightforward. Elections do not amount to democracy, yet democracy cannot exist without multiparty elections. This is the paradox of democratisation in Africa. There are countries where elections are held regularly, yet those countries fall far below the threshold of democracy. That is why it is critical that in Africa today the regularity and frequency of elections should not be the sole indicator of democratisation.

The degree and depth of the democracy project in Africa should be judged, not merely by the regularity of elections but by the contributions such elections make to democracy. Are they an asset or a liability? How are they managed? Is the management of elections helping in the resolution of disputes and conflicts or creating post-election crises?

Elections are an asset to democracy if they are peaceful and do not lead to post-election violence and instability which threaten peace and security. They

are a liability if they are marred by violent conflict and, in the process, trigger political and social instability.

The causal relationship between elections and conflict is not difficult to establish. Elections are a high-stakes battle for state power and, as such, are prone to conflict. But the problem is not that elections generate conflict. The problem is that conflict may escalate into political violence with belligerents resorting to violent means of resolving their differences at various stages of the electoral process.

Africa is making great strides towards embracing multiparty democracy marked by regular elections. With very few exceptions, almost all the 53 states that form the African Union (AU) have transformed their political systems into some form of democracy, formalised through their own constitutional frameworks. Commitment to multiparty democracy has triggered a momentum towards holding regular elections. However, holding regular elections is one thing, ensuring that such elections are of such high quality that their credibility is assured and their outcomes are legitimate is quite another. This is why some countries have made considerable progress towards liberal democracy as practised in the industrialised countries of the North, yet others are characterised as illiberal democracies, which simply cast a veil over their essentially autocratic systems.

A robust continental normative framework has emerged beyond individual nation states, reinforcing the commitment of the political elite to democratic governance. Included in this framework are the Organisation of African Unity's Declaration on the Framework for an OAU Response to the Unconstitutional Changes of Government, adopted in Lomé, Togo, in 2000; the Declaration on Democracy, Political, Economic and Corporate Governance of the New Partnership for Africa's Development (NEPAD), adopted in Durban, South Africa, in 2002; The African Peer Review Mechanism (APRM), adopted in Abuja, Nigeria, in 2003 and, most recently, the African Charter on Democracy, Elections and Governance, adopted in Addis Ababa, Ethiopia, in 2007.

These continental initiatives constitute significant milestones on the road to the democratisation of governance systems and the promotion of political integration in Africa and, in the process, inculcate a culture of peace, democracy, human rights and constitutionalism. It is worth emphasising that the above noble initiatives generally remain mere declarations of intent which are rarely translated into enforceable laws and political culture within the individual African states. There is a yawning gap, therefore, in respect of commitment to democratic governance in most African countries between declarations and political culture and practice. This gap needs to be closed.

While African leaders should be commended for the new momentum towards institutionalising a culture of democracy, peace, human rights and good governance, cognisance must be taken of the stark reality that the continent is still confronted with daunting challenges in this regard. These challenges are

particularly glaring in respect of elections. While elections are an important ingredient of democracy, recent experiences in Africa point to a worrying trend that suggests that they may, depending on how they are conducted and managed, be a mere façade of democratic governance. Once elections fail to become a political asset to democratic governance they fail to contribute to peace, stability and political harmony in societies marked by ethnic, racial, regional, religious and gender cleavages.

In an attempt to correct this deficiency a recent trend on the continent is for African leaders and the international community to favour inclusive governance in their attempts to redress post-election political impasses. The notion of inclusive governance entails power sharing or other mechanisms, such as unity governments, designed to increase the number of groups formally represented in government. Whether or not these are appropriate moves that ensure long-lasting peace and stability is a subject of debate among scholars and practitioners. This issue features prominently in some chapters of this volume.

## **ABOUT THE BOOK**

This book emanates from a conference convened by the Electoral Institute for the Sustainability of Democracy in Africa (EISA) in November 2009, which brought together scholars, practitioners, and policymakers to reflect on the phenomenon of electoral violence in Africa and explore strategies to mitigate this violence. The authors were broadly mandated to examine factors that propel and trigger electoral violence and to identify institutional best practices that might help to anticipate and prevent it.

In meeting these objectives, the authors proceed from the basic assumption that while the novelty of competitive electoral processes accounts for the recent upsurge in electoral violence, questions of the solidity of elite pacts, socio-economic cleavages, democratic institutional design and electoral management institutions need to be placed at the centre of analyses of electoral violence and strategies for breaking the cycle.

The authors also contend that the rise of electoral violence has coincided with a deterioration in Africa's democratic climate reflected in the resurgence of military coups; unconstitutional changes that permit presidents to extend their tenure; the creation of 'dynastic democracies', wherein the state power is dominated by a few dominant political classes behind the veil of democracy and the emergence of 'hereditary democracies', whereby sons/daughters inherit state power from their parents, bypassing democratic pluralism.

Other symptoms are the emergence and deepening of 'presidential monarchies' (see Diamond & Plattner 2010) wherein presidents wield enormous powers, which essentially subvert the very essence of democratic culture and practice – a trend that is also referred to in the literature as 'hyperpresidentialism'

– and increasing loss of faith in democratic processes by wide segments of the population in many countries, as vividly demonstrated by various Afrobarometer studies. Given the trends that have sullied democratisation in Africa the book underscores the need to situate electoral violence within the broader framework of debates about the obstacles to and opportunities for the construction of meaningful democracies on the continent.

This section of the introduction highlights some key themes and findings in the 14 chapters that follow, organised in three parts: conceptual reflections on elections and conflict, case studies of electoral violence and lessons in how to manage them, and continental and sub-regional structures for doing so.

Khadiagala's chapter locates electoral violence in 'third wave democratisation', the rapid opening up of political space and the re-emergence of opposition parties in the early 1990s. He lauds the contribution of third wave democratisation to the emergence of competitive elections, but laments that most of these elections were not anchored in liberal institutions of governance. Moreover, while elections proliferated most were marked by high levels of violence, which African states and the international community came to tolerate.

The chapter concludes that the initial tolerance of violence has produced the recent spates of electoral violence that have dented the image of democratisation on the continent.

Along the same lines, Baregu examines the resurgence of militarism in Africa as a consequence of the shortcomings of the state, socio-economic vulnerability and the failure of most countries to build legitimate and representative institutions. Analysing these failures, Baregu charts the evolution of different modes of military intervention to suggest that electoral violence is a manifestation of these deep-seated problems; in the absence of new constitutions that reorder state-society relations and put limits on power-holders, crises of state legitimacy and fragility will continue to reproduce themselves in every political generation. Focusing largely on East Africa, Baregu contends that those that have failed to effect genuine constitutional change have laid the foundations for militarism and electoral violence.

In his chapter Leonard reviews two broad debates that link elections to political stability: the sceptical thesis that contends that elections exacerbate conflicts in post-conflict states and the optimistic perspective that proposes that repeated elections create the impetus for democratisation and long-term stability. Leonard tests these arguments in various African contexts and concludes that while elections may produce violence, the overall African experience reveals that they have assisted in the gradual maturation of democratic practices. In states that are prone to violence, Leonard proposes robust international engagement in building what he calls 'violence-mitigating practices and institutions' that have become a part of the standard package of international electoral assistance in recent years.

In the last chapter of part one Molomo reiterates the importance of electoral systems to the mitigation of electoral violence. Drawing on the cases of Kenya, Lesotho, Madagascar and Zimbabwe, the chapter suggests that the 'winner-takes-all' electoral system has been a frequent source of conflict. In contrast, electoral systems that emphasise forms of proportional representation seem to enhance stability because most of the parties benefit from the outcome. Molomo cautions that electoral systems are not ends but means to an end and thus, where election-related conflicts reflect deep-seated tensions in society, changes to the electoral system must be accompanied by socio-economic reform to address the sources of the conflict.

Chapters in part two probe the socio-economic and institutional conditions in a number of African countries to reveal distinctive approaches to mitigating electoral violence. One of the consequences of the violence in Kenya and Zimbabwe was the emergence of post-election power-sharing arrangements, governments of national unity (GNUs). As Shale's chapter contends, these GNUs have generated intense debate because they are the outcome of flawed elections and set potentially dangerous precedents. Ideally, post-election coalition governments should be transitional arrangements that allow countries scarred by violence to recreate durable rules of competition rather than permanent vehicles that legitimate fraudulent elections.

There is evidence throughout Africa that GNUs may be strengthening both trends: in Kenya, the power-sharing government produced a modicum of peace that permitted the previously feuding parties to embark on a significant constitution-making process that may return the country to constitutional and political normality. In contrast, after the elections in March 2010 in Togo, condemned by opposition parties for widespread irregularities, the major opposition party, the Union of the Forces of Change, opted to join a coalition government with President Gnassingbe's ruling Togolese People's Rally, ostensibly to save the country from a 'forty year political crisis'. The trend that prevails in Africa in the short to medium term will ultimately hinge on the balance of forces in particular countries and the intentions of elites which coalesce through political pacts.

Most of the best practices in mitigating electoral violence emanate from South Africa, where sturdy mechanisms were introduced in the mid-1990s as part of the transition to a new political order. As Moepya's chapter contends, given the history of conflict in South Africa, the priority in the constitutional negotiations was to create consultative mechanisms and approaches that would promote inclusiveness. More importantly, in addition to the creation of an Independent Electoral Commission (IEC) which, since 1994, has proved its independence and capacity to conduct elections, South Africa also created party liaison committees (PLCs) in 1999 as vehicles for consultation and co-operation between the IEC and political parties, with the object of building confidence in the electoral process

and preparing for elections free from violence and conflicts. Similarly, Bradshaw's chapter argues that the South African electoral system has evolved innovative alternative dispute resolution mechanisms such as mediators in contested regions to pre-empt violent conflict.

South Africa's successful model for solid institutions that manage conflict and promote peaceful elections is contrasted with the cases of Kenya, Nigeria and Zanzibar, which have been slow to build institutions that reduce electoral violence. Almost all the chapters in the book touch on the electoral convulsion in Kenya that led to an estimated 1 000 and 1 500 deaths and between 300 000 and 500 000 displaced persons.

The Kenyan experience is interesting to most of the authors because it underscores the urgent need for institutions to resolve underlying problems that are aggravated during the uncertain times of elections. After reviewing the background that led to Kenya's electoral violence Elkit reports on the finding of the commission led by Judge Johann Kriegler to study its causes. According to Elkit, the Kriegler commission concluded that at every stage of the electoral cycle Kenya's electoral commission failed to carry out its role adequately and thus contributed to the flawed electoral process that led to violence. He thus concludes that the Kenyan election was characterised by uncertainties in both outcomes and procedures, a recipe for the disaster that occurred.

Egwu's chapter on Nigeria considers recent instances of electoral violence against the backdrop of the long post-colonial history of manipulated elections. Given its geographical, linguistic, and cultural diversity, Nigeria has confronted enormous state- and nation-building challenges with implications for the choice of leaders and the legitimacy of the political system. Egwu's equally powerful message is that successive Nigerian governments have procrastinated over rules and systems that can manage diversity effectively, hence the persistence of badly managed electoral processes at all levels of government.

Like Kenya and Nigeria, Zanzibar has faced instances of electoral violence since the inauguration of competitive politics. But as the chapter by Mbunda and Killian demonstrates, Zanzibar has a long legacy of violence stemming from the racial, class and ethnic differences that have dominated its history. The chapter argues strongly that electoral violence has built on historical cleavages to produce a perennial stalemate in Zanzibari politics which can be resolved once the ruling elites acknowledge the deeper sources of these conflicts.

The chapters in part three address the array of institutional rules and practices articulated by the African Union, NEPAD, the Economic Community of West African States (ECOWAS), and the Southern African Development Community (SADC). These institutions are critical to setting the rules for electoral governance and constitutional norms and, increasingly, are providing mediators to help countries resolve electoral violence. As a result, some of the poignant questions these chapters address are: how solid are continental and sub-regional mechanisms



in dealing with electoral violence? What are the impediments to evolving a stable continental and sub-regional regime of responsibility in relation to elections?

In their chapter on the lessons from NEPAD's African Peer Review Mechanism (APRM), Jerome and Matlosa show that since early 2000 African leaders have taken measures to help countries improve the institutional and policy environment for governance that have also entailed building effective governance and representative systems. Equally vitally, the mandate of the APRM includes monitoring governance trends; it is instructive that before the outbreak of the electoral violence in Kenya the APRM report had predicted a violent electoral outcome if elites continued to postpone constitutional reforms and to organise around ethnic affiliations.

Similarly, as Ikome argues in his chapter, the AU has, since its formation, created a wide range of policy instruments and conventions that focus on elections and electoral management, unconstitutional changes in government, protection of human rights and promotion of good governance. Ikome notes, however, that despite these provisions the key challenge has been the implementation of these conventions, specifically through their ratification and incorporation in domestic legislation. Nonetheless, he concedes that the role of the AU Panel of the Wise that helped mediate Kenya's conflict was significant in elaborating new African norms for resolving problems related to elections and civil conflicts.

Matlosa and Adefuye examine the experiences of SADC and ECOWAS, and leadership is a significant theme in Matlosa's analysis of SADC's intervention in Lesotho and Zimbabwe. SADC intervened in the two countries to help resolve electoral conflicts, mandating two key actors – former South African president Thabo Mbeki and former Botswana president Ketumile Masire – to provide stable and sustained leadership. Wearing SADC hats these leaders played vital roles in mediating the conflicts, as did the AU's Panel of the Wise, who successfully produced the Kenyan settlement. But Matlosa also points out that SADC's intervention had its own problems, particularly the inability of regional mediators and SADC as a whole to force agreements when the parties are profoundly divided.

Matlosa advances three main conclusions. Firstly, he contends that in Lesotho and Zimbabwe national-level mechanisms for the prevention, management and resolution of violent election-related conflicts are weak and ineffective. Secondly, he observes that the weakness and ineffectiveness of these mechanisms have shifted the responsibility for conflict resolution to SADC as part of its regional integration mandate. Thirdly, he argues that SADC's mediation efforts in Lesotho and Zimbabwe have been severely limited by two main factors, namely, SADC's own internal capacity constraints and the high political stakes in post-election conflicts that make parties less inclined to win-win solutions.

Adefuye, a former ECOWAS policymaker, provides a frank assessment of the organisation's limits in intervening to resolve electoral conflicts in Guinea

Bissau and Nigeria. He contends that ECOWAS made significant progress in reducing the escalation of violence in Guinea Bissau, particularly after the double assassination of the country's president and the head of its armed forces in March 2009. Subsequently, ECOWAS, alongside other international actors, has steadily steered the parties towards a comprehensive framework that addresses the many challenges facing Guinea Bissau.

In Nigeria, though, ECOWAS was hamstrung by the fact that, as the most important country in West Africa, Nigeria was unwilling to countenance the ECOWAS intervention in what it perceived as a domestic affair. Despite fielding a team of observers during the flawed elections of 2007 ECOWAS was reluctant to alienate Nigeria by criticising the outcome. Adefuye acknowledges that Nigeria's leaders thus impose a heavy price on the evolution of consistent regional norms of governance and elections in West Africa.

This book seeks to address some of the central conundrums in discussions about elections and conflict. Do elections on their own produce conflict or do parties mobilise and magnify pre-existing fissures during elections? What should be the priority in building institutions for conflict mitigation? Should countries focus on electoral systems that structure better competitive rules or on fundamental socio-economic and political reforms that get at the root of these conflicts? Our authors do not claim to have easy answers to these questions, nor have they sought to tilt the argument towards either side of the debate. But hopefully, in their analytical depth and policy convictions the chapters will spark broad African and international interest in how to resolve these problems.





# PART I

## EXPLAINING CAUSES AND CONSEQUENCES



# **REFLECTIONS ON THE CAUSES, COURSES AND CONSEQUENCES OF ELECTION VIOLENCE IN AFRICA**

**Gilbert M Khadiagala**

## **INTRODUCTION**

The widespread violence that threatened to destabilise Kenya and Zimbabwe after the elections of 2007 and 2008 has ignited policy and scholarly debates about the scourge of electoral violence in Africa. Broadly, electoral violence denotes the incomplete nature of Africa's democratic transition, but it also forces a frontal focus on institutions that may stabilise political competition.

This chapter seeks to analyse the causes, courses and consequences of election-related violence in Africa against the backdrop of the evolution of Africa's democratisation since the 1990s. It contends that while electoral violence reflects the subversion of rules of competition and participation, the fundamental problem revolves around the absence of solid institutions to manage the fragmented nature of African political systems. Furthermore, since electoral violence is a manifestation of unresolved socio-economic and political issues, there is a need for approaches that focus on durable institutions of meaningful political change.

After analysing the context of electoral violence over the last two decades the chapter provides a typology of electoral violence. Using various African examples to illustrate these themes, it concludes by reiterating some of the basic assumptions, particularly about the potential lessons presented by electoral violence in the articulation of new constitutional structures.

## **THE CONTEXT OF ELECTORAL VIOLENCE**

Electoral violence reflects the mixed legacy of the 'third wave' of democratisation that has marked Africa's democratic experiments since 1989. While, on the one hand, elections increased the number of democracies in Africa, most

of these democracies emerged without fundamental alterations to the rules that supported pluralism and liberalism.

Samuel Huntington (1994) identified third wave democracies as creatures of the confluence of external and internal pressures that propelled poor and previously authoritarian states to make significant strides toward erecting democratic institutions.<sup>1</sup> Throughout Africa, third wave democratisation inaugurated a momentous phase of civic and mass agitation that was labelled the 'second liberation', in which military rulers and one-party dictatorships were overthrown. In the course of these political transformations elections became the main vehicles for political change by expressing popular will, engendering leadership changes, and giving legitimacy to elected governments (Bratton & Van de Walle 1997; Chege 2005).

Further, elections enabled people to choose their representatives and helped redefine the reciprocal relationships between governments and people. The gains from the democratic experiments were illustrated by the numbers of African countries that had become democratic by the mid-1990s: between 1989 and 1994, 38 African countries held competitive elections, while another 11 states followed suit and held founding elections between 1995 and 1997. In the same period 16 countries held second elections.<sup>2</sup>

The triumphant era of third wave democratisation nonetheless concealed profound issues that resurfaced in later years and culminated in electoral violence. At heart, the initial phase of African democratisation was characterised by inordinate euphoria about the transformative powers of elections. Forced to adapt to the new order, regimes of every stripe latched onto elections, not as instruments of political change but, for the most part, as a means of postponing significant political reforms that would lead to genuine political competition.

Thus, in addition to weak political parties, the first phase of Africa's democratisation led to the proliferation of regimes that gained legitimacy from electoral processes that were far from democratic. In the absence of changes in the rules of competition most of the formerly dominant parties in countries such as Benin, Ghana, Mali, Kenya, Uganda, and Tanzania won democratic elections. Even where there was marked change through elections, in countries such as Benin and Zambia, old and new ruling parties managed to deploy the new institutions to gain power amid widespread condemnation from the fledgling opposition parties.<sup>3</sup>

Third wave democracies in Africa were discredited for two reasons. First, although they promised to launch irreversible processes of change, they ended up producing political lethargy and inertia in relation to meaningful reforms. Second, amid the euphoria and triumphalism local and international actors tolerated the abuse of democratic norms and standards. Cloaked in democratic garb, authoritarian parties mobilised sectarian interests, unleashed violence on opposition groups, and stole elections without let or hindrance. Moreover,

widespread legitimization of 'strong men' democracies that were ostensibly responding to the imperatives of state reconstruction in Ethiopia, Eritrea, Rwanda, and Uganda helped to strengthen semi-democratic practices and patterns that later contributed to the eruption of electoral violence (Ottaway 2003).

At the end of the 1990s there was growing recognition in Africa that although elections and multiparty competition had become internalised democratic consolidation was thwarted by the absence of rules governing political competition, particularly the urgent need to build structures that gave institutional credence to the democratic transitions.

This led to the agitation for constitutional and electoral reforms that grew from one basic premise: since most of the democratic breakthroughs of the 1990s had been hastily organised few countries had precious time to institutionalise sound procedures for popular governance. Furthermore, although elections had become central instruments for political transformation less attention had been devoted to building sturdy rules and institutions that would promote organised and predictable competition.

As part of the new clamour for change, most countries tried to find constitutional mechanisms that would strengthen opposition parties, legislatures, judiciaries, civil society, and independent media. These campaigns also entailed the search for more autonomous, impartial and transparent electoral management bodies (EMBs) to administer free, fair, and competitive elections.<sup>4</sup>

Constitutional reforms to underwrite pluralism and liberalism in Africa since the early 2000s have revealed the problems of democratic consolidation. In fact, some authors have claimed that, where they have been established, constitutional reforms have marked the start of genuine democratic transitions (see Villalon & Van Doeppe 2005; Gyimah-Boadi 2003).

The fate of constitutional reforms is vital to an understanding of the context of electoral violence because the dominant picture remains the persistence of democracies without liberal institutions. Most of the countries that have instituted electoral and constitutional reforms have done so primarily under the superintendence of the international community. For instance, in Burundi, the Democratic Republic of the Congo (DRC), Liberia, and Sierra Leone, donors devoted considerable resources to advancing negotiated constitutions that laid the foundations for democracy and economic reconstruction.

As Kwesi Obeng (2008) observes, 'Liberal democracy and free market systems are two elements fastened to the heart of states recovering from violent conflict, ostensibly to assist these countries make the transition to peace from a state of anarchy and bloodbath.'<sup>5</sup> In a majority of the African countries, however, the struggle for constitutional reforms has wrought institutional paralysis that has deepened electoral and other forms of political violence. In states that continue to face ethnic fragmentation and elite disagreements bids to institute competitive politics have ended in interminable stalemates. Of note is the case of Nigeria,

which, despite perennial demands for a constitutional convention to resolve pertinent national issues, has remained mired in political uncertainty and civil strife (Human Rights Watch 2003; Osaghae & Onwudiwe 2007).

Reminiscent of the initial phase of democratisation in the 1990s most of the countries that are struggling to build participatory and representative institutions are characterised by the existence of strong leaders who have been in power for many years and by enormous constraints on the effective participation of opposition parties. Algeria, Egypt, Niger, and Uganda epitomise this trend. These countries have also witnessed sharp reversals in democracy through changes in constitutions to fortify authoritarian rule: instead of changing constitutions to broaden democracy, leaders in these countries have extended executive tenure or abolished limits on it (Baker & Van Doep 2005, pp 65-87; Vencovsky 2008, pp 15-22; Ingram 2007, pp 71-75).

In a more recent case the party of Niger's President Mamadou Tandja won a majority in Parliament in a fraudulent election in October 2009 that was boycotted by opposition parties protesting against changes to the Constitution to permit a presidential third term. Prior to the elections Tandja dissolved Parliament and the constitutional court when both bodies opposed the changes. The Economic Community of West African States (ECOWAS) subsequently suspended Niger's membership after Tandja ignored calls to delay the election (Allafrica.com 2009).

In the worst cases of democratic reversal the military has intervened in politics in Guinea, Mauritania, and Madagascar to defeat the popular will and defy continental norms and standards about unconstitutional changes of government. Although armies have taken power ostensibly to prevent their countries from descending into civil violence, these cases demonstrate the failure to evolve civil-military relations that are grounded in a democratic ethos of civilian control of national governance. The resurgence of military rule illustrates the formidable problems of building democracies in societies fragmented along ethnic, regional, and socio-economic lines. In addition to military rule, the progress made in democratisation in Africa is under threat from the increase in electoral violence.

## **CONCEPTUALISING THE CAUSES, COURSES AND CONSEQUENCES OF ELECTORAL VIOLENCE**

Even when they are informed by rules of fairness, transparency, and secrecy elections are always competitive events with uncertain outcomes. Shaheen Mozaffar and Andrew Schedler (2002, p 11) have characterised the paradox of transparency and uncertainty in terms of procedural certainty and substantive uncertainty:

The close association between procedural legitimacy and substantive uncertainty poses the paradoxical challenge 'institutionalizing uncertainty' ...

The paradox is that substantive uncertainty requires procedural certainty. It is this paradox that defines the central task of electoral governance: organizing electoral uncertainty by providing institutional certainty. Distinguishing between substantive and procedural uncertainty enables a more nuanced understanding of variations in political actors' risk-aversion. Authoritarian and democratic actors, for instance, exhibit different attitudes towards uncertainty. While the former attempt to reduce the uncertainty of outcomes, the latter attempt to reduce the uncertainty of institutional rules.

Institutions are the mediators of the two seemingly contradictory factors, bringing predictability and order to the competitive game. Electoral violence profoundly alters this equation, injecting a new element between transparent rule and uncertain outcomes. This is why, for the most part, electoral violence reflects the absence and/or the distortion of rules for orderly competition.<sup>6</sup> In recent years in Africa, as elections have become the main legitimate means of power acquisition, the stakes have increased alongside the escalation of electoral violence.

Electoral violence has featured in Africa's democratisation and various forms of violence have occurred at different stages of the electoral process. The key puzzle, however, is whether this is caused by profound divisions inherent in Africa's polities and socio-economic systems or whether it signals the transitional teething problems of building better electoral management systems and impartial judiciaries to interpret and adjudicate electoral disputes.

This characterisation offers a suggestive typology of electoral violence. In the first order of causes, electoral violence is the outcome of events and circumstances that emanate from broader political conflicts, particularly in societies that are beset by ethnic, communal, and sectarian fissures. In this regard, elections widen these societal fissures, permitting parties to use violence to influence electoral outcomes. In the second category, electoral violence is a consequence of imperfect electoral rules; imperfections that allow some parties to manipulate elections through electoral fraud, vote buying, and rigging.

As in the case of the much-publicised Florida elections in the United States in 2002, imperfect rules exist even in countries with solid constitutional frameworks; that Florida avoided electoral violence in the face of opportunistic manipulation of electoral rules is testimony to the solidity of institutions to manage the uncertainties of elections. In addition, once the state of Florida recognised the flaws in the electoral rules it launched significant reforms to change them.

Although violence is used as an instrument to distort electoral outcomes in both examples the major difference is that countries that confront violence that manifests deeper socio-economic and political conflicts are bound to take much longer to redress the sources and courses of violence than those in the second category, which are more amenable to electoral reforms that close the institutional loopholes. In societies confronted by political conflict electoral reforms may not



guarantee the end of electoral violence in the absence of what John Higley and Michael Burton (1990) termed elite settlements: significant agreements among core leaders about the governance framework.<sup>7</sup> How do these two typologies inform discussions about the cause, course and consequences of electoral violence in Africa?

In the early period of democratisation on the continent in the 1990s once-dominant ruling parties under siege by emerging opposition parties were the key perpetrators of electoral violence. Facing intense pressure and determined to hang onto power, dominant parties in Angola, Chad, Ethiopia, Kenya, Tanzania, Uganda, and Zimbabwe resorted to violence aimed at subverting the electoral process and outcomes.<sup>8</sup> They also deployed partisan state institutions, particularly the military, paramilitary, and police forces, against opposition groups.

Violence organised by ruling parties included the forceful dispersion of political rallies, beating, assault, arbitrary detention of leaders and followers, torture, murder, and wanton destruction of property. Furthermore, blatant manipulation of the electoral process, including vote buying, intimidation of voters and the rigging and destruction of ballot boxes became part of the repertoire of violence of parties determined to deny their opponents the opportunity to take power. Similarly, opposition parties and groups, invoking the language of fairness and seeking to undo years of authoritarianism, also responded violently through street demonstrations and the destruction of property. In some cases, the spiral of violence throughout the electoral cycle forced opposition groups to boycott the elections, especially in conditions where state-organised violence succeeded in curtailing the organisational abilities of weak and fledgling parties.

The reluctance of ruling parties to accept legitimate political competition and pluralism was compounded by ethnic and regional cleavages that also contributed to electoral violence. Electoral violence in Africa typically occurs where the uncertainties of electoral outcomes have aggravated communal, ethnic, and religious conflicts, raising the costs of winning or losing elections (Laakso 1997; Bratton 1997, pp 67-93).

The politicisation and mobilisation of communal and ethnic identities always transformed elections into zero-sum contests; these forms of mobilisation, in turn, invited violent reactions from competing ethnic and regional groups, igniting violence during and after the elections. In extreme instances electoral violence took the forms of ethnic cleansing, balkanisation, sabotage, evictions, and mass displacements. These measures resulted in ethnic and regional disenfranchisement that deprived opposition challengers of the minimum conditions for effective participation. After elections, political alienation and marginalisation continued when whole groups and communities were denied economic resources because of their support for losing parties.

One of the outcomes of the electoral conflicts of the 1990s was the incremental militarisation of society as aggrieved communities resorted to arms to protect

themselves against violence perpetrated by governments. Although in most African countries the militarisation of large segments of society was a consequence of years of civil war, countries such as Kenya and Zimbabwe witnessed election-related violence that invariably generated defensive militarisation (Brown 2004, pp 325-42; Howard & Roessler 2006, pp 365-381).

Kenya's first transition elections, in 1992, were characterised by state-organised violence against ethnic groups that challenged the hegemony of the Kenya African National Union (Kanu). Adept at demobilising the opposition, the government of Daniel arap Moi sanctioned 'ethnic clashes' that tilted the electoral outcome in Kanu's favour. As Jacqueline Klopp (2001, p 474) has observed: 'The timing of the "clashes" (immediately prior to the 1992 multiparty elections), the highly complicit behaviour of many actors within the Kenya government, and the testimony of numerous witnesses all strongly suggest that the violence was part of a strategy to counter the onset of liberalisation in Kenya.

This practice was repeated in the 1997 elections with the expansion in the number of regions targeted by the government. As Kagwanja noted:

From mid-1997, there occurred a spatial expansion of ethnic violence into virtually all provinces. Certainly, the Moi state was reacting to a determined challenge by a pro-democracy alliance the National Convention Executive Council that demanded far-reaching constitutional and structural reforms ahead of the 1997 elections. In the run-up to the elections, the culture of vigilantism reached a fever pitch. A month to the elections, Kenya was a cesspool of all genres of communal violence. In the Rift Valley, the regime used violence to intimidate and disenfranchise rival communities, and to suppress resistance within its own ethnic community. At the coast, it employed vigilantes to displace and disenfranchise inhabitants in such opposition strongholds with the aim to eliminate the demographic basis of a nation-wide political alliance between up-country and coastal groups.

Klopp 2001, p 474

Since militarisation coincided with economic and political marginalisation there emerged an infrastructure of violent dissent that would be significant in subsequent electoral processes. Thus, for instance, in the Rift Valley, assorted armed groups that were used by the government in Kenya's elections in the 1990s gradually mutated into militias for the opposition in the 2007 elections.

The use of violence to effect political change in the face of electoral impasse has become another feature of Africa's democratisation in recent years. The case of Madagascar since the 2001 elections is instructive. Following the disputed elections in December 2001 conflict emerged between the president, Didier Ratsiraka, and opposition leader and former mayor of Antananarivo, Marc Ravalomanana, that left the country with two presidents, two governments, and two capitals.

Charging that the government had stolen the elections Ravolamanana organised his supporters in strikes and street demonstrations that paralysed Antananarivo. Amid the stalemate the government declared a state of emergency that invited violent responses from the opposition. In March 2002 Ravolamanana, supported by the military, declared himself president and scuttled the anticipated presidential runoff (Pan-African News Agency 2002).

At its inaugural meeting in Durban in July 2002 the African Union (AU) condemned the forcible seizure of power but it subsequently recognised the government because Ravolamanana was riding on a wave of popular support. Although he won re-election in 2006 Ravolamanana faced the same fate that befell his predecessor when a new mayor of Antananarivo, Andry Rajoelina, led a string of violent protests that, with the support of the military, unseated Ravolamanana in March 2009. Attempts by the Southern African Development Community (SADC) and the AU to negotiate a multiparty transitional government of national unity have stalled, largely because international actors, who endorsed Ravolamanana's street revolution, have no credibility in resolving electoral conflicts in Madagascar. The new leader is emboldened by the belief that international opprobrium of his illegal actions will dissipate once the international community moves onto another crisis (Allafrica.com 9 and 11 December 2009).

In other instances electoral violence has taken place in countries with leaders who have no stake in pluralism. This pattern is similar to that in the early phase of democratisation, where strong leaders and parties have been reluctant to subject themselves to credible opposition. In most of these countries opposition groups that have never had a chance to govern perceive elections as vehicles for ascending to power, while the incumbents see them as a means of sustaining their legitimacy. Burkina Faso, Cameroon, Ethiopia, The Gambia, Rwanda, Senegal, Tanzania, Uganda and Sudan are good examples of countries with either authoritarian individuals or dominant parties that have never ceded political space to opposition groups.

It is in these countries that we will see the next major phase of electoral violence in Africa. Similarly, the emergence in African politics of the dynastic tendency whereby leaders are succeeded by their sons will increasingly fuel violence. The transition in Togo from Gnassingbe Eyadema to his scion, Faure Eyadema, in 2005 occurred violently after the military engineered the election. More recently, after the demise of Omar Bongo, voters in Gabon demonstrated violently when Ali Bongo was declared the winner of the August 2009 presidential elections (Allafrica.com 4 September 2009; UN News 3 September 2009).

The policy and scholarly focus on the electoral violence in Kenya and Zimbabwe in 2007 and 2008 ignores the fact that the structural factors that caused these implosions took a long time to evolve but these factors were widely known in these countries.<sup>9</sup> In both countries the previous practices of violent disenfranchisement and ethnic exclusion provided the tinderbox for the electoral

violence. More importantly, both countries have procrastinated on constitutional reforms that would define steady rules for managing their deeply divided polities. Youth unemployment and social marginality further fuel the conditions that guarantee future violent conflagrations at election times.

Kenya and Zimbabwe, however, forced a new engagement by African and international actors over issues that had been swept under the carpet during the celebrations of democratisation in Africa. Both countries have been rescued by the international community through the institution of governments of national unity (GNUs), which, although undemocratic, were the only way to provide for a return to order and some semblance of national coherence. The challenge is how elites in these countries will use the limited time frames of the GNUs to build institutions that will inure them from future violent conflict.

Kenya and Zimbabwe are not unique in terms of the consequences of the failure to pre-empt the causes of violent strife embedded in their socio-economic and political systems. If they are typical cases and if there is a marked proliferation of electoral violence the question that will confront regional and international actors is whether Africa is potentially moving into a new phase of instability stemming from the pressure for genuine pluralism.

## **CONCLUSION: TOWARD AFRICA'S FOURTH WAVE OF DEMOCRACY**

In the larger scheme of political development African democratic experiments are still young, only 20 years old. This relative novelty partly explains the problems that have confronted most countries as they learn the difficult rules of orderly competition. The triumphalism that attended African democratisation has now ended with the recognition that, facing deep socio-economic differences, countries need to invest more in reforms and institutions that lend substance to participation.

Elections are important, but they are no substitute for fundamental constitutional reforms that redefine elite relationships and those between elites and masses. One of the core problems in the past two decades has been the assumption that democracies could be built on the cheap, through electoralism and a semblance of power rotation that postpones meaningful change. The upsurge in electoral violence is an outcome of the lack of attention to the framing rules and social contracts that will stabilise African politics.

Electoral violence also constitutes a vital learning process in generating the pressures that may be critical to the evolution of constitutional rules for future stability. For this reason the effects of election violence are igniting the glimmer of a potential fourth wave of democratisation on the continent. This is beginning to take two directions. First, in the aftermath of the Kenya and Zimbabwe elections, most African voters are exercising increasing vigilance over their rights and obligations.

Although authoritarian governments will continue to impose tough measures to determine electoral outcomes there are limits to what most of them can do to manipulate the electoral processes. Kenya and Zimbabwe present models of citizens taking recourse in violent contestation to articulate their grievances about stolen elections. African voters may, perhaps, be reaching the stage of the agitated, informed, and vigilant citizenry that has characterised the Philippines and Thailand in their decisive phase of democratisation. It is important to have such a citizenry in the foundational phases of constructing institutions, because then it ties the hands of elites. Secondly, electoral violence furnishes lessons for countries that seek to pre-empt it or nip it in the bud. For instance, Ghana conducted a close, but successful election, in part to avoid the growing pattern of botched elections in Kenya, Nigeria, and Zimbabwe.

## NOTES

- 1 For wide-ranging discussions of the origins of third wave democracy see Huntington 1994; Di Palma 1990 and Geddes 1999, pp 129-48.
- 2 For an excellent analysis of these trends see Lindberg 2006, pp 58-61.
- 3 Disappointment with the democratic trends in Africa is captured in Joseph 1997, pp 363-82 and Carothers 2002, pp 5-21.
- 4 For analyses of constitutional experiments see Mozaffar, Scarrit & Galaich 2003, pp 379-90 and Barkan, Densham & Rushton 2006, pp 926-939.
- 5 For a critical analysis of elections in post-conflict environments see Lyons 2005.
- 6 For wide-ranging discussions on electoral violence see Hoglund 2003, pp 233-56; Fischer 2002; Laakso 2007, pp 224-253; Reilly 2003, pp 118-39; Rapoport & Leonard 2001; Hoglund 2005; Atuobi 2008, pp 10-15.
- 7 See a critique of the model by Cammack 1990, pp 415-20.
- 8 For a good analysis of the East African cases see Friedrich Ebert Stiftung 2001.
- 9 For wide-ranging discussions on Kenya see Leonard, Owuor & George 2009, pp 71-107; Khadiagala 2008, pp 4-32.

## THE LEGITIMACY CRISIS AND THE RESURGENCE OF MILITARY COUPS IN AFRICA

### *The limits of democratisation*

**Mwesiga Baregu**

#### INTRODUCTION

A military coup may be defined as a series of events in which existing regimes are illegally or unconstitutionally removed by the actions of relatively small groups in which members of the military, police and security forces play a key role either on their own or in conjunction with civil servants and politicians. This is a definition that describes the process and identifies the actors involved. Military forces often seize power with the claim of restoring order and the rule of law, uprooting corruption or dispensing justice.

The immediate post-independence period in Africa was accompanied by a series of military coups which became the subject of considerable scholarly attention in the 1960s and 1970s.<sup>1</sup> This first wave of coups, driven by economic crises and carried out by discontented middle ranks of the armed forces, lasted into the early 1980s, when Africa embarked upon structural adjustment programmes and, ultimately, democratisation processes. Lately, a new wave of military interventions, rooted in persistent state failure and legitimacy crises, has emerged. Whether this is a transient phenomenon or one likely to be with us for some time will depend on the type of intervention, the conditions that give rise to it, and its driving forces.

Major Jimmi Wangome (1985) painted a pessimistic picture when he wrote: 'As long as there is economic and political instability military coups will continue to occur; and as long as military regimes exist, counter-coups will continue to occur. The future of Africa is that bleak.' Two decades later Collier & Hoeffler (2005) echoed Wangome, writing, 'In Africa coups remain common. Since 2000 there have been successful coups in the Central African Republic and Togo and

failed coups in São Tomé, Príncipe and Equatorial Guinea.’ Since that time the list has grown to include Guinea, Guinea Bissau, Mauritania, and Madagascar.

This runs counter to the claim by John Clark that political liberalisation is leading to the decline of coups, although he is aware that in some cases electoral authoritarianism has led to military coups and civil wars. Addressing the United Nations (UN) Security Council in July 2009, Said Djinnit, the UN Secretary General’s Special Representative for West Africa, pointed to the resurgence of ‘unconstitutional or violent changes of government’ as the major emerging regional threat. He attributed this development to the decline of the rule of law and the growing drug trafficking from Latin America transiting through Africa to Europe, which has virtually created narco-states out of countries such as Guinea Bissau.

Collier & Hoeffler (2005) examine the economic causes of coups and conclude that ‘...standard indicators such as political repression and economic inequality do not feature as significant influences’. Instead, they propose that what they call a ‘coup trap’, driven by persistent low incomes and stagnant or declining economic growth, is likely to underlie most coups. Hence, they argue that those African countries that have experienced coups have seen their per capita incomes decline by an average of 2.6 per cent in the years in which the coups have occurred. The problem with this argument, however, is that it is based on selected cases and confuses correlation with causation. Not all countries with that rate of decline in per capita incomes have experienced a coup.

This chapter argues that economic performance may tell part of the story, but not the whole of it. Its role may partly depend on the kind of coup and its drivers. Coups must, in the first instance, be understood as political phenomena that stem from the lack or weakness of political legitimacy. Such crises of legitimacy have given rise to the current wave of military coups. Reviewing the long inventory of incidents of political instability in Nigeria since independence Oguniye (2009) comes to the conclusion that: ‘These manifestations of political instability are the symptoms of basic system pathology, namely the crisis of legitimacy.’

To discuss this contention this chapter proposes that there are four coup types. These types will be examined with an emphasis on the conditions that give rise to them, their drivers and their implications for democratisation in Africa. In addressing this task the chapter will endeavour to identify and associate the current wave with one of the types outlined below.

### **Type A**

Type A is military intervention by ‘state invitation of the generals’, or ‘self-coup’. Unable to address the socio-economic crisis and maintain rule by consent of the governed, the state progressively loses legitimacy as its rule is challenged by growing sections of the citizenry. Recognising its loss of legitimacy the state reverts to rule by coercion and relies increasingly on the security apparatus rather



than on civilian institutions. It systematically subordinates the legislature and the judiciary as it steadily subverts the constitution, concentrates power in the executive, politicises the security institutions and securitises politics. Ultimately, security institutions are transformed into instruments of rule and totalitarianism replaces democracy.

In Latin America, this process was described as *autogolpe*, or self-coup, after the 1992 presidential coup carried out by Alberto Fujimori in Peru. Fujimori, in collaboration with the military, suspended the Constitution, shut down the Congress and purged the judiciary on the pretext of establishing conditions for 'a legitimate and effective democracy'. He characterised what existed then as 'a deceptive formality – a façade' (Smith 1995, p 236).

The coup enjoyed considerable popular support at home, although it was opposed by the United States, Europe and some countries in the region. Fujimori was recently tried and convicted of committing serious human rights violations during his rule. The likelihood of this type of coup is increasing in Africa because of state fragility and the close relations between the governments and the military. It is not surprising, therefore, that at the height of the crisis in Kenya, President Kagame of Rwanda appealed for such intervention.

### **Type B**

This might be called the 'indignation of the generals'. In this scenario the commanders of the armed forces intervene in response to a pervasive breakdown of law and order and loss of authority by the state. In such situations the head of state and important members of the government may be arrested and probably even killed to mark the end of the regime and instil fear among the people. This was typical of the successive Nigerian coups in which, from the 1960s to the 1990s, generals Ironsi, Gowon, Muhammad, Obasanjo, Buhari, Babangida and Abacha invariably claimed they were intervening in order to rescue Nigeria from chaotic civilian rule which they construed as having lost legitimacy.

Although the generals claimed to be cleaning up the government they ended up overthrowing each other and establishing successive military regimes. The probability of this type of coup cannot be ruled out, but it would mean there would have to be a split within the commanding echelons between those loyal to the government and those inspired by national concerns. If this split were to occur before the coup it would lead to pre-emption, most likely by loyal forces, leading to an *autogolpe*. If it were to occur after the coup it could lead to foreign intervention at the invitation of the state, as happened in Sierra Leone.

### **Type C**

In Type C, which might be called the 'rage of the ranks', a progressively dissatisfied rank and file organises against the government and its commanders and purportedly joins forces with the aggrieved masses to overthrow the existing



order and establish a military order. This is the scenario that characterised Liberia under Master Sergeant Samuel Doe and Ghana under Flight Lieutenant Rawlings. In Liberia the government was overthrown, the president assassinated and some members of the government publicly executed. In Sierra Leone, a military junta (Supreme Military Council) was overthrown, its three successive leaders executed and the Armed Forces Revolutionary Council formed to work with a civilian government.

More recently, in 2008, Captain Dadis Camara carried out such a coup in Guinea, claiming; 'I could not stand to see my country continue to slide to hell; and yet this was the likely fate of the country had we allowed the Speaker of Parliament to take over' (Kindeh 2004). One of his first moves was to sack the generals. According to Cellou Dalein, who was prime minister under President Lansane Conte between December 2004 and April 2006, 'There was no resistance because of a crisis of legitimacy surrounding the country's institutions and because of the misery of the Guinean people (Al Jazeera 29 December 2008). As this chapter was being written the coup had degenerated into an orgy of killings and incipient counter-coups, something that currently appears to be the dominant trend. In both Madagascar and Mauritania coups were preceded by pervasive mass protests and, in the case of Madagascar, the government was forced to submit to the military, which, in turn, handed over power to Andry Rajoelina, who promised a new constitution and fresh elections in two years.

After considerable uncertainty, it would now seem, judging by recent reports, that Madagascar may soon embark upon a constitution-making process and an eventual referendum, leading to legislative and ultimately, presidential elections by the end of November. It is also worth noting that Rajoelina has announced that he does not intend to stand (AllAfrica.com: Madagascar, 14 May 2010).

### **Type D**

This might be termed the 'resurgence of foreign intervention', in which mercenaries, private military companies and foreign armed forces are deployed to overthrow governments in targeted African countries. This was the case in 2004, when conflict entrepreneur Mark Thatcher, in collaboration with mercenary Simon Mann (a former British army officer, founder of Sandline International and associated with Executive Outcomes, both being private military companies) and others, attempted to despatch such a force on a mission to overthrow the government of oil-rich Equatorial Guinea. The mission was intercepted and detained in Zimbabwe and Thatcher was convicted and fined in South Africa.

The growing fragility of African states could herald the dawn of yet another phase of mercenary forays. Mann was ultimately tried in Equatorial Guinea, convicted and sentenced to 34 years' imprisonment. In his testimony he implicated the British government and revealed that Thatcher (son of former British Prime minister Margaret Thatcher) was not simply an investor but '...a part of the

management team' of the coup plot. With such connections it is, therefore, not surprising that Simon Mann received a presidential pardon and was released by the very same President Teodoro Obiang Nguema whom he had plotted to overthrow.<sup>2</sup>

Naison Ngoma (2004) contends that the role of foreign intervention has resurged and converged with that of mercenaries and both of these open the way for the subtle involvement of foreign actors. The standard motivating factors, Ngoma argues, include new business openings and geo-political interests. He cites the Equatorial Guinea saga, suggesting that the removal of the government by mercenaries, with the help of foreign sponsorship and in partnership with some power-hungry local politicians, could indicate an emerging trend.

The most recent mercenary manifestation occurred in Madagascar where it was reported in July 2009 that exiled President Marc Ravalomanana, with the assistance of some governments, was raising a mercenary force (including some veterans of the Mark Thatcher-Simon Mann-organised Equatorial Guinea intervention) to invade, overthrow the Rajoelina regime, and reinstate himself in power (Brümmer 3 July 2009). In his book *The Bottom Billion* Paul Collier (2009), citing the example of Sierra Leone, proposes that to break the cycle of coups and civil wars that keep Africa poor, foreign military interventions – for the long haul – should be put on the agenda. This is part of an emerging trend in securitising aid which World Bank President Robert Zoellick described as 'bringing security and development together' (Easterly 2008).

## CONTESTED LEGITIMACY IN AFRICA

One of the explanations for the new wave of military coups is the persistent crisis of legitimacy of the African state. This crisis emanates, in the first instance, from the fact that at independence almost all African states received their constitutions from the outgoing colonial powers. The independence constitutions, intended to safeguard the interests of the colonial powers through neo-colonialism, were designed, not as social contracts between the rulers and the ruled, but as instruments for controlling Africans, with the triple aims of imposing order, suppressing dissent, and extracting labour. To this end colonial structures and institutions were left largely intact under single-party authoritarian rule. Thus, in nearly all African countries after independence, constitutions did not express the popular will, defining the boundaries of public power, but were instruments of coercive rule. This was particularly the case where the heads of state accumulated power at the expense of other branches of government. With such power they could proclaim edicts, directives, and various orders without fear of breaching any part of the constitution. It was this that established the bedrock of personal rule, autocratic, dictatorial and authoritarian regimes. These circumstances perverted constitutions and prevented the emergence of a culture of constitutionalism.

Since the reintroduction of multiparty politics in Africa there has been an acrimonious debate about the need for new constitutions. In Tanzania, for example, the debate has been three-sided. The first side comprises supporters of the multiparty competitive political system, who believe that, to work effectively, Tanzania needs a new constitution that is consistent with the aims of multiparty politics. The group supporting this view includes almost all the new political parties formed after the introduction of the Political Parties Act of 1992 and bases its case on the recommendations of the Nyalali Commission Report.

At the other end is the position espoused by the ruling party, the Chama Cha Mapinduzi (CCM), and the government, which insist that Tanzania's Constitution may be amended on the basis of specific recommendations and that there is no need to create a new one. From this perspective, the reintroduction of multiparty politics is not perceived as a major event that warrants such a drastic move. Between the two extremes are the ordinary citizens who, by and large, either do not understand the essence of the discussion or are preoccupied with the business of earning a living. Unfortunately this group comprises the majority of Tanzanians, who are expected to perform their civic responsibilities dutifully, including participating in elections.

The differences between the two major protagonists arise, first, from the meaning attached to the concept of a constitution. Secondly, differences arise from the failure to distinguish between a constitution as a document and constitutionalism as the thinking and ethos that informs the constitution. Constitutionalism is a political culture that nurtures and sustains adherence to a constitution as a social contract between the rulers and the ruled.

Constitutionalism also underwrites the legitimacy of the state through practice, behaviour and mutual expectations between the rulers and the governed. Without a culture of constitutionalism, the legitimacy of the state as the source of the citizens' political obligations becomes tenuous and the authority of the state questionable, factors that may lead to the overthrow of governments. The military then becomes the most organised contestant for political power.

## **CONSTITUTIONALISM AND CONSTITUTIONS**

Constitutionalism is an idea frequently associated with liberal democracy; it captures the notion that governments should be legally limited in their powers and that their authority and legitimacy depend on enforcing these limitations. Thus, by definition, constitutionalism circumscribes the powers of the state while widening the freedoms of the citizens in a delicate balancing act, responding to the challenge posed by Holmes (1995):

Any agency that wields enough power to protect me against the predations of my neighbour, wields enough power to destroy or enslave me. How can

we exit from anarchy without falling into tyranny ... How can we assign the rulers enough power to control the ruled, while also preventing this accumulated power from being abused?

The answer lies in tenaciously cultivating a culture of constitutionalism which opposes the instrumentalist culture in which the constitution undermines popular control of public power. That is the sense in which Lord Acton, source of the dictum 'All power tends to corrupt and absolute power corrupts absolutely', is also credited with having advised that: 'Nothing but a constitution can avert arbitrary power'. That is why constitutionalism is considered to be the foundation of the rule of law.

It is conceivable to have a written constitution without constitutionalism, just as it is conceivable to have constitutionalism without a written constitution. The former would occur where those in power either bypass the constitution, interpret it to suit their wishes or amend it to fit their aims. In cases such as that of Tanzania, excessive lip service is paid to the constitutionality of decisions when, in fact, constitutionalism is under severe stress. The worst case is when a constitution is suspended either directly under military rule and martial law or indirectly, when, for example, excessive powers are vested in the presidency. That is what happened with the 13<sup>th</sup> Amendment in 2002 when Parliament removed the absolute majority requirement for the presidency and reintroduced presidential seats in Parliament.

The case of constitutionalism without a constitution is represented by the United Kingdom, which does not have a written constitution beyond the Magna Carta of 1215. Yet, with all its imperfections, the Westminster system meets the major requirements of constitutionalism, particularly responding to the wishes of the majority without jeopardising those of the minority. This is partly because the Magna Carta, the foundation of British constitutionalism, was, according to *Black's Law Dictionary*, 'A charter of government deriving its whole authority from the governed.'

To speak of constitutionalism or constitutional government, therefore, is not to refer to a specific document but to a combination of political ethos, culture, traditions, institutions, and rituals that define political behaviour. The forms may differ from country to country but the behavioural results are similar in terms of imposing limits on governments. Much as republican France, with a written constitution, differs from monarchist Britain, without a written constitution, the forms of constitutionalism in the two countries place comparable limits on state power vis-a-vis the citizens.

But constitutionalism did not simply happen in Europe or the United States, it was the result of political struggles which, in the case of the US, involved both a war of independence and a civil war. In France it entailed a revolution and in the United Kingdom a historical compromise that resulted in a constitutional

monarchy. Africa cannot avoid comparable political struggles to establish constitutional rule.

There are at least two meanings attached to a constitution. One is the narrow or minimalist meaning, which places emphasis on the constitution as a document defining the rights and obligations of the state and society. This meaning tends to stress the instrumental or practical aspect of the constitution as a mechanism of rule which may, in the worst situations, be handed down to the ruled by the rulers. This is definitely the case with colonial constitutions and edicts, directives and orders issued by dictatorships and authoritarian regimes. In this case, the constitution is essentially seen as an instrument of social and political control. In Tanzania it is this view that informs those resisting initiatives for a new people-driven constitution who invoke the 1977 Constitution created by the CCM and its government. In Tanzania the Constitution is an instrument for the exercise of state power rather than a mechanism for its control.

The other meaning attached to a constitution is the broad and fundamental sense of the document as a contract or covenant drawn up by citizens, spelling out the limits of state power and stressing popular sovereignty and the control of public power. In such cases, the constitution is the guarantor of citizen's rights. It also originates from the people and can only be changed through a mechanism that involves them.

This is the essence of liberal democracy in which elections, for example, are important, but only as one element of the process of fulfilling the requirements of the social contract. In this view both the existence of a constitutional document and the process of arriving at it are important. Thus participatory constitution-making becomes necessary to confer organic legitimacy on the state.

The process of participation affirms the voluntary and spontaneous consent of the citizens to the constitutional order as the basis for political obligation. It is also an act of building the political culture of constitutionalism. It is against this background that periodic elections provide only a conditional mandate for those elected to public office to discharge their responsibilities while enjoying the confidence of the public.

Elsewhere, I have argued that African countries do not have constitutions in the organic or fundamental sense, but only in the instrumental sense. This observation is based on five premises:

- The independence constitutions were essentially instrumental pacts between the new African leaders and the colonial powers on ruling in their mutual interests.
- Post-colonial states did not embark upon a people-led constitution-making process that would have created a social contract between the rulers and the ruled.
- As a result of this omission, African countries have endured an endemic

crisis of political legitimacy because the state is an alien and repressive imposition.

- Constitution-making processes are necessary to obtain the spontaneous consent of citizens and to confer organic legitimacy upon the state.
- Without new people-driven constitutions the crisis of legitimacy will deepen and ultimately frustrate any pretence of democracy.

These premises and their implications apply to all African countries which have not developed organic constitutions. This problem was recognised by the Nyalali Commission in 1991 in the process leading to the restoration of multiparty politics in Tanzania.

Contrary to the government's assertion, the most important recommendation of the Nyalali Commission was not the adoption of a multiparty system, since domestic pressures and international trends had forced the government to accept this system. Rather, the most critical of the commission's recommendations was that the Constitution should be rewritten as a precondition for a functional multiparty state. The commission was more interested in preparing the ground for constitutionalism than in re-establishing a pluralistic political system. The other key components of the recommendations included:

- abridging the excessive powers of the president;
- repudiating 40 pieces of repressive legislation;
- forming an independent body to oversee the transition;
- mounting a public education programme on multipartyism and democracy;
- forming a constitutional commission to draft a new constitution;
- holding a referendum and a constituent assembly to pass the constitution.

All these recommendations point to a concern with constitutionalism. Unfortunately they were ignored by those who take an instrumentalist view of the constitution. Moreover, there was no coherent and systematic response to the Nyalali recommendations justifying this course of action. Instead, the ruling party picked on those items relating to the restoration of multipartyism, removed the single-party clauses in the CCM and national constitutions, introduced the Political Parties Act 1992 in Parliament and ignored the more important recommendation relating to the Constitution. It also decided to uphold the status quo on the union, precisely because it had constitutional implications.

Yet a rewriting of the Constitution would have provided an opportunity to produce a consensual and organic constitution, to establish a firm foundation for constitutionalism through popular consultations and a referendum. It would also have contributed to addressing the union and Zanzibar questions in a



comprehensive constitution-making framework that sought to harmonise the union and the Zanzibar constitutions. This exercise, coupled with the proposed mass democracy-education programme, would also have helped to free the people from the ideological hegemony of single-party rule, while legitimising multiparty politics

## **LESSONS FROM KENYA**

The situation that unfolded in Kenya in the wake of the December 2007 elections was, in many respects, to be expected. This is mainly because the failure to introduce a new constitution had created tensions. Thus the road leading to the elections was fraught with dangers emanating from the fact that they were held against the background of a contested constitutional framework. As a result, from the start the rules, procedures and electoral law had little legitimacy in the eyes of ordinary Kenyans. It was generally accepted that the elections would be won or lost by means other than the prescribed rules and procedures.

The collapse of the Bomas constitution-making process, which led to the breakup of the National Rainbow Coalition and the rise of the Orange Democratic Movement, was the first indication of the emerging crisis which resulted in a series of tragic events. First, by embarking on the Bomas process the government had, by implication, repudiated the existing Constitution. Secondly, by rejecting the Bomas recommendations and putting an alternative to a referendum the government was acting in bad faith. Thirdly, the failure of the government in the constitutional referendum was tantamount to a popular vote of no confidence. At this point the government of Kenya should have stepped down.

Instead, it chose to move into elections without resolving issues that the new constitution would have addressed, including those of political power and socio-economic justice. The hope was that elections would be the last arbiter in the contestation for power. But by this time the government was facing a crisis of political legitimacy which could not be resolved by elections alone. The expectation that had been raised by the Bomas process had been frustrated, giving rise to aggression. The breakdown of law and order that followed the elections was, therefore, symptomatic of a crisis, not of democracy, but of legitimacy.

The crisis in Kenya will be remembered more for the bloodshed and chaos that brought the country to the brink of disaster than for the factors that triggered the situation. It is important to reflect on the root causes that led to many deaths and to massive suffering and destruction of property. Lessons from the Kenyan crisis are also important for East Africa as well as for other African countries. Kenya faced legitimacy and democracy deficits – shortcomings or imperfections that negatively affect the proper functioning of any system.

Legitimacy deficits relate to the spontaneous consent of the ruled to be governed by the existing political order. Spontaneous consent means that

obedience or compliance with norms, rules and procedures does not depend on coercion but on voluntary self-interest. Democracy deficits arise from the improper functioning of a political system in meeting the expectations of citizens. They occur when a system fails to facilitate the articulation of citizens' interests through political parties and interest groups or fails to aggregate those interests to arrive at equitable policies.

The major legitimacy deficit in Kenya arises from the failure to produce a new constitution. Having ridden the wave of constitution-making to come to power and having promised to draw up a new constitution in 100 days, President Mwai Kibaki's government squandered the goodwill that had brought it to power. The government's failure to fulfil its promise ignited mass resentment.

There are at least two lessons to be drawn from this. One is for the power-sharing government that was formed in the wake of the crisis and is in the process of drawing up a new constitution for Kenya. The pact can only work if it addresses this fundamental legitimacy deficit. The present government should not be looked at as a coalition government, for it is not one, it is, in my view, a transitional arrangement created essentially to restore the legitimacy of the state by facilitating the process of producing a new constitution which will address areas of long-standing grievance such as the sovereignty of the people, national norms and values, citizenship, culture, the Bill of Rights, land and property, environment and national resources and the powers of the legislature, executive and judiciary. These were the subject of the Bomas process, which was distorted by the Kibaki government and subsequently ended in a failed referendum.

Others have contended that this kind of arrangement is basically a collusion or conspiracy among political elites to share the spoils of power, particularly when they are evenly matched. In this version, power-sharing is less about public service than about personal gain. Thus, intense preoccupation with positions clearly shows that the arrangement should, more correctly, be referred to as a predatory loot-sharing conspiracy.

A typically sceptical view was recently expressed by Dr S Mueller (2009):

... Kenya is not a real coalition government. Classic coalitions are based on voluntary peaceful agreements among parties to form a majority government in parliament. In Kenya the coalition government was instead manufactured under pressure by outside mediators as a temporary band-aid to stop the escalating violence and to keep the state from disintegrating.

Mueller expressed concern that, in its present form, the coalition represents a reversion to a one-party state. Furthermore, she contended that the coalition would hold, but for the wrong reasons, mainly self-interest: members of Parliament do not want to risk a rerun for their seats with the possibility of losing their huge salaries.



To some extent this view is confirmed by the statement made by the ODM secretary general during the stalled negotiations in April 2008:

... power-sharing agreement also means that executive power and authority must be shared between the Prime Minister and the President [it] includes, but not limited to equal share of cabinet, permanent secretaries, ambassadors, high commissioners, heads of state corporations and other public institutions.

Clearly here the main concern is the spoils and the patronage that can be extended by each party to its clients.

Yet those who attach some credence to the arrangement insist that power-sharing is necessitated by the failure of the democratic process to produce a decisive outcome. Just as market failure often leads to state intervention in the markets (as is currently happening in the US) electoral failure leads to some kind of power-sharing arrangement in the state. Market failures may lead to chaos, recession and even depression. Election failures, on the other hand, have frequently led to intense conflict, violence and anarchy. This argument emphasises the pragmatic, problem-solving aspects of power-sharing.

The formation of the coalition government in Kenya and the subsequent constitution-making process that has now reached the crucial stage of a referendum, would seem to suggest a successful conclusion. In April 2010 Parliament approved the first draft, which is to be put to a referendum. Although there are still some differences, revolving around the religious, ethical and land provisions of the draft, it is expected that the draft will receive popular approval in June; though not without a considerable struggle.

At the regional and continental level the crisis should remind us that the legitimacy deficit is not an exclusively Kenyan problem. Demands for new constitutional orders are pervasive on the continent. Responses range from those of reformers who have produced new constitutions or embarked upon processes of constitution making (eg, South Africa and the Democratic Republic of Congo) to resisters who reject the notion (eg, Tanzania). Zambia offers a clear example of procrastination – the constitution-making process has been under way since 2003 – while Kenya has hesitated, the process going from the Bomas draft to the Wako draft, a failed constitutional referendum and currently another process and referendum; without a new constitution, as yet. As the legitimacy crisis deepens, however, so do the pressures for political change throughout Africa.

The democracy deficit is connected with the legitimacy deficit in fundamental ways. Some African governments have tried to make up for the legitimacy deficit by embarking on democratic processes such as the holding of elections. To some extent this is what the Party of National Unity tried to do in Kenya by holding elections to obtain a new mandate. As it turned out, however, the elections had

to be rigged in order to obtain favourable results, thus adding to the legitimacy crisis.

To many people involved in the 'mass action' that followed the elections it appeared that the government had not only blocked a new constitution but had also used the old one to steal the elections. The behaviour of the Electoral Commission of Kenya (ECK) was thus perceived, not as the failure of the institution *per se*, but as manipulation by the government. This impression was compounded by the statement of the chairman of the ECK that he did not know who had won the election. The lesson to be learned here is the importance of institutional capacity, autonomy and transparency. Electoral commissions must be appointed by Parliament by means of a system that includes important constituencies, and must also be answerable to Parliament.

Apart from the institutional deficit, democracy in Kenya also showed major weaknesses because of the electoral system itself. The first-past-the-post or winner-takes-all system did not serve the country well. It may be argued that, by its very nature, the system offers incentives for corruption and rigging, particularly where the contenders are evenly matched, as was the case in Kenya's last election and in past elections in Zanzibar. Apart from wasting the votes of the losers, the results are unrepresentative and the system may be an impediment to voter turnout in the elections. It is thus important for the countries in the region to re-examine their voting systems with a view to moving from the winner-takes-all to proportional representation, or a combination of the two.

Another area which should be examined is centre-local relations, or the devolution of power. A debate that has raged in Kenya, Tanzania and Uganda is the question of national versus local representation and the distribution of political power between the national and local authorities. In Kenya and Tanzania this is dubbed the 'Majimbo' debate, while in Uganda it is known as the 'Federo'.

These debates signal dissatisfaction with the over-centralisation of power in the national institutions which makes local institutions relatively ineffective and structurally dependent on the central institutions. This system, too, was designed by the colonialists essentially to control Africans and extract labour. Substantive democracy may be more important at the local level, where key decisions are made to enhance development. Institutions at this level must be strengthened enough to negotiate their relationship with central government institutions so they cannot be taken for granted.

There are also direct lessons for Tanzania in the conflict in Zanzibar. The electoral conflicts in Kenya and Zanzibar were comparable in the sense that the contending political parties were equally matched. In both cases, governments of national unity provided a way out of the crisis for an interim period. In the long term, however, major constitutional overhauls are the antidote to political instability. In Zanzibar, this should be handled within a comprehensive constitution-making process that puts the island in the context of a union constitution.

## CONCLUSION

The fundamental concern of this chapter was to explore and explain the resurgence of military coups in Africa. To aid this exploration the chapter developed a typology of military coups, along with their drivers in terms of the actors and interests. Using this framework four types of coups were identified: the 'self coup' (A); indignation of the generals (B); rage of the ranks (C) and foreign intervention (D). Type A is almost endemic in all those countries where the military is politicised because it holds political office and the society is militarised through paramilitary vigilante and militia groups. A delicate, though symbiotic relationship is maintained between the civilian government and the military command. Type B, on the other hand, was prevalent in the 1960s and 1970s in Nigeria, Ghana and other West African countries, but does not seem to feature very much in the current wave. Type C, normally capitalising on popular discontent, seems to be the most potent in the current wave, basically feeding on the socio-economic crisis. Type D featured somewhat in the early post-independence period in the Congo, for example, but is enjoying a new lease of life in the form of private military companies driven by the pervasive fragility of African states.

It should be stressed that none of these types is 'pure'. The more likely scenario is that future coups may embody several elements that cut across the pure types. The chapter concludes that the most likely future coup scenario will feature a combination of C and D, with mercenaries combining with the rebellious rank and file, particularly in the resource rich countries. It is the result of the persistent socio-economic crisis in combination with state fragility. The recent coup in Guinea, with the alleged involvement of South African mercenaries, points in that direction (BBC 19 November 2009).

The twin challenges of state legitimacy and fragility can only be addressed by inculcating a culture of constitutionalism through constitution-making processes. It is this sort of process which can produce strong but legitimate states in Africa – states which are, in turn, likely to take up the challenge of African unity with new vigour.

## NOTES

- 1 These scholars include Finer, Bienen, Andreski, Levine and Janowitz, who attributed coups to a social and political environment with a low or minimal political culture in which the military is untainted by civilian failures. Others, including Zolberg, believed that coups were idiosyncratic, while a third group subscribed to multi-causality.
- 2 On his release Mann said he would give evidence should Mark Thatcher and Lebanese businessman Eli Calil, who are alleged to have been co-conspirators in the attempted coup, come to trial. See 'Simon Mann puts Sir Mark Thatcher in the Frame as he lands in Britain'. *Times online* 4 November 2009.

## **ELECTIONS AND CONFLICT RESOLUTION IN AFRICA**

**David K Leonard<sup>1</sup>**

### **INTRODUCTION**

Ideally, democracy should serve two functions in society – representation and conflict resolution. The most prominent of these, and the one that has received the great bulk of scholarly and policy attention has been the first – a mechanism for making government responsive to the expressed interests of the population it serves. But democracy can and should play another role as well – providing an alternative to violent conflict as a means of determining who will rule the state; a mechanism that can become routinised in a society and is less costly to human life and economic growth.

Elections are not straightforward as tools for conflict resolution, however. They provide a specific time and contest during which the composition of government is to be determined. As a result – unless they are very well managed – the social forces underlying a country's most important underlying conflicts are likely to be mobilised to 'fight' the election [note the word]. In this way an election can bring to a head the very conflict it is supposed to sort out and itself lead to violence.

In this chapter I therefore want to privilege consideration of the conflict resolution function of elections over that of the representation one, asking – for Africa – what is needed in their conduct for them to reduce political violence.

To do so I will begin with a review of some important studies that have been done on the practices of the 'international election industry' in the 1990s. This research suggests that elections are likely to lead to substantial conflict and violence unless a number of institutional prerequisites are met. In such circumstances some authors suggest the postponement of elections to provide room for much longer, sequenced transitions to democracy.

Secondly, I will examine the work of scholars who counter that postponement and sequencing lead to authoritarianism and that in Africa elections themselves, when repeated, are the better path to democracy.

Thirdly, I use African cases to suggest that the postponement and sequencing argument ignores the extent to which the promise of elections is central to negotiating the end of a conflict and that elections are highly valued by African citizens. Thus we may not have as much choice about holding elections as the 'Institutionalisation Before Elections' advocates imply. Furthermore, the real issue may be less *whether* and *when* to hold elections than *how* to conduct them. These considerations lead us, fourthly, to a discussion of the features of elections that are important to their conflict resolution function and of the role of the international community in assuring them.

## REVIEW OF EXISTING LITERATURE

Recent studies by Paul Collier, Jack Snyder, and Roland Paris have demonstrated that there is a high risk of elections in post-conflict situations re-igniting the conflict they are supposed to resolve. Violent conflict is not a simple product of deep inequalities or other grievances in a country. Fearon & Laitin (2003) as well as Collier (2007) have demonstrated with cross-national econometrics that the degree of individual income inequalities in a society (known as vertical inequalities) does not predict the likelihood of civil war. Østby (2008) shows instead that inequalities between *groups* (known as horizontal inequalities) may be associated with violent domestic conflict, but even there the explanatory power of the inequalities is modest.

Such findings have led Paul Collier to conclude that civil war is a product not of grievances but of the 'greed' of leaders, that is, of the extent to which the economic, social and political structure creates an opportunity for leaders to profit from mobilising violence. Almost certainly Collier is overstating his results; it is not that grievances are absent as that they are universally present and available for mobilisation by political 'entrepreneurs' where circumstances permit. Furthermore, once these grievances *have* been mobilised they take on a life of their own and usually have to be dealt with directly if the violence is to be de-escalated (Leonard & Justino 2008).

Thus, the point remains that elections *can* create an opportunity for political entrepreneurs to advance their careers through extremist appeals to mobilise their ethnic or religious group and that such 'out-bidding' can lead to increased violence in society. So, although elections are a precipitating rather than an underlying cause of violence in society (a distinction made by Brown (2001)), the ability of elections to mobilise extreme opinions that outlast the immediate contest should make us cautious about their conduct when conflict is already present (Mbugua 2006).

Snyder (2000, pp 41, 195, 308, 309, 320, 339) analyses cases from the 1990s to argue that if democratisation is not to take a disastrous turn into nationalistic conflict it must be preceded by economic development, an established middle class, professional media and a well-functioning state (with the rule of law and

an impartial bureaucracy). He also contends that elites who would be displaced by elections must have an alternative to political power that they find acceptable if they are to surrender it without a fight. Prior to the achievement of these conditions he is prepared to accept a mildly authoritarian regime that is moving toward democracy. The bulk of his analysis derives from developments in the former Soviet bloc, although he does consider Rwanda – a case to which we will return below.

Roland Paris (2004) uses a largely different set of cases from those cited by Snyder but he, too, concludes that the introduction of democracy will increase societal conflicts dangerously unless the institutional preconditions for its success have first been met. Thus he calls for 'Institutionalisation Before Elections'. By 'institutionalisation' Paris means that an array of pro-democratic organisations, practices, and rules should be in place *and valued* by key actors *for their own sake* (Selznick 1957; Stinchcombe 1968).

As Paris does not favour the establishment of authoritarian regimes as a step out of civil wars, in effect he is calling for an extended period of international stewardship over post-conflict countries, delaying the initial election until reforms in the structures critical to successful democracy are in place and extending supervision for some time afterward while they gain acceptance. Most of the elements Paris prescribes (p 205) have become, in the 21<sup>st</sup> century, standard objectives for United Nations Development Programme (UNDP) post-conflict election missions (Leonard 2009; UNDP 2009), save that he would not proceed with elections without evidence that 'moderate' political parties would prevail over those promoting inter-group conflict (pp 189-90). Bastian & Luckham (2003), also working from case studies, lend support to this last precondition.

Paul Collier (2007) shares the concern of Snyder and Paris that the international community has been too anxious to see elections as a panacea for conflict resolution and has been too quick to exit conflict states after the vote has been conducted. However, his major concern – once again backed by cross-national econometric evidence – is to persuade donors that post-conflict reconstruction is a lengthy process, requiring at least a decade of sustained effort and assistance.

There is, therefore, very strong evidence that elections can precipitate violence and that careful preparation is needed if they are to lead to stability and assist in the resolution of societal conflicts. Successful democratisation requires an interlocking set of institutions that are not easily or quickly created.<sup>2</sup> On these points there is now wide agreement. The real questions are: Does a country need to postpone genuinely competitive elections until most of the institutions required for successful democracy are in place? What are the processes through which the institutional prerequisites for conflict-mitigating democracy will be created? Are there circumstances in which conflict resolution requires that elections be held before the desirable supporting institutions are in place? And, if so, just how should this be done?



## SEQUENCING, GRADUALISM OR OPPORTUNISM IN DEMOCRATISATION?

Should preparation for democracy be consigned to a non-democratic 'caretaker' out of concern over domestic conflict? As Carothers (2007) remarks, 'the record of democratic change since the "third wave" began in 1974 reveals few successful cases of "controlled reforms" leading to democracy'. His point is reinforced for Africa by Uganda under President Yoweri Museveni, who insisted that in order to avoid democracy causing the re-eruption of ethnic conflict in the country there would have to be a period of controlled transition under his guidance, but who, in fact, has perpetuated his own enlightened authoritarianism for two decades – and has also fought a long, ethnically-based civil war in the north (Griffiths & Katalikawe 2003). One could take an even older historical sweep and note that most of the world's democracies emerged in periods of civil disorder, not smooth institution-building or careful preparation by authoritarian rulers.

This is not to deny the importance of institutions and social conditions supporting a democratic society, nor is it to argue for forcing elections on a society that does not seem to be asking for them. In Africa, however, the demand for democracy is very high. It enjoys majority levels of popular support in almost all African countries, and military regimes are never preferred (Bratton 2007). Very often combatants demand elections as a condition for stopping fighting (eg, Burundi, Democratic Republic of Congo, Liberia, Republic of South Africa, Sierra Leone). In contemporary Africa most often there really isn't a choice about whether or not to hold an election.

Both Paris (2004) and Snyder (2000) cite the Rwandan genocide as a consequence of premature democratisation. This is a serious oversimplification of what happened. It is true that international pressure led to the end of the one-party state in Rwanda and to political pluralism. But it was the invasion from Uganda of the Tutsi-led Rwandan Patriotic Front (RPF) more than pluralism that set off the train of events that led to the genocide. The RPF represented only an eighth of the population and could never have won an open election.

The international community (and moderate Hutus) responded to the RPF's success on the battlefield by urging its inclusion in a coalition government – not elections. This combination of increasingly strong moderate forces is what led the Hutu extremists to a violent last stand, one that was deadly only because the international community *failed* to use the forces it had on the ground to stop it (Mamdani 2001; Prunier 1995). The Rwandan case is thus irrelevant to the democratisation debate and stands, instead, on the side of active international intervention in situations in which a deadly conflict poses a serious threat.

A better example of the necessity for and benefits of elections is found in the unpromising ashes of the war that engulfed the Democratic Republic of Congo (DRC) from 1997. Elections were called for by the internationally sponsored

negotiations between combatants of 2000 and 2002 that brought the war to a close and created a coalition government and a United Nations peacekeeping force. The preconditions for democracy certainly were not met in the DRC and movement towards the elections in 2006 was gradual, if steady. The results were not perfect but, as a consequence of a major international effort, the vote was conducted and a new government selected with only modest violence. Furthermore, one of the parties accorded a vice-presidency in the 2002 accords failed to gain electoral support and has disappeared from the scene. And another warlord, who had refused to disarm, was delegitimised by the popular election of the president and removed from the scene by international pressure after the new government was in place. All of this was the consequence of a gradual process of democratisation: warlords were unwilling to step back from combat without the assurance that they would be able to contend for power in an election, the promise of a vote facilitated and encouraged substantial international efforts at institution-building in the country, and the process itself was sufficiently legitimate to pressure the combatants to accept the results. The result has *not* been democracy, but it has been a step in that direction and it has facilitated conflict mitigation and resolution (Kadima, Leonard & Schmidt 2009).

It is in contexts where elections are difficult but nonetheless popular and necessary that the distinction between 'sequencing' and 'gradualism' is useful. Carothers (2007) writes,

Sequencing is about putting off democracy – especially open, competitive elections – until sometime in the indefinite future while pursuing state-building and the rule of the law in the meantime. Gradualism is different. It is based on the recognition that authoritarian rule is itself usually a key obstacle to building a well-functioning state and establishing the rule of law. The gradualist approach seeks to find a way for countries where few circumstances favour democratization to take incremental but definite steps toward open political competition while *simultaneously* pursuing state-building and rule-of-law reforms.

Lindberg's work adds support to this tactic. His cross-national econometrics suggest that elections in Africa become more democratic the more often they are repeated, even if they are not conducted auspiciously at the start (Lindberg 2006, 2009). When an election is held it sets in process a series of societal changes in organisations (eg, the rejuvenation of parties), behaviour (eg, politicians who are looking to electorates when making policy decisions) and attitudes (eg, citizens who come to expect contested elections) that build momentum toward still further democracy.

This finding is reinforced by that of Robert Bates (2008), who finds that in Africa the prospects of a military challenging state order is *decreased* by elections.<sup>3</sup>



Nonetheless, it is true that both the Lindberg and Bates findings are *averages*, may be more valid in Africa and Eastern Europe than elsewhere, and are not automatically assured (Lindberg 2009). The democratising and conflict reduction effects of elections have also been achieved in Africa through ongoing domestic and international pressure – and probably the realisation by current power-holders that their interests will be adequately served with less severely anti-democratic measures (Heilbrunn 2007).

Thus, although it is true that the process of regaining stability after a conflict is sure to be lengthy (and that the expectations of those in the international community who have intervened to bring the fighting to a close that they will be able to exit quickly after an election are false), the demands of African citizens and the dynamics of negotiating the end to civil wars make gradual progress toward elections a frequent necessity. The question is not *whether* to hold elections but *how can* the international community help conflict-prone societies hold elections that avoid violence and promote peaceful conflict resolution, despite the acknowledged difficulties?

Bastian & Luckham (2003) insist that there is no universal template for democratisation – history matters, as does the process of institution building and the actions of the political actors involved. But the choices are not just (a) quick elections, no institution-building, and rapid international exit *versus* (b) no elections, institution-building and continued international involvement. The options are much more complex than that – particularly in sub-Saharan Africa, where so many states are donor-dependent and international involvement in elections has come to be accepted (and is even a part of African Union (AU) expectations). What does the last decade in Africa suggest about the best ways to move forward on elections?

## **INSTITUTIONS THAT REDUCE THE LIKELIHOOD OF VIOLENCE IN ELECTIONS**

States are rooted in violence. Max Weber (1967, 1978) famously defined a state as an organisation that exercises a monopoly over the legitimate exercise of *violence* within defined territorial boundaries. Thus, as the state needs both control over its society's police and military and legitimacy for controlling them, it should not be surprising that those who are struggling to gain or keep those levers of control and be legitimated in doing so may be tempted to use violence in their quest.

An electoral system that rewards the use of violence greatly increases the likelihood that it will, indeed, be used. Violence in the process of contestation will be contained only if the superordinate instruments of legitimate violence for a particular country (which could be either national or international forces) refuse to accord authority over themselves to those who are victorious through its use.<sup>4</sup>

The only way to stop violence in an election is to ensure that those who use it will gain no advantage from it (or at least to create a reasonable expectation that they

won't) and that they may well experience a setback for doing so. Of course the same should be said of other illegitimate means of gaining electoral advantage – such as bribery or cheating. The stakes in elections are high and successful contestants will have used the means that work in order to win. It is safe to assume that any flaws in an election system will be found and exploited. If such exploitation requires violence, it is likely to be used.<sup>5</sup>

Of course, 'flaws' in the electoral system may be due more to a lack of commitment of key participants to democratic outcomes than to 'technical design' issues. Contending parties can agree to a political settlement involving elections only because they fear being left out, but then defect by 'creating flaws' in the elections. Electoral processes that work fine in one country suffer severe flaws in another as actors who are willing to defect if the cost is not too high find clever ways to commit fraud. Enforcement against those who use violence to exploit such 'flaws', then, is even more important.

All of this leads to a set of observations about means of helping to reduce violence and promote reasonable elections. With the assistance of Sara Wolcott I reviewed articles and reports written on elections in 11 African countries since 2005, as well as reading the more general literature on electoral practices in the region. For each election we noted whether a particular electoral design feature was present and whether or not the observers mentioned it as important to the outbreak of violence in the electoral process.

This research is summarised in the accompanying table. In almost no cases were assessments of all the possible election system features provided. Columns 2 through 4 of the table provide evidence that the particular attribute is important to the absence of violence in the election process – either because it was present and observers thought it was valuable in reducing violence (col 2), because it was absent and the reports indicated this had exacerbated or encouraged violence (col 3), or because a cross-country study sees it as significant to the occurrence of violence. The larger the number of notations in columns 2 through 4 the more likely it is that the electoral system attribute is important. In column 5 any evidence that the feature is *not* important is recorded.

The first steps away from electoral bloodshed begin with the acknowledgement that a society that is already torn by violent conflict more or less by definition lacks the institutions that would mediate or mitigate the underlying causes and is therefore likely to have difficulty in mounting a set of institutions that will manage a difficult election well. For this reason international assistance and pressure are often critical to bringing these institutions into existence and ensuring their effectiveness in conflict-prone societies, especially ones in which democratic elections are not well institutionalised. As a 'security dilemma'<sup>6</sup> sometimes underlies the conflict (eg, in Burundi) and as the institutionalisation of the needed practices will take time, international involvement is likely to be required for a long time (Collier (2007) thinks it takes a minimum of 10 years). It is especially important to guarantee that

parties to an electoral contest will be punished if they defect and rewarded if they play by the rules, including by being protected if they lose elections and a former enemy takes control of the state. (See 2 in the table.)

Paul Collier has proposed a way to achieve the foregoing, but it turns out to be unpromising. He argues that progress toward democratisation in Africa would be best assured by pacts between existing rulers and the international community – ones in which the former pledge themselves to maintain momentum towards the construction of the institutions that are necessary to democracy in society and the latter pledges its militaries to protect incumbents from coups d'état as long as they are doing so (Collier 2007, 2009).

This proposal is very similar to one made in 2003 by this author and Scott Straus that the European Union Rapid Response Force plays such a role in partnership with the armed forces of established African democracies. It is evident that African presidents have more to fear from coups than from democratic competitors, so that they do indeed have an incentive to make the required pledge to gradual democratisation. It also is clear that European military forces provide a highly credible deterrent to coups and violent conflicts in sub-Saharan Africa (much more so than the US, the UN or the AU), so the protection offered would be real (Leonard & Straus 2003). But to date only the British military involvement in Sierra Leone has clearly played the pro-democratic role Collier and we have proposed. The crucial questions are both whether the EU is willing to commit itself to playing such a role and whether African heads of states are willing to compromise their sovereignty openly by making such a pledge. So far there has been no public movement by either party in such a direction.

What instead is viable is more subtle – repeated early networking by the international community to pay close attention to what is happening around democratisation in a particular country, to offer aid in conducting the elections properly and to provide assistance to members of civil society who are campaigning for genuine democracy. Soft sanctions are also available, ranging from concerted diplomatic pressure to international shaming, to reductions in aid or shifting aid from direct budgetary support for the government to NGOs that are independent of it.

For the many African countries that are highly dependent on Overseas Development Assistance these sanctions can be significant if the international community maintains unity in applying them. The fact that the ambassadors of both the People's Republic of China and Iran joined in the international pressure on the president of Sierra Leone to accept that his party had lost the general elections in 2007 suggests the prospects for such networking and its success are much better than a hardened 'realist' might imagine (Leonard, Pitso & Schmidt 2009). As the 2007 Kenyan elections illustrate such networked assistance and pressure will not always be successful and democracy *can* regress (Leonard 2009). But progress is possible and is evident in Africa (Lindberg 2006, 2009).

So much for *who* might help to maintain the pressure for democratisation and conflict free elections. What institutional changes should internationals be seeking in their attempts? The list here is familiar to anyone who is concerned with 'free and fair' – that is democratic – elections. It is well to note that the list has expanded with time and experience since the 'democratic revolution' of 1989.

An election that is popularly seen as fraudulent is more likely to attract *post*-election violence. But there is an imperfect correlation between electoral violence and the degree to which the election is relatively free and fair. *Pre*-election violence is most likely when the outcome of an election is in doubt – the government will risk the international and local opprobrium of violence only when it feels it is needed to assure its victory and the opposition risks the costs in human life only when it thinks it has a chance of victory. Thus elections that a government fully, comfortably and confidently controls can be the most peaceful of all.

Thus it would seem that Mozambique in 2005 had a small amount of violence but that the election was less fair than the previous one (Cistac 2005). The situation in Ethiopia would seem to be worse – only a small amount of violence, but the election was not free (European Union Election Observation Mission 2005). There was no reported violence in Rwanda but there were underlying (and often unreported) problems with both freedom and fairness. The opposition saw no prospect of victory and felt exposed to post-election punishment, so there was no violence, as everyone focused on peace instead (European Union Election Observation Mission 2008). On the other hand, Sierra Leone experienced some violence but delivered a fairly good result (European Union Election Observation Mission 2007). Of course Kenya and Nigeria were bad in both dimensions and Namibia, Burundi, Ghana, and South Africa did well in both (UNDP 2009). (These observations are recorded in Table 1.)

It would seem that both the fairness of the election and the absence of violence correlated with the degree of cooperation with international electoral support missions (table, 3). Thus Burundi, the DRC and Sierra Leone did reasonably well, despite having emerged from a period of severe conflict, in good part because they cooperated with the international community on preparatory actions that began at least two years in advance (Ghana, too, had two years of advance preparation (Lekorwe 2006).

The high quality of the elections in South Africa and Namibia despite the modest international presence was probably due both to the fact that the basic outcome was never in doubt and to institutions (media, courts, police and army) inherited from the previous governmental order. In Kenya the electoral management body and the police (quite possibly for political reasons) chose to ignore important aspects of international advice and assistance, which contributed heavily to the severe post-election violence. Of course correlation is not necessarily causation. It may be that the same factors that created acceptance of or resistance to international assistance also caused the electoral violence. Nonetheless, it is likely

that greater cooperation with the assistance donors were offering can mitigate the conflict associated with an election.

Lack of independence in the electoral management body (EMB) is highly correlated with election problems and is probably a good predictor of them (although it is not the sole cause, of course, see table, 4). There is probably a major salutary effect on long-term electoral behaviour if, as in Sierra Leone, the EMB is willing to throw out the results from polling stations where the voting process has been compromised. Such independence helped in Liberia in 2005, Ghana in 2006 and Sierra Leone and the DRC in 2007. Its absence contributed to negative results in Kenya and Nigeria in 2007 and in Zimbabwe in 2008 (see Leonard 2009).

#### **Evidence of electoral process attributes that help to reduce election-related violence**

	<b>Attribute</b>	<b>Confirming evidence: Present with positive impact</b>	<b>Confirming evidence: Absent with negative impact</b>	<b>Other supporting evidence</b>	<b>Disconfirming evidence</b>
1	'Free and fair' elections	Namibia Burundi Ghana South Africa	Kenya 2007 Nigeria 2007		<i>Absent but no violence:</i> Mozambique 2005 Rwanda 2008 <i>Present but some violence:</i> Sierra Leone 2007
2	Long term international assistance and pressure on electoral processes	Burundi DRC Liberia Mozambique	Zimbabwe 2008	Collier 2007, 2009 Lindberg 2006, 2009 Leonard & Straus 2003	<i>Present but violence</i> Kenya 2007 Nigeria 2007
3	Cooperation with international electoral support missions	Sierra Leone 2007 DRC 2007 Ghana 2006 Liberia 2005	Kenya 2007 Nigeria 2007 Zimbabwe 2008		
4	Independence in the electoral management body (EMB)	Botswana 2006 DRC 2007	Kenya 2007		
5	Independent and fair delimitation of constituency boundaries	Mozambique 2005	DRC 2007 Kenya 2007 Nigeria 2007 mixed		
6	Independent, speedy and substantively just adjudication of electoral disputes	DRC		Leonard 2009	

7	Comprehensive and non-fraudulent voter registration	DRC 2007		Reilly 2001	
8	Effective monitoring and regulation of the media to prevent incitement	Sierra Leone 2007	Kenya 2007		
9	Monitoring of political party activity to dissuade incitement to violence and mediate non-electoral disputes	Sierra Leone 2007	Nigeria 2007 Zimbabwe 2008		
10	Non-partisan and effective policing of the voting process and the integrity of the ballot	Ghana 2005 Sierra Leone 2007	Nigeria 2007 Zimbabwe 2008		
11	Local pre-election peace committees	Ghana 2005	Kenya 2007		
12	An electoral system that is resilient to polling station fraud		Kenya 2007 Nigeria 2007 Sierra Leone 2007	Molino 2006	
13	An electoral system that gives minority groups 'fair' representation				
14	Non-partisan armed forces	Kenya 2007 Liberia 2005 Sierra Leone 2007	DRC 2007	Collier 2007	Botswana Lindberg 2006, 2009
15	Pre-election disarming of combatant groups seeking political power	Sierra Leone 2002, 2007 Liberia 2005	DRC 2007 Angola		
16	Assurance that losers will have a fair chance to contest again	Mozambique	Angola Sudan		
17	Protection into the future of the rights of minorities and losers	Burundi 2005			

Sources for these observations are derived from: *Botswana*: Lekorwe 2006; Molino 2006; Tshosa 2006; *Burundi*: Topangu 2005; *Democratic Republic of Congo*: Leonard 2009; *Ghana*: Ojelo & Nyathi 2009; UNDP 2009; *Kenya*: Ajulu 2008; Leonard 2009; Ojelo & Nyathi 2009; *Liberia*: Adejumbi 2006; *Mozambique*: Cistac 2005; *Namibia*: LeBeau 2005; *Nigeria*: Danjibo & Oladeji 2007; Nwoli 2007; Leonard 2009; *Rwanda*: European Union Election Observation Mission 2008; *Sierra Leone*: Leonard 2009; Ojelo & Nyathi 2009.

The evidence is also fairly strong that other factors that reduce violence are: independent and fair delimitation of constituency boundaries (5); comprehensive and non-fraudulent voter registration (7); monitoring of political party activity to dissuade incitement to violence and mediate non-electoral disputes (9); non-partisan and effective policing of the voting process and of the integrity of the ballot (10); non-partisan armed forces (14); pre-election disarmament of combatant groups seeking political power (15); and assurance that those parties that lose the election will have a fair chance to contest again for authority in the future, thus assuring that the advantage of incumbency will not be so huge as to cement re-election in later elections even in the face of great unpopularity. (16).

There is also less powerful but also positive evidence of the value of: independent, speedy and substantively just adjudication of electoral disputes (6); effective monitoring and regulation of the media to prevent incitement (8); local pre-election peace committees (11) and protection into the future of the rights of minorities and losers (17).

All the above findings and their implications are consistent with 'international best practice' for election support. Thus there is no particular need to elaborate on them. Even if the evidence in support of the latter set of four attributes is less than overwhelming, there is no evidence that they are *not* important.

The next and final two items are somewhat more surprising and controversial, however. An electoral system that is resilient to polling station fraud and minority intimidation (12) is supported by our evidence but is not usually considered in this way. In rural Africa kinship groups tend to be geographically localised and a major factor in voting behaviour. Thus voters at polling station level tend to vote overwhelmingly for one candidate, making polling station fraud and intimidation of minorities easier, since the great majority, or all of those officiating at the station, will support the same outcome.

If, at a higher level, the *size* of a local victory brings rewards, if minority votes are added up across electoral units to allocate legislative seats proportionately at a higher level or if national winners have to achieve a certain minimum percentage of the vote across many electoral units (as they do in Kenya and Nigeria) the majority at polling station level may use violence to fraudulently limit minority votes – something they would see no need to do in a first-past-the-post (FPTP) election (Leonard 2009). If a proportional representation system is important to the viability of a country's democracy – as it may well be in Kenya and Nigeria – extraordinary vigilance is needed at polling station level to avoid fraud and voter intimidation.

The importance of an electoral system that gives minority groups 'fair' representation (13) is counter-indicated by some of our evidence, which is surprising, given the attention it usually receives in the literature (Molino 2006). No report mentioned its presence or absence as important to violence. It is probably important, in the long run, to the legitimacy of a democracy and is not an issue



when minorities are geographically separate. Otherwise this point can be in tension with the preceding one, making it unclear that there are universal formulae that must be followed to avoid violence around election day.

As noted in the preceding point much seems to depend on whether major societal rifts are important at the level of the polling station, in which case, violence is likely in close elections, as it was in the central Rift Valley of Kenya (Lyons 2004). Countries such as Botswana that use FPTP single-member constituencies rather than the 'international best practice' of proportional representation have not had the same problems with electoral violence (Lindberg 2006, 2009).

## CONCLUSION

The list of things that need to be done not only to make an election democratic but also to reduce the risk of accompanying violence has expanded considerably in the past 20 years. At least in Africa, so has the acceptance of the amount and length of the international involvement that is needed to secure these results. The critics of quick 'in and out' international efforts at democratisation are right. Poorly conducted elections are an invitation to violence and an international exit before institutionalisation has been achieved is an invitation to revert to violence.

The institutional features needed to make elections 'free and fair' are close but not identical to those that seem important to a reduction in violence. Most notably, the type of representation system (13) was not noticeable as a cause of violence in the elections we surveyed. There was also weak evidence of the value of the monitoring of political parties (9), but this is probably because it is so rarely done effectively.

Most of the violence-mitigating practices and institutions we highlight have become a part of the standard package of international electoral assistance in the 21<sup>st</sup> century. Among the long-list we identified, however, the most important probably are: an independent electoral management body (4), cooperation with long-term international election assistance (2, 3), prompt and substantively fair judicial resolution of election disputes (6), effective and non-partisan oversight of the security of the electoral process (non-partisan police and an uninvolved army (10, 14), and the assurance that losing parties will not be permanently disadvantaged (16, 17).

There is also nothing automatic about a democratic or a peace dividend from elections. The steady improvements that Lindberg (2006, 2009) has observed over time in African electoral processes are not automatic but have been produced by a great deal of domestic and international effort. Still, results *are* possible, they are worth the effort, and they are best achieved by 'learning while doing'.

Democratisation and a reduction in election violence are not likely to be achieved by any kind of international treaty or convention, such as that proposed by Collier (2009) or myself (Leonard & Straus 2003). Instead they are likely to



emerge from the persistent suasion and assistance of a well-networked and united international community and from donor assistance to domestic civil society advocates of democracy (Topangu 2005).

## NOTES

- 1 My thanks for the research assistance of Sara Wolcott.
- 2 Indeed, institutionalisation requires that key actors have come to value the behaviours or organisations in themselves, and such commitment to new values tends to take time.
- 3 Bates does find that multiparty systems are more likely to create challenges to order, but the effects of elections to the contrary are stronger.
- 4 Leonard (2009) (following Stinchcombe 1968) makes the point that the boundaries of a role's legitimate authority derive from the limits within which it will be supported by other centres of power in a society. The consent of the governed is only one of the possible sources of such power. In the realities of contemporary Africa it matters what the military and key international actors think is legitimate.
- 5 These observations are *not* specific to poor countries. Both violence and fraud were evident in USA elections into the 1960s.
- 6 A 'security dilemma' exists where both parties to a conflict desire peace but each fears that if they lay down their arms – or if the other party wins the first election – they will never have a chance to compete for power again and that their rights as a minority will not be respected. International actors can help to overcome such a security dilemma and bring peace by guaranteeing that free and fair elections will be repeated in the future and that minority rights will be protected.

## **ELECTORAL SYSTEMS AND CONFLICT IN AFRICA**

**Mpho G Molomo**

### **INTRODUCTION**

Khadiagala (2009) argues that the ‘third wave’ of democratisation has been vindicated by the proliferation of democracies in Africa and the adoption of elections as primary mechanisms of regime change. As a result, inordinate attention was given to elections as the way of delivering democracy at all times.

Elections and electoral systems as democratic institutions are not beyond reproach, they are a necessary, though not sufficient condition for the attainment of democracy. As things stand, there are hot spots in Africa where elections have been contentious and, in some cases, have led to violent conflict. Compounding this problem has been the attention paid to the attainment of democratic institutions without focusing on democratic politics – the creation of the political space that encourages dialogue and mutual reciprocity. What is needed is to build social capital that will lead to political trust. One way of doing so is to strengthen election management bodies to ensure that they are responsible and responsive to people’s demands and are independent and inspire the confidence of all the stakeholders. More importantly, the power relations that emerge after elections must reflect the voices of the people.

Although Huntington (1991) asserts that the double turnover of political power through free and fair elections guarantees democratic consolidation, Toulou (2009, p 187) argues that political turnover does not ‘always signal a new dawn of democracy’ – some elections legitimise authoritarian governments. Moreover, since elections are political contests through the ballot, it is important to understand why they often degenerate into violent conflict. At times electoral systems contribute to violence because of their inability to inspire confidence and trust in the contending parties. Norris (2004, p 4) views them as ‘basic democratic structures’ which facilitate democratic elections and possibly democratic politics.

For elections to be considered free and fair they must be conducted using instruments that are accepted by the role players. Electoral systems must be regarded as above board and uncorrupted by any player, especially the incumbent. Moreover, elections have to be free from violence and intimidation to be accorded a measure of democratic legitimacy. Governments that undermine or corrupt electoral systems to perpetuate their hold on state power undermine their political legitimacy and attract critical scrutiny. Attempts to deepen and consolidate democracy have, among other things, focused on the design of electoral systems to ensure that they are simple to administer and produce responsive, accountable, inclusive and consensual governments. Reynolds & Reilly (1997) maintain that electoral systems are manipulative because they determine how elections are won and lost.

This chapter underscores the centrality of electoral systems in deepening democracy and how, in some cases, they may promote conflict. It starts by celebrating the success of the 'third wave' of democratisation, as manifested by the proliferation of democracies worldwide. The chapter also discusses how, in pursuit of the democratic dividend, which is widely evident, and has led some, like Fukuyama (1992), to say that its success marks the 'end of history', electoral systems may either advance democracy or lead to conflict. More specifically, it maps out the types of electoral systems in Africa, and what value, if any, they add to the democratisation process. It also discusses how electoral systems could, on the one hand, promote conflict and, on the other, pacify election-related conflicts.

Case studies of Kenya, Lesotho, Madagascar and Zimbabwe show how electoral systems, especially the 'winner-takes-all', become a source of conflict; in addition, I analyse how power-sharing, in the case of Kenya and Zimbabwe, was used to appease leaders who felt that they were robbed of electoral victory. Drawing on these conflicts the chapter discusses how the 'winner-takes-all' electoral system in Lesotho created an impression of election rigging. As a measure of redress, it demonstrates how electoral reform in Lesotho won the confidence of the people in the electoral process. The chapter starts with a contextual framework for understanding the different types of electoral systems.

## CONTEXTUAL FRAMEWORK

The designation of elections as free and fair and free from violence is not only contingent upon what happens on polling day but also on a number of other processes. Among those are the political terrain and the environment that exists in a country; that is, whether political and civil society organisations are accorded the democratic space to organise freely, without fear and intimidation; whether all actors have equal access to the news media and whether the political playing field is level and all political parties are able to maintain visibility and are able to embark on effective voter education and mobilisation.

Free competition cannot exist among unevenly matched political parties. The freeness and fairness of an election is measured, among other variables, by the ability of political parties to compete equally for political support. With this in mind, political party funding is suggested as one of the ways of levelling the political playing field. The fairness of elections is measured by the ability of all political parties to canvass for political support. Drawing on the Southern African Development Community (SADC), the SADC Parliamentary Forum, the Electoral Institute of Southern Africa (EISA) and African Union protocols, among others, there are norms and standards that govern the conduct of democratic elections.

The deepening of democracy requires popular control of decision-making on the basis of political equality, which requires the constant construction of countervailing institutions within both political and civil society. As in all other democracies in the world, including the developed ones, the project of democracy in Africa can best be informed by the assertion that democracy is an ever-evolving process that must constantly be nurtured and refined to meet people's aspirations.

One way of nurturing democracy is to develop electoral systems that accord legitimacy to and inspire trust among stakeholders. In so doing the electoral system creates social capital, which is the necessary raw material for building political trust (Molomo 2006). In a democracy it is necessary to build an environment that creates confidence in all those involved in the political system that electoral institutions and processes operate in their best interests and do not defraud them; the populace must trust that election management bodies (EMBs) always do what is right.

## **ELECTORAL SYSTEMS**

Electoral systems play an important role in developing electoral norms and standards. They are important because they define the rules of the game – how elections are won and lost. They determine the basic parameters of the electoral law and the frontiers of representation and inclusion. Africa has a range of electoral models that include variations of the first-past-the-post (FPTP), proportional representation (PR) and mixed member proportionality (MMP) electoral systems, which provide different degrees of representation, accommodation and accountability.

### **First-Past-The-Post**

The FPTP system, also known as the winner-takes-all or majoritarian system, is based on single-member constituencies. It has two basic forms, the simple and the overall majority system. The simple majority implies that any candidate who gets more votes than others is elected. In the case of an overall majority system a candidate must win 50%+1 of the vote to be declared a winner. This system is

widely practised, especially in Commonwealth countries, which have inherited it from Britain. Based as it is on single-member constituencies, FPTP is credited with providing an effective link between government and the electorate, as people know who their representatives are and are able to hold them accountable.

However, contrary to the popular belief that FPTP 'always' produces a clear cut winner, in Britain's May 2010 elections the Conservative Party, led by David Cameron, won the largest number of votes and seats but failed to garner the overall majority needed to form a government. The result was that the Conservative Party had to court the Liberal Democratic Party in order to form a coalition government. Perhaps what this suggests is that political scientists need to rethink electoral theory in light of demographic changes brought about by globalisation.<sup>1</sup>

The major drawback to FPTP is that supporters of candidates who lose the elections also lose their vote because, irrespective of how many votes the losing candidate polls, even if he or she loses by a margin of one vote, he or she cannot take office. In essence, this system violates the principle of one-person-one-vote because not all votes count in the making of a government. The FPTP system produces single-party dominance, wherein one political party dominates the political landscape. In countries like Botswana, where such systems are manifest, power tends to be concentrated in one political party, often leading it to become complacent and arrogant.

Botswana's case is particularly instructive in that, especially during the term of President Lt **Gen Seretse Khama Ian Khama**, it has led to the concentration of political power in the presidency. At party level the predominant party system has undermined inner-party democracy. In the name of discipline within the party dissenters have either been suspended or expelled. As a result, the ruling Botswana Democratic Party (BDP), which has been in power since 1966, has split, and a rival faction known as *Barata Party* (those who love the party) formed the Botswana Movement for Democracy (BMD). At its first convention, on 29 May 2010, BMD committed itself to restoring democracy in the country. Although it is too early to assess its impact, the split has clearly damaged the inner stability of the BDP, opening up all sorts of possibilities for the stability of the country.

The effect of the winner-takes-all system, in Botswana and elsewhere in Africa, reduces politics to a zero-sum game wherein losers are vanquished, thus defeating the basic tenets of democracy, which suggest inclusiveness and accommodation. Both Kenya and Zimbabwe have a FPTP system and the chapter will show how this accounts for the democratic deficit in these countries and, perhaps more importantly, how the system failed Lesotho and led to political disturbances that resulted in violence and the loss of lives and property in 1998.

### **Proportional representation**

The PR system is fairly new and is gaining currency in new and emerging democracies. It is widely used in Latin America and is slowly gaining acceptance

and appeal in Africa. In Southern Africa it is used in Namibia and South Africa. Its appeal lies in the fact that every party that contests an election receives a share of the available seats in proportion to the percentage it wins of the popular vote, and the voices of the people are well represented in political office.

Because of its inclusive nature it ensures that all shades of political opinion are reflected in the decision-making structures of government. Although this system is viewed as the most representative of all, it lacks accountability because voters cannot single out any candidate as their representative. Under PR the whole country is taken as one big constituency and, depending on whether the system is an open or a closed list system, candidates are ranked according to their worth to the party. The list is usually based on the priorities of the party, so it may happen that no candidate from a particular region makes it onto the list or, if they do make it, they are too low down to win a position. The net result is that it is the party and not a particular candidate that is accountable to the people.

The South African Parliament has tried to obviate this problem by assigning members of Parliament to specific regions but, despite its good intentions, this has not proved an effective remedy. Returning to the issue of representation, variations in the preparation of the party list, such as the zebra system, can be used to empower specific groups. This system, based on the values and intentions of the party, might determine that every other candidate on the list is a woman, or a young person, or disabled, and so on, making the system more inclusive and allowing it to cater for minority or sectional interests. The great strength of the PR system is that it produces inclusive governments based on consensus and power sharing.

Although PR is considered to be representative it is criticised for giving smaller parties or interests inordinate powers to 'swing' the vote, thus making them king makers, as PR systems are usually amenable to coalition governments. Power sharing and consensus building cut both ways – they may lead to representative government but they may also lead to weak and unstable governments where, in exercising political power, parties have to accommodate the interests of coalition partners. Coalition governments invariably lack implementation capacity because they are unable to be firm and make authoritative decisions.

### **Mixed member proportional system**

The inherent limitations of both the FPTP and PR systems have led to the emergence of a third variation, which is largely contemplated but yet to be widely used, known as the semi-PR or mixed member proportional (MMP) system. The MMP borrows from both the FPTP and PR systems to develop best practice in representative and accountable government. The essence of the MMP is a hybrid system that enjoys the best of both worlds, drawing on features of both FPTP and PR.

The MMP system gives each voter two votes: a constituency vote and a party vote. The constituency vote, using the FPTP system, determines who will represent the constituency in the national assembly and the party vote, based on PR, determines the proportion of the party's share of the popular vote. The PR poll is used to award compensatory seats where political parties win fewer seats under the constituency system than they would have been entitled to under PR.

This system is used in Germany and New Zealand. In Germany 50 per cent of the seats are elected by FPTP, the other 50 per cent by PR. In New Zealand 58 per cent are FPTP and 42 per cent PR (Reynolds & Reilly 1997). In an attempt to redress the problems that besieged Lesotho in 1998, widely believed to be a result of the unrepresentative nature of the FPTP system, the country adopted the MMP system. In Lesotho, 80 seats of a total of 120 are allocated to FPTP and 40 to PR (Lesotho Government 2001). The way the two systems are combined depends on the circumstances of a particular country, but the intention is to produce governments that are both representative and accountable. The next section will examine case studies of Kenya, Lesotho, Madagascar and Zimbabwe.

## KENYA

Kenya faced an unprecedented wave of violence in January 2008 following the announcement of the results of presidential, parliamentary and local council elections. Some 1 300 people were killed, and more than 350 000 fled their homes (Khadiagala 2009).

In the elections, which were run on the FPTP system, Mwai Kibaki, representing the Party of National Unity (PNU) won 47 per cent and Raila Odinga of the Orange Democratic Movement (ODM) 44 per cent of the popular vote in the presidential elections. The ODM won 99 seats in the 210-seat National Assembly and the PNU 43 ([www.mahalo.com/kenya-elections-2007](http://www.mahalo.com/kenya-elections-2007), pp1-2; [news.bbc.co.uk/2hi/africa/7175694.stm](http://news.bbc.co.uk/2/hi/africa/7175694.stm), p 1).

However, the elections failed to secure a verdict from international observers that they were free and fair. To compound matters, the Electoral Commission of Kenya (ECK) was not able to establish the 'integrity of the tallying process' (Otieno 2008, p 1), casting serious doubts on the credibility of the elections. Both local and international observers believed the authenticity of the elections result could not be established. The *Kenya General Election Report* maintained that 'events that had unfolded since the polling day had eroded the confidence of the Kenyan people. The manner in which the results were announced had raised suspicion and caused widespread mistrust'.

The declaration of Mwai Kibaki as winner of a presidential election characterised by 'serious inconsistencies' and irregularities, including the fact that some polling stations received the wrong ballot papers ([news.bbc.co.uk/2hi/africa/7175694.stm](http://news.bbc.co.uk/2/hi/africa/7175694.stm), p 3), prompted widespread rioting, leading to the loss of life



and property. The delay of more than a day in announcing the results led to suspicion and speculation that the elections had been rigged in favour of Kibaki, 'especially at the final vote tallying stages'. In many cases there were considerable differences between the number of votes at the national level and those at the local level, with the number cast in the presidential election significantly higher than those in the parliamentary and council elections ([en.wikipedia.org/wiki/Raila\\_Odinga](http://en.wikipedia.org/wiki/Raila_Odinga), p 1).<sup>2</sup>

The perception was that, although voters might vote differently at the different levels, since votes at all three levels were cast simultaneously the number of votes cast in each election should largely tally. In the event, the number of votes cast in the presidential election was significantly higher than the number cast in the parliamentary and council elections. This seemed to defy common logic – people would normally be expected to vote for their local representative, because that office has the greatest direct impact on their lives, rather than to cast their vote only for the president. The election commission conceded that in one constituency the turnout was '115 percent' ([news.bbc.co.uk/2hi/africa/7175694.stm](http://news.bbc.co.uk/2/hi/africa/7175694.stm), p 1),<sup>3</sup> giving credence to allegations that there had been electoral fraud. Equally suspicious was the fact that Odinga lost some areas that were known to be his strongholds.

The 2007 elections were marked by politicised ethnicity. I use this expression because ethnicity in itself as a marker of identity and self-expression is not necessarily a bad thing. It is only bad when it is used to diminish other people, or as a ploy to deny others access to political power and resources.

In the case of Kenya what unfolded in 2007 had the trappings of ethnic politics. Kibaki dominated the polls in his native Central Provinces, which are predominantly Kikuyu, and Odinga drew support from the Luo and also forged links with ethnic groups like the Luhya in the Western Province and the Kalenjin in the Rift Valley. After Kibaki was declared winner civil unrest broke out, targeting his supporters, especially the Kikuyu.

Odinga, maintaining that 'the train of democracy in Kenya is unstoppable, like the flow of the Nile', refused to concede defeat and declared himself 'a people's president'. Following the intervention of the international community a 'grand coalition Cabinet', or a government of national unity, was brokered in April 2008, in which Kibaki was inaugurated as president and Odinga as prime minister. The Cabinet consists of 40 ministers and 52 deputy ministers drawn from the PNU and the ODM ([en.wikipedia.org/wiki/Kenya](http://en.wikipedia.org/wiki/Kenya), p 7). The government of national unity only brought temporary relief to the polarised country and real work still has to be done to build trust and the accommodation of all the ethnic groups and the ECK.

In ethnically divided societies such as Kenya it is important to ensure that election outcomes reflect the popular will of the people. Lesotho, discussed below, presents a similar but slightly different scenario – although the country



is ethnically homogeneous, its people have diverse political opinions. The case of Lesotho shows that the FPTP system sows the seeds of discord, which often result in violent conflict.

## LESOTHO

The mountain kingdom of Lesotho, often referred to as the kingdom in the sky, attained independence in 1966 as a constitutional monarchy in which the king is the head of state without executive authority. Not since its independence elections of 1965, in which the Basotholand National Party (BNP) won 31 seats to the Basutoland Congress Party (BCP)'s 25 and the Marema-Tlou Freedom Party (MFP)'s 4 has the country enjoyed political stability.

The problems were aggravated by the fact that the then Prime Minister, Chief Leabua Jonathan of the BNP, nullified the 1970 elections, which were believed to have been won by the BCP, on the pretext that they were marred by violence. Jonathan declared a state of emergency, suspended the Constitution and instituted authoritarian rule in Lesotho for 16 years. In a failed attempt to return to multiparty politics, elections were held in 1985, but they did not enjoy legitimacy because the opposition boycotted them on the grounds that the atmosphere was not conducive to free and fair elections.

Things came to a head in 1986 when, because of Lesotho's foreign policy posture, which was inclined towards the Eastern bloc, South Africa closed its borders with Lesotho. There was no hope that Lesotho, a landlocked country, totally surrounded by South Africa and economically dependent on it, could withstand such pressure. Moreover, more than 60 per cent of Lesotho's male labour force is employed on South African mines. As a result of this pressure, in January 1986 Major-General Justin Lekhanya took over power. However, on 30 April 1991 junior officers toppled Lekhanya and Colonel Elias Ramaema became the new military leader (Southall 1994).

Lesotho did not hold another multiparty election until 1993, when the BCP won all the seats, although it polled only 74.9 percent of the popular vote to the BNP's 22.6 per cent. This winner-takes-all phenomenon gave the opposition parties the impression that the government had manipulated the election results. The opposition parties followed accepted democratic procedures for redress, through the courts of law, but lost the case, as there was no strong evidence to substantiate their claims (Southall 1994). Meanwhile, the BCP was polarised by internal fighting and its leader, and the country's prime minister, Ntsu Mokhehle, resigned and formed the Lesotho Congress for Democracy (LCD) in 1997. Despite this move, Mokhehle was able to continue as prime minister as the majority of BCP members of Parliament crossed the floor to join the new party.

The elections on 23 May 1998, the first test of the legitimacy of the LCD, were conducted against the backdrop of a disaffected population. Basotho felt that the

opposition parties were cheated in the 1993 election and argued that the high court had been biased in favour of the government. The 1998 elections were a near repeat of those of 1993 – contrary to expectations that the LCD would lose, it was returned to power by a landslide majority, winning 79 of the 80 parliamentary seats. What was unsettling about these results was that the LCD had won only 60.7 per cent of the popular vote. The BNP, which had received 24.5 per cent, won only one seat (Musanhvu 2009).

The lack of trust in key institutions of democratic governance since the 1993 elections led opposition parties to believe the elections were rigged. Dissatisfaction, low levels of efficacy and institutional distrust led opposition parties to mobilise disgruntled forces, especially the urban unemployed and the youth, to manifest their anger by extra-legal means and civil unrest. As a result of these protests a commission of inquiry headed by South African Constitutional Court justice Pius Langa was charged with investigating the alleged electoral irregularities.

The Langa Commission report revealed, among other things, that there had been gross administrative irregularities in the conduct of the election, among them, 'broken seals' on ballot boxes. Although there was evidence that the 'integrity' of some documents was compromised by the failure of the Independent Electoral Commission (IEC) to comply with procedures and regulations, the Langa report did not nullify the election results, noting that while there were administrative errors, they were not sufficiently serious to overturn the will of the Basotho. It concluded that there was no deliberate intention to defraud the electoral system (Matlosa 2004; Makoa 2004).

According to the Afrobarometer surveys (2003) Basotho had low levels of trust in the courts (40%) and the Independent Electoral Commission (32%). The Langa report was not well received in Lesotho, as opposition parties believed it was a mere charade by Southern African Development Community (SADC) leaders to protect a fellow head of government, Prime Minister Phakalitha Mosisili. Arising out of this dissatisfaction a palace vigil held by the Setlammo Alliance, a conglomeration of six political parties, which were unhappy with the outcome of the 1998 elections, followed by a groundswell of civil unrest that was joined by the police and military, led to a complete collapse of law and order, which culminated in the burning down of the business districts of Maseru, Mafeteng and Mphahle's Hoek. This led Prime Minister Mosisili to invite SADC to intervene in September 1998. On behalf of SADC, Botswana and South Africa instituted Operation Boleas and, subsequently, Operation Maluti, to guarantee peace and democracy and to restructure the Lesotho Defence Force (LDF).<sup>4</sup>

From the election results of 1993 and 1998 it is clear that the FPTP system encourages a predominant-party situation. While this system is traditionally credited with producing stable governments that are accountable and lead to an effective link between members of Parliament and the people, it excludes opposition parties from government, thus precluding consensus building. The

disparities between the proportion of the popular vote and the number of seats the opposition received made their allegations plausible. As a result, it was decided to reform Lesotho's electoral system. In December 1999 an agreement was reached between the Lesotho Government and the Interim Political Authority (IPA) whereby all stakeholders committed themselves to ensuring that Lesotho held successful, legitimate, free and fair elections.

The National Assembly Election (No 1) Amendment Act of 2001, which amended the National Election Act of 1992, gave authority to the Interim Political Authority to establish a MMP electoral system for the National Assembly elections. The effect of the amendment was to increase the size of the National Assembly to 120 members, 80 elected by the FPTP system and 40 by PR (Lesotho Government 2001).<sup>5</sup> The general elections held on 25 May 2002 using the MMP system – the first elections conducted in that country since the disturbances of September 1998 – were a major turning point in the country's politics and a test not only of the return to democracy but of the new electoral system. The results were widely accepted by all the role players and the populace.

This should not create the impression that MMP is a panacea for all electoral problems. In 2007 the MMP system was at the heart of the election disputes in Lesotho. Due to internal wrangles within the ruling Lesotho Congress of Democrats, in October 2006 Tom Thabane, together with 17 other MPs, defected to form a new party, known as the All Basotho Convention (ABC). Faced with a narrow majority in Parliament of 61 of 120 seats, on the advice of the Prime Minister Phakalitha Mosisili, King Letsie III on 24 November 2006 dissolved Parliament and called an early election on 17 February 2007.

In those elections the LCD won 61 and the ABC 17 of the 80 constituencies. Under PR, both the National Independent Party (NIP), which is allied to the LCD, and the Lesotho Workers Party (LWP), which is allied to the ABC, won 21 seats. Thabane protested that the PR seats had not been allocated fairly, and threatened to ask the government to call fresh elections ([en.wikipedia.org/wiki/Lesotho](http://en.wikipedia.org/wiki/Lesotho), pp 1-2).

## **MADAGASCAR**

The Indian Ocean island of Madagascar has, since independence in 1960, undergone profound political transformation from a Marxist regime based on public ownership of the means of production (the 1970s) to a free market economy underpinned by political liberalism (the 1990s). During its 49 years of independence it has had three republics.

The political situation since independence has been marked by a battle for political control. The predominant-party system has been characterised by 'assassinations, military coups and disputed election' results ([en.wikipedia.org/wiki/madagascar](http://en.wikipedia.org/wiki/madagascar), p 2).

The first republic came into being with the adoption of the 29 April 1959 Constitution, which asserted Malagasy's independence from the French under Philibert Tsiranana. Following a defeat in a referendum in 1972, Tsiranana stepped down and General Gabriel Ramanantsoa became both president and prime minister. Amid fears of ethnic domination by the Merina ethnic group, a referendum, held to allay ethnic sensitivities, resulted in the adoption of Malagasy as an official language. In December 1974 an attempted coup by Malagasy of Cotiers extraction, sponsored by police officers, was the result of dissatisfaction with what was seen as Merina domination and control of the armed forces. The first republic was unstable and marked by coups and counter coups.

The second republic came into being in 1975 after Didier Ratsiraka assumed the reins of power. Ratsiraka's rule was characterised by a 'benevolent Marxist dictatorship', which imposed one-party rule, nationalised key sectors of the economy, and pursued an aggressive investment agenda financed through extensive external borrowing (Toulou 2009). In line with the winds of change ushered in by the 'third wave' of democratisation, Ratsiraka's regime faced opposition in the 1990s. As happened in other countries in the region, opposition parties were formed and, following Ratsiraka's intransigence and refusal to accede to democratic reforms, in July 1990 an opposition group called 'Forces Vives' (Toulou 2009) appointed a parallel government, with retired General Jean Rakotoharison as president and Albert Zafy as prime minister. In the stalemate that resulted Ratsiraka imposed a state of emergency, which led to tension and violence and, eventually, to the suspension of the Constitution.

The third republic was ushered in on 19 August 1992 after the adoption of a new Constitution which enshrined civil liberties and democratic reforms, including limiting the tenure of the president to two terms of five years. More substantively, it provided for the establishment of a parliamentary form of government consisting of a Senate and a National Assembly. Perhaps it is correct to say that the third republic was officially inaugurated by the swearing in of Albert Zafy, following his overwhelming election victory over Ratsiraka. The goodwill that Zafy enjoyed was, however, short lived, as a result of the deteriorating economic situation. The National Assembly impeached Zafy and Ratsirahonana was appointed interim president, pending the holding of fresh elections. In the elections that followed, in November 1996, Ratsiraka was re-elected president, a position he held until 2002 when he was forced to flee to France following a seven-month standoff with Marc Ravalomanana, who claimed election victory.

Although Ravalomanana was elected for a second term in December 2006 he was not able to complete the term as a result of widespread civil unrest and protest, led by Andry Rajoelina, former mayor of Antananarivo. The material issue was that the Ravalomanana government closed the radio station belonging to Rajoelina for broadcasting statements from the former president, Didier Ratsiraka, in exile in France.

Rajoelina mounted a spirited campaign, arguing that the closure of the radio station was politically motivated and accusing the president of authoritarian rule and corrupt practices. Manifesting irredeemable tension between the president and the mayor, the latter announced a parallel government destined to take over power. President Ravalomanana reacted by removing Rajoelina on 3 February 2009. The move further polarised government and opposition forces and protests intensified, resulting in numerous injuries and about 130 deaths. In the end Ravalomanana was forced to step down and hand over power to the military in March 2009. This move was considered to be a well orchestrated ploy to hand over power to military men loyal to him. Instead the military decided power should go to Andry Rajoelina (Toulou 2009, p 219), an opposition leader who had opposed Ravalomanana's rule.

In a dramatic turn of events the international community, including SADC, the African Union and the United States, imposed sanctions and a trade embargo on Madagascar, calling on it to restore a constitutionally elected government. SADC also suspended Madagascar from the regional body. In an attempt to find a lasting, durable and all-inclusive solution to the crisis, SADC appointed the former president of Mozambique, Joaquim Chissano, as a mediator. With the assistance of South African President Jacob Zuma, the contending parties agreed to return the country to 'constitutional normalcy through an electoral process that is inclusive, credible, and free and fair'. Although there are differences, the political stalemate in Madagascar mirrors what is happening in Zimbabwe

## ZIMBABWE

After a protracted armed struggle (1966-1979) in Zimbabwe, the post-colonial state came into existence as a result of a negotiated settlement in 1979, leading to independence in 1980. Soon after independence the largely Shona Zimbabwean African National Union launched a campaign known as *Gukurahundi* (Shona for 'the rain which washes away the chaff before the spring rains'), against supporters of the predominantly Ndebele Zimbabwe African People's Union (Zapu) (Sithole 2000). As Zanu was bent on extending its hegemony throughout the country, including the Ndebele stronghold of Matabeleland, tension grew between the two parties and their leaders, Zimbabwean President Robert Mugabe (Zanu) and Joshua Nkomo (Zapu).

The result of the *Gukurahundi* was genocide in Matabeleland in 1982-1987, perpetrated by the Fifth Brigade, a North Korean trained unit within the Zimbabwe Defence Force.<sup>6</sup> These atrocities, in which an estimated 20 000 people were killed, only ended with the signing of a unity accord between Mugabe and Nkomo on 22 December 1987 as a result of which the two parties merged to form Zanu-PF, and Zimbabwe became a de facto one-party state. Once the accord was signed there was a 'noticeable rupture of elite cohesion' (Sithole 2000), leading

to the expulsion from Zanu-PF of Edgar Tekere, an erstwhile party stalwart and secretary general. Tekere subsequently formed the Zimbabwe Unity Movement (ZUM), breaking Zanu-PF's monopoly of the political space. However, the semblance of a one-party system returned to the country after the decisive defeat of ZUM in the 1990 presidential and parliamentary elections.<sup>7</sup>

It would be a serious omission to discuss the political economy of Zimbabwe without referring to the land question. The Land Apportionment Act of 1930 had partitioned all land in the colony into European-owned land and native reserves. European land was later classified as freehold and the native reserves designated communal lands. The subsequent Land Husbandry Act of 1950 concluded the racial zoning of the land and the marginalisation of the African peasants. What this meant was that about 4 000 white farmers owned more than 50 per cent of the fertile land, while the remaining land, mainly barren, was owned by the more than 7-million African peasants. The land question remains an important political issue in Zimbabwe, and Zanu-PF has made it a campaign issue during all its elections.<sup>8</sup>

In the 1990s Zimbabwe experienced a most volatile period when ZANU-PF embarked on a programme of consolidating its rule in the face of dissenting views within the party, opposition forces trying to regroup following their liquidation in the *Gukurahundi*, and white commercial farmers angered by the expropriation of their land.

Following the economic hardships that had resulted in the crash of the Zimbabwe dollar against major foreign currencies and the soaring prices of basic commodities there were major disturbances. The greatest challenge came from the Zimbabwe Congress of Trade Unions (ZCTU), which protested against the high taxes and prices of goods, and college students demanding an increase in their grants. Although the opposition parties were, at the time, very weak, Zanu-PF lost its hegemonic claim on the electorate as a 'vibrant civil society' emerged, giving 'impetus' to democratic discourse (Sithole 2000, p 81).

The year 1998 was an important turning point in the post-independence politics of Zimbabwe. During that year the ZCTU and other civil society organisations, recognising the predominance of ZANU-PF, and its marginalisation of opposition parties, coalesced to contest political power. On 11 September 1999 the Movement for Democratic Change (MDC) was formed from the labour movement, which enjoyed widespread support from church organisations, women, students and human rights bodies. Morgan Tsvangirai, who had been secretary general of the ZCTU, became its president.

Within months of its formation, on 11 February 2000, the MDC spearheaded a campaign for a NO vote in a national referendum on a new constitution for Zimbabwe, resulting in the defeat of the proposal with a 55 per cent vote. The MDC also contested the parliamentary elections held on 24-25 June 2000, which were characterised by violence and intimidation, winning 57 of the 120 seats. Such



violence and intimidation were to become a characteristic feature of Zimbabwean elections.

The local elections held on 28-29 September 2002 were also characterised by 'state sponsored violence, torture, arrests and intimidation of opposition supporters and candidates'. In a calculated move to intimidate voters and candidates, several houses of MDC candidates and political activists in the Gutu and Bikita districts of Masvingo province were burnt down before the election (Mmegi/ AI 2002, p 29).

The 2002 presidential elections attracted a host of foreign observers, among them the Commonwealth, the SADC Parliamentary Forum, the SADC Electoral Commissioners Forum and EISA, some of whom witnessed acts of violence. Members of the parliamentary forum were, themselves, targets of an orchestrated attack 10 km outside of Chinhoyi on 24 February (see Nkiwane 2002).

The SADC Parliamentary Forum and other international observers declared that the elections had not been free and fair and opposition parties and civil society organisations such as the Zimbabwe Election Support Network (ZESN) and the Zimbabwe Crisis Committee (Crisis), which were instrumental in civic and voter education programmes, rejected the results. According to Crisis 'the will of the people had been subverted'.

The 2005 parliamentary elections were conducted in the wake of a mass eviction of urban dwellers in May known as 'Operation Murambatsvina', translated by the government to mean 'Operation Clean-up' but more literally meaning 'getting rid of the filth' – the campaign was, the government maintained, designed to address the problem of illegal squatters and traders.

By the time of these elections the MDC had split into two factions because of disagreement over the introduction by the government of a second parliamentary chamber, a Senate, and over issues of internal democracy. The two factions became known as MDC-Tsvangirai, led by Morgan Tsvangirai, and MDC-Mutambara, led by Arthur Mutambara.

In elections once again marred by violence and intimidation, the opposition won the urban centres with a landslide majority.

The parliamentary and presidential elections of 29 March 2008 were conducted against the backdrop of increasing debate over whether Zimbabwe's democracy was consolidating or regressing. These elections were important if Zimbabwe was to restore the credibility the country had lost as a result of the perception that it faced a drought of democratic governance characterised by widespread political patronage and human rights abuses.

In the first round of the presidential elections, the announcement of whose results were delayed for more than a month, no candidate scored an overall majority, as required by the electoral law. Tsvangirai won 48 per cent of the popular vote to Mugabe's 43 per cent. A run-off presidential election was scheduled for

27 June. However, Tsvangirai withdrew from the race, citing incidents of violence against his supporters (Wikipedia 2008). As a result, Mugabe won once again.

A settlement orchestrated by the then president of South Africa, Thabo Mbeki, resulted in the formation of a government of national unity, with Mugabe as president, Tsvangirai as prime minister and Mutambara as one of two deputy prime ministers.

Although the government of national unity was embraced by both Zanu-PF and the MDC and by SADC, it was stillborn. Zanu-PF, which has held on to key positions in government and has veto powers, has continued to erode the concessions won by the opposition. The power-sharing deal has only served to legitimise the authoritarian rule of Mugabe without the opposition gaining any effective concessions. Zimbabwe remains at a crossroads and a lasting peace is not in sight.

## CONCLUSION

What emerges from the above is that elections are an important barometer, gauging the political temperature in any country. In most cases, election-related conflicts reflect deep-seated tensions in society. Furthermore, elections and electoral systems are not ends in themselves but means to an end. As a result, no amount of electoral engineering, if it is not based on broad social engineering, can resolve social conflicts in Africa.

The key solutions to electoral conflicts entail building the public integrity of the electoral process, which, in turn, builds political trust among the contending parties. Electoral engineering should not be an end in itself but must facilitate the institutionalisation of democratic politics that leads to empowerment, which, in turn, may lead to political trust. Moreover, political systems should not merely rely on judicial systems, which are often slow to deliver timely verdicts, but must build conflict-resolution mechanisms to build lasting peace.

It has become evident that the FPTP and the PR systems have both strengths and weaknesses. This chapter, therefore, posits the mixed member proportional system as a credible alternative that draws on the positive features of both systems and avoids the negative ones. Such a system provides an effective link between MPs and their constituents and allocates seats in proportion to the popular vote. One problem is that, as happened in the cases cited above, governments of national unity are perceived as a panacea for all political problems. In effect, although they bring about some measure of political relief, governments of national unity are, by and large, platitudes that bring back into government political parties that have lost elections and do not want to relinquish power.



## NOTES

- 1 FPTP has failed at least twice since the Second World War to produce a clear-cut winner in the United Kingdom. For details see [en.wikipedia.org/wiki/United\\_Kingdom\\_general\\_election,\\_2010](http://en.wikipedia.org/wiki/United_Kingdom_general_election,_2010), p1.
- 2 In many cases results that were announced at the national level were different from those announced at the local level.
- 3 There are allegations that some regional stations ran out of kerosene for their lamps and the counters suspended the counting process, with the understanding that would continue the next day. On returning the following day they discovered that there were more votes in the presidential election than in the local and parliamentary elections.
- 4 The legality of this intervention is widely questioned in Lesotho because the head of state did not sanction it. Even though the king is a mere ceremonial head of state, where he does not sanction a Bill, it does not become law. Since the king had not invited SADC, its intervention was widely viewed as an invasion.
- 5 In the event, only 78 of the constituency seats were contested as two candidates died before the elections took place.
- 6 Reminiscing about Zimbabwe's past, President Mugabe said, 'Zimbabweans should cherish the unity ushered in by the signing of the unity accord between PF ZAPU and ZANU PF to end the post-independence disturbances.' He continued, 'we had a terrible time fighting each other, which we all regret. It was very bad. This was a bad chapter in our revolution. Let's mend it and look forward.' For details, see 'President queries Moyo, Army Meeting', *The Herald* 24 March 2005, p1.
- 7 As Sithole (2000) indicates, Zanu-PF has remained dominant in Zimbabwean politics as a result of the politics of patronage and the effective use of 'state institutions such as the army, the police, the Central Intelligence Organisation (CIO) and the media'. The party also maintained its dominance through politically inspired violence. During the 1990 elections violence against the opposition resulted in the shooting and maiming of opposition leader Patrick Kombayi.
- 8 While the principle of land reform is generally accepted, its application in Zimbabwe raised serious political questions. It was felt that the criteria for designating certain lands and not others were not altogether clear. Whites, many of whose lands were targeted for redistribution, felt the move was racially motivated and the few acquisitions of black-owned farms were said to be politically motivated. Moreover, while not negating the necessity for land restoration, such a resettlement plan without proper infrastructure and support services was considered to lay waste to formerly productive land. The newly resettled small-scale farmers have also not been able to produce because of uncertainty of tenure and their inability to secure credit. This situation, added to the problems of drought, has compounded the food crisis. The Zanu-PF government has been seen as using the land question for political gain, to buy a new lease of life for a beleaguered government that was experiencing a legitimacy crisis.

# PART II

## CONFLICT PREVENTION, MANAGEMENT AND RESOLUTION



# **THE APPLICATION OF ALTERNATIVE DISPUTE RESOLUTION MECHANISMS IN HANDLING ELECTION-RELATED CONFLICTS**

**Gavin Bradshaw**

## **INTRODUCTION**

Elections are the most important and most visible aspect of democracy, but in recent years they have become increasingly disputed and, in many cases, compromised.<sup>1</sup> Often this is the result, among other factors, of the weakness of the states concerned. When poverty is widespread and economic opportunities are rare politics can rapidly become ‘the only game in town’. Any move towards electoral reform and the institutional arrangement of conflict management mechanisms will be futile if these measures are viewed in isolation from development initiatives designed to make the non-political advancement of interests more attractive.

Unsurprisingly, whether driven by passions or frustrations, the controlled competition of election processes often gives way to more uncontrolled forms of conflict. At these times it is vitally important that we have available appropriate conflict regulation mechanisms before, during and after elections, to address these conflicts and prevent them from becoming too destructive.

This chapter addresses the nature of social conflict and provides an overview of recent trends in conflict related to electoral processes in Africa – especially the nature of the so-called ‘liberal peace process’, commonly applied to democratising nations, and the current practice of ‘liberalisation before institutionalisation’ (Paris 2004). It examines the impact of frustrated human needs on election-related conflicts and brings the ideas of the conflict resolution school to bear on current practice.

The chapter makes policy recommendations for the use of alternative dispute resolution practices, including mediation, arbitration, the application of conflict management systems (CMSs) and the institutionalisation of conflict management.

A plea is made for a move away from relegating the management of conflict to the sidelines of political processes, towards the mainstreaming of conflict management, and a focus on human security. Use will be made throughout of examples, including South Africa, Kenya, Zimbabwe and Sudan, to illustrate the argument.

## **THE NATURE OF SOCIAL CONFLICT**

Social conflict is ubiquitous and a normal part of our existence. Essentially, conflict involves a disagreement among individuals, or groups of individuals, over goals or the means of achieving goals. Conflict may be about the conflicting interests of parties, the differing values they espouse, or the tensions among them concerning the fulfilment of certain basic human needs. At a different level, conflicts may be the result of inaccurate communications, or the different ways parties understand various salient issues. Some conflicts may be mainly about the perceptions of the parties, but that makes them no less 'real' in the eyes of those parties.

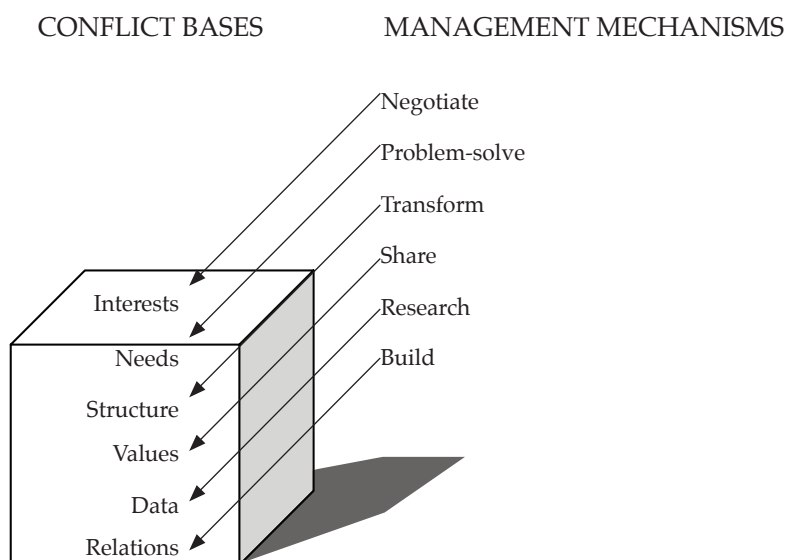
## **CONFLICT AND COMPETITION**

There are different types of conflict, and conflict literature, from its earliest articulation, quite clearly draws a distinction between two main forms: conflict and competition. This is reflected in the work of sociologists Park and Burgess (Schmidt & Kochan 1972), who (incorrectly in my view) see conflict as but one subset of competition. They view competition, as distinct from conflict, as 'not requiring direct confrontation' (Bradshaw 2008c p 54). Then again, other scholars see competition as a subset of conflict, and a problematic one at that. Additionally, other sub-fields of the conflict literature (for instance the literature on integrative bargaining) distinguish between interest-based conflict (competition), which may be resolved by means such as negotiation, and value-based conflict, which is more deep-seated and not really a good subject for negotiation, with its concomitant compromises.

I have captured these different 'bases of conflict' in a 'conflict cube' model – depicted on p71.

## **THE CONFLICT CUBE**

Though these distinctions may seem to be minor, or cases of academic hair-splitting, the implications of ignoring them are often quite profound in the real world and may result in life and death struggles, and quite inappropriate attempts to manage conflict.



### **THE UNDER-THEORISING OF SOCIAL CONFLICT THE TENDENCY TO UNDERSTAND CONFLICT AS COMPETITION INSOFAR AS ELECTORAL CONFLICT IS CONCERNED**

There is no general theory of social conflict. The result is that there are a number of partial theories, or 'islands of theory', as some have put it. The various sub-fields of the conflict management literature, therefore, do not always take cognisance of each other or of the underlying theories of conflict dynamics, and this can have enormous real-life implications. For instance, because all conflict is not the same, different approaches are called for in dealing with these different sub-types of conflict.

John Burton, Edward Azar, Sandole and others (the analytical conflict resolution school) have long made the case for a special sub-type of conflict, which they have termed 'protracted social conflict' (Azar), or 'deep-rooted social conflict' (Burton). In their thinking, protracted social conflict is characterised by, among other things, the presence of 'frustrated human needs', which, because they are, in a sense, 'hard-wired' into the human psyche, cannot simply be negotiated away.<sup>2</sup>

People will react negatively when their needs are frustrated – they really have no choice, as they are 'driven' to satisfy their needs. The implications of the above for conflict management are enormous. It implies that conflicts involving such frustrated needs cannot be negotiated, because negotiation almost invariably involves the making of compromises and, according to John Burton, human needs are 'not for trading'. Should parties negotiate away their needs satisfactions they will invariably break the terms of their agreements before long

and hostilities are likely to resume. This, for these scholars, explains the fairly large number of long-standing (protracted) social conflicts raging around the world,<sup>3</sup> despite the numerous attempts to settle them through compromise-based conflict management.

### **THE NATURE OF ELECTORAL CONFLICT – ESPECIALLY IN NON-WESTERN SOCIETY**

By their very nature elections are highly competitive processes and there will therefore always be occasions when competitive urges stress the system. For this reason it is important to provide for dispute resolution when that happens. Research indicates that alternative dispute resolution (ADR) is the most efficient and cost-effective approach for dealing with such issues.<sup>4</sup>

Fortunately, the need for ADR has been recognised in many instances. For instance, in the 2009 South African general election the Independent Electoral Commission provided for the presence of mediators in certain hot spots, where antagonisms were running particularly high. However, this seems to have been something of a 'band-aid' solution, in that it trained its own officials in conflict management techniques just before the election. It would be better to be able to call on permanent conflict resolution experts as opposed to those for whom it is only a secondary skill.

Many countries around the world are examples of what the literature terms 'protracted social conflict'. The Middle East is probably the most obvious example, but Sri Lanka, Cyprus, Northern Ireland and South Africa are often cited in this regard. According to Edward Azar (1990) protracted social conflict displays the following characteristics:

- A multi-communal context (ethnic diversity)
- Frustrated human needs
- Skewed government delivery along communal lines
- The internationalisation of aspects of the conflict

If we examine closely the societies in sub-Saharan Africa it is quite clear that those who experience societal upheaval often display these attributes. If we apply analytical conflict resolution thinking to these cases we should not expect the conflicts to be resolved easily. They cannot simply be negotiated away. Compromise and, indeed, the exercise of power,<sup>5</sup> tend also not to be good instruments for resolution in these cases.

If we scrutinise closely the assumptions behind liberal democracy, with its regular elections, political parties, governments and opposition structures, and parliamentary debate, underlying these assumptions is a line of thinking that seeks to transform the rambunctious, disorderly interplay of political *interests* into

an ordered competition for temporary power and, implicitly, also the regular replacement of one governing faction by another, so enabling various social formations to have a turn at ruling the state. Much of this is implicit in the social contract theories of the likes of Hobbes, Locke and Rousseau (Heywood 1997, p 87).

### **THE PROBABILITY OF CONFLICT BEING DEEP-ROOTED**

These assumptions of liberal democracy are deeply flawed, however, when the dominant social fault lines create a *protracted social conflict* – where differences are not shallow and interest-based, but are deeper, involving values and frustrated human needs. Where social cleavages are permanent and kinship-based, with powerful identity and value differences, new stresses and strains are introduced into the social fabric. These cannot simply be compromised away and may not be able to stand the competitive cycles that liberal democracy demands and which are also largely impervious to the exercise of raw power such as the mediation by powerful political figures (including presidents or ex-presidents of great powers) that is quite a common response to these kinds of conflicts.<sup>6</sup>

When elections take place in societies displaying protracted social conflict the differences among parties are not simply conflicts of interest, as envisaged in the classical democratic theories. They are, in all probability, differences that are expressions of basic human needs, including the needs for identity and security. This means that standard negotiation and mediation-based techniques are unlikely to prove effective in most applications. Other forms of ADR would be necessary under these circumstances.

Burton (1990), Azar (1991), Lederach (1997) and others in the conflict resolution field argue that approaches that take human needs into consideration are likely to be more effective than the ‘standard’ mechanisms that stress negotiation, which is often dependent on compromise. In Burton’s case, he stresses the need for facilitated, analytical problem solving, in a track-two context.<sup>7</sup> Azar proposes similar processes, which he calls ‘problem-solving forums’ (Fisher 1997, pp 19-90). John-Paul Lederach stresses the need to move away from traditional modes of statist diplomacy. He maintains (1997, p 25) that ‘... contemporary conflict thus demands innovation, the development of ideas and practices that go beyond the negotiation of substantive interests and issues. This innovation, I believe, pushes us to probe into the realm of the subjective – generationally accumulated perceptions and deep-rooted hatred and fear.’

### **RECENT ELECTORAL CONFLICT IN AFRICA – SOME EXAMPLES**

There are two recent examples of elections held in sub-Saharan Africa, which, though noteworthy, are by no means unique. These are the last general election in Kenya, in 2007, and the most recent general election in Zimbabwe, in 2008.



In a nutshell and, at the risk of over-simplifying the situations, both these elections involved the refusal of some parties to accept the outcome, citing as their reason corrupt practices in the running of the election. In the Kenyan case the announcement of the election outcome led to mass protests and the refusal of Raila Odinga and his party to accept the result. Protests turned violent, and the police reacted brutally.

According to reports more than 300 people were killed, and widespread panic caused some 250 000 people to be displaced. Kofi Annan, former United Nations secretary general, who was invited by the African Union (AU) to mediate, eventually brokered a compromise, which saw a government of national unity established, with Mwai Kibaki as president and Odinga as prime minister, and an enlarged Cabinet, reflecting representation of both parties. Tensions between the two governing parties remain, giving rise to standoffs which compromise the proper functioning of government.<sup>8</sup>

A similar trajectory has been followed in Zimbabwe, where the brokered deal is not yet complete, in respect of the appointment of key government posts, and the Southern African Development Community (SADC)-mandated intervention of South African President Jacob Zuma continues a year later.

If we believe that a pattern of response to electoral disappointment is emerging we can agree with Kingsley Moghalu (*Conflict Trends* 2008) when he states that 'power-sharing arrangements in post-election contexts are transitional arrangements, but could also become permanent features of governance architecture ... While it may be seen as rewarding bad political behaviour by despots and reluctant democrats ... the danger is that power sharing arrangements could become the end itself, rather than a means to an end.'

Lest we begin to see these as uniquely African problems, it is noteworthy that, internationally, the 2009 Afghan election displays some similar attributes, as does the 2009 election in Iran, both of which have led to opposition parties crying foul and citing instances of widespread electoral fraud.

## **STANDARD MOVES TO ADDRESS ELECTORAL CONFLICT**

The result of this form of election-based conflict has been an often lengthy stand-off, followed by some high-powered intervention and the 'solution' of a compromise arrangement involving the establishment of a government of national unity to accommodate members of both major parties. Clearly, for a number of reasons, such arrangements are problematic. We cite some of the problems below.

### **Organised anarchy**

If one examines the current situation in Zimbabwe very closely the question that arises is 'who is really in control?'. There are different messages emanating from

different departments of government, dominated by different parties, with two sets of policies in power. A year after the brokered settlement the two leaders are taking opposing views on many core issues, including the charges of treason levelled against the Movement for Democratic Change's (MDC) designated Minister of Agriculture, Roy Bennett (Voice of America 27 May 2010). There has been a deadlock in key appointments, including those of Central Bank governor and attorney-general, which still requires intervention by Zuma. Stories of the persecution of MDC members by the Zimbabwe African National Union-Patriotic Front persist (France24 International News 24/7, 17 March 2010).

### **Gridlock in unlocking the engines of economic development**

Under these conditions it is almost impossible for the government to satisfy international donors and trading partners. This causes major problems for those trying to get the economy back into a productive mode. In the case of Zimbabwe, it had been hoped that a successful election, or even a brokered settlement would lead, at least, to the lifting of sanctions, but that has not transpired. In more general terms, government disunity will hinder direct foreign investment, and undermine the economic growth required to overcome poverty and underdevelopment.

### **Citizen dissatisfaction**

From the perspective of the populace, who expected to see their electoral choices translated into political change only to be frustrated by a different arrangement, this outcome represents a thwarting of the electoral process that is supposed to deliver regular change. In other words, voters do not see their choice converted into policy reflecting the popular will.

### **Heavy government**

Such arrangements may also result in the establishment of 'heavy' government, consisting of too many ministers and other senior officials, to accommodate the different party interests, and that translates into increased expenses that these, largely poor, countries just cannot afford.

### **Conflict provoking**

It involves making compromises, often in the area of frustrated human needs, including identity needs that will probably result in simmering underlying tensions. The use of outside political heavyweights to mediate, such as the role played by former South African president Thabo Mbeki, and later Jacob Zuma, mandated by SADC to mediate in the case of Zimbabwe, or Kofi Annan in the case of Kenya, adds an element of 'imposition' of outside solutions on domestic parties, which also flies in the face of our best understanding of protracted social conflict, where it is important that the conflicting parties 'own' their own conflicts.

## **A NEED TO RE-THINK THE NATURE OF DEMOCRACY?**

There is nothing inherently wrong with power sharing and governments of national unity – they are an attempt to give representation to the entire spectrum of social interests. But the real issue is how they come about. It is one thing to have a constitutional provision for highly representative government and quite another to construct such an edifice on the basis of an expediency that flies in the face of the existing provisions of the constitution and compromises the will of the majority.

### **The ‘liberalisation before institutionalisation’ process**

In countries recovering from, or in the throes of protracted social conflict elections take on an extra significance. More than just a function of the democratic process, they represent a new beginning – they are a badge of democracy, marking the transition from authoritarianism and conflict to peace and democracy. That results in the international community, as well as the conflicting parties, tending to rush towards an election – perhaps before they are fully ready – in order to become a full, respected member of the international community of states, with all the advantages that that signifies.<sup>9</sup>

In addition, in countries emerging from destructive episodes of protracted social conflict, the international community and the global financial institutions insist on the implementation of a neo-liberal economic system. The combination can, if anything, contribute towards exacerbating conflict as these policies almost inevitably tend to increase levels of inequality in already poor societies. Therefore, along with the other measures listed below, I would agree with Roland Paris (2004) as he urges the necessity of concentrating on building institutions of governance, perhaps delaying the first election, and tailoring economic systems to satisfying human needs rather than the particular interests of the international neo-liberal lobby. Again, in this case, South Africa can be used as an example, but the Democratic Republic of Congo, Somalia and Guatemala are also frequently cited (Begby & Burgess 2009, pp 45-57).

## **CONCLUSION**

Based on the above considerations I make three recommendations.

### **Constitutional mechanisms**

Firstly, at a constitutional level, the means of dealing constructively with conflict should be institutionalised, using the ‘stock in trade’ of proportional representation, federal and consociational models, as appear to be fit, but, more especially, to recognise the importance of satisfying basic human needs and institutionalising conflict resolution ‘as a political system’, to paraphrase John

Burton (1990), and achieve what he termed 'conflict prevention'<sup>10</sup> on an ongoing basis. Having achieved an electoral outcome it is insufficient to rely on politics as usual to maintain social cohesion when there is a protracted social conflict at the heart of social tensions in any given state.

Secondly, at the stage of elections and their preparatory phases mechanisms should be established to address the fallout of election stress. Mechanisms may range from the provision of ADR, including mediation and facilitation, to address vote-counting discrepancies, to engagement with disaffected parties to assist them to come to terms with their disappointments.

These provisions should not be made in an *ad hoc* reactive fashion but proactively; to deal with matters as they arise, preferably at the earliest stage, and at the lowest levels possible, in order to prevent escalation. They should, in addition, be able to provide the appropriate forms of conflict management, so that the chances of their success are enhanced. This implies that choices be made expeditiously between mediation, facilitated problem solving, commissions of enquiry, value sharing, relationship building and team-building exercises. In other words, those who are familiar with the conflict management literature will appreciate that I am proposing the establishment of conflict management systems to deal with the various elements of election fall-out.

### **Institutionalising ADR: The need for conflict management systems in contemporary electoral conflicts**

In the conflict management literature the application of conflict management systems is generally restricted to dealing with conflicts within organisations. Many would argue that it would be impossible to put in place on a state-wide basis all the mechanisms, structures and activities that would normally form part of a CMS. One successful example of such system does exist, however, and bears closer scrutiny. That is the example of the South African National Peace Accord, which was established before the negotiation process in the early 1990s and which played an important role in enabling the first democratic general election.

I have elsewhere (1992; 1994, pp 3-4) summarised the attributes of CMSs as follows:

A conflict management system is a permanent, rather than a once-off intervention, which is substantially 'owned' by the parties to the conflict. It includes structures or institutions, and ongoing activities in pursuit of peace. It should be self-sustaining and accessible to the community at the point of need. Because conflicts shift and change, the CMS needs also to change and grow, constantly adapting to the needs of the changing conflict. The system should have in-built procedures for accessing resources, especially expertise, and opportunities for planning.

According to Costantino & Merchant (1996) and Ury, Brett & Goldberg (1989) (cited in Bradshaw 2008, p 167) conflict management systems include

... putting the focus on interests, building loop-backs to negotiation (when other methods have been tried), providing low-cost power back-ups, building in consultation before, and feedback after, arranging procedures in a low- to high-cost sequence, and providing the necessary motivation, skills and resources to facilitate the system's functioning.

CMSs also enable the use of appropriate processes for dealing with non-interest-based conflicts, such as value sharing exercises and relationship-building initiatives, which, if used timeously, could vastly improve the climate for elections. Costantino & Merchant (1996) also include the recommendation that CMSs should provide conflict management at the lowest possible levels in order to prevent the escalation of conflict to the point where it becomes very expensive and difficult to deal with.

### **Re-examining the 'liberalisation before institutionalisation' paradigm**

If successful elections are going to become the norm it is also very important that the institutions of governance are built and strengthened, so that when electoral crises occur they are strong enough to deal with them in a professional and unbiased fashion. For instance, the structures of the legal system, including the highest courts, need to be able to take harder lines against political leaders who refuse to accept the results of elections. The judicial apparatus should therefore be strengthened and empowered to deal with electoral disputes, so the entire electoral process is not brought into disrepute.

Conditions for the registration of political parties must reward those parties that propose moderation, and crosscutting religious, language and cultural appeal. Electoral commissions should be strengthened. International organisations such as the Electoral Institute for the Sustainability of Democracy in Africa (EISA) also have an important role to play. It has been proposed (Paris 2004) that the so-called 'liberalisation before institutionalisation' paradigm be turned around, to become 'institutionalisation before liberalisation'.

It is clear that we cannot simply continue without making changes, or democracy will be steadily undermined. In summary, my central point is that elections are highly competitive processes and, in many countries, constitute the epitome of competition – not between easily resolvable conflicting interests – but rather between clashing values and frustrated needs.

Under these conditions conflict management mechanisms need to be implemented – not simply 'tacked on', but 'mainstreamed'. Some of these mechanisms will be constitutional, and political, but ADR techniques should

also feature more prominently, and will be most effectively applied if they are included as a central pillar of conflict management systems. Such initiatives must also take as their reference point the emerging understanding of sound conflict management theory and practice.

## NOTES

- 1 Lest I be characterised as an Afro-pessimist, let me first draw the reader's attention to the disputed election results in Florida that led to the election of George W Bush to the American presidency as a case in point. In addition, the 2009 Afghan election, with widespread accusations and evidence of election fraud, and the abandoning of the run-off election by the challenger, Abdullah Abdullah, against a background of extremely low voter turnout, not only damages the political process in that country, it brings the very notion of democracy into question in countries experiencing deep-rooted social conflict.
- 2 In this sense, Burton, for instance, borrowing from Maslow and Joseph Himes, proposes the need for security, identity, control and participation, among others. Burton does not, however, accept Maslow's notion of the hierarchical nature of human needs. For him, all needs have equal power, which brings issues surrounding identity and security into play in many conflict scenarios.
- 3 The Middle East, Northern Ireland, Sri Lanka and, for a long time, South Africa have been held up as examples of this type of conflict
- 4 See, for instance, Deffains (2001). Most research indicates that ADR is faster, produces more satisfactory results, and tends to preserve relationships to a greater extent than legal processes.
- 5 Theory goes that power can only force parties so far. Because human needs satisfaction will ultimately prevail, power is unlikely to be effective in the long term. It may force a settlement in the short term but if that settlement does not take human needs into account it will probably collapse before long. See, for instance, Burton 1990 in this regard.
- 6 This line of thinking is borne out by the not infrequent recourse to violence that accompanies elections in states characterised by the attributes of protracted social conflict.
- 7 The use of 'track two' in conflict management literature refers to interventions that do not involve the conflicting parties themselves, but rather those close to them, who may be able to influence them; so, for instance, in the case of South Africa there were numerous meetings that included 'friends' of the National Party government, when they, themselves, would not have considered participating.
- 8 As recently as February 2010 a decision by the prime minister to dismiss two ministers on grounds related to corruption was overturned by the president, giving rise to calls for fresh intervention efforts by Kofi Annan (*Maliti Politics News Website*, 15 February 2010).

- 9 In this regard, one could cite many examples, but South Africa and Namibia would provide two early examples of a pattern that has often been repeated on the African continent and elsewhere.
- 10 By provention Burton meant the early, pre-emptive treatment of conflict, through analysis and human needs satisfaction – the institutionalisation of conflict resolution.

# **POWER SHARING AS A MECHANISM FOR MANAGING POST-ELECTION CONFLICTS IN AFRICA: A CURE OR A CURSE?**

**Victor Shale**

## **INTRODUCTION**

The existing literature on democratisation in Africa seems almost unanimous that many African countries have made giant strides in ensuring civil liberties and guaranteeing regular elections (Breytenbach 1996, Nzongola-Ntalaja 1997, Hyslop 1999, Matlosa 2003, Killian 2009). The paradox is, however, that the democratisation process has also been accompanied by a pervasive wave of violent post-election conflicts in many countries, often triggered by the electoral processes themselves. A disturbing trend in recent years has been that politicians have adopted an alternative, non-electoral approach, capturing power through negotiated power-sharing deals disguised as mechanisms for peace and political stability. Put differently, in some countries, in order to avert civil unrest, the electorate is blackmailed into accommodating politicians who lose elections. Thus, after elections politicians enter into negotiations that produce selfish outcomes that have little to do with the people's interests.

This chapter recognises the democratic value of power sharing in post-conflict situations. However, it interrogates the wisdom of negotiated power-sharing agreements in lieu of the democratic outcomes of electoral processes. To do this, it raises pertinent, albeit complex questions about the utility of power-sharing arrangements in managing post-election conflicts.

- Are power-sharing arrangements a panacea for political instability in Africa?
- To what extent do these arrangements promote sustainable peace and political stability?
- If politicians can negotiate their way adroitly to state power



through power-sharing arrangements even if they have lost elections  
what does this imply for the democratic value of elections?

The chapter warns against the dangers of circumventing electoral results through power-sharing agreements in an attempt to solve election-related conflicts.

The second section of the chapter provides an overview of contemporary democratisation trends in Africa; the third looks at the values and principles that underpin democratic elections; the fourth considers the causes of election-related conflicts; the fifth problematises power sharing in Africa by asking the critical question whether power sharing is a cure or a curse for constitutionalism and democracy. Using the cases of Kenya and Zimbabwe the chapter looks at the pros and cons of power-sharing arrangements. It probes questions such as: how are power-sharing arrangements negotiated? Who should be involved? How are power-sharing agreements implemented? The sixth and final section provides a conclusion and recommendations for averting post-election conflicts.

## **CONTEMPORARY DEMOCRATISATION TRENDS IN AFRICA: AN OVERVIEW**

The literature on governance and democratisation in Africa suggests that this process has been important in re-orienting African political systems. Arguably bolstered by the regional efforts, the process has, according to Matlosa (2003, p 5), transformed the systems away from authoritarian rule towards multiparty and competitive political governance, in particular by jettisoning military dictatorships and thus steering politics away from bullets.

An Afrobarometer (2009, p 9) survey confirms that this perception exists among ordinary people in Africa. Following public attitude surveys conducted in 19 African countries in 2008 the Afrobarometer report states that 'an average of 59 percent of all Africans interviewed in these countries considered that they lived in a full or almost full democracy'. The report shows that among the respondents the citizens of Botswana lead with 91 per cent, followed closely by Ghanaians at 83 per cent, while Zimbabweans 'trail far below at a dismal 14 percent'. As I indicate below, the Zimbabwean attitudes are attributable to the democratic deficit in that country.

Although ballots have indeed replaced bullets, as seen, for instance, in Mozambique between 1994 and 2009, in Liberia in 2005 and in 2006 in the Democratic Republic of Congo (DRC), the military coups in Mauritania and Guinea, the fierce battle in the eastern DRC between the government and rebel forces which escalated to unprecedented heights by end of 2008 and the usurpation of power by the military establishment in Madagascar in March 2009 represent some of the recent setbacks to Africa's democratisation. However, it is encouraging to note the efforts made by the African Union (AU) and regional

bodies such as the Economic Community of West African States (ECOWAS) and the Southern African Development Community (SADC) to arrest this resurgence of unconstitutional changes of government. The suspension of Mauritania and Guinea due to military coups in August 2008 and December 2008 respectively, as well as the refusal to recognise the military-backed junta led by Andry Rajoelina after it deposed a democratically elected government in Madagascar are cases in point.

This notwithstanding, the literature points to a new trend in which, even though there seem to be no obvious problems with the pre-election phase problems are often encountered in the post-election period, particularly in hotly contested elections (Owuor 2008; Leonard 2009; Kadima, Leonard & Schmidt 2009). The case of Kenya, where the disputed election results of 2007 led to the killing of between 1 000 and 1 500 people between 27 December 2007 and 29 February 2008 (Waki Report 2008, p 305) serves as an important example of this trend. The presidential candidate, Mwai Kibaki, who, by all indications, had lost the election, held onto power through a negotiated settlement which established a new position of prime minister to accommodate his rival, Raila Odinga. The negotiation process resulted in the formation of a government of national unity.

Similarly, the ruling Zimbabwe African National Union-Patriotic Front (Zanu-PF) of Robert Mugabe not only manipulated the March 2008 election results so as to warrant a second round of presidential elections (eventually contested only after the withdrawal by the opposition, complaining of a campaign of violence against its supporters) but unleashed terror on its people as it had done in the past to influence the victory (Shale 2006a, p108). The manipulation of election results triggered a political crisis; the second round of elections in June 2008 was declared a 'non-event' by opposition and election observer groups (both international and national). Confronted with a legitimacy crisis Mugabe gave in to pressures to talk to the opposition about power sharing.

A protracted negotiation among the three main belligerents – Zanu-PF and the two Movement for Democratic Change (MDC) factions, led by Morgan Tsvangirai and Arthur Mutambara, ended with all parties reaching an 'amicable solution' in the form of a power-sharing agreement. Here again, the government of national unity created the positions of prime minister and deputy prime minister to accommodate both opposition leaders.

The chapter will argue that these power-sharing agreements were primarily crafted to serve the interests of the political elites, with ordinary people (who exercised their democratic right to vote) marginalised. In this regard, the power-sharing arrangements in Kenya and Zimbabwe clearly have far-reaching consequences for the sustainability of democratic governance in these two countries, as they empower the already powerful political elites and disempower the people.

## THEORY AND PRACTICE OF POWER SHARING

There are competing views about power sharing and its successes or failures in Africa and elsewhere. Some scholars consider it to be a viable means of democratic conflict management. This school of thought supports power-sharing initiatives in Africa (Baregu 2009, p 16; Harris & Reilly 1998, p 139). Others point to African experiences such as that of Angola in 1992 to show that power sharing has inherent problems that make it difficult to implement (Spears 2000, p 106). Andreas Mehler (2009, p 453) reminds us that 'power-sharing is not uniform and therefore has no similar effects on peace and war, and it tends to ignore local security concerns'. It is therefore important to begin this section by touching briefly on the theoretical and contextual framework of the subject before analysing power-sharing agreements in Africa.

The notion of power sharing is closely associated with Arend Lijphart, who popularised the theory of consociational democracy. Lijphart believed that in a plural society characterised by sharp religious, ideological, linguistic, regional, cultural, racial and ethnic cleavages the political process is often marred by hostilities and anxieties, hence the need to thwart the dangers that surround such a political process. The theory explains how culturally segmented societies can establish peace and democracy. Its basic prescription is power sharing among the various cultural segments (Binningsbø 2005, p 4; Steiner 1987, p 361). As Lijphart (1996, p 265) himself puts it, power sharing is a necessary condition for the survival of democracy in divided societies. According to Lijphart (1996, pp 259-61), there are four types of power sharing: grand coalitions, cultural autonomy, proportionality and minority veto.

### Grand coalitions

According to Lijphart a grand coalition can take the form of an inclusive Cabinet of ethnic, linguistic or religious parties. The foundation of a grand coalition can be permanent or temporary committees with more influence than that of the normal advisory role of committees. He uses the Austrian, Malaysian, and South African power-sharing systems as examples of the modal form of grand coalitions. Yet, there are many other possibilities. He states that:

One entails the formation of grand governing coalitions in sites other than the cabinet, such as the Dutch pattern of permanent or ad hoc 'grand' councils or committees with much greater influence than their formal advisory role. Another entails grand coalitions in cabinets, defined not in partisan terms but more broadly in terms of the representation of linguistic or other groups in a predetermined ratio; for instance, Belgian cabinets have rarely been coalitions of all significant parties, but they have been ethnically 'grand' because of the constitutional rule that cabinets must consist of equal numbers

of Dutch-speakers and French-speakers. Yet another option entails neither cabinets nor parties: the allocation of top governmental offices – such as the presidency, prime ministership, and assembly speakership in Lebanon, and the presidency and vice-presidency in Cyprus – to specified ethnic or religious groups.

Lijphart 1996, p 259

### **Cultural autonomy**

Power sharing can also be used to give autonomy to minority cultural and linguistic groups in three main ways: through federal arrangements, the establishment of autonomous schools, and by enacting separate laws. Lijphart indicates that in Switzerland, Belgium and Czechoslovakia (now split into two countries, the Czech Republic and Slovakia) there is a certain degree of linguistic independence, while in Belgium and the Netherlands public funds are used to support the autonomous school system. In Lebanon and Cyprus, on the other hand, in order to cater for minority preferences separate laws have been put in place to govern marriages, the adoption of children and inheritance.

### **Proportional representation**

Power sharing can also be effected through a proportional representation (PR) electoral system, where minorities are accommodated in Parliament through the principle of proportionality. As Lijphart (1996) aptly notes, ‘the plurality (first-past-the-post) and other majoritarian methods have the tendency to over-represent majorities and large parties to discriminate against smaller minority parties, as well as the corollary tendency to create artificial parliamentary majorities for parties that fall considerably short of winning popular vote majorities ...’

Various countries in Southern Africa (such as South Africa, Mozambique, Namibia and Angola), have introduced the PR system as a deliberate strategy to craft consociational democracy as part of their transition from war to peace. Part of this strategy has brought about power-sharing arrangements. In South Africa, for instance, the adoption of the PR system ensured that all parties, irrespective of their size, were represented in the legislature (Shale 2009, p 17).

### **Minority veto**

For Lijphart (1996, p 261) power sharing can also be effected by way of a minority veto where there is an informal understanding that minorities have the right to reject any decisions that threaten to curtail their autonomy. Again, using the examples of Belgium, Cyprus and the then Czechoslovakia, he demonstrates that in other instances minority veto rights are entrenched in the constitution because the minorities are faced with a solid majority.

From the above it is evident that power sharing can be a curse if it is not used to end a civil strife and to build legitimate democratic institutions (Harris

& Reilly 1998, p 140). It is harmful when used to circumvent electoral processes and impose illegitimate leaders. It is clear from Lijphart's four typologies of power sharing that the power-sharing arrangements in Kenya and Zimbabwe do not fit into the scope of deep societal cleavages as proposed by consociational democracy theory.

Admittedly, election-related conflicts in countries such as Kenya, Ethiopia, and Zimbabwe take place against the background of broader societal fissures (Khadiagala 2008a, Kariuki 2008, Smith 2009). According to Smith (2009, p 872) in Kenya 'election-related violence escalated quickly into intercommunal violence which was both spontaneous and organised ...' This was to be expected because ethnicity has always been a contentious issue in Kenya and in Zimbabwe (Barnes 2005, Muzondidya & Ndlovu-Gatsheni 2007; Khadiagala 2008b, Leonard, Owuor & George 2009).

Besides ethnic and other social cleavages electoral violence in both Kenya and Zimbabwe was triggered by serious deficiencies in the election management process (Ajulu 2008, Khadiagala 2008b, Owuor 2008, Abuya 2009; also see Elklit in this volume). One of the glaring similarities between the two countries is the incompetence and political bias of the election management bodies. For instance, the delay in the public announcement of the results and the subsequent revelation that the chairperson of the Electoral Commission of Kenya (ECK) did not know who had won the 2007 election contributed significantly to the post-election crisis in Kenya. The other contributory factor was the constitution review issue. According to Baregu (2009, p 8) there were warning signs that there would be conflict over the December 2007 elections. For him, the failure by the government to deliver on its promises, which included introducing a new constitution, put it in a difficult situation in the run-up to the elections. It should be remembered that Kibaki had been defeated in a constitutional referendum in November 2005 in which he sought to introduce a constitution with draconian presidential powers. This defeat was no doubt tantamount to a people's vote of no confidence in the Kibaki-led government (Ajulu 2008; Harowitz 2008; Baregu 2009). Hence, Baregu suggests that the post-election violence was a symptom not of a crisis of democracy but of legitimacy. Of course there are no short cuts to attain legitimacy. In this case it would have been advisable for the Kibaki government to meet its part of the social contract, which was to deliver a new constitution through a credible electoral process. It follows, therefore, that failure to do this would have been costly for Kibaki in the elections, which serve as a social contract between the people and their elected leaders.

Similarly, the five-week delay (from 29 March 2008 to 2 May 2008) and prevarication by the Zimbabwe Electoral Commission (ZEC) in releasing the election results within six days after polling, as required by the legislation led to the political instability that ensued after the March 2008 elections. According to EISA's Election Observer Mission Report (2008, pp 28-31):

The post-election period was a highly contested phase in Zimbabwe's 2008 electoral process. It was an 'unconventional' electoral *campaign* in the sense that it was violence-driven. In terms of violence in Zimbabwean politics, it was unconventional only in as far as the levels of violence were most comparable to those last seen in Zimbabwe in the mid-1980s. The ruling party and its associated state security and paramilitary forces discarded the electoral edifice of civility and the degree of campaign.

This was despite the fact that the Constitution and other electoral legal framework had been amended prior to the 2008 elections precisely to ensure that conditions were conducive for free and fair elections (Booyesen & Toulou 2009).

In both cases those in power undermined the due electoral processes, including rejecting the outcome when it did not favour them. In so doing, the political elites in Kenya and Zimbabwe have rendered people's participation meaningless because they did not honour their wishes. The non-recognition of the outcome of the election is also tantamount to usurping the people's power freely to choose their leaders. The reality of this situation is that any resultant political authority cannot be legitimate in the eyes of the population. As Rousseau's doctrine of general will states, political legitimacy derives from the general will (Rousseau 1999). So, the sovereign cannot be imposed but derives legitimacy from the popular will and this is the Achilles heel of power-sharing arrangements in the cases of Kenya and Zimbabwe.

### **COMPARATIVE INSIGHTS FROM KENYA AND ZIMBABWE**

The power-sharing arrangements in both Kenya and Zimbabwe take the form of governments of national unity, which Baregu (2009, p 7) suggests are transitional measures that are meant to restore normalcy and to provide alternative solutions to the problem. The time frame is a critical factor in the success or failure of a power-sharing arrangement. Harris & Reilly (1998, p 140) share Baregu's belief that power sharing works best if it is a temporary arrangement to stabilise the political situation and build confidence. Part of the democratic deficit of power sharing in these two countries is the glaring lack of popular consent.

Harris & Reilly (1998) raise two other critical factors necessary for power-sharing arrangements to succeed. The first is the existence of 'strong core moderates', including politicians and a broader civil society. They suggest that this will ensure that the extremist politicians and members of the public who mobilise on the basis of divisive ethnicity are restrained. Regrettably, evidence in the literature shows that citizen participation in power-sharing negotiations is non-existent at worst and minimal at best. This is succinctly captured by Mehler (2008, p 6), who states that '... peace roundtables usually involve top politicians and military leaders, who negotiate, sign, and/or benefit from the agreement. What is usually and conspicuously absent from peace negotiations is broad-



based participation by those who should benefit in the first place: citizens. More especially, the local level of security provision and insecurity production is rarely taken into account'. The experience of power-sharing negotiations in Kenya and Zimbabwe corroborates this observation.

Khadiagala (2008b, p15) reminds us that in the preliminary stages of the Kenyan mediation process although former United Nations Secretary General Kofi Annan consulted widely with the various non-state actors including religious, human rights and business bodies as well as the media and welcomed submissions and briefing papers from civil society organisations, these were not represented in the actual talks. This is typical of a first-track diplomacy processes and there is no gainsaying that this lack of citizen participation explains why, in Kenya for instance (although there are, admittedly, other factors), the people perceive democracy to be dwindling.

The Afrobarometer report (2009, p 16) reveals that countries like Kenya, where there is a power-sharing arrangement, are among those with declining public approval ratings on the question of whether they are moving toward consolidated democracy. It shows that in Kenya the demand for democracy has risen slightly, but the perception of the degree of democracy dropped by more than 40 per cent, lower than that in any other country examined during the study. As a consequence, a promising new democratic era that had dawned in 2003 had unravelled by 2008. While other factors may have contributed to this state of affairs, for example, the unequal distribution of resources and ethnic divisions, the power-sharing arrangement, as Le Van & Assenov (2009, p 2) aptly observe, emerged from electoral disputes, despite weak domestic demand for it.

As in Kenya, the power-sharing negotiations in Zimbabwe were a formal diplomatic arrangement whose priority was to contain violence and create political stability. The mediating team led by former South African President Thabo Mbeki missed an opportunity to involve civil society organisations. Civil society was excluded from the Zimbabwean dialogue despite its pressure to be allowed to take part in the talks so that whatever agreement was reached at the negotiations would reflect the true will of the people. As Matlosa (2009, pp 3-21) observes, the post-election negotiations in Zimbabwe have created an elite pact in which, as he puts it, 'state power has been won by losing elections'. He concludes that one of the major weaknesses of the Zimbabwean process leading to the formation of the new government is that:

Its very composition excluded the electorate who voted in the elections, as well as civil society organisations, whose voices were severely curtailed. This is an important point because it suggests that instead of empowering people, post-election negotiated elite pacts tend to disempower them, empowering the political elites. The popular votes of the Zimbabwean people have been set aside and the political whims and caprices of the political elite have

loomed larger. The dialogue agenda remained secret; the dialogue venue remained secret outside the borders of Zimbabwe and the deal on the new government remained secret until the public pomp and ceremony that marked the signing of the Global Political Agreement (GPA).

Matlosa's conclusion is instructive because it points to the crux of the problem. That is, it is secrecy that usually renders power-sharing agreements meaningless in the eyes of the people. As Senator Obert Gutu (2009) accurately describes the Zimbabwean power-sharing arrangement: '... the global political agreement (GPA) that was solemnised in Harare amidst much pomp and ceremony on September 15, 2008 has been anything but a happy marriage. Marriages of convenience are never known for their marital bliss and harmony.'

In both Kenya and Zimbabwe these marriages of convenience came in the form of bloated cabinets and parliaments that have put unnecessary financial strain on the already economically weak countries. For instance, in Kenya, there were complaints about the financial costs of the Odinga-Kibaki power-sharing agreement, which was crafted to accommodate all the belligerents through the principle of 'portfolio balance' (Harowitz 2008; Waki Commission Report 2008; Le Van & Assenov 2009). The overstuffed 42-member Kenyan Cabinet consists of:

- President (Kibaki)
- Vice-President
- Prime Minister (Odinga)
- 2 Deputy Prime Ministers
- 37 ministers

Le Van & Assenov (2009, p 8) indicate that the Kenyan Cabinet's costs are estimated to be as high as US \$130-million per ministry. Hence he asserts that this indicates that the elite has triumphed in protecting its interests.

Similar sentiments are shared by Matlosa (2009, p 18), who laments that the power-sharing formula determined how elites in Zimbabwe would redistribute power among themselves without recourse to the electoral outcome. The sheer size of the Cabinet shows that the deal was intended to benefit the politicians more than the people. It consists of:

- President (Robert Mugabe)
- Two Vice-Presidents (both from ZANU-PF)
- Prime Minister (Morgan Tsvangarai)
- 2 Deputy Prime Ministers (Arthur Mutambara and a member of MDC-Tsvangarai)
- 31 ministers (15 from ZANU-PF, 13 from MDC-Tsvangarai and 3 from MDC- Mutambara)



- 15 Deputy Ministers (8 from ZANU-PF, 6 from MDC-Tsvangarai and 1 from MDC-Mutambara)

The governments in Kenya and Zimbabwe manipulated election results to stay in power. Even if power-sharing arrangements were necessary to stop the countries from plunging into further conflict, expanding ministerial portfolios to accommodate people who lost elections amounts to electoral chicanery. Adar (2009, p 19) suggests that the leaders in the two countries have been more preoccupied with sharing the spoils through the distribution of ministerial portfolios than in focusing on the plight of the people, who have to contend daily with abject poverty. The voters have been betrayed because, firstly, they had no say in the negotiations and, secondly, they are not a priority to the leaders who have secured political power.

## CONCLUSION AND RECOMMENDATIONS

It has been suggested that Africa has achieved significant milestones since the democratic transitions of the early 1990s. The chapter has, however, cautioned that the fact that elections are assured does not necessarily mean that democracy is fully achieved. In fact, it is suggested that the two are neither synonymous nor coterminous.

The chapter has highlighted the challenges facing the continent with regard to a rapidly growing trend of non-acceptance of election results, which is often accompanied by violence. To this end the chapter has suggested that while, in some instances, power-sharing arrangements may be a cure for various political ills, in Kenya and Zimbabwe these arrangements have proved to be a curse. The chapter has argued that the power-sharing agreements in both countries go against the general will of the people and, for this reason, cannot be legitimate in the eyes of the people. Rather, space should be opened for citizen participation in the electoral process, including the resolution of electoral disputes.

It is worth reiterating that the power-sharing deals in Kenya and Zimbabwe are not accidents but calculated acts intended to achieve clear political goals. They are façades which bring about illegitimate regimes, accountable to no one but themselves. In this respect, power sharing in both countries has been used to grab power undemocratically in the form of consociational democracy. In both cases the incumbents devised a strategy of creating anxiety among the people by delaying election results and manipulating the election management bodies to serve their interests. The indifference of election officials and government authorities after the polling triggered conflict and political instability.

Evidently, power sharing can only be a cure for a country's ills if it is used to ensure equitable power distribution against the background of conditions described by consociational democracy theory. Hence, the chapter has suggested

that over and above addressing the fundamental political problems, a panacea for election-related conflict is to ensure that stakeholders comply with the rules of the electoral processes to put effective conflict management mechanisms in place prior to elections (see also Moepya's chapter in this volume).

In order for elections to add value to democracy two solutions are suggested: first, the implementation of international principles of election management and second, the adoption of citizen participation. It has been indicated that one of the challenges is that during competitive elections politicians tend to flout the electoral process. For this reason it should be emphasised that stakeholders must primarily comply with the rules of the electoral processes. Abuya (2009, p 129) contends that 'in order for states in Africa to walk the (desired) democratic path, sitting governments must comply with internationally recognized standards on free and fair elections'. There is a dire need to enhance the capacity of the electoral management bodies to carry out their mandate. They must be assisted to understand the importance of efficient and impartial management of the whole electoral process, including holding discussions with all stakeholders.

Secondly, there is a need to inculcate a culture of citizen participation in democratic processes. Citizen diplomacy must be adopted to accompany electoral processes, particularly in fragile and conflict environments. In order to deal effectively with the root causes of election-related conflicts elections must be a participatory process.

Citizen participation opens opportunities for communication, cross-cultural understanding and joint efforts to address the needs of parties. It also seeks to bridge the divide between government and civil society, between elite and grassroots levels within communities, and between different cultural worldviews on how to manage conflicts (Shale 2006b). It serves as a valve through which tensions that build up during the electoral process can be channelled.

In the Kenyan and Zimbabwean power-sharing negotiations the mediators used official diplomacy and overlooked the importance of the involvement of ordinary citizens in trying to address the conflict. Citizen diplomacy is preferable because, firstly, it precedes the elections and continues beyond them. Even if it were to be employed in the event of post-election conflict it would have legitimised the outcome of such power-sharing negotiations because the whole process would have been participatory and inclusive.

# **ELECTIONS AND VIOLENCE IN NIGERIA**

**Samuel Egwu**

## **INTRODUCTION**

The history of electoral democracy in post-independence Nigeria is replete with incidents of election-related violence, which have undermined the credibility of elections and, in some instances, led to the collapse of democratic experiments.

The only exceptions were the 'transition' elections supervised by the departing colonial authorities and the successive military regimes, either because of fear of 'retribution' or the fear that handover dates might be postponed. Election-related violence and other forms of electoral malfeasance, including rigging, snatching of ballot boxes and inflation of votes, severely undermined the credibility of democratic regimes in the first and second republics (1960-1966 and 1979-1983 respectively). Since the country returned to civil rule in 1999 election-related violence has played a significant role. Nevertheless, the dominant elites and Nigerians have continued to show faith in the idea of elections, at least in the symbolic sense that they are a necessary part of civilian life (Egwu, Leonard & Matlosa 2009).

The scale and intensity of violence during the 2003 and the 2007 elections gives credence to fears that democratisation in Nigeria remains fragile and may not necessarily deliver sustained political stability. Thus, if democratic institutions and values are to be entrenched and governance be made accountable to the people the country must, of necessity, deal with the problem of electoral violence.

There have been shifts in the trends and patterns of election-related violence. In the First Republic, for example, it threatened national stability and cohesion because of the ethno-regional character of politics which structured the party system. The deployment and counter-deployment of violence in the struggle for political hegemony among competing regional elites directly threatened national unity and the stability of the political order. This situation has changed slightly since the return to civilian rule in 1999, with a more nationalistic orientation of the political elites in response to the political engineering of successive military

regimes. Although some existing political parties have ethnic and regional appeal, regional ideology appears to have waned considerably.

Election-related violence persists despite the fact that it is prohibited by law. Section 26 of the Electoral Act 2006, for instance, forbids acts of violence, including disorderly behaviour at political meetings and wilful defacement or destruction of ballot papers. Section 96 of the Act empowers the commissioner of police in each state to bar people from carrying offensive weapons and missiles and using foul language that may provoke violent reactions or emotions during political rallies, while Section 98 expressly bars the use or threat of the use of force.

The law further prescribes fines or terms of imprisonment. Additional measures aimed at curbing election-related violence, especially on election days, are restrictions on the free movement of all people except those on election duty.

In discussing election-related violence in post-independence Nigeria this chapter examines the impact of the recurrent violence built into the electoral process on the democratisation process in general and the challenge of entrenching democratic practices and values in particular. The chapter argues that election-related violence is the underlying reason for the persistence of electoral authoritarianism, fuelled by a combination of historical, structural, institutional and psychological factors that need to be addressed to entrench democratic values and culture.

While exploring the role of violence in ensuring electoral authoritarianism in the successive waves of democratic experiments since independence the chapter provides further illustrations, using the case of the ethno-religious violence of November 2008 in Jos, to highlight how pre-existing expressions of communal violence reinforce tensions and violence associated with elections in a multi-ethnic political setting.

## **VIOLENCE AND ELECTORAL AUTHORITARIANISM**

Elections are central to the principles and practice of democracy. The notion of popular will as the source of sovereignty of the modern state finds concrete expression in elections because they offer the people a way to exercise their right to determine their rulers and they confer legitimacy on those elected. Furthermore, elections promote accountability, in the sense that the threat of defeat at the polls exerts pressure on elected public officials to take account of popular interests and wishes when they make their decisions.

There are a number of conditions necessary for free and fair elections, including an independent judiciary to interpret the electoral laws; an honest, competent and non-partisan administration to manage the elections, including creating a level playing field; a developed system of political parties, well organised to put their programmes and candidates before the voters and a general

acceptance of certain rules of the game, which limit the struggle for power because of some unspoken sentiment that if the rules of the game are not observed more or less faithfully, the game itself will disappear amid the wreckage of the whole system (Mackenzie 1967; Dundas 1994). These ingredients constitute the bedrock of a democratic polity and, where they are lacking, the consequence is obvious: democracy cannot endure and its practices and culture cannot be regularised. Reliance on violence as a means of influencing electoral outcomes undermines the sanctity of the electoral process, even if all the above conditions are fully met.

The European Commission, the United Nations Development Programme and International IDEA (2009, p 36) define election-related violence as acts or threats of intimidation, or physical harm perpetrated to affect an electoral process or that arise in the context of electoral competition. When perpetrated to affect an electoral process violence may be employed to influence the process of elections, for instance, to delay, disrupt or derail a poll, and to influence the outcome: the determination of winners in competitive races for political office or the responses to referendum questions.

Despite the fact that the most ubiquitous manifestation of violence in the electoral process tends to be the physical form used by political thugs in the course of election rigging, or by the masses of the people in reaction to real or perceived theft of the vote, a more nuanced concept of violence would factor in psychological and structural dimensions, including intimidating, harming or blackmailing political opponents before, during and after an election with a view to determining, delaying or otherwise influencing an electoral process (Ochoche 1997; Albert 2007). Galtung (1991) further reminds us that various expressions of violence may be mutually reinforcing.

Violence plays a major role in undermining the value of elections and eroding the culture on which democratic elections are anchored. The mediating role of violence makes a huge difference between electoral democracy and electoral authoritarianism. It is, however, important to recognise that the relationship between election-related violence and democracy is often complex and dialectical. On the one hand, elections that are undermined by violence and, therefore, lack credibility can provoke anti-social choices by individuals and groups (Ijim-Agbor 2007, p 81), which can threaten the survival of democracy. On the other hand, there is a recognition that electoral processes, when successful, provide a platform for channelling social conflict into debates, persuasion and common rules for choosing representatives of the people.

The main purpose of electoral violence is to eliminate or neutralise opposition and to facilitate the commission of electoral fraud (Alemika 2007, p 115). To a large extent, therefore, electoral violence in the form of intimidation of voters, the bullying of officials to persuade them to manipulate and falsify results and the snatching, stuffing or destruction of ballot boxes are the main architecture for other elements of electoral malfeasance.

Violence undermines the basic tenet of democracy as a rule-based game, rubbishes the notion of election as contests of ideas, weakens the concept of mandate and whittles away the legitimacy of government. And to the extent that it undermines the sanctity of the vote it also undermines citizens' faith in the letter and *spirit* of the law and, most importantly, a core principle of elections in liberal democratic theory: the possibility of today's winners becoming tomorrow's losers and today's losers becoming tomorrow's winners (Jinadu, Ibeanu & Egwu 2008).

An analysis of conditions that have sustained gender imbalance and the exclusion of women further points to the role of violence in physical, structural, and psychological terms. Ibrahim & Salihu (2005) and Okoosi-Simbine (2007) provide robust documentation of the experience of women in the 2003 general elections, pointing to the systematic manner in which the deployment of violence and terror led to the exclusion of women candidates in the course of party primaries and during the elections apart from a few who, through male patronage, secured party tickets. Apart from the use of physical violence, in which male candidates have a comparative advantage, the use of cultural invective and other forms of subtle pressures on women candidates illustrates the role of violence in the existing imbalance in gender representation.

Electoral violence is rooted in a number of underlying structural, institutional, psychological and cultural factors that are embedded in Nigeria's political economy. First is the colonial foundation of politics, which left behind a legacy of intolerance and authoritarian rule. Second is the profitability of state power controlled by elites who are not entrenched in the discipline of capitalist production and enterprise. The use of state power as an instrument of primitive accumulation makes the state a coveted prize to be won at all costs. This is well captured in the analysis of the politics of patronage and neo-patrimonialism in Africa. Joseph's (1987) account of prebendal politics in Nigeria draws attention to the way in which the central role of the state in the control and distribution of patronage engenders fierce competition for state power. In Nigeria it is exacerbated by its oil-based accumulation, which fosters 'a do or die' mentality in elite competition for power and the underlying culture of impunity.

Third, and closely related, is the politicisation of ethnic, regional and religious identities and the political salience of these identities. Since the ambition of every group is to entrench itself in power to the detriment of other elite factions every election is fought as a 'war', sustained by mutual fear of domination in which the key actors present themselves as representing communal interests.

Fourth is the absence of a culture of opposition politics, fuelled, on the one hand, by the absence of tolerance for the opposition factions of the elite in power and, on the other, by the failure of the opposition to develop the capacity to organise and mobilise so as to provide a credible alternative to the party in power.

Finally, there is the deep culture of poverty and illiteracy. The prevailing economic situation, which has exacerbated the problem of mass poverty, unemployment and lack of access to the basic means of livelihood for the majority of the Nigerian people, as well as the high level of illiteracy have made citizens, especially the youth, more susceptible to manipulation and to being recruited as thugs during elections. The development of public policy, expected in the long run to deal with the problem of electoral violence, must address the issues of poverty and illiteracy.

The role played by violence in sustaining electoral authoritarianism can be further explained by the institutional weaknesses of political parties. These include the lack of internal democracy, the role of godfathers and the absence of ideology and issue-based campaigns, loss of faith in the independence and impartiality of electoral authorities and mechanisms and a deep-seated culture of impunity and a lack of respect for the rule of law, partly resulting from the impact of prolonged military rule.

To elaborate I will use the case of the party system. There are more than 50 registered parties, all of them lacking the internal procedures that make key decision-making processes open, transparent and accountable. More often than not, party 'godfathers' imposes 'consensus' candidates instead of holding open and transparent primaries. A related problem is that political parties are largely publicly funded and not membership-driven and are, therefore, not accountable to their members. Party campaigns are not driven by issues and policies and the differences between the parties are not evident from their ideologies and manifestos.<sup>1</sup> In the absence of issued-based politics there is a tendency to mobilise along ethnic and communal lines, thus raising the spectre of violence.

While there is often a tendency to pin the manifestations of the weaknesses in the party system on the ruling party, the People's Democratic Party (PDP) it is a problem that characterises all the existing parties, though the PDP pretends to be the most democratic.<sup>2</sup> It is therefore important that any attempt to deepen democracy and end electoral authoritarianism must address these institutional weaknesses. In the next section I focus on the role of election-related violence in the democratic eclipse of the first and second republics.

## **ELECTORAL VIOLENCE AND THE ECLIPSE OF DEMOCRACY**

There is often a strong correlation between electoral violence and the crisis of legitimacy faced by governments that have emerged from fundamentally flawed electoral processes. This is best exemplified by the democratic eclipse that followed the disputed elections in Nigeria during the first and second republics, in 1966 and 1983 respectively. It is widely understood that the justification for military interventions in 1966 and 1983 were corruption and widespread political violence (Alemika 2007; Nwolise 2007). The argument has always been that since the



political class appeared to have legitimised the use of (organised) violence in the struggle for power it had, by extension, given a veneer of legitimacy to the military, which has professionalised the use of violence in its direct takeover of the machinery of governance (Ake 1989).

In the first and second republics the dynamic of electoral violence was largely the result of the regional framework of politics that became entrenched in constitutional development in the terminal phase of colonial rule. The federal system that evolved, as expressed in the Oliver Lyttleton Constitution of 1954, largely reflected the compromise between the ethnic and class interests of the emergent ruling elites. It ensured, for example, the death of the broad-based nationalist movements that had thrived before the Second World War and the emergence of political parties with strong ethnic and regional bases. Some of these were the National Council of Nigerian Citizens (NCNC) from the Eastern region, the Action Group (AG) from the Western region and the Northern Peoples' Congress (NPC) from the Northern region.

The structural imbalance in the federal system which ensured that the Northern region was bigger than all the other regions combined gave undue advantage to the northern faction of the ruling elites in control over national power. However, the authoritarian nature of the colonial state that supervised the 1959 federal elections ensured that the scale of violence did not undermine the transition to neo-colonial dependence.

In the First Republic the dynamics of political conflict were partly the result of the structural imbalance in Nigeria's federal system and partly of attempts by the factions of the regional elites in power at the federal centre to undermine the regional balance among the competing elites which provided the basis of political stability. Apart from routine incidents of intra-party and inter-party violence it was the attempt by the NPC-controlled federal government to extend its control over the machinery of government by undermining, through rigging, the electoral advantage of the AG, the dominant party in the erstwhile Western region, in the 1964/65 federal elections that provoked a violent reaction. Similarly, in its attempt to ensure total control of power to the detriment of opposition parties within the Northern region it provoked a violent reaction from ethnic minority groups, especially the Tiv, who appeared to be resisting perceived Hausa/Fulani hegemony (Anifowose, 1982; Takaya & Tyoden 1987; Tyoden, 1993).

Similar patterns of election-related violence accounted for the premature termination of the Second Republic, despite attempts by successive military regimes to use political engineering to alter the balance of federal politics in favour of the centre. This is reflected in attempts in the 1979 Constitution of the Federal Republic of Nigeria to outlaw ethnic and regional parties and encourage the emergence of broad-based political parties with a national outlook. The efforts, along with a centralised federal system with an enormous concentration of economic and political power in the centre, failed, however, to change the ethnic



and regional character of politics in the Second Republic, with the exception of the ruling National Party of Nigeria (NPN), which had a semblance of a national image.

Other parties, such as the Unity Party of Nigeria (UPN), and the Nigerian Peoples Party (NPP) had regional electoral bases in the erstwhile Western and Eastern regions respectively, while the Peoples Redemption Party (PRP), which had a clear populist ideology, captured power in only two core northern states – Kano and Kaduna. It was the attempt by the NPN, which was believed to be controlled by the core Northern political elite, to extend its control to the Yoruba-speaking area of the Western region controlled by the UPN in the 1983 elections that provoked the violence that led to the termination of the second democratic experiment.

However, the strong ethnic and regional undertones of politics and the tendency for political domination and resistance to it to take ethnic and regional forms appears to have been strongly diffused by the party system and the patterns of political competition in the Fourth Republic. The long-term impact of creation of additional sub-units (states and local governments) within the federation and the more nationalistic re-orientation of the ruling elites induced by the control of oil wealth by the centre have largely accounted for this trend. Nevertheless, election-related violence has persisted, as the 2003 and the 2007 general elections have shown.

## **VIOLENCE AND THE 2003 GENERAL ELECTIONS**

The 2003 general elections brought into bold relief the role of violence in the electoral authoritarianism that has characterised Nigeria's fragile democracy in the post-military era since May 1999. Compared to the series of transitional elections that ushered in the civilian administration in 1998/99, violence became a key factor in determining the outcome of the 2003 elections. The systematic deployment of violence by the ruling PDP, the incumbent president and state governors not only entrenched a culture of violence in the polity but, more importantly, the culture of impunity.

The failure of the existing system of electoral justice to address the grievances of those who felt short-changed and the atmosphere of impunity encouraged by the failure of the security forces and the Independent National Electoral Commission (INEC) to apprehend and punish perpetrators of violence prepared the ground for greater use of violence in the 2007 elections. As it turned out, the elections resulted in a landslide victory for the PDP, with President Olusegun Obasanjo and the party overrunning the states in the South-West, where they had failed abysmally in the 1999 elections.

The incidents of violence that characterised all phases of the 2003 elections can be explained by the internal and external environments of the electoral process. To

begin with, the three major components in the preparations for the 2003 elections – voter education, voter registration and monitoring – were deeply flawed. The report of the Justice Development and Peace Commission (JDPC) (2003), which contained information about the pre-election monitoring of the activities of political parties, especially in relation to party primaries and the selection of candidates, revealed an absence of openness and transparency.

The decision of the leaders of the PDP to nominate all the governors who had been elected in 2003 and the hijacking by governors of the party machinery, to facilitate their return to power and to effect the election of their cronies at both state and federal levels, generated tensions within the party. This was the trend in all three political parties that sponsored candidates in the 2003 elections and the tension it generated within the parties accounted for the high level of intra-party violence detailed below.

The JDPC report further highlighted shortcomings in the voter education and mobilisation programmes of government agencies, especially the National Orientation Agency (NOA) and INEC in the period leading to the 2003 elections. NOA's civic education was limited to advertisements on television and radio. Civic education carried out by civil society groups took place against a background of voter apathy and violence and came too late to improve the outcome of the election significantly. The voter registration exercise conducted in September 2002 and the display of the register for claims and objections could not be completed six months before the elections as required. The second exercise, in January 2003, was marred by irregularities as a result of which more than one million voters who had reached the age of 18 since the last election or who had changed residence were disenfranchised.

The Transition Monitoring Group (TMG) noted that the overall credibility of the elections was in doubt and that they fell short of minimum national and international standards. It also noted that none of the major political parties could claim a moral high ground in relation to rigging, ballot box stuffing and snatching, inflation of votes and the use of thugs to rig the ballot and intimidate political opponents.

The local government elections which followed were no better because of recurring problems arising from the flaws identified above. The consequence was that those who felt helpless because they could not seek redress for perceived wrongs were compelled to adopt extra-judicial means (TMG 2004a; 2004b). Most observer groups agreed with the JDPC (2003, p iv), which noted the 'barefaced partisanship of state agencies whose duties are to protect and promote the right of all of us to free and fair elections' (EU-EOM 2003; DFID 2003; TMG 2004a).

In light of the above, the high level of violence, including the use of thugs and politically motivated killings experienced in the countdown to and during the 2003 elections was anticipated. As Human Rights Watch (2004, p 4) noted, the level of violence, which politicians did not attempt to conceal in some areas, was

made possible by the availability of small arms and large number of unemployed young men willing to be hired.

In the build up to the elections the spate of violence was so alarming that fears were openly expressed about the dangers of holding the elections. A curious dimension was the fact that intra-party conflicts and violence were more pronounced and threatening than incidents recorded between the ruling party and the opposition. Intra-party violence was most visible within the PDP. This can be explained by the fact that the stakes appeared to be much higher given the perception that gaining the party nomination was as good as winning the elections. Matters were not helped by the utterances of key party functionaries to the effect that serving public officers, especially governors, elected on the platform of the party would automatically be nominated. Politically motivated killings, including that of Marshall Harry, the PDP South-South coordinator, in March 2003, resulted from the crisis within the PDP.

During the election itself it was estimated that more than 100 people were killed and many more injured in violence across the country masterminded by the PDP. The highest incidence was reported during the elections of 12 and 19 April (Human Rights Watch 2004). The reduction in the level of violence in the subsequent elections was the result of voter apathy resulting from the experience of the first two elections and a boycott by the opposition. In many states in the Niger Delta, especially Rivers, Bayelsa, and Delta, it was widely reported that voters were scared away from polling stations, even though the number of votes suggested an almost 100 per cent voter turnout (Egwu 2007).

Disturbing incidents of inter-party violence pitching opposition parties against the PDP were high in Benue and Nasarawa states. In both these states candidates who challenged the PDP on the ticket of the All Nigeria People's Party (ANPP) had defected because they had been short-changed in the course of party primaries. About 40 deaths were recorded in Benue, 22 of the victims being shot dead in one particular incident. In Nasarawa State, which had been a flashpoint of violence, a police commissioner and a civil commissioner were killed.

While many observers of the 2003 elections lamented the open use of violence by PDP thugs and the connivance of security agencies there were reported cases of people, including accredited observers, who were beaten for attempting to challenge election rigging. In the local government elections that followed, in March 2004, several incidents of violence and intimidation directed at opposition parties and candidates were reported; a charge that is not limited to the PDP because in states where the ANPP and the Alliance for Democracy (AD) were in control they swept the polls, using violence and intimidation. In states like Delta and in other parts of the Niger Delta the high level of violence necessitated the postponement of the local government elections (TMG 2004).

The post-election survey carried out by the United Nations Electoral Assistance Division (UNEAD) and UNDP in 2003 showed that fear of violence

and intimidation was the most important factor that kept voters away from polling stations. Most of the respondents in the survey in the three zones where the level of violence was highest – South-South, South-East and North-Central – gave violence as their reason for staying away from the polls (see Alemika 2007).

The massive resurgence of identity-based politics in different parts of the country increased the level of violence, especially where electoral issues fed into pre-existing grievances. This was particularly the case in the Niger Delta region, where the assertion of ethnic minority identity, fuelled by complaints of marginalisation in terms of access to oil wealth led to organised violence perpetrated by restive youths. Local politicians took advantage of the situation to recruit and arm militia and cult groups to wage an 'election war'. In the South-East, the level of violence was remarkably high, with local grievances feeding into the elections, while in the North-Central, predominantly inhabited by ethnic minorities, conflict took on an ethno-religious form, breaking out over issues of citizenship and access to local power and resources and leading to mass killings, the destruction of property and the displacement of thousands of people. In Jos and the southern parts of Plateau State and the adjoining Nasarawa State communal conflicts and violence threatened civil activities, including elections.

While some of the violence experienced in the 2003 elections was consistent with the experience during the first and second republics there were some remarkable shifts in the patterns. Egwu's (2007) analysis of the trends of violence that characterised the period before and after the elections examined the incidence and intensity of violence across the six geo-political zones. Although the analysis showed there was violence in all the states, there was a geo-political variation. The South-West zone, which experienced the highest level of violence during the first and second republics, remained relatively peaceful in spite of the potential for violence created by the defeat of the AD, which was considered to be the most popular party in the region (Ibrahim & Egwu 2005). The South-South zone, or the Niger Delta, experienced the most disturbing violent incidents with at least three deaths in each of its states and Delta State alone accounting for more than 20 deaths between the National Assembly and the presidential elections (Human Rights Watch 2003). The next highest incidence of violence was in the South-East and the North-Central zones for the reasons outlined above.

One new trend noted in the elections was the role of security agencies in perpetrating violence – previous election-related violence was masterminded by party thugs. Alemika (2007) laments the fact that security agencies whose duty it is to protect democratic institutions and citizens failed to prevent and control violence during the political campaign and the elections, failed to safeguard the security of election materials and results and were partisan in favour of the ruling party and the incumbents, shielding perpetrators of violence.

Despite the high level of violence in both the period leading up to the elections and during the elections themselves, the level of post-election violence was

significantly less than anticipated. In particular, the joint call on the Nigerian people by opposition parties and civil society to reject the results and to engage in acts of civil disobedience fell on deaf ears, partly because both opposition parties and civil society lacked clearly defined constituencies which they could mobilise. Nevertheless, the rejection of calls to violence largely reflected the confidence of Nigerians in recourse to due process and the rule of law to handle grievances arising out of the elections. It was, therefore, not surprising that the number of election petitions presented before the elections petitions tribunals in the 2003 elections increased to 574 from fewer than 200 in the aftermath of the 1999 elections.

### **VIOLENCE AND DEMOCRACY DEFICITS IN THE 2007 ELECTIONS**

The 2007 general elections were considered, for a number of reasons, to be a critical milestone in Nigeria's efforts to routinise democracy. First, they were the third successive elections in the country's history and led to a successful transfer from one civilian regime to another. Second, they were marked by an enormous expansion in the political space, with the participation of more than 50 political parties. Third, there was an increase in civic engagement with the electoral process which popularised campaigns against electoral violence. However, as it turned out, the elections were 'marred by extraordinary incidences of rigging and intimidation of voters in many areas throughout Nigeria' (Rawlence & Albin-Lackey 2007). It is difficult to say whether civic campaigns around 'mandate protection' made any significant difference to the level of violence experienced during the elections.

The elections turned out to be a huge deficit for the consolidation of democracy, taking place as they did against the background of the government's failure to undertake the constitutional and institutional reforms that were envisaged in the aftermath of the 2003 election. INEC failed to pursue its first-track strategy of presenting to the National Assembly specific proposals for amendments to the Constitution to address its institutional and organisational shortcomings. Second, civic and political education aimed at achieving attitude change was not pursued as vigorously as had been envisaged. While INEC implemented civic education poorly as a result of a lack of focus, the inability of civil society organisations to gain access to donor funds early enough, as had been the case in the 2003 elections, limited the impact of its intervention.

Not unexpectedly, the 2007 elections were characterised by many shortcomings and malpractices, notably poor logistics on the part of INEC, especially in the delivery of voting materials, the late opening of the poll in most states, ballot-box stuffing, allocation of votes where voting did not take place, falsification of votes and the deliberate denial to perceived opposition strongholds of adequate supplies of election materials. INEC did not put in place the basic infrastructure to support the efficient transmission and collation of results, for

which funds had been appropriated by the National Assembly. Gangs of armed youngsters were employed to thumbprint ballot papers in place of voting at polling booths.

As was the case in 2003 all stages of the elections (pre-voting, voting and post-voting) were marked by extraordinarily high levels of political violence – according to official sources during the 14 April election 55 people died (*Vanguard* 16 April 2007). There were reports of intensified political violence in Oyo, Ondo, Enugu and core Delta states and in Lagos, Ekiti and Kano, reports of high-profile killings abounded. The death toll was estimated by various observers to be as high as 200 (Zasha, Mustapha & Meyer 2007).

Both domestic and international observers believed these to have been the worst elections in Nigeria's post-independence electoral history, failing to meet regional and international standards of freeness and fairness. This failure is graphically demonstrated in the numerous expressions used to characterise the elections, among them 'garrison democracy', 'war by another name' and 'balance of terror'. So discredited were the elections that even in states such as Lagos, Bauchi and Kano, where opposition parties won, it was difficult to conclude that the process had been credible (Ibrahim & Egwu 2007).

Ibrahim & Egwu (2007) have also noted, partly bearing in mind the visible role of violence, that the 2007 elections marked a transition from the 'competitive rigging' that characterised the 2003 elections to 'allocation of votes'. A systematic documentation of the travesties in the 2007 elections, including the massive use of violence to steal the vote, is appropriately titled: 'direct capture' of the people's sovereignty in 2007 (Jibrin & Ibeanu 2009).

Most observers conclude that President Olusegun Obasanjo's outburst to the effect that the elections were going to be a 'do or die' affair gave early warning of the intention to use violence, including the coercive apparatus of the state, and the equally threatening resolve of opposition parties and candidates to resort to counter-violence.

The pre-election phase was characterised by the high incidence of violence resulting from both intra-party rivalries and those between the ruling party and the opposition. As noted in respect of the same period in the 2003 elections tensions arising from the absence of internal democracy within the parties accounted for much of the violence; the ruling PDP being the worst example. Apart from the fact that the party failed to conduct transparent primaries<sup>3</sup> the decision of the party hierarchy that winning a primary did not guarantee a nomination fostered violence among rival camps within the party.<sup>4</sup> Against this backdrop it was not surprising that seven of the ten reported cases of assassinations and attempted assassinations stemmed from intra-PDP rivalries (Human Rights Watch 2004, p 23). Two were recorded in the South-West, where Funsho Williams in Lagos and Ayo Daramola in Ekiti states were killed. In Bayelsa and Delta states rival groups within the party attacked one another, using bombs and weapons. In Kano the



killing of a Muslim leader in the mosque in the weeks leading up to the election raised deep fears of a religious war.

Disturbing incidences of violence in the April/May elections were reported by various sources. Human Rights Watch (2007, p 22) reported at least 70 incidents between November 2006 and March 2007 in 20 of the 36 states, in which at least 70 people died and many more were injured. The Institute for Democracy in Africa (IDASA), whose conflict tracking project complemented media monitoring of election-related violence with community-based monitors, presented an even a more frightening picture, reporting 280 incidents of violence involving more than 500 people.

In Oyo state and Ibadan, the heart of politics in the South-West, violence occasioned by intra-PDP rivalries led to the deaths of scores of people as a result of disagreements between governor Rasheed Ladoja and his godfather, Chief Lamidi Adedibu. As a result of this, the latter decided to anoint Ladoja's deputy, Christopher Alao-Akala, as the party's candidate in the election. The contending parties used rival factions of the Oyo State branch of the National Union of Road Transport Workers (NURTW) as cannon fodder. The PDP's nomination of Alao-Akala in February heightened the tension and violence that resulted in the deaths of several people. In Anambra State in the South-East patronage extended by rival groups within and between political parties to established cult groups such as the Black Axe and Vikings created an atmosphere of terror and intimidation.

The violence that characterised the pre-election phase continued into the elections, during which reported acts of violence, including arson targeted at opposition parties, candidates and INEC officials, were widespread across the country. Nwolise (2007) provides a detailed account of the use of violence to intimidate and harass opposition candidates and officials of INEC who were perceived not to be cooperating with the PDP.

In Abia State Chief Solomon Soyebi, INEC's resident electoral commissioner, was allegedly attacked by the PDP's nominee for the governorship, Chief Onyeama Ugochukwu, who lost the gubernatorial contest, while the INEC office in Zango in Daura Local Government was torched by thugs hired by aggrieved politicians. Human Rights Watch (2007) gives a chilling account of the deployment of violence, largely by the PDP, as well as the violent response of armed thugs allied to opposition politicians and candidates in states such as Nasarawa, Kano, Benue, Ogun, Kogi, Edo and Bauchi.

The perception, especially in the South-West, that connivance between the PDP and the security forces deprived the opposition of the opportunity of a fair contest led to the establishment of The Forum of Oyo State Governorship Candidates, which consistently decried the systematic use of violence by the PDP in the state coordinated by the godfather of Ibadan/Oyo politics, Chief Lamidi Adedibu.

In Kogi, both the PDP and the ANPP opposition, led by a former governor, Prince Abubakar Audu, who sought to return to power, engaged armed thugs

whose intimidation and harassment scared many voters away outside the state capital. In Kogi Central Senatorial District the main opposition party, Action Congress (AC), openly resorted to violence, forcing INEC to annul the results of the polls (Egwu 2008).

The announcement of election results in a number of states, among them Nasarawa, Benue, Osun and Ogun, was greeted with violence by opposition parties and their supporters, who believed the results as announced did not reflect the pattern of voting. Although belief that the judiciary would redress some of the injustices arising from elections significantly reduced the number of incidents of violence<sup>5</sup> IDASA's conflict tracking project put the number of election-related killings at 300 – far higher than the figure for the 2003 elections.

The failure of the police to arrest and prosecute perpetrators of violence reinforced the prevailing sense of impunity. Where the police attempted to make arrests they were largely of thugs recruited by opposition parties and candidates with the police tending to turn a blind eye to violence perpetrated on behalf of ruling parties and incumbents. This not only applied to the PDP at the centre and in the states, the situation was the same in states controlled by opposition parties, as was the case in Lagos and Kano states.

Because of the level of violence and related examples of malfeasance the 2008 elections turned out to be the most disputed in Nigeria's post-independence history. There can hardly be a better illustration of this than the number of petitions presented by aggrieved candidates and political parties to election tribunals across the country in which a sizeable number of petitioners asked for results to be annulled because of violence. A total of 1 475 petitions, representing about a 300 per cent increase over the number recorded in the 2003 elections, was presented before election petitions tribunals. The number of orders for polls to be repeated confirms that violence called into question the credibility of the elections.

### **JOS: ELECTORAL VIOLENCE AND INDIGENE/SETTLER DIVIDE**

The ethno-religious violence that resulted from the November 2008 elections in Jos North Local Government of Plateau State gives a useful insight into the dynamics of electoral violence where elections feed into local political conflicts and longstanding inter-communal conflict.

Although it is difficult to establish the number of lives lost and the level of destruction of property, the picture presented by available sources suggests that it is some of the most devastating violence in Nigeria. While the official figure made available by the police puts the number of dead at 200, the State Security Department (SSD), relying on several sources including hospitals, religious bodies and the rescue team put in place by the Plateau State government, established that 634 people had been killed. Between 800 and 1 000 people were estimated



to have been internally displaced and property worth billions of naira destroyed (Federal Government 2009, p 19).

However, it is difficult to understand the basis of the violence that greeted the repeat of the elections following the cancellation of the earlier polls without examining the wider context of identity politics and the struggle for local power and resources that pits the indigenous ethnic communities against the Hausa/Fulani community in the city. What is particularly frightening about the trend is that the levels of violence and carnage have increased with each occurrence since April 1994.

It would seem that the return to civilian administration in 1999 has resulted in increased conflict and violence along ethno-religious fault lines. While this may raise the challenge posed by democratisation to the management of ethnic diversity and the patterns of social inequality fostered by neo-liberal policies it is important to focus on the weaknesses of democratic institutions, including political parties, elite attitudes to political competition and the problems of corruption and misgovernment. The misgovernment and lack of statecraft that have characterised civilian administrations in Plateau since May 1999 have contributed to election-related violence in the city.

However, at the core of the circle of violence into which the city of Jos has been plunged is the battle over the 'ownership' of the city. It is a battle that goes beyond the material gains associated with who becomes the chairman and the councillors of the local government it is the symbolic meaning of the ethnic origin of those elected, since that is directly linked to the issue of 'ownership' of the city. Like ethnic identity, religious identity is implicated in the Jos crisis – while the majority of the Hausa/Fulani community is Muslim, Christians predominate among the indigenous ethnic groups.

Ethno-religious identity, therefore, provides the platform for battles over issues that have hardly any ethnic and religious content but border on an elite struggle for power and resources. Embedded in the claims and counter-claims of the groups involved are issues of injustice, inequity, citizenship and the unequal treatment of the various communal groups by those in authority. It is therefore important to outline the historical and contemporary basis of the conflict.

## **IDENTITY AND COMMUNAL CONFLICT IN JOS**

Communal violence in Jos is not new, it dates back to 1945, when the Hausa community was pitted against the Ibos (Plotnicov 1971) and to 1966, when there was violence in many northern cities targeted at the Ibo population. However, in more recent times communal violence in the city has become protracted, taking on increasingly ethno-religious forms and pitting so-called 'indigenes' (the Afizere, Anaguta and Berom) against members of the Hausa/Fulani community in deadly confrontations.

The first major encounter took place in April 1994 when the indigenes of the city resisted the appointment of Alhaji Aminu Mato as chairman of the caretaker committee of Jos North Local Government. A more deadly confrontation took place in September 2001 against the background of the appointment of another 'Hausa/Fulani' politician, Alhaji Muktar Mohammed, as coordinator of the Federal Government's National Programme on Poverty Eradication (NAPEP).

The spate of violence in Jos, especially that in September 2001, was a huge humanitarian tragedy. According to Human Rights Watch (2001) between 1 000 and 2 000 people were killed in the confrontation. It has also been established that about 171 people were detained, of which 26 were children. Idris & Nwogu (2003) record the displacement of more than 50 000 people who were forced to seek refuge in the police headquarters in Jos and the army barracks at Rukuba. The report is filled with unconfirmed stories of bias demonstrated by security agencies in the handling of the conflict.

After the violence of 2001 issues of political marginalisation continued to undermine inter-group harmony. The response of the Hausa/Fulani community to their perceived marginalisation in the relocation of a polling station from Angwan Rogo, a predominantly Muslim slum area, to Eto Baba, where Christians predominate, led to the second explosion, in 2002. The violence occurred during the ward congress of the ruling PDP, which was scheduled to be held in Eto-Baba on 2 May 2002 (Human Rights Watch 2002).

The spate of ethno-religious violence in Jos has had devastating consequences beyond the killings and the physical displacement of the people. In particular, it has led to the redrawing of the ethnic and religious map of the city, segmenting residents along ethnic and religious lines, a divide that has created a spatial framework that makes it possible to identify the relevant 'Others'.

The underlying explanation for the unending spiral of violence is the politics of the 'indigene/settler' divide that pits the Hausa/Fulani community against the indigenous ethnic groups of Jos, and, indeed, the entire Plateau State. The notion of 'indigeneity' was first entrenched in the 1979 Constitution of the Federal Republic of Nigeria and has become widely adopted in practice. Although it was introduced in the context of implementing the 'federal character' provisions in the Constitution and as a means of managing diversity, it has become the basis of exclusion.

In practical terms, a common notion of citizenship is inoperative at the national level; rather, what obtains is local citizenship in which membership of the local ethnic community is the basis for claiming rights. The struggle to prove that an individual or a group belongs to the local ethnic community is at the heart of intense 'production of history', including the history of migration (Egwu, 2003). The two communal groups are locked in conflict over who owns Jos and is able, therefore, to lay exclusive claims to power and resources.

It is, however, useful to locate the persistent conflict in Jos city in a number of

historical and contemporary developments. First is the dynamics of inter-group relations in the erstwhile northern Nigeria, in which ethnic minority agitation channelled through the construction of 'Middle Belt' identity is counterpoised with the perceived hegemonic ambition of the Hausa-Fulani. In the construction of this minority identity, which began in the terminal phase of colonial rule, the Jos Plateau remained the epicentre of the struggle.<sup>6</sup>

The role of Plateau elites in fostering Northern ethnic minority consciousness is well documented (Takaya & Tyoden 1987). The execution of military officers, mainly of Plateau origin, alleged to have been involved in the coup that overthrew the government of General Murtalla Mohammed in 1976, contributed immensely to increased anti-'Hausa/Fulani' sentiments on the Plateau.

Secondly, the creation of Plateau State in 1976 brought the elites of indigenous ethnic groups to power, making it possible for them to advance their interests at the expense of groups perceived to be dominating them. The 'politics of emancipation' that was adopted as the slogan of the Second Republic Governor of Plateau State, Chief Solomon Daushep Lar, drew largely on such sentiments (Adeyi 1989).

Thirdly, whereas other ethnic communities in Jos willingly concede the political space to the indigenes, the claim of the Hausa/Fulani community to the 'ownership' of Jos on the grounds of their long residence, which predates formal colonisation, makes them strong contenders for these resources. Colonial policies which structured local administration in favour of the Hausa/Fulani community in the infamous distinction between the Native Town (for the Hausa) and the township, appointing 12 people of Hausa origin as *Sarkin* Jos between 1902 and 1947 and ensuring ethnic segmentation of the city to preserve Hausa traditions, contributed significantly to giving the Hausa population a possessive attitude to Jos city (Plotnicov 1967). The claim by the Hausa to 'ownership' of Jos is perceived as unwarranted and reckless competition for the scarce political resources and values; most dramatised in the contest for local power. In addition, authoritarian military rule and the perception that successive military regimes ruled at the behest of the Hausa/Fulani hegemony created a further basis for inter-group animosity for the contending parties in the city. For instance, the creation of Jos North Local Government in 1991, in line with the demand of the Hausa/Fulani community, deepened the divide and animosity as the indigenous ethnic communities considered it a deliberate ploy to legitimise the Hausa/Fulani claim to 'ownership' of the city.

While the framework of competition for power and resources provides the most useful context, it is important to factor in the massive decline in Jos's economy in the wake of the orthodox structural adjustment programme introduced from the mid-1980s and following the earlier collapse of the Tin Industry, led to the disintegration of the public-sector-led industrial activities of the 1970s and the early 1980s which had provided employment and livelihood for thousands of Jos residents. There is also the reality of ethnic segmentation of the market, reflected

in the patterns of ethnic monopolies and horizontal inequality and, again, skewed against the indigenous ethnic population (Egwu 2003).

### **CIVILIAN RULE, CRISIS OF GOVERNANCE AND ETHNO-RELIGIOUS VIOLENCE IN JOS**

There are strong elements of continuity between the violence of September 2001 and the eruptions that followed the November 2008 local government elections in Jos in terms of the weaknesses of the current democratic experiment and the issue of statecraft. The deficit in statecraft has marked successive administrations in the state, including the brazen corruption and ineptitude that characterised the eight-year rule of governor Joshua Chibi Dariye and the leadership of Governor Jonah Jang, who succeeded him in May 2007.

These, among other things, among them the weaknesses of the party system, the absence of internal democracy, the reckless and unguarded utterances of key government functionaries and the failure to distance the state from religious groups, made the state itself a crisis-generating mechanism. These problems fed on the deep divides along ethno-religious lines or on the basis of an 'indigene/settler' dichotomy.

Evidence of the deficit in statecraft emerged in the failure of the governor to show sensitivity to the ethno-religious diversity of the state, openly taking sides with the 'indigenes' in their determination to exclude the 'settler' communities. This was the reason for the inexorable drift to anarchy and blood-letting in the city on 7 September 2001 and was evident in Dariye's decision to go on holiday to the US, ignoring security reports which pointed to impending chaos and the breakdown of law and order (Bagudu 2003).

The significance of Dariye's poor governance record became more evident as the ethno-religious crisis engulfed the southern part of the state. Despite setting up a commission of inquiry under Justice Niki Tobi and a judicial commission under Justice Dusu to investigate the crisis in Jos in 2001 and the spillover to southern Plateau in 2002, the reports of the commissions were not published and no concrete steps were taken to address the policy issues. This woeful record contributed to the alienation of the governor, not only from the people but also from the organs of the PDP, at both national and local levels. Declaring a state of emergency in Plateau state on 18 May 2004 and suspending the governor and the state's democratic structures for six months President Obasanjo openly accused Dariye of lacking interest, desire, commitment or the capacity to promote reconciliation and of displaying a lackadaisical attitude and apparent bias in relation to the salient issues (*ThisDay* 19 May 2004).

The governor's failure to provide purposeful and committed leadership, especially in the delivery of 'democracy dividend', became a matter for public discussion following investigations carried out by the Economic and Financial

Crimes Commission (EFCC). The investigations, though instigated by the presidency, revealed the level of looting of the state treasury and resulted in Dariye's impeachment in November 2006. The impeachment and the state of emergency that followed led to increased polarisation within the ruling PDP that undermined the coherence within the apparatus of governance in the state.

The resort to ethnic and religious manipulation became a clear strategy of political survival for the governor and his supporters in the face of their abysmal governance record. This is evident in the proliferation of publications which sought to interpret the chains of ethno-religious violence in the city as a consequence of the machinations of the so-called Hausa/Fulani hegemony. One such publication sought to demonstrate the politically motivated nature of the state of emergency, which, it argued, was imposed by President Obasanjo to placate the northern ruling elements (Gofwen & Ishaku 2005). A similar publication deliberately sought to whip up fears of the Islamisation of the Plateau people (Plateau Republicans 2005).

The gubernatorial elections of 14 April 2007 in Plateau state saw the emergence of a new PDP government under the leadership of Jonah Jang, a Christian of Berom extraction, one of the indigenous ethnic minorities. His administration is widely perceived as advancing the interest of the Berom, the largest ethnic group in Plateau, which had previously been prevented from gaining access to the governorship for fear they would entrench themselves in power if given the opportunity. The governor is not only perceived as advancing the interest of his ethnic group at the expense of others, he is believed to have a strong bias towards the Christian community and, at the same time, to be hostile to Hausa/Fulani Muslims. This perception has direct implications for his capacity to manage differences among the divided communities.

## **VIOLENCE AND THE NOVEMBER 2008 ELECTIONS**

The violence that greeted the local government council elections in Jos North on 28 and 29 November 2008 actually preceded the formal announcement of the results of the polls by the Plateau State Independent Electoral Commission (PLASIEC). The two contending parties were the PDP and the leading opposition party in the local government, the ANPP. Despite the fact that the two parties enjoyed support among both the Hausa/Fulani and the ethnic minorities there was a perception that the PDP represented the interest of the Christian community and the ANPP the platform of opposition for the 'settler' community in the city.

The perception that the PDP had manipulated the outcome of the elections to favour its candidate for chairman in an election the opposition claimed to have won precipitated the violence. The tension began with the PDP primaries, in which the party split over two contesting candidates – Danladi Pasali, a Muslim and Timothy Buba, a Christian. The eventual choice of Buba did not go down

well with Pasali's supporters, who felt that the PDP hierarchy had manipulated the outcome in his favour.

While the predominantly Christian elements expressed discomfort about Pasali because of his religious and 'settler' identity, the Hausa/Fulani community refused to endorse the candidature of Buba, who was believed to be an indigene of the Jos South Local Government. The confusion that attends the exclusive practices inherent in the 'native/settler' divide is highlighted by the opposition to Buba despite his Berom identity and his long residence in Jos North, where he discharges his obligation as a citizen, including paying taxes. Danladi's supporters threatened to go to court and to mobilise to vote *en masse* for the ANPP candidate, who happened to be a Hausa/Fulani Muslim.

Tension was further aggravated by intra-PDP factional rivalry in the nomination of Buba's running mate, in which the choice of another Christian, Isha, was opposed by Muslim PDP members. The latter threatened to defect to the ANPP because of the failure of the PDP leadership, including the governor, to respond to the protests. Intelligence reports presented to the governor warned that urgent interventions were necessary, but these were ignored.

The situation became more complex because of the different layers of identity and claims in Jos city. For instance, the Afizere, the most populous indigenous ethnic group in the present Jos North Local Government, protested that they were being marginalised and felt that the position of vice-chairman of the PDP should go to them. Threats emanating from aggrieved elements were communicated to the governor by the State Security Department, but fell on deaf ears (SSS 2008a, b, c).

The major division which became significant in the violence that followed the election was the 'indigene/settler' divide, which polarised the contending parties along religious lines. Aggrieved Hausa/Fulani members of the PDP apparently forged an alliance with the ANPP, which has a substantial number of members drawn from the Hausa/Fulani community, and resolved to vote for the leading opposition candidate, who ran on the platform of the ANPP. The open politicisation of religion followed in mosques and other places of worship, raising security fears that were communicated to the governor.

Although the state governor and the commissioner of police called a meeting of stakeholders to discuss the looming security problems this was not enough to stop the drift into anarchy. In addition, since the governor was not perceived to be neutral it was doubtful whether his intervention was effective enough to calm the situation down.

The style of campaign adopted by the ANPP did not help. The party openly threatened to use violence to counter any attempt to manipulate the elections and, on 17 November, suspected ANPP thugs launched an attack on the PDP campaign office at Yan-Gado by. This attack coincided with the visit to Jos of a federal legislator elected on the platform of the ANPP. In the run-up to the election



the AC issued a similar threat should the election not favour its candidate (Federal Republic of Nigeria 2009, p 18).

The outbreak of violence was occasioned by the perception of young supporters of the ANPP that PLASIEC, conniving with the PDP and the governor, intended to rig the elections in its favour. A number of developments heightened the suspicion that the results would be manipulated. The first was the fact that, at the last minute, PLASIEC changed the collation centre from the local government secretariat to Kabong. Secondly, there was a suspicion that the ANPP's early lead had been lost to the PDP. Thirdly, it was alleged that PLASIEC had altered the result of the councillorship election for Tudun Wada ward, which was believed to have initially been won by the AC. Other grievances were that PLASIEC had screened out 31 opposition candidates, including some from the ANPP, and had failed to display the voters' register two weeks before the election, as required by the electoral law.

Thus, the same institutional weaknesses that characterise the EMB at the national level bedevil the state-level EMBs, which appear to suffer more credibility problems because they are perceived to function at the behest of state governors. The lack of trust in PLASIEC and the partisan disposition of the governor, therefore, forced the opposition to take the law into their own hands.

In the weeks that followed, the violence in Jos polarised the entire country along ethno-religious lines. The decision by both the federal government and the Plateau state government to set up separate commissions of inquiry, and the perception that the president sided with the Hausa/Fulani Muslims and the governor of Plateau with the indigenous ethnic minorities undermined the coherence of the Nigerian state and dragged it directly into the arena of communal divide.

## **TOWARDS CURBING ELECTORAL VIOLENCE**

From the foregoing there is ample evidence that electoral violence accounts to a significant degree for the growing deficit in popular confidence in the electoral process. The potential for violence will be higher in the 2011 elections if serious steps are not taken to stem the tide of violence and improve significantly the security of the electoral environment to assure opposition parties, candidates and their supporters of a violence-free environment, and to encourage civic action that ensures the protection of mandates and the integrity of the franchise.

In addition, the persistently unstable situation in the Niger Delta and the occasional violence in the North Central and Northern states, as well as the exacerbated situation occasioned by kidnapping and politically motivated killings, call attention to the need to develop a comprehensive approach to contain the spiral of violence generated by electoral competition. Furthermore, the spate of violence that attended the conduct of the PDP ward congress for the nomination of

the party flag bearer in the 6 February 2010 gubernatorial election in Anambra State indicates strongly that the spectre of violence may hang over the 2011 elections.

The best approach to curbing the entrenched culture of violence is to build and sustain confidence in the electoral system by means of generally free and fair elections, an objective that has eluded the country. The reform of the electoral system, in line with domestic law and international conventions and standards, has enormous potential to bring about a credible and competitive electoral process that inspires confidence. At the heart of this effort is the urgent need to reform the constitutional and legal framework of elections in Nigeria. As the Nigerian Bar Association correctly emphasises in its submission to the Electoral Reform Committee, there is a strong 'nexus between legal framework and electoral impunity' (Quoted in Jinadu, Egwu & Ibeanu 2008, p 20).

The imperative for improvement arises not only from the need to reform the institutions and rules of competitive politics, it also emanates from the need to dilute the zero-sum approach to competitive electoral politics by making a number of innovative changes. These include the adoption of modified proportional representation, which will make the electoral system more competitive by better reflecting the relationship between the proportion of electoral votes won by a political party and its representation in the legislature. It also limits post-election tension by making it mandatory for political parties that secure at least 10 per cent of the national vote to be given Cabinet level and ambassadorial appointments, as a matter of entitlement, combating the abuse of power by incumbents (Jinadu, Egwu & Ibeanu 2008).

The Electoral Reform Committee (ERC) set up by the late President Yar'Adua in the aftermath of the fundamentally flawed 2007 elections addressed the concerns of Nigerians about reducing election-related violence. Some of the committee's recommendations in what is popularly known as the 'Uwais report' include the need for INEC to have structural autonomy in terms of its composition, administrative autonomy and funding; requirements for internal democracy within political parties for the selection of candidates; requirements for disputes to be resolved before any executive or legislator is sworn in and the adoption of modified proportional representation to improve diversity in representation in the legislature (ERC 2008).

Unfortunately, hopes for significant reforms have waned because of the fear of the PDP hierarchy that such reforms, which aim to create a level playing field, could undermine its overwhelming control of government both at national level and in more than two-thirds of the 36 states of the country. This is because the executive has rejected the committee's core recommendations, which deal with the institutional autonomy of INEC and the conclusion of election disputes before the swearing in of winners, making the capacity of civil society to mobilise citizens and put pressure in the legislature the only avenue for significant reform before the 2011 elections.



However, beyond reform there is an additional imperative to invest in attitudinal change to promote a culture of elections within the political class and Nigeria as a whole to keep faith with the letter and spirit of the law. Reforms of the legal framework are not enough if the values and culture of elections are not internalised. The fact that, despite the improvements contained in the Electoral Act 2006, the 2007 elections resulted in worse violence than those in 2003 makes it clear that observance of the law is more important than the detail of that law. There is a need for massive civic education and public enlightenment about the responsibilities and duties of the electorate to ensure credible elections and to encourage a culture that views elections not as a mechanical activity but as part of a wider and more continuous process of ensuring accountability in public life.

Responding to the challenge of electoral violence requires the establishment of a strong and credible platform of inter-party dialogue to promote the understanding of issues like a code of conduct for political parties, especially relating to non-violence in the electoral process. As in many struggling democracies the EMB has a statutory role to play in this regard, provided it is perceived to be independent and non-partisan. The Inter-Party Advisory Council (IPAC) established in February 2007 by INEC could provide this kind of platform, but it needs to be strengthened and engaged on issues of intensified dialogue among political parties, not only to promote a code of conduct but to draw and build consensus around guidelines that will enhance transparency in the nomination of candidates.

There is also a need to deal with the partisan political tendencies within the security forces, which are evidenced in the failure to apprehend and prosecute offenders, resulting in the entrenchment of a culture of impunity. The situation is becoming more critical in view of the widespread perception that the recruitment, maintenance and deployment of gangs and militias is being systematically entrenched in the political process. While the involvement of the military should be discouraged<sup>7</sup> the role of the police in making the electoral environment secure needs to be reviewed.

Although some international observer groups commended the police for their work during the 2007 elections there are still concerns that they were not impartial in dealing with all the political parties and that they were involved in unprofessional conduct such as intimidation of perceived opponents of the ruling parties and incumbents and in facilitating snatching/and or destruction of ballot boxes and forging of results.

It is, however, important to address other problems faced by the security agencies, particularly the police, in relation to election duties. For instance, there is the problem of the functional ineffectiveness arising from inadequate personnel, inadequate training and a lack of intelligence capability; inadequate transportation and the welfare of the deployed personnel. It is therefore important to invest adequately in training the police for election duties and identifying relevant state

and non-state actors who can provide the necessary assistance in this regard. It would also be useful to develop a code of conduct for the police, which should include guidelines for the conduct of police officers on election duty.

Considering the imperative of focusing on the root causes of election-related violence and the forces embedded within the Nigerian political economy that drive such violence, the material environment within which electoral democracy operates must be addressed. For instance, there is need to address the problem of youth unemployment which makes available 'a reserve army of the unemployed', from which gangs are recruited.

Finally, the civil society sector has an important role to play in the promotion of non-violence in the electoral process. Although the exact impact of the involvement of civil society organisations in campaigns aimed at non-violence and mandate protection in the 2007 general elections has not been measured, such campaigns brought to the fore the importance of engaging the key actors on the issue of non-violence.

A useful approach was that of the National Campaign on Reduction of Electoral Violence (NACOREV), implemented by IDASA in the 2007 elections. This was a systematic approach to tracking election violence and making the information available in the form of an early warning system to stakeholders, including the police hierarchy and the presidency, and creating channels for responding to issues of election-related violence as they developed (Marco 2007). Civic and political education in which electoral violence becomes a key concern, as well as strong domestic observation of elections, could contribute enormously to curbing the level of violence.

## CONCLUSION

A deep culture of violence and impunity entrenched in Nigeria's electoral process threatens the chances of democratic consolidation in the country. Experience since the return to civilian rule in May 1999 seems to suggest that incidents of violence have increased with every election. The concern is not simply that the votes do not count, it is that systematic deployment of violence by the ruling parties and incumbents and the violent response from the opposition interfere with the people's ability to exercise their right to vote.

The general perception is that the spectre of violence will be much greater in 2011. Widespread violence and a thoroughly discredited electoral process could provide an excuse for anti-democratic forces in the country, especially the military, to overthrow civilian rule and return the country to military dictatorship.

The threat to the survival of democracy in Nigeria becomes more real in light of the fact that its fragility stems from the inability to make state institutions accountable to the people, enhance effective service delivery and improve security and material conditions of existence for the majority. Moreover, democracy is

weakened when election-related violence ensures that those who emerge as elected public officials are not the popular choice of the people and do not have any notion of a contract with the people and the people have no compulsion to hold them accountable.

While it is necessary to curb the culture of impunity and enforce the rule of law in the existing legal and constitutional framework of electoral democracy it is critical to push through genuine and fundamental reform of the law and introduce adjustments that can moderate the nature of political competition, while, at the same time, structuring the behaviour of the actors. Moderating the cutthroat competition for power through the introduction of proportional representation, among other devices, could change the nature of electoral politics in Nigeria.

## NOTES

- 1 It is widely believed that the manifestos of the first registered political parties – the People’s Democratic Party, the All Nigeria People’s Party and the Alliance for Democracy – were written by one person.
- 2 Although the PDP has hardly met the requirements of transparency and openness, many of the opposition parties have simply selected their candidates through ‘consensus’ of party elders and godfathers.
- 3 Though it was the only party that even attempted to conduct primaries in accordance with its constitution.
- 4 In at least four states, namely, Rivers, Taraba, Imo and Niger, the party, for various reasons, did not allow the winners of the gubernatorial primaries to stand.
- 5 In the months and weeks leading up to the 2007 elections the judiciary inspired public confidence through landmark judicial pronouncements that checkmated the excesses, especially of the ruling PDP and the incumbent president, Chief Olusegun Obasanjo. The attempt to exclude the then vice-president, Alhaji Atiku Abubakar, which the Supreme Court pronounced illegal, is a good example of such a decision.
- 6 Political organisations of Northern ethnic minorities such as the Northern Non-Muslim League, the Middle Belt Zone League and the United Middle Belt Congress were born in the city of Jos.
- 7 The involvement of the army should be restricted to conveying election materials and officials to areas that are difficult to reach.

## **ELECTIONS AND CONFLICT IN ZANZIBAR**

**Bernadeta Killian and Richard Mbunda**

### **INTRODUCTION**

Electoral conflicts in pluralist Zanzibar seem to confirm the worries expressed by supporters of a single-party system in Tanzania to the presidential commission that was appointed in 1991 to seek views on changing the one-party system to a multiparty one. A total of 77.2 per cent of the population thought the reintroduction of a multiparty system would disrupt the peaceful fabric of Tanzanian politics.

Opponents raised two issues: firstly, they believed a multiparty system would usher in ethnic, racial, and other irreconcilable differences that would be inimical to national unity (URT 1991, pp 77-79). Secondly, they feared that a multiparty system would lead to the collapse of the union between Tanganyika and Zanzibar.<sup>1</sup> Those who pushed this view feared that an anti-union group might capture power in Zanzibar and undo the union (Killian 2005, p 132).

Despite these concerns three multiparty general elections have had various results. Tanzania Mainland has held three rounds of elections without significant conflicts. In Zanzibar electoral conflicts have become a dominant feature of political competition between the ruling Chama Cha Mapinduzi (CCM) and the main opposition party, the Civic United Front (CCF).<sup>2</sup> Paradoxically, while elections are supposed to allow for a predictable and peaceful change in government, elections in Zanzibar have not done this (Killian 2009). This chapter attempts to interrogate why elections have produced recurrent conflicts in Zanzibar. It also analyses internal and external efforts to resolve the electoral conflicts. Finally, the chapter recommends ways of resolving the conflict, drawing on best practices elsewhere.

### **DO ELECTIONS CAUSE CONFLICT?**

In this chapter we argue that it is not elections themselves that cause conflict but that there are underlying causes that lead to electoral conflict. We discuss the role of elections from the perspective of the elite theory of democracy. As

Dye & Zeigler (1980, p 5) point out, all political societies are divided into two classes, one consisting of those who rule, the other consisting of the ruled. This presupposes the existence of an oligarchy, which is a minority class (elites) that controls the lives and actions of the rest of society (Dye & Ziegler 1980, p 33). These elites have the power to determine societal values and also to protect their own interests. They perform all the political functions, monopolise power, and enjoy the advantages that power brings.

In a democratic setting elites control the political process that determines the acquisition of power within the polity. Elections are, therefore, channels that enable the elites to secure power by being elected as representatives. Thus representative democracy serves as a framework that creates an opportunity for elites to rule. Consequently, elections are seen as an unavoidable inconvenience if the elites are to gain legitimacy for their leadership (Dye & Zeigler 1980). Where elites representing two groups have incompatible goals it is likely that there will be conflict as each group tries to protect its interests.

In Zanzibar, although the conflict is waged between political parties (the ruling CCM and the CUF), elites and their interests are at the core of the dispute. While some members of the ruling party elite wish to entrench their interests, dominate political life and legitimise this domination through elections, those in the CUF fight to participate in decision-making and the allocation of scarce resources. Since, historically, the ideologies and goals of the two parties are incompatible the friction between them has affected democratic governance and institutions in Zanzibar.

## THE HISTORY OF POLITICAL ORGANISATIONS AND CONFLICT

The post-1992 electoral conflicts that have affected Zanzibar after each general election (1995, 2000 and 2005) are not new. Political associations were created in the country in the early 20<sup>th</sup> century on the basis of both race and class (Sheriff 2001, p 307).

At the heart of this division was the British colonial system, which was intended to divide and rule. Associations were created to protect the socio-political and economic interests of racial groups but also as a means of increasing their group cohesion and identity. The Arab Association was the first to be formed, in early 1900, to protect the interests of the declining land owning class (Sheriff 2001, p 307). The resultant political status of the Arab Association prompted the Indians to establish their own association. Thus, in 1910, the Indian National Association was formed to safeguard the interests of the merchant class in the isles (Mrina & Mattoke 1980, pp 40-50).

Two other important associations were created in the 1930s – the African Association, in 1934, and the Shirazi Association, in 1939.<sup>3</sup> Unlike the Arab and Indian associations, the African and Shirazi associations remained inactive during

the pre-World War II period. The hierarchy was Arabs at the top, followed by Indians, the Shirazi, and Africans at the bottom.

When the British wanted to grant independence to Zanzibaris in the 1950s they called for the formation of political parties that had to compete so that the winner could form a government. However, the early political and social organisations laid down the foundations for the configuration of politics in the isles during the struggle for self-rule. In December 1955 the Arab-based Zanzibar Nationalist Party (ZNP) was established, its roots in the Arab Association. While the Indian association was not transformed into a political party the ZNP faced opposition from the majority Afro-Shiraz Union (ASU), founded in 1957 when the African and Shirazi associations merged.

The merger of the Shirazi and African associations, which was negotiated in February 1957 by the then president of the Tanganyika African National Union (Tanu), Julius Nyerere (Lofchie 1963), was contingent on each association retaining its identity. It was not an unqualified success because the Shirazi considered the Mainland Africans to be job usurpers and agents of Christianisation (Mukangara 2000, p 42). Indeed, the Shirazi association initially contemplated joining the ZNP because many Shirazi felt closer to Arabs than to Africans (Mukangara 2000, pp 41-42). Thus, although the ASU's archrival was the ZNP, the friction between Africans and Shiraz persisted, threatening the stability of the party.

The relationship between the ZNP and the ASU deteriorated into violence after the defection of some members of the Shiraz Association from the ASU in 1959. The Pan-African Freedom Movement of East and Central Africa (PAFMECA) had to intervene to facilitate the settlement of the racial disputes (Lofchie 1963, p 202). With the assistance of PAFMECA, ZNP and ASU leaders united in the struggle for independence to form the Zanzibar Freedom Committee (ZFC).

Rather than bonding in the interests of a common cause the ZFC became yet another source of conflict as the parties manipulated it for their parochial ends (Lofchie 1963, p 202). In the end the Freedom Committee, instead of uniting all Zanzibaris against colonial oppression fractured the relationship between Africans and Shirazi within the ASU. According to Lofchie (1963, p 203) 'disagreements within the ASU over its participation in the Freedom Committee ultimately provoked a split in the party, which led to the formation, in November 1959, of the Zanzibar and Pemba People's Party (ZPPP).' The ZPPP was formed by the Shirazi group which had defected from the ASU, alleging that the ASU was heavily dominated by Africans of Mainland origin. The ZPPP later became the principal ally of the ZNP, with the two parties ultimately forming a coalition. After this defection the ASU renamed itself the Afro-Shiraz Party (ASP) in 1959 (Malyamkono & Kanyongolo 2003, p 135).

During the elections of January 1961 the three parties campaigned vigorously along ethnic and racial lines. The ASP edged ahead of the ZNP by one seat, while the ZPPP levelled the number of seats by allocating two of its three seats to the ZNP

and one to the ASP. The British colonial authorities then carved out a constituency in Pemba to break the deadlock. As the new constituency was in a ZPPP stronghold the ASP felt that the intention was to give the ZNP the victory (which had been won by the ZNP/ZPPP) when the election was re-run in June 1961.

The June 1961 election was followed by bloody riots that left 65 Africans and three Arabs dead (Ramadhani 2000). More than 350 people were injured and many were arrested. The violence prompted a call for a constitutional conference, which was held in Lancaster in 1962. While the ZNP/ZPPP coalition called for the immediate granting of independence, the ASP insisted on another election. The British created eight new constituencies, which gave the ZNP/ZPPP coalition another victory in the 1963 elections (Ramadhani 2000, p 60; Othman 2006, p 125). Despite the fact that the ASP had 54 per cent of the popular vote, it received only 13 of 31 seats (Ramadhani 2000). In December 1963 Zanzibar attained its independence under Sultan Jamshid, the leader of the ZNP/ZPPP. Claiming that the new coalition was illegitimate the African group launched a bloody revolution in 1964 that led to the ASP coming to power, the banning of all other political parties, and the suspension of the Constitution.

Following the 1964 revolution most people of Arab origin fled Zanzibar. The revolutionary government labelled the Pemba based ZPPP supporters traitors because of their strategic alliance with the Arabs. As a result, the first revolutionary regime, under President Abeid Amani Karume, excluded and persecuted ZNP and ZPPP supporters (Bakari 2001; ESAURP 2004). ASP leaders who took over after the assassination of President Karume in 1972 continued to exclude those with views that differed from their own. For example, Seif Sharif Hamad, a prominent politician from Pemba, was sacked from the government and the party in 1988 for his alleged bias towards Pemba. After leaving the CCM Hamad and others created an opposition party, the Civic United Front (CUF), when Zanzibar changed its Constitution in 1992 to allow for multiparty politics. By 1995, when the first multiparty general elections were held, the CUF had already gained strong support, particularly in Pemba, and became the principal challenger to the incumbent CCM.

## THE ROOTS OF THE CONFLICT

There is no consensus among the primary parties in the conflict about its root causes (Mbunda 2009). The CUF raised four issues in negotiations with the CCM held in 2008.<sup>4</sup> They were:

- the allegation that the 1995, 2000 and 2005 presidential elections were rigged and that the rigging was facilitated by the biased Zanzibar Electoral Commission (ZEC), which doctored the results to give CCM Zanzibar victories it did not deserve;



- the political playing field in Zanzibar was tilted in favour of the incumbent, the CCM;
- the revolutionary government was violating human rights, especially those of CUF supporters, who, the CUF claimed, had been discriminated against and threatened by, among others, government troops.
- that Pembans were not represented in the government simply because they supported the CUF.

The fourth complaint seems to be at the core of the dispute. Pembans have largely been excluded from vital political positions in the revolutionary council and the Cabinet. In addition, Pemba island has not enjoyed the same development programmes as its sister island, Unguja (TEMCO 2005, p 58).

After the reintroduction of multiparty politics in 1992 some Pembans protested about the unequal distribution of resources and employment in the public service, noting that only about 20 per cent of Zanzibar government officials came from their island (Mbunda 2009, p 5). Another important cause of the conflict is a deep-rooted historical mistrust between members of CCM Zanzibar and those of the CUF, whose identities are collapsed into parties which participated in the struggle for independence.

However, while the CCM is proud to be identified with the ASP, the CUF does not trace its origin to the ZNP/ZPPP alliance. Instead, it identifies itself as a party that represents hope for the people who were marginalised by the revolutionary regime (Bakari 2001; Rawlence 2005; Shivji 2006).

Mukangara (2000, p 45) observes that historical identities conditioned by current practices and the geographical polarisation of CUF and CCM supporters have contributed greatly to the persistent political conflict in Zanzibar. The areas in which the CCM and CUF won elections in 1995, 2000 and 2005 are more or less the same as those where the ASP and ZNP/ZPP alliance won in the pre-independence elections of 1957, 1961 and 1963. The violent competition for political power that was evident during pre-independence elections is still present today. Although not much can be said about the Arabs and the ZNP in the current political setting, the Shiraz identity and the ZPPP values still linger in the minds of some Zanzibaris. On the other hand, the CUF, with its demands for Pemba representation, is perceived as seeking to 'liberate' Pemba.

The CUF's intimate relationship with Pembans manifested itself during the third round of *Muafaka*<sup>5</sup> dialogue with the CCM, which collapsed in March 2008. Following the collapse of negotiations, a group of people from Pemba demanded to secede from Zanzibar and Tanzania. In April 2008 a delegation comprising some elders and CUF leaders met with the United States Ambassador to Tanzania, Mark Green. The elders requested that the US help them to gain independence from Zanzibar and Tanzania as it had helped Kosovo in its secession from

Serbia (Jadi 2008). They claimed that Tanzania had failed to ensure the safety of Pembans.

Furthermore, the historical mistrust between CCM Zanzibar and CUF supporters has brought many other issues to the fore. Unlike the CCM, which has embraced the 1964 revolution, the CUF has been accused of applauding political life in Zanzibar before the revolution (Mapuri 1996; TEMCO 2005, p 58). In addition, the CCM is concerned that the CUF might be harbouring grudges that it may use against CCM supporters once it gains power. CCM leaders also claim that the CUF's struggle to capture state power is ultimately aimed at reinstating Arab rule in the isles, particularly by returning land to its former Arab owners (Mbunda 2009; Killian 2008, p 100). On the extreme side, there were allegations in the lead-up to the 2005 general elections that the CUF had recruited youth in Pemba into the armed forces, hoping, eventually to capture power (Mbunda 2009). This mistrust informs the mode of democratic transition in Zanzibar.

## THE TRANSITION TO MULTIPARTY POLITICS

The transition to democracy in Tanzania was controlled from above (see Bakari 2001; Sansa 2004; Makulilo 2007). Bakari (2001), for example, has argued that the transition process in Zanzibar was deliberately retarded by the ruling elites to favour the CCM regime. For example, when multiparty politics was reintroduced Art 5 of the Constitution was slightly amended to declare that Zanzibar adheres to multiparty democracy, the rule of law and respect for human rights. However, the Constitution contains some provisions that are unfavourable to the operation of opposition parties. For instance, Art 34 (7) provides that 'when a candidate is declared by the Electoral Commission to have been duly elected in accordance with this Article, then no court of law shall have any power to inquire into the election of that candidate.' This provision has two implications: first, it gives the ZEC unlimited power, which impedes the development of a democratic political culture. It also prevents opposition candidates from seeking a legal remedy when they feel that the victorious candidate is not legitimate.

The ZEC, which was established during the transition, is not considered to be impartial (TEMCO 2005; Makulilo 2007). Critics have argued that the fact that its members are appointed by the president makes them dependent on the presidency for resources. Even though the *Muafaka II* reorganised the appointment process by involving members of the opposition in the electoral commission<sup>6</sup> the president still retains a great deal of influence over the ZEC in appointing five members, who must be loyal to him.

The president can also frustrate the opposition by not appointing people who are loyal to the opposition party. For example, when President Karume wanted to appoint CUF members to the ZEC he asked the party's leaders to submit a list of more than two names. The CUF submitted the names in order of preference but,

according to the CUF's secretary general and Zanzibar presidential candidate in all three elections, Seif Sharif Hamad, to the party's dismay, the two who were selected were chosen from the bottom of the list (Mbunda 2009). The government has used the ZEC's dependence on it for resources to influence the functioning of the commission. The ZEC has also relied on government employees as returning officers and assistant returning officers during elections (Mbunda 2009).

The crafted transition process has also given the CCM government an unprecedented advantage over the opposition parties because of what Makulilo (2007) calls an 'informal fusion' between the party and the state. According to Makulilo (2007, pp 122-23), the amendments to the legal and institutional framework should conform to the multiparty democracy. However, the political system has remained intact because of the persistence of an informal 'partnership' between the ruling party and government departments such as electoral management bodies, the security forces, the public service, the House of Representatives, the executive, the local government, civil society, the business community and the media.

## THE ROLE OF ELECTIONS

Given the mistrust that is rife between the CCM and the CUF Zanzibar has not experienced independent or peaceful elections (Killian 2008, p 116). While CCM Zanzibar has used elections to maintain and legitimise state power the CUF has tried to use them to gain state power. Thus, in all stages of the electoral process each of the two parties has attempted to manipulate the rules to gain an advantage over the other. For example, both parties have used the registration process as a means to exclude some potential supporters of the other party (TEMCO 2005; Killian 2008). There have also been allegations that both parties have attempted to import illegal voters to the isles, or even to register underage voters so as to maximise their victory (TEMCO 2005; Killian 2008).

While the CUF has tried to manipulate the registration process the CCM has an additional advantage in other stages of the electoral processes. One of these is manipulating the voting process, using double voting. In the 2005 general elections, for example, TEMCO (2005) reported that military and security personnel, who are under the CCM government, were ferried from one voting station to another. The counting process and announcement of results has been dominated by controversy and disagreement. It is claimed, for example, that the CUF won the 1995 presidential election, but the ZEC announced Salmin Amour of the CCM as the winner (see, eg, Anglin 2000; Donor countries 1995).

In the 2000 general elections the ZEC took the ballot boxes away and kept them for more than five days before the votes were finally counted (TEMCO 2000). Despite the fact that the elections were clearly rigged CUF members and supporters have had no legal remedy and the armed forces are often deployed to

crack down its supporters if they try to mobilise civil disobedience. The result is that the CUF opts for a confrontational approach to pressure the CCM to create a level playing field and to share power.

## CONFLICT RESOLUTION

Since the disputed 1995 general elections both external and internal actors have tried to help the parties reach a settlement. The Commonwealth Secretary General, Chief Emeka Anyaoku, and his special envoy, Moses Anafu, with the assistance of other donors, played an overt role. Although Chief Anyaoku managed to secure the signatures of both the CCM and the CUF (to produce the *Muafaka* Accord I in June 1999) after arduous rounds of negotiations, the Commonwealth could not resolve the conflict.

There are three reasons for this. Firstly, Chief Anyaoku failed to bring the parties together to negotiate directly (Malyamkono & Kanyongolo 2003, p 176). Instead, he and Anafu worked as communication facilitators, meeting the conflicting parties separately and crafting settlement solutions. This approach deprived the parties of a chance to examine the problems and explore possible solutions by themselves. Moreover, the 1999 *Muafaka* Accord I did not deal with core questions such as who would rule Zanzibar in the face of the mistrust that existed between the parties. The CCM later claimed that the first accord was externally imposed and accused the Commonwealth of being partisan and an agent of donor countries (Malyamkono & Kanyongolo 2003, p 176). For its part, the CUF felt that the shuttle diplomatic approach distorted the messages that one party conveyed to the other.

Secondly, the Commonwealth mediators did not work to transform the relationship of the parties. They believed the most important priority was to convince them to reach an agreement on acceptable terms. Thus, by the time the agreement was ready to be signed the behaviour of the parties had not yet been transformed. Anglin (2000, p 55), for example, points out that President Amour continued to act oppressively against the CUF when he instructed the police to summon Seif Hamad for interrogation in July and August 1998. As a result there was still mutual distrust at the time of the signing of the agreement, making it difficult to implement.

The third weakness was that the Commonwealth had no way of enforcing the agreement in the face of the absence of goodwill. Although the agreement did not touch the core of the dispute, it contained a few proposed reforms that might have helped advance the democratic process but it was left to the conflicting parties to implement it. More specifically, it was left to the Revolutionary Government of Zanzibar (Anglin 2001; Bakari 2001). Although a special advisory organ called the Inter-Party Committee was established, it had no constitutional or legal status.

There have also been internal efforts to resolve the conflict using home-grown

solutions. After another disputed general election, in November 2000, which was followed at the end of January 2001 by mass demonstrations by the CUF and violent confrontations between CUF supporters and the police, the parties endeavoured to find an amicable and acceptable solution. An agreement reached in 2001 and commonly referred to as the *Muafaka II*, set new rules for competition and to improve future interactions between the parties. The accord was also supposed to set the rules to guide the 2005 general elections. However, the agreement did not bring a comprehensive resolution to the conflict because it was perceived as a 'cease fire', intended to halt the violent acts of January 2001 rather than to seek for a durable solution (Heilman 2004, pp 56-57). When the *Muafaka II* agreement eventually collapsed after the 2005 general elections the parties went back to the negotiation table. However, these negotiations, too, collapsed, in March 2008, with no solution being found to the pressing problems.

The reason for the collapse was the refusal by CCM Zanzibar to acknowledge the existence of the conflict, raising issues about its sincerity (Bakari 2001; Mbunda 2009). In addition, there were deep disagreements within the two parties. While members of the CCM from the Mainland were inclined to accept that power should be shared with the CUF, members of CCM Zanzibar were not prepared to do so (Bwire 2008; Kubenea 2008). Recently, however, there has been discussion about the introduction of a powersharing agreement before the elections scheduled for October 2010. These, like previous multiparty elections, will be a litmus test of whether or not lasting peace will indeed prevail in Zanzibar.

## LOOKING TO THE FUTURE

As the discussion has indicated previous negotiations have failed to resolve the deep-rooted historical mistrust between the two conflicting parties. However, at a meeting held on 5 November 2009 between outgoing President Amani Abeid Karume and CUF secretary General Hamad Seif Sherrif another agreement was reached, known in Kiswahili as *maridhiano*. The *maridhiano* process and a referendum scheduled for the end of July 2010 may offer some hope for a settlement of the conflict in Zanzibar.

Since the November meeting the two parties have agreed to resolve their differences and create a constitutional framework for the formation of a government of national unity (GNU) after the October 2010 elections. In January 2010 Abubakari Khamis Bakari, a CUF member, and leader of the opposition in the House of Representatives, moved a motion calling for a Bill providing for the formation of a GNU. A referendum Bill was tabled and unanimously endorsed by the House of Representatives on 30 March 2010. It was later signed by the Zanzibari president and a national referendum is scheduled to take place on 31 July 2010 in which Zanzibaris will be asked to approve a GNU.

Unlike the situation with previous series of negotiations, for the first time in Zanzibar's political history the people are directly involved in a decision which may lead to the resolution of a long-time political conflict. While the future remains unpredictable, the current agreement offers another opportunity for conflict resolution in Zanzibar.

It is possible that, in an attempt to heal its historic rifts, Zanzibar may have to emulate South Africa and establish a Truth and Reconciliation Commission. If they are to be able to forgive each other Zanzibaris need an opportunity to examine the struggle for independence and the revolution and the injustices committed after it and after the reintroduction of multiparty politics. This healing process must be institutionalised to make all Zanzibaris feel its impact and to participate in the process. Agreements that are not institutionalised may not guarantee Zanzibar a durable solution.

## CONCLUSION

Electoral conflict in Zanzibar is symptomatic of deep social cleavages based on race and regional (Unguja and Pemba) identities. Political parties are, therefore, formed and organised within these politicised identities. The cleavages have been deepened by political competition since the struggle for self-rule and the revolution that followed. Thus, there is deep-rooted mistrust between the politicised and racially based disputing groups.

No significant steps were taken to resolve these social cleavages during the struggle for independence or after the revolution – an attempt was only made when they emerged in the new multiparty era (1992). As this chapter has shown, previous efforts to resolve the conflict through third parties and direct negotiations between the antagonistic parties failed to address its root causes. The effectiveness of the November 2009 agreement and the results of the forthcoming referendum may, in due course, indicate the likelihood of greater success in the future.

## NOTES

- 1 Zanzibar is a semi-autonomous administrative entity/state which became part of the United Republic of Tanzania after its union with Tanganyika in 1964. It comprises two main islands, Unguja and Pemba. Although Zanzibar is not recognised internationally, it has three organs of state – an executive, a judiciary and a House of Representatives – and its leader has the title of president. Zanzibaris vote for their president and members of the House of Representatives for a five-year term and they also vote to elect the Union president and members of the Union Parliament in their constituencies.

- 2 These parties are registered and contest elections both at the union level and in Zanzibar. With reference to Zanzibar, CCM is unofficially referred to as CCM Zanzibar, and CUF is unofficially referred to as CUF Zanzibar.
- 3 Africans originated from people who either came to the islands as slaves or as manual workers from the Mainland and neighbouring countries such as Malawi and Mozambique. The Shirazi are believed to have descended from intermarriage between Persian Gulf traders and indigenous Zanzibaris as early as the 9<sup>th</sup> and 10<sup>th</sup> centuries (see Mukangara 2000).
- 4 The agenda for the negotiations was proposed by the CUF and accepted, with minor amendments, by the CCM (see CUF 2008).
- 5 *Muafaka* is a Swahili word that stands for 'accord' or agreement.
- 6 It was agreed in *Muafaka II* that of the seven members of the ZEC two should come from CCM and two from the CUF. The ZEC chairperson should be a qualified person appointed by the president as he/she considers necessary. One member is appointed by the president from among the judges of the High Court and one is appointed by the president as he/she deems appropriate.



## **THE 2007-2008 ELECTION CONFLICT IN KENYA**

### *Reflections on the Independent Review Commission*

**Jørgen Elklit**

#### **INTRODUCTION**

The simultaneous presidential, parliamentary and civic elections held in Kenya on 27 December 2007 were disastrous. This was because many of the politically best established and well-known losers did not accept their electoral fate – as they probably would have done if they had believed the results to be credible. In addition, serious election-related violence erupted – in some places even before the results were known. However, most of the violence occurred after the official announcement of the winner of the presidential contest, President Mwai Kibaki, and the surprisingly low-key swearing-in ceremony immediately thereafter.

Estimates of the number of people who died in the violence oscillate between 1 000 and 1 500, the number of rapes and other forms of harassment is unknown, and the number of internally displaced persons was somewhere between 300 000 and 500 000. This tragic violence was greeted with disbelief around the world as Kenya was considered by many to be a reasonably well-functioning country, where democracy was taking root – as demonstrated by the 2002 general elections and the conduct of the constitutional referendum in 2005. Many also saw it as having a well-functioning economy, with substantial GNP growth, and as a regional economic locomotive, which meant that developments there were expected to have a positive impact on developments in the rest of the East African region.

The result of the elections was also a blow to the donor community, who made substantial contributions which were coordinated by a special unit under the United Nations Development Programme (UNDP). The intention of the

UNDP and the donors had been to demonstrate to Africa – and in particular to East Africa – what a successful and well conducted election looked like. This was not to be, as the election disaster left Kenya in disarray and disrepute and demonstrated the hollowness of the country's democracy and the instability of the Kenyan state. Although a few observers and analysts had pointed to the possibility of such an outcome nobody listened to them.

Kenyans were unable to find a way out of this political crisis and did not want to accept the first attempts at international mediation. It was only when a small group of eminent Africans, spearheaded by Kofi Annan, former United Nations Secretary General, on behalf of the African Union, came into the picture that solutions to the various problems were identified and accepted by the parties to the conflict (for an overview of this process, see Khadiagala 2008). The key agreement was only hammered out in the very last days of February 2008, two months after election day.

This chapter focuses on one key element in the various attempts to settle the crisis, namely the analysis of the electoral process followed by suggestions for remedies in the future conduct of elections in Kenya. This work took place within what was officially known as the Independent Review Commission (IREC), but became popularly known as the Kriegler Commission after its chairperson, retired South African Constitutional Court Justice Johann Kriegler. The six other members were four Kenyans, two from each side of the political divide, an acting Tanzanian judge and a very experienced electoral advisor from Argentina, who had previously been the head of the UN Electoral Assistance Division. The author of this chapter was secretary to the commission.<sup>1</sup>

The IREC was mandated to:

- analyse the constitutional and legal framework for the conduct of the elections;
- examine all aspects of the preparedness of the Electoral Commission of Kenya (ECK) and its method of conducting the elections;
- examine public participation in the electoral process;
- investigate all relevant aspects of the 2007 electoral operations;
- investigate the vote counting and tallying for the entire election, with special attention to the presidential elections, to 'assess the integrity of the results and make recommendation for improvements ...';
- 'assess the functional capacity of the ECK and its capacity to discharge its mandate';
- 'recommend electoral reform, including constitutional, legislative, operative and institutional aspects, as well as accountability mechanisms for ECK commissioners and staff pertaining to electoral malpractices, in order to improve future electoral processes'.

*The Kenya Gazette* 14 March 2008, Notice No 1983

IREC – formally a commission of inquiry – was not asked to establish who had actually won the presidential race, even though that question was probably what triggered the violence. The drafters of the brief understood how difficult it would be to answer that question and any attempt to declare who should ‘rightfully’ have won would, in all likelihood, have re-ignited the political and ethnic violence, especially if it turned out to be Raila Odinga, the opposition candidate. But the key point for the drafters of the brief – and for IREC – was that it would not be possible to establish without doubt who should have been declared the winner (for reasons which will be developed below).

The picture painted by the local and international media as well as by international and domestic election observers and monitors was that the elections – and in particular the presidential election – were marred by irregularities, rigging, and fraud, mainly committed by the Party of National Unity (PNU), probably in collaboration with some ECK staff at the National Tallying Centre in Nairobi and/or ECK commissioners who were guilty of some kind of complicity. Therefore, the outburst of popular dissatisfaction because of the loss by the expected winner was seen by many as understandable, probably even justifiable.

The course of election-related events in Kenya in late 2007 and early 2008 has triggered a considerable amount of writing. At least three academic journals (*Journal of East African Studies*, *Journal of African Elections*, and *Journal of Contemporary African Studies*) have published special issues dealing with various aspects of the political and electoral developments. There is no doubt that the subject will continue to raise contentious issues among scholars, election advisors, and other experts.

One of the key issues is how to separate what happened during the electoral process from more general political and social developments, if, indeed, these topics can be kept apart. Among those who argue that all these events are part of the same overall development are Branch & Cheeseman (2008), who see the elections as the immediate trigger of the crisis, but argue convincingly that its roots are to be found within three broad historical trends, namely, elite fragmentation, political liberalisation, and state informalisation.<sup>2</sup>

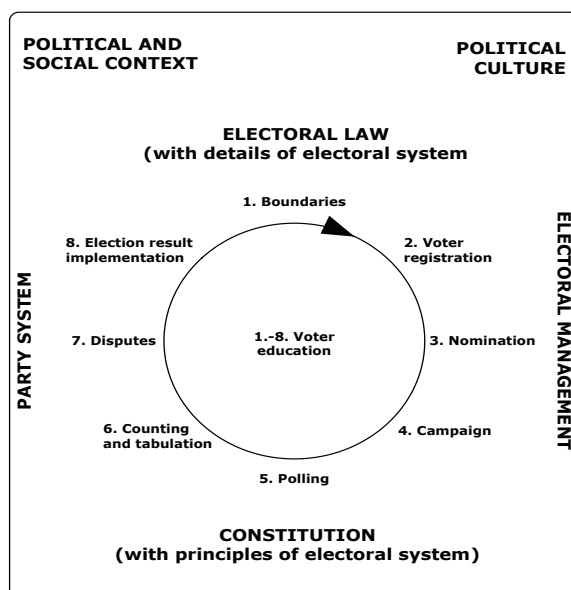
This approach fits well into an analytical framework which one can call the electoral-cycle approach. This approach has been developed for the general analysis of electoral processes and has (in slightly different forms) become more or less common ground for the study of electoral processes, not least the processes of democratic transition.<sup>3</sup> However, the framework, as applied here, contains three elements which allow a more comprehensive understanding of the degree to which the electoral process is embedded in a set of important institutional and contextual factors. These are (see figure below):

- The nine iterative steps of the electoral process in its strictest sense (the circle in the middle). Step 9 (voter education) is – at least in

principle – linked to all the other eight steps, which is why it is placed within the circle.

- The four institutional factors located around the electoral process circle, that is, the electoral administration system (or electoral management body – EMB), the constitution, the electoral law, and the party system. The EMB also encompasses a variety of regional or international assistance with the running of the elections, whether fully integrated in the EMB or not.
- The political, cultural, and social factors placed in the upper corners of the square. These broad factors reflect key characteristics of the society under scrutiny and the on-going development of these characteristics. No election can be fully understood without a good grasp of these factors.

Branch & Cheeseman (2008; see also Smith 2009) provide a useful account of relevant elements in the social and political development of Kenya. They also put the often-cited ethnic factor into proper perspective by drawing on their insights into elite fragmentation over recent decades, demonstrating convincingly that it is too simplistic to refer only to Kenya's ethnic composition (and the relationships between politicians, political parties, and ethnic groups) as the primary cause of the crisis. Behind the use of the ethnic factor lies elite fragmentation as it has developed, and which caused some elite segments to behave differently in 2006 and 2007 from the way they might otherwise have done (for a useful survey of the relationship among ethnic groups and parties, see, eg, Elischer 2008; Leonard, Owour & George 2009, 79ff).



The various elements in the figure – whether electoral process steps, key institutional features or basic political, social or cultural factors – reflect, to a very considerable degree, the various areas of investigation, examination, analysis, assessment, and recommendation contained in the IREC brief. It is, therefore, tempting to use the elements of the figure to structure the presentation and organisation of IREC's key findings, suggestions, and so on, as that will allow for a more systematic understanding of what went so awfully wrong during the electoral process in Kenya, before, as well as on (and after) 27 December 2007.

This approach will also support a key point of this exposition, which is that no individual factor can be singled out as responsible for the failure to conduct acceptable elections, as all nine + four + two (three) elements interacted in complicated ways, thereby contributing to the eventual political crisis. This chapter isolates various factors that ignited the crisis, including background and institutional factors.

## **BACKGROUND FACTORS**

The political and social context of the December 2007 elections has already been referred to in general terms. The difficult introduction, between 1991 and 1992, of a fully-fledged multiparty democracy and the remarkable ethnic composition, with the largest ethnic group consisting of only slightly more than 20 per cent of all Kenyans – and the clear pattern of parties being formed and appealing for support on the basis of ethnicity – created a situation with a substantial number of challenges for the harmonious development of an electoral, multiparty democracy.

The political culture as it has developed suffers from a number of problems. Among the most important are a culture of impunity – the 'Big Man' syndrome common to many African countries – and strong elements of neo-patrimonialism.

## **INSTITUTIONAL FACTORS**

The electoral management body was the Electoral Commission of Kenya, with 22 members, of whom as many as 19 had only been appointed shortly before the elections, and by President Kibaki without inter-party consultation. Many saw this as a conscious violation of the 1997 Interparty Parliamentary Group (IPG) agreement and it contributed to the ECK being considered by many – not only the opposition Orange Democratic Movement (ODM) supporters – as biased in favor of the incumbent president.

Some of the new members of the ECK lacked electoral and other relevant experience, so it is easy to understand that many claimed that the commission was not, in 2007, a legitimate body to organise and arbitrate election-related issues. The chairman, Samuel Kivuitu, was, however, experienced and professional; his

eventual re-appointment as chair was seen – not least by the donor community – as a strong guarantee that professionalism would prevail in the end and that the electoral process would be run as competently and unproblematically as it was during the 2005 general elections and the 2005 referendum. However, most observers had forgotten that there had not been the same adversarial political climate during these two events as there was in 2007. At the margin of the ECK donors established an electoral support coordinating unit.

Kenya's Constitution had been debated for a number of years because it reflected a seriously flawed political system. One element that took on some symbolic meaning was the silence of section 33 on the way the 12 nominated seats were to be filled. The ECK was not able to explain why seats were differently allocated after the 2007 parliamentary election from the way they were allocated in 1997, apparently using a formula that had not been used before in Kenya's electoral history. The Constitution limits the number of ordinary constituencies to 210. This fixed number did not make it easier to develop a constituency structure that reflected the current residential pattern in the country.

The electoral law itself is not in good shape. Only one full copy exists (in the Parliamentary Library) and it is therefore difficult to provide those who are interested with a complete and comprehensive legal text. The manuals allocated to the various levels of election administrators were also lacking in various respects – in particular because the law was changed after they had been printed – a last-minute change that permitted voters who had registered more than once to vote, even though the prior provisions had made doing so a serious offence punishable by a heavy fine and/or imprisonment. This change was extremely ill timed and, because of communications difficulties, probably poorly implemented.

The party system is relevant to the understanding of any election. This is particularly so in the case of Kenya, where the fragility of political parties contributed to the problems. The weak support base of the parties – with no formal party membership (or only a very narrow membership base) – meant that it was easy for those interested (and wealthy enough) to consider standing to convince those present at nomination gatherings to nominate them. The fluidity of the party concept and the relationship between ethnicity and party among grass-roots supporters, as well as among some of the new candidates standing for election, did not make it easier for voters to find a party that represented their ideology and policy vision – even though it has been demonstrated convincingly that government performance and issues also influenced the electoral outcome (Elischer 2008; Gibson & Long 2009).

## **THE NINE STEPS OF THE ELECTORAL PROCESS**

### **Boundaries**

This first step in the systematic analysis of an electoral process is boundaries,

because well-defined constituency and polling district boundaries must be in place before anything else, since they play a role in the subsequent process. This was, by and large, the case in Kenya, although there had been attempts to have a new constituency delimitation conducted before these elections, particularly because of the differences in the sizes of constituencies. The largest constituency had 20 times as many registered voters as the smallest, which many saw as problematic – and detracting from the legitimacy of Parliament – especially as it was Parliament which had previously blocked the ECK's attempt to revise, at least to some extent, the structure and size of constituencies.

### **Voter registration**

The second step, and one of the most important elements of the electoral process, from a democratic as well as an administrative point of view, is voter registration, the means by which those who are eligible become voters and full citizens of a country. If the voter registration system does not include all (or almost all) of those who are entitled to appear on the voters' roll, the entire system will lack democratic legitimacy. Registration in most African countries is problematic, as it is not unusual for as many as 30-35 per cent of the voting-age population to fail to register.<sup>4</sup>

Kenya combines a system of continuous registration (through the so-called *Black Books* kept at the constituency registration offices) with registration drives when an election is imminent. The constituency registration offices do not function well when it comes to tidying and updating the voters' register. One convincing estimate is that about one million names on the register in 2007 belonged to people who had died (IREC 2008, pp 279-81).

The under-registration of young people and of women affects not only Kenya but Africa in general, although this is a poor excuse for not ensuring that potential voters are on the register on election day. It was interesting to note that in the recent by-elections in two constituencies, Bomachoge and Shinyalu, the number of registered voters had declined considerably compared to that in December 2007.

### **The nomination process**

The nomination of candidates for parliamentary and civic elections was fraught with problems, largely because of the low level of institutionalisation of political parties. Candidates whose preferred party declined to nominate them continued to seek nomination by other parties, often distributing cash in their attempts to convince those present of their suitability as candidates. This was possible because most parties were weak and had weak organisational structures, few, if any, card carrying members, and not always well-defined and regulated nomination procedures. The consequence was that in many of the constituencies there were large numbers of candidates, who, given the spread of votes, had little chance of winning.



## **The campaign**

According to most election observer mission reports, election campaigning went reasonably well, particularly because candidates generally preferred to campaign in areas where the general political mood was, for a variety of reasons, favourable to them. However, when it comes to the assessment of media coverage certain biases are uncovered in the reports (eg, the EU Observer Mission Report, pp 24-26). The EU Observer Mission reports make it clear that neither the Kenyan Broadcasting Corporation nor the ECK fulfilled its legal obligation to ensure free airtime or a reasonable degree of balance in the news coverage (EU OM 2008, p 25; see also IREC 2008, ss 5.7 and 5.8). It is also evident that the campaign period was characterised by a considerable amount of hate speech, primarily in vernacular language radio programs.

## **Polling**

According to both domestic and international observers polling went reasonably well, but some constituencies – and, in particular, a number of polling stations – had an unusually impressive turnout of voters. Given the many names of dead voters on the register – spread all over the country – there should not have been a turnout of more than 90 per cent but that was the case in many polling districts, some even recording exactly 100 per cent. These unlikely figures were regarded by the IREC as indicative of poor administration and possible ballot-box stuffing. A returning officer from a constituency in Western Kenya explained to the IREC that the turnout of exactly 100 per cent in some polling districts was the result of the ‘impressive political interest in those districts’.

## **The vote count**

A major concern for IREC was the process of counting and tabulating votes, with the ODM maintaining that members of the ECK staff and commissioners, in some kind of illicit co-operation with the PNU, had extensively manipulated the process at the National Tallying Centre in the Kenyatta International Conference Centre (KICC) in central Nairobi.

Three elements are worth noting.

Firstly, a key issue in all complaints about the election was the surprising discrepancies in voter turnout for the presidential and the parliamentary elections in some constituencies. In Kirinyaga Central, to take just one example, 80.4 per cent voted in the presidential contest according to official ECK figures, but only 64.5 per cent in the parliamentary election (see Table 1).

Many, including leading civil society organisations and the ODM itself, in their submissions to IREC, saw this as evidence that at the KICC about 11 000 votes had been added to the vote for Kibaki, who, in that constituency, received 52 886 votes of a total of 55 061. Such turnout differentials are very unlikely in simultaneous elections.

TABLE 1\*

<b>ELECTORAL COMMISSION OF KENYA</b> <b>27TH DECEMBER 2007 GENRAL ELECTION</b> <b>PRESIDENTIAL ELECTION RESULTS PER CONSTITUENCY</b>			
CONSTITUENCY: 090 <b><u>KIRINYAGA CENTRAL</u></b>			
CANDIDATE'S NAME	POLITICAL PARTY	VOTES SCORED	% VOTES SCORED
KIBAKI MWAI	PARTY OF NATIONAL UNITY	52,866	96.01 %
KUKOUBO NIXON JEREMIAH	REPUBLICAN PARTY OF KENYA	8	0.01 %
MATIBA KENNETH STANLEY NJINDO	SABA SABA ASILI	9	0.02 %
MUSYOKA STEPHEN KALONZO	ORANGE DEMOCRATIC MOVEMENT- KENYA	53	0.10 %
MWANGI PIUS MUIRU	KENYA PEOPLE'S PARTY	37	0.07 %
NGACHA JOSEPH KARANI	KENYA PATRIOTIC TRUST PARTY	130	0.24 %
NGETHE DAVID WAWERU	CHAMA CHA UMA PARTY	2	0.00 %
ODINGA RAILA AMOLO	ORANGE DEMOCRATIC MOVEMENT	580	1.05 %
RAJPUT NAZLIN OMAR FAZALDIN	WORKERS CONGRESS PARTY OF KENYA	3	0.01 %
<i>Total Votes Cast: 55,380      Valid votes: 55,061      Registered Voters: 68,878</i> <i>Rejected Votes: 319      Percent Voter Turnout: 80.40 %</i>			

Source: Official ECK Release printed 9 January 2008

\* The tables replicate exactly those provided by the ECK, including spelling errors

TABLE 2

ELECTORAL COMMISSION OF KENYA			
GENRAL ELECTION- 27 <sup>TH</sup> DECEMBER 2007			
PARLIAMENTARY ELECTION RESULTS			
CONSTITUENCY: 090 <u>KIRINYAGA CENTRAL</u>			
CANDIDATE'S NAME	POLITICAL PARTY	VOTES SCORED	%VOTES SCORED
ABUBAKAR HASIA IRERI	ORANGE DEMOCRATIC MOVEMENT	219	0.50
DICKSON DANIEL KARABA	PARTY OF NATIONAL UNITY	17,151	39.02
GATIMU PAULINE WANJIKI	NEW SISI KWA SISI KENYA	536	1.22
GICHUKI EVAN MUCHINA	FARMERS PARTY	126	0.29
GITURE ERIC KARANI	THE NURU PARTY	474	1.08
KAGONDU ANDREW MURIITHI	AGANO PARTY	226	0.51
KAPONDA DISIDERIOUS	KENYA NATIONAL DEMOCRATIC ALLIANCE	372	0.85
KARIMI DISHON KIRIMA	VIPA PROGRESSIVE ALLIANCE	336	0.76
KARIUKI JOHN NGATA	FORUM FOR THE RESTORATION OF DEMOCRACY – ASILI	17 219 (WINNER)	39.17
KERIRI JOHN MATERE	SAFINA PARTY	7,298	16.60
KINYUA EDWIN MURIITHI	KENYA NATIONAL CONGRESS	9,239	21.02
MBUI NICHOLAS KINYUA	DEMOCRATIC PARTY OF KENYA	948	2.16
MWANGI LAWRENCE RURIGE	CHAMA CHA MWANANCHI	199	0.45
MWANIKI HENRY MURUIUKI J	MAZINGIRA GREENS PARTY OF KENYA	1,855	4.22
NJERU SAMUEL KAGOIYO	NATIONAL LIBERATION PARTY	257	0.58
NJIRU JAMES NJAGI	KENYA NATIONALIST PEOPLES DEMOCRATIC PARTY	309	0.70
NJOGU RICHARD MUGO	FORUM FOR THE RESTAURATION OF	24	0.05
	DEMOCRACY FOR THE PEOPLE		
THOMAS RAYMOND KARINGA	UNITED DEMOCRATIC PARTY OF KENYA	309	0.70
Total Votes Cast: 44,446		Valid votes: 43,957	
Rejected Votes: 489		Registered Voters: 68,878	
		Percent Voter Turnout: 64.53%	

Source: Official ECK Release Printed 9 January 2008

It appeared to the IREC that part of the reason might lie in the figures being incorrectly calculated. A comparison of the figures in the presidential and parliamentary elections in Kirinyaga Central (see Table 1) is illustrative, and there are several other constituencies in which the same picture emerges.

Secondly, in the case of Kirinyaga Central it was decided to look at all the Form 16s, which were used to transmit polling station results to the constituency tallying centre. After the results were entered in a simple spreadsheet IREC realised that the official ECK figures for the two elections were wrong. The published figures for the total number of votes cast (ie, the figures on the preceding page) were too high in the case of the presidential and much too low in the case of the parliamentary election. The number of votes recorded for 17 of the 18 parliamentary candidates and eight of the nine presidential candidates was also wrong. Kibaki had actually been allocated *fewer* votes than he should have had<sup>5</sup> – and in the parliamentary race, the declared winner actually only came second (IREC 2008, pp 320-321). At the IREC hearings the returning officer from Kirinyaga Central stated officially that he accepted the correctness of IREC's findings.

Similar problems were found in most of the other constituencies scrutinised in this way, so it is very clear that the published ECK official elections results were not genuine.<sup>6</sup> The important conclusion, however, is that such problems were not only found in constituencies where Kibaki had massive support, they also emerged in constituencies where there was strong support for Odinga (and elsewhere as well), so the obvious conclusion is that the suspicious turnout differentials were not caused by Kibaki- or PNU-biased ECK staff or commissioners they were due to poor working conditions at constituency tallying centers, insufficient staff training, the late decision by the ECK not to use the computers (and software) obtained primarily, and at great cost, for this purpose, and probably also to sloppy work by some returning officers or their deputies. IREC was only able to scrutinise a sample of constituencies in this manner as it is a time-consuming operation, but it arrived at the conclusion that:

... conduct of the transfers from polling stations to constituencies, the tallying in constituencies, the transfer of constituency-level presidential election results and the tallying at national level is – generally speaking – of incredibly low quality; it is actually not acceptable ... This scrutiny of the handling of results-transfers and tallying has not indicated any particular or discernible party bias in the demonstration of incompetence by constituency tallying centre staff, by national tallying centre contract staff at KICC, or by ECK permanent staff or commissioners.

IREC 2008, pp 127-129

Thirdly, other counting and reporting related problems also contributed to the confusion, which was noted by all observers of the process.

- Reporting from some constituencies was late, and the debate over possible patterns in these delays has been intense.<sup>7</sup>
- The fact that some returning officers did not abide by the very clear instruction that they should *never* release partial results and that total presidential results should only be considered as provisional<sup>8</sup> obviously contributed to misperceptions and confusion, even within the ECK itself.
- Some partial results even made it to the KICC, where some were being updated on paper forms, which gave the impression that ‘corrections’ (read: illegal changes) were being entered in the ECK’s results computer.<sup>9</sup> It became evident during the IREC hearings that there was a remarkable lack of understanding of the need for officially and transparently correct results (both for the presidential and the parliamentary elections).
- The European Union Election Observation Mission (EU EOM) did not fully identify all the above-mentioned problems related to counting, tallying and publication of results, which, in itself, contributed to setting the tone of the preliminary as well as the final EU EOM reports.
- KODEF – the umbrella organisation of domestic monitors – also did not understand the nature of the various mistakes made by the ECK. The full KEDOF report is, therefore, of little value – and it only appeared almost a year after the general elections.

### Complaints process

The time frame allowed for preparing election-related complaints and the brief time frame for personally serving the winners contributed a great deal to the level of anger and frustration, particularly because the courts took a very legalistic approach to the issues before them, even in highly suspicious cases, thus confirming the low level of trust Kenyans have in their courts. It was also telling – but surprising for observers – that Odinga was reluctant to bring his complaints to court, as provided for in the electoral law.

### Implementation of results

The implementation of the results was rapid, with Kibaki being sworn in shortly after the ECK had declared him the winner, by a few percentage points, over Odinga. This surprisingly speedy procedure contributed to an increasing level of suspicion that the election had been rigged.

## **Voter education**

Considerable effort and expenditure was put into voter education, though it was not clear why this should have been considered to be necessary in view of the fact that the country had held elections in 1992, 1997 and 2002, a considerable number of by-elections in constituencies across the country, and the 2005 referendum.

## **LATER DEVELOPMENTS**

One of IREC's many suggestions was that in view of the level of incompetence and lack of integrity shown by the ECK the body should be dismantled. It was eventually replaced by a nine-member Interim Independent Electoral Commission (IIEC), which is now Kenya's functioning EMB. The body had to be interim because the constitutional reform process for the establishment of a new body had not been completed. The proposed constitution of Kenya (6 May 2010) lays down that there will be an Independent Electoral and Boundaries Commission but the constitution can only be implemented if it is approved in the referendum scheduled for August 2010.

The same applies to many of IREC's other recommendations. The Interim IEC has launched a pilot electronic voter registration system, which is currently being tested in 18 constituencies. It will be interesting to see whether the quality of the registration process improves and whether the system will work as intended during the constitutional referendum. The government has assured the IIEC of its willingness to fund the exercise (*The Standard*, 13 April 2010).

The publication in mid-November 2009 of the Harmonised Draft of the Constitution of Kenya, prepared by the Committee of Experts on Constitutional Reform, gives the public access to the committee's original suggestions.<sup>10</sup> After submission of the revised draft to the National Assembly – and scrutiny by the select committee – the proposed constitution was adopted by the Assembly and was published on 6 May 2010.

It is interesting to note that the proposal does not contain provisions for the establishment of a special Electoral Dispute Resolution Court, as suggested by IREC, but leaves it to the National Assembly to enact legislation on this (Art 87 (1)). It is also notable that the mooted electoral system contains no real element of proportional representation,<sup>11</sup> while it creates 47 special women's constituencies (overlapping with the counties) over and above the 290 single-member constituencies. So all voters will have two different ballot papers for the National Assembly and one for the Senate.

A provision ensuring that at least one-third of all members of elected public bodies (such as the National Assembly) are women (Art 81 (b)) is commendable. However, this is not consistent with Art 97 (1), as the consequence is that at least 57 of the 290 constituencies must return a woman – and there is no indication what will happen if that requirement is not met. Will it be necessary to rerun the



election in some constituencies, denying the elected male representative his seat? Such a situation could have some very unpleasant consequences.<sup>12</sup>

The regulation of political parties is quite detailed – probably more detailed than is necessary – but it builds on and provides the constitutional basis for the Political Parties Act, which came into force in mid-2008.

## CONCLUSION

IREC was able to fulfil its mandate within the required time and could therefore pronounce on the electoral process in its report, which was published on 18 September 2009 and presented first to President Kibaki and Prime Minister Odinga and then to Kofi Annan.

IREC was not able to establish without doubt that the outcome of the presidential contest was caused by fraudulent behavior at the KICC or elsewhere, but it was very clear that the ECK was not able to ensure the integrity of the electoral process, which contributed to the tragic outbreak of violence which followed the declaration of the result of the presidential election.

On occasion elections in new or unstable democracies have been criticised for being characterised by certainty about the outcome but uncertainty about procedures and processes. This is, of course, deplorable, since acceptable elections should be characterised by uncertainty about outcome, but certainty about procedures and processes.

The general elections in Kenya in December 2007 provided a new variant – uncertainty not only about the outcome of the presidential election (and some parliamentary elections as well) but also about procedures and processes.

It does not seem as though all those involved in the political scene in Kenya have fully understood the implications of IREC's findings. If they had, at least some of the articles in the proposed constitution would be different.

It is regrettable that the politics of the day has been allowed to interfere with a more principled view of the constitutional process. However, the finalisation of constitutional reform after the popular referendum in August 2010 – if the proposal is not defeated – will hopefully allow Kenya to emerge with a strong and principled Independent Electoral and Boundaries Commission, which can complete the process of implementing a better electoral administrative system than the country has had in the past. The victims of the election-related violence at least deserve that.



## NOTES

- 1 This chapter is written in the author's personal capacity.
- 2 Branch & Cheeseman (pp 3ff) argue (1) that the earlier collusion of a range of elites started to fragment after Daniel arap Moi's accession to the presidency in 1978, (2) that this fragmentation contributed to the end of the one-party-state and to the political liberalisation after 1991, and (3) that Moi's response to this development was to pursue a policy of state informalisation by, for example, looting the Kenyan state and transforming some of the country's gangs into ethnic militias
- 3 This approach has previously been presented in, eg, Elklit 2007, pp 80ff.
- 4 The obvious consequence is that turnout percentages in many African countries are inflated, at least compared to what they would have been had the basis for the calculation been the voting age population (VAP), a more useful figure.
- 5 This is, of course, surprising in a Kibaki stronghold!
- 6 The document compiled by Toni Weis (2008) is therefore only of value if one wants to document the basis for the misperceptions and misunderstandings about the importance of turnout differentials held by civil society, the ODM, and some of the election monitoring organisations.
- 7 See, eg, Throup (2008a) and 2008b – Throup's paper presented to IREC. Further: Throup & O'Mahoney (no date [2008]).
- 8 Because the ECK was responsible for the final result and was therefore the only body that could declare the final presidential results (for constituencies or for the entire country).
- 9 Juja Constituency is a good example of this: the final result of the presidential elections in the constituency – in particular the 100 390 votes cast for Kibaki – was challenged by many, because another result – 48 293 votes for Kibaki – had also been reported. However, the latter was only a partial result, based on 111 polling stations (documentation in the ODM submission to IREC), while the constituency has 232 polling stations. Results for all other presidential candidates also more or less doubled between the announcement of the partial and that of the final results; this adds to the credibility of this explanation of the differences noted by so many Kenyans and also by, among others, the EU observers.
- 10 The publication was followed by an invitation to the general public to debate the draft and present submissions for further deliberation to the committee within 30 days.
- 11 The appointment of 12 nominated members in the National Assembly and 16 + 2 + 2 in the Senate proportional to the number of seats won by the political parties in the constituency elections does not challenge this claim. It is also a problem that it is not clear what method should be used to allocate these seats (IREC 2008, pp 363ff).
- 12 These problems have been submitted to the Commission of Experts for consideration, but have apparently had no effect.

# **THE ROLE OF MULTIPARTY LIAISON COMMITTEES IN PREVENTING AND MANAGING CONFLICT IN SOUTH AFRICA**

**Mosotho Moepya**

## **INTRODUCTION**

South Africa has experienced a significant number of conflicts in its history and it was only after 1994 that the majority of its citizens achieved equality through a negotiated political settlement. The first democratic parliament was elected in 1994, with President Nelson Mandela as the country's leader.

Given the country's historical inequalities and discriminatory past it was important that South Africa's new Constitution 'reject inequality' and the 'unrestrained power of the apartheid state' and 'create a state system in which power was directed and constrained by law' (Currie & De Waal 2001).

This chapter considers how the role of election management bodies (EMBs) and their relationships with political parties may be used to prevent and manage electoral conflicts. The role of party liaison committees (PLCs) as implemented in South Africa between 1994 and 2009 is discussed with a focus on their establishment, composition and mandates and their contribution to promoting free and fair elections. The chapter concludes by drawing lessons that could, if appropriate, be emulated by EMBs in other countries.

## **SOUTH AFRICA'S TRANSITION TO DEMOCRACY**

In its report presented to President Mandela in October 1994 the Independent Electoral Commission (IEC) articulated the conditions under which the 1994 elections were held, as follows:

The significance of the elections and role of IEC in relation thereto must be assessed in the context of the transitional process of which they were part

... Protracted negotiations, intermittent yet determined, ensued between the National Party (NP) which had been the governing party since 1948, and the African National Congress (ANC), which had been the main opponent of white minority rule for many decades. Other parties joined the negotiations, and by December 1993 the participants had reached substantial consensus on a carefully constructed programme of political transition to majority rule.

Although the establishment of new and democratic political structures was an essential transitional step, conducting an election in an unstable political environment *was* a risky business ... As the elections drew nearer, the security situation deteriorated steadily ... The IEC welcomed and strove to facilitate negotiations aimed at drawing as many participants as possible into the electoral contest.

IEC 1995

## HOW ARE ELECTIONS MANAGED AND BY WHOM?

Chapter 9 of the Constitution of the Republic of South Africa 1996 establishes state institutions to support the country's constitutional democracy. Section 181(1)(f) specifically provides for the establishment of an electoral commission, which is known as the Electoral Commission of South Africa (IEC). The IEC derives its functional mandate from s 190(1) of the Constitution, which states that:

the Electoral Commission must –

- a) manage elections of national, provincial and municipal legislative bodies in accordance with national legislation;
- b) ensure that those elections are free and fair; and
- c) declare the results of those elections within a period that must be prescribed by national legislation and that is as short as reasonably possible.

It is also important to note that s 190(2) of the Constitution confers additional powers and functions prescribed by national legislation to the commission. Section 191 goes further, stipulating that the commission must be composed of at least three people and that the number of members and their terms of office must be prescribed by national legislation. For this purpose, the Electoral Commission Act 51 1996 was enacted.

Since its passage the Act has been amended four times, strengthening its provisions. All the amendments were made after consultation with the political parties.

## HOW DOES THE PUBLIC VIEW THE IEC?

Section 3 of the Electoral Commission Act 1996 establishes the commission as an independent body subject only to the Constitution and the law. Section 3(2), in particular, decrees that: 'The Electoral Commission shall be impartial and shall exercise its powers and perform its functions without fear, favour or prejudice.'

Section 4 calls upon the commission to strengthen constitutional democracy and promote democratic electoral processes and s 5 lists its powers, duties and functions. These include:

- to manage any election;
- to ensure that any election is free and fair;
- to promote conditions conducive to free and fair elections;
- to promote knowledge of sound and democratic electoral processes;
- to compile and maintain voters' rolls by means of a system of registration of eligible voters using data available from government sources and information furnished by voters;
- to compile and maintain a register of parties;
- to establish and maintain liaison and co-operation with parties;
- to undertake and promote research into electoral matters;
- to develop and promote the development of electoral expertise and technology in all spheres of government;
- to continuously review electoral legislation and proposed electoral legislation, and to make recommendations in connection therewith;
- to promote voter education;
- to promote co-operation with and between persons, institutions, governments and administrations for the achievement of its objects;
- to declare the results of elections for national, provincial and municipal legislative bodies within seven days after such elections;
- to adjudicate disputes which may arise from the organisation, administration or conduct of elections and which are of an administrative nature;
- to appoint appropriate public administrations in any sphere of government to conduct elections when necessary.

The final aspect with regard to the integrity of the commission is the process of appointment of its members. Section 6 of the Act prescribes a transparent and elaborate process which must result in the appointment of people who are South Africans and who do not have a high political profile.

Section 6(2) requires that commissioners be recommended by a resolution adopted by a majority of the members of the National Assembly. The names of the recommended candidates are then submitted to a panel consisting of the president of the Constitutional Court (now the chief justice, as chairperson), a representative of the South African Human Rights Commission, a representative of the Commission on Gender Equality and the Public Protector. The latter three institutions are established in terms of Chapter 9 of the Constitution.

The thoroughness and transparency of these processes has allowed the IEC to enjoy public confidence. Political parties, civil society and the electorate in general, have supported the work of the IEC without restraint or reservation. The institution has been taken to court on occasions where an issue of law required that a decision could only be made by a court. These experiences have only served to strengthen electoral democracy and to advance its course in South Africa.

### **THE IEC'S RECORD IN MANAGING ELECTIONS BETWEEN 1999 AND 2009**

South Africa has, to date, held three national and provincial elections, two municipal elections (also known as local government elections) and about 850 by-elections (the statistics as at 31 August 2009). Each of these has marked a significant development in the way in which elections are managed in the country. Demands from candidates for a more simplified, transparent and better-managed electoral process have increased with each election.

The electorate has also increased its participation thanks to an improved knowledge of the electoral process and all the elections have been declared credible, free and fair by electoral stakeholders in general and the political parties in particular.

### **THE COMPOSITION AND MANDATE OF THE IEC IN THE CONTEXT OF PLCS**

Section 5(1)(f) of the Electoral Commission Act imposes on the IEC the duty to compile and maintain a register of political parties and s 5(a)(g) requires the commission to liaise and co-operate with the parties. It may be deduced, therefore, that its relationship with the parties begins when they apply for registration and ends when their registration is legally terminated.

The Regulations on Party Liaison Committees 1998 (GN R824 in *Government Gazette* 18978, 19 June) establish PLCs for the National Assembly, the provincial legislatures and the municipal councils. The committees consist of not more than two representatives from each registered party represented in that particular sphere of government and one for each independent candidate. The regulations further give the IEC the discretion to co-opt additional members to the PLC

structures. The regulations prescribe that from the date of promulgation of an election until the date of the election any registered party which, or independent candidate who has complied with the requirements for contesting that election shall be entitled to representation on the relevant PLC. The commission, through its administration, convenes and chairs all the PLCs.

The primary function of the PLCs is to serve as a vehicle for consultation and co-operation between the commission and the political parties participating in the PLCs on all electoral matters, with a view to achieving free and fair elections. It should be observed that while PLCs meet more regularly closer to and during elections their meetings are maintained on an ongoing basis.

### **SOUTH AFRICA'S EXPERIENCE OF PLCS IN PREVENTING, MANAGING AND RESOLVING ELECTION-RELATED CONFLICTS**

There are numerous causes of conflict in elections. By their very nature, elections are a contest, with clear winners and losers. The attainment of credible, free and fair elections does not arise only when the results of the elections are announced. Instead, the credibility, freeness and fairness are determined throughout the electoral management cycle, when points of discontent are raised (or not raised) and resolved (or left unresolved).

South Africa has numerous mechanisms in place to deal with the prevention, management and resolution of election-related conflict. These include the deployment of conflict management panelists, law enforcement structures such as the joint operation committees (JOCS) of the security cluster of the state, the courts, and the PLCs. While each of these has its clear role the PLCs have been a catalyst in informing the other mechanisms about potential and/or real election-related conflict(s). PLCs have played an even more direct and significant role in ensuring that the immediate and direct contestants in an election regularly consult one another and the commission about any matter that may affect the credibility, freeness and fairness of any legislative election. In this regard, the role of the PLC, unlike those of almost all the other conflict resolution mechanisms, is consistently maintained throughout the electoral management cycle, especially in periods between elections.

#### **The role of PLCs in consulting on the legislative framework for elections**

While it is the function of the commission to review electoral legislation continuously and to make recommendations in connection with it (s 5(1)(j) of the Electoral Commission Act 1996), it prefers not to make recommendations to Parliament until and unless it has consulted with the PLCs. This approach has enabled the commission to share the proposed legislation with the parties and allow them to comment on its relevance, applicability and/or enforceability.

Once consulted, parties often take it upon themselves to increase awareness among their constituencies and therefore lighten the burden of the commission in dealing with its advocacy programmes.

Since, at the national level, these parties are represented in the National Assembly all legislation submitted to the National Assembly is passed or rejected after members have heard all the major issues from their party representatives in the PLC.

### **The role of PLCs in determining electoral voting districts**

It must be noted that in South Africa the demarcation of boundaries (provincial, municipal and ward) is the responsibility of the Municipal Demarcation Board (MDB). To avoid boundary disputes being brought to the centre of the election management process the IEC consults with PLCs at all levels of government on timeframes for each delimitation cycle, the principles to be followed in delimiting the voting district (not ward) boundaries, and the means of obtaining approval during the consultative process.

Each of the approximately 20 000 voting districts used in the 2009 national and provincial elections was individually signed off by PLCs in the municipal sphere, thereby enriching the process with local knowledge of the area covered by the voting district and the practicality of the borders informing the underpinning delimitation process. It is no wonder that, since 1999, no voting district boundaries in South Africa have been contested.

### **The role of the PLCs in electoral staff recruitment**

The recruitment of electoral staff has come under the spotlight in recent years, especially because, in South Africa, the members are recruited from a number of unionised sources, predominantly, but not exclusively, educators. It is also common knowledge that the unions to which they are affiliated often endorse a particular political party.

To deal with this real problem the IEC tabled a policy for discussion with the PLCs to guide the recruitment of staff, particularly the presiding and deputy presiding officers. As is to be expected, this was a matter that was very important to every party in the PLC and eventually the following policy provisions were adopted:

- Employment equity applies. At least 50 per cent of presiding and deputy presiding officers must be women and 2 per cent must be persons with disabilities.
- Presiding and deputy presiding officers must:
  - be South African citizens;
  - be registered voters;
  - not have held political office in the past five years or been a



- candidate in an election or have been politically active in a registered political party;
- not have held office in the past five years in an organisation that has party political affiliations or aims;
- have between eight and ten years of professional, supervisory or administrative work experience;
- have a valid driver's licence and access to a vehicle;
- have access to a mobile telephone; and
- have achieved a level of 80% or higher in an assessment used as a benchmark for evaluating the competence of electoral staff.

It is noteworthy that in preparation for the 2009 national and provincial elections municipal PLC meetings were convened nationwide at which the credentials of the presiding and deputy presiding officers were presented to political parties. Parties had the opportunity to object to a presiding officer on the basis of the IEC's adherence to the policy provision cited above. There were objections on the basis of these provisions to only 100 of the 19 726 suggested presiding officers and 80 of these objections were upheld (IEC 22 October 2008). Once more the PLCs were instrumental in ensuring that the integrity of the electoral process was placed beyond any reasonable doubt.

### **The role of PLCs in the compilation of the electoral timetable**

Section 20 of the Electoral Act 73 of 1998 directs that the commission must, after consultation with the national liaison committee, compile an election timetable for each election and publish it in the *Government Gazette*. This provision has proved useful as it enables all political parties to present their views for consideration by the commission before the timetable is finalised. The consultation with parties has also disposed of the perception that the EMB provides certain political parties with information that gives them an unfair advantage over others. In practice, many parties in South Africa understand the process so well that they can determine their own working electoral timetable before the commission supplies the official one, so they are not disadvantaged in any way.

### **The role of PLCs in validating the results processes and computation systems**

In general there are often deep-seated reservations about the security and integrity of results processes and results computing systems in elections, irrespective of whether those elections have taken place in mature or emerging democracies. The IEC has, since its inception, accepted that unless this matter is addressed openly and transparently the integrity of the elections may be at stake. To this end, the commission has developed computerised results processing and computing systems and has consulted with the parties about their specifications.

The parties also have a window within which they may enlist the services of their systems auditors to test the results systems as specified and satisfy themselves that they are functioning as agreed. Some parties do this consistently while those that do not have the means to do so benefit from detailed audits and tests undertaken by the commission via appropriately qualified and independent system auditors whose report is made available to all parties.

As a result of these precautions the credibility of the results has never been challenged on the basis of problems with the commission's systems.

### **The role of PLCs in dealing with electoral conflicts**

It must be said that if there is any place where parties participate equally in an electoral contest it is in the PLC, where every party has equal representation and can raise matters of concern. The system also allows parties to raise matters that have arisen during the electoral campaign which have the potential to spark conflict or have already resulted in conflict and, on occasion, these matters can be discussed and resolved within the relaxed environment of the PLCs, where representatives of parties have a good working relationship (IEC 2009).

A separate report on the commission's conflict management programme attributes its success partly to the PLC.

Despite the 2009 national and provincial elections being highly contested these elections witnessed the lowest number of conflicts in a 15 year period. A multi-pronged approach considered the context of each province and sought to pre-empt conflict through the establishment and effective utilization of PLCs, the JOCS, the Operations Centres and the Conflict Management Programme.

IEC 2009

### **The role of PLCs at results operations centres**

PLCs play a central role at the commission's results operations centres (ROCs). While the ROCs are established for the purposes of consulting with parties at short notice as events unfold on election day and immediately thereafter, PLCs also serve as an important channel through which election objections can be submitted to the commission in terms of the Electoral Act 1998 or the Municipal Electoral Act 2000.

ROCs also serve as a point of ongoing consultation and information sharing, including the status of voting station operations (whether stations are opened or closed), emerging challenges in the electoral process and how they are being dealt with, the logging and resolution of complaints and progress with respect to the processing of results.

No element of the operations of the commission is exempt from examination and it is this transparency, coupled with a fully briefed PLC, that has resulted

in a transparent process that would be unheard of in those countries where the relationship between the EMB and the political parties is adversarial rather than cooperative.

### **The role of PLCs in election debriefing sessions**

South African elections are never complete until debriefing sessions have been held with key stakeholders to consider the extent to which objects were achieved, what worked and what did not work. Taking into consideration all these variables, an appraisal is made and a programme of action proposed on matters that need to be attended to and/or implemented on or before the next round of elections.

These debriefings have significantly shaped the policy discussions that have led, among other results, to amendments to legislation. They have become a standard process of feedback and evaluation that serves as a useful filter of incremental quality assessment in the electoral management processes in South Africa.

### **LESSONS TO BE LEARNT**

In drawing possible lessons other countries may wish to learn from the operation of the PLCs and their significance in dealing with violent election-related conflict it is best, perhaps, to consider first what PLCs are not and, secondly, what challenges have emanated from them.

### **What the PLCs are not**

- PLCs were not established in law as a power-sharing initiative between the commission and participating political parties. They are a useful vehicle for consultation with parties on matters of mutual interest in the quest for the attainment of free, fair and credible elections. In the course of discharging their role, this golden principle is best adhered to. In South Africa, the commission has done so with a great deal of empathy and sensitivity to the matters on which it may be consulted.
- PLCs are vehicles established in law and conduct their business within the framework of the law. They are never used to legitimise unlawful practices that may arise or have arisen during an election. While these practices will be discussed in a typical PLC setting, such discussions are often followed by a documented record (minutes) of what transpired and how best to deal with such occurrences in the future. Accordingly, PLCs maintain a record of matters arising and action lists, with a clear allocation of responsibility and due dates.

- The commission has never used PLCs as an excuse not to consult with political parties that are not represented. In this regard, and when a matter for consultation is viewed by the commission to be in the best interest of every registered political party, the commission has invited unrepresented parties to consultative meetings. In addition, the commission frequently sets up meetings with political parties at their offices to discuss items on a pre-defined agenda.
- PLCs are not tribunal bodies that adjudicate the wrongdoings of individuals or parties. Rather, they are bodies that seek to clarify, review and recommend to the commission what may be done to address matters of general interest to their members. Adjudication of matters that may arise out of the ordinary delivery of elections is adequately dealt with by the legislative provisions governing disputes, objections and violations (real or perceived) in the electoral process.
- Members of the commission are not *ex officio* members of the PLC. The administration of the commission, headed by the chief electoral officer or a person he or she designates (at national level), the provincial electoral officer or the person he or she designates (at provincial level), or the municipal electoral officer (at local government level) is responsible for convening and chairing meetings. In this process, policy matters are referred to the commission for a decision. The commission is always informed of the PLC meetings and is given feedback either as part of the chief electoral officer's monthly report to the commission or in some other way that the commission determines.
- The PLCs are not watchdog or oversight bodies over the commission. They do not prescribe how the commission spends funds allocated to it or determine its priorities. Instead, the commission reports to Parliament, and the national treasury is responsible for allocating the funds it needs. The office of the auditor-general undertakes annual audits of the financial statements of the commission.

### **Challenges that have arisen out of PLCs**

- PLCs, by their nature, are set up to create conditions of equity and ensure that the playing field is level. Sometimes it is not possible for political parties to attend every meeting but some are more remiss in their attendance than others. This, in our experience, has created

an environment in which members who do not attend regularly are often left behind on very important matters. In mitigating this risk, the commission has created a facility on its website for political parties to have access to all PLC minutes. Minutes are also sent to all represented parties, whether or not they have attended the meeting.

- PLCs are not the only conflict resolution mechanism, even though they are regarded in South Africa as the most important and effective one. It is important to guard against the temptation to make them an amorphous conflict-resolution body, as has happened innumerable times. In these circumstances, the greatest source of guidance has been the terms of reference of the PLCs and their determination not to exceed their lawful mandate.
- Regulation 7 of the Regulations on Party Liaison Committees provides that political parties are responsible for all travelling and accommodation expenses incurred by their representatives in respect of their participation in PLCs. The commission covers all administrative costs associated with the venue and facilities for the meetings. However, sub-regulation 7.1 provides that should a party be unable to send a representative to meeting of the national or provincial PLC because it does not have the means to pay for his / her travel and accommodation the commission may endeavour to assist that party.

## CONCLUSION

South Africa has a history of conflict, hence the desire to create consultative mechanisms and approaches to heal the past and consolidate the political settlement reached in 1994. From the drafting of the Constitution to the choice of the electoral system there was an attempt to build inclusive mechanisms. The enormous public confidence in the electoral commission demonstrates that the country's political founders were correct in insisting on transparent institutions to manage political competition. PLCs are another indicator of continuous institutions that prepare the electorate and parties for accountable and transparent elections.



# PART III

## THE ROLE OF AFRICA'S INTERGOVERNMENTAL INSTITUTIONS





## **THE CHALLENGES OF ELECTIONS IN AFRICA**

### *Lessons from the African Peer Review Mechanism process*

**Afeikhena Jerome and Khabele Matlosa**

#### **INTRODUCTION**

With very few exceptions almost all 53 African Union (AU) member states have embraced multiparty democracy, a fact that has provided impetus for regular competitive multiparty elections, although elections have always been an integral part of post-independence African politics.

Between 1989 and 2007 more than 100 competitive presidential elections were held on the continent, the majority being 'founding' elections, typically marking a transition from a long period of authoritarian rule to fledgling democratic governments. In the same period about 56 legislative elections involving at least two political parties were held. A total of 38 African countries had subsequently gone through a second election cycle, 20 had completed three uninterrupted cycles, and seven had held four or more consecutive elections (Lindberg 2006).

Holding regular elections is one thing, ensuring they are of high quality and credible and the outcomes are legitimate is quite another. The focus of multiparty elections is gradually shifting from quantity to quality, with emphasis being placed on their credibility and legitimacy. In successful elections the majority of key candidates and voters accept the outcome and disputes, if there are any, are peacefully resolved through recognised mechanisms of dispute resolution. Such elections are becoming increasingly evident in Africa.

However, while competitive elections are now a norm that marks the contemporary political culture on the continent the quality of many of these elections has been suspect and their outcomes have been disputed, a factor which has frequently resulted in violence. Some recent elections have been plagued

with serious irregularities, thus failing the true test of democracy: peaceful regime change through credible and transparent elections.

In a number of African countries elections tend to become political liabilities rather than assets, largely because the electoral governance regime does not ensure procedural certainty – the rules and procedures are not well known and the outcomes are likely to be predictable even before the elections even take place. Thus, a disturbing trend is emerging whereby the quality of elections could be in decline, threatening democratic consolidation and leading to declining numbers of citizens participating in the democratic process and, even more worryingly, triggering post-election violence, often resolved through elite-dominated power-sharing arrangements.

The mandate of the African Peer Review Mechanism (APRM) includes monitoring governance on the continent and elections have featured prominently in its work. It was one of the emerging crosscutting issues tabled by the heads of states and governments who participated in the first Extraordinary Summit of the APRM held in Cotonou, Benin, from 25 to 26 October 2008.<sup>1</sup>

This chapter appraises elections in APRM member states. It outlines the major electoral challenges in the countries that have been peer reviewed thus far and focuses on the electoral cycle to understand the broader issues surrounding elections.

## KEY ISSUES IN ELECTORAL GOVERNANCE

The aspiration for democratic rule is an almost universal phenomenon, as illustrated by the ubiquitous wave of democratisation around the world at the close of the last century. Indeed, the concept of democracy is so honoured that all manner of political systems claim to be democracies. Even countries that have not held an election in decades are conveniently baptised ‘democratic republics’.

The importance of elections is underscored by the fact that some of the world’s most unreformed autocrats still feel the need to at least go through the motions, a fact that attests to the power of elections to legitimise political authority in the 21st century, but also points to the intricate risks of regarding elections as an unqualified harbinger of democracy.

The prerequisite for representative or republican democracy – a condition to which most of the democratising countries in Africa aspire – is the realisation of a number of institutional guarantees. First, political authority must be based on a limited mandate, with citizens reserving the right to renew it periodically in free and fair elections. Secondly, elections must be based on universal adult suffrage and on genuine choices between alternative political parties. Third, every citizen must be guaranteed the right to freedom of association and expression and the eligibility, in principle, to seek public office. Fourth, aspiring political leaders must be afforded the right to compete freely for support and votes, buttressed

by multiple channels of political communication. Finally, it is imperative to have democratically accountable governmental decision-making institutions, with elected officials free from overriding opposition from unelected officials (Van de Walle 2003; Dahl 1989).

In short, the realisation of democracy is contingent upon the rules of the game that provide for political parties to compete against one another for the chance to govern within institutional systems that guarantee fairness and a genuine opportunity for the alternation of power.

Elections are a cornerstone of democracy, hence they figure prominently in democratisation efforts everywhere. They serve a number of significant functions, outlined by Teshome (2008). First, they provide the government with legitimacy, as officials are chosen through the popular will. Second, in principle, they allow for the alternation of governing coalitions, which permits the entry of new ideas into policy debates and different approaches to governance. Simply put, they allow for diverse voices to have a role in governing. What is more, with respect to conflict management, alternation of power builds confidence in former opponents, encourages stability, and allows the public to learn about the visions of different groups for the country.

When elections are putatively free and fair they imbue the government with legitimacy garnered from the consent of the people, improving the capacity of the state to ensure human security through legitimate authority under the rule of law, and to improve levels of human development through effective service delivery. Procedurally fair elections create legitimate governments that enjoy popular support for their programmes and policies. When citizens are given a direct voice in political life society's trust of and willingness to cooperate with the state in achieving development is strengthened.

By themselves regular elections are not by any means sufficient for representative democracy, but they are a necessary minimum condition. The commonly accepted criteria that elections must meet to ensure democratic legitimacy include being free of violence, intimidation, bribery, vote-rigging, irregularities, systematic fraud and deliberate partisan manipulation; providing a free choice of competing parties and candidates without the repression of opposition parties or undue bias in the distribution of campaign resources and the provision of access to the news media; employing fair, honest, efficient and transparent procedures from voter registration to the final vote tally and generating widespread public participation. Where rulers have blocked, derailed or corrupted the outcome of the electoral process in their attempts to retain power this has undermined their legitimacy and attracted critical scrutiny.

The litmus test of the electoral process is the possibility that the minority may, at some point, become the majority and that in the case of such an event there is a peaceful change of government. As a result, it is not possible to conceive of democracy without elections. However, the lesson that has emerged thus far from

the African experiences with multiparty democracy is that it is possible to have elections without genuine democracy.

While many African citizens are now, in principle, free to choose their own leaders, in a substantial number of cases incumbent leaders have found ways to win electoral mandates without granting political liberties and participation. Furthermore, political freedoms and civil rights may be formally recognised but are imperfectly observed in practice, particularly between electoral exercises. This has led scholars to conclude that the simplicity of elections has benefited some of Africa's autocrats, who are now able to parade democratic credentials without reforming their repressive regimes (Ake 1996). Some have termed such elections the 'fallacy of electoralism' (Diamond 1996).

The problematic nexus between elections and democracy discussed above is linked to yet another complex problem: the interface between elections on the one hand and peace and political stability on the other. Conventional wisdom holds that a positive correlation between elections and democracy will lead to peace, harmony and political stability. While this may be so in some countries, a recent trend points to the fact that not only do elections lead to the 'retreat of democracy' but may become a serious source of protracted violent conflict, war and political instability, all of which are inimical to sustainable human development.

If elections do not facilitate a culture of peace not only do we have a problem of the retreat of democracy but the situation leads to the postponement of socio-economic development, as politically unstable countries are unable to eradicate poverty and meet the millennium development goals (MDGs).<sup>2</sup>

Elections have, in the recent past, catalysed conflicts in several countries. Afghanistan, Bangladesh, Cambodia, Colombia, Guyana, Egypt, Ethiopia, Iran, Iraq, Kenya, Nigeria, Pakistan, the Philippines, and Zimbabwe have all experienced election-related endemic violence, with widespread consequences, among them the failure of the state. In some countries, notably Kenya and Zimbabwe, disputed elections have resulted in questionable power-sharing arrangements between victors and vanquished.

Perhaps no situation underscores the urgency of understanding the complicated nexus between elections and sustained political violence than that in Kenya in late 2007 and early 2008. The violence flared despite a sustained and significant effort by the international community to avert conflict and violence well before the poll, during voting, and in the tumultuous political crisis that arose after the Electoral Commission of Kenya (ECK) announced that incumbent president Mwai Kibaki had 'won' the hotly contested presidential elections. The spiralling escalation of inter-ethnic violence resulted in more than 1 000 deaths in the few weeks after the election, in what some observers believed reached the dimensions of 'ethnic cleansing'.<sup>3</sup>

While the Kenyan crisis came as a surprise to most observers, as Kenya had long been considered a hub of peace in East Africa, a region perpetually in turmoil,

close observers of the Kenya APRM review process revealed that it was not a spontaneous independent event but the outcome of historically dysfunctional power relationships and an inability to manage the diversity manifest in structural factors such as ethnicity, a history of marginalisation and exclusion of some segments of the population and region, land grab and impunity.

## **THE AFRICAN PEER REVIEW MECHANISM**

In 2003 African leaders undertook to put countries on the continent individually and collectively on a path of sustainable development and place their own destiny in their hands. The New Partnership for Africa's Development (NEPAD), which was crafted as the primary vehicle for achieving these objectives, has good governance at its epicentre and the APRM to champion this cause. The Sixth Summit of the Heads of State and Government Implementation Committee (HSGIC) of NEPAD, held in March 2003 in Abuja, Nigeria, adopted a Memorandum of Understanding (MOU) on the APRM and members of the panel were appointed in May 2003 and commenced work after an inaugural meeting in Cape Town in June 2003.

The APRM, widely heralded as the jewel in NEPAD's crown and as an innovative initiative on governance in Africa, is an instrument to which member states of the AU voluntarily acceded for self-evaluation. Assessment under the APRM is conducted within the framework of agreed values, codes and standards as contained in the Declaration on Democracy, Political, Economic and Corporate Governance. It has at its epicentre the deepening of democratic practices, the harnessing of achievements, dissemination of best practices and the rectification of underlying deficiencies in governance and socio-economic development processes among AU member states. The framework is intended to encourage and build transformative leadership through a self-assessment process, constructive peer dialogue and the sharing of information and common experiences, to reinforce successful and exemplary practices among African countries.

The APRM is unique in both its scope and breadth, with the review process extending to all levels of government, parliament and the judiciary, as well as the private sector and civil society organisations. It also covers the simultaneous evaluation of four distinct pillars: democracy and good political governance, economic governance and management, corporate governance and socio-economic development.

A total of 29 countries have signed the APRM accession MOU, representing roughly 76 per cent of the African population.<sup>4</sup> Cape Verde expressed interest in July 2009 and was formally accepted by the APR Forum. Mauritania was suspended following an unconstitutional change of government – the military coup in August 2008 that ousted its democratically elected president – and is yet to be formally readmitted by the APR Forum after holding presidential elections.

Reviews have been finalised for 12 countries – Ghana, Rwanda, Kenya, South Africa, Algeria, Benin, Uganda, Nigeria, Burkina Faso, Mali, Mozambique and Lesotho – and the reports have been peer reviewed by heads of state. Mauritius and Ethiopia had completed their Country Review Missions by the end of 2009 and will shortly be reviewed by the forum. Tanzania has submitted its Country Self-Assessment Report, including the draft National Programme of Action to the APRM secretariat, paving the way for the country review mission. Negotiations are also ongoing for the second country review mission to Kenya.

Seven years after its inception the APRM has been firmly established in Africa's governance landscape. The mechanism has demonstrated its value as an instrument for advancing good governance in all its ramifications, as well as its immense potential to play a decisive role in 'collective self-governance', thereby unleashing the continent's economic and political potential.

The APRM has exceeded stakeholders' expectations and the experience emerging from its implementation process is encouraging. It continues to garner momentum and interest regionally and globally. Designed by Africans for Africans, it is one of the most comprehensive governance assessment tools that has ever been developed and implemented.

While *ex post facto* evaluations of the gains from the APRM, especially in countries participating in the process, are only just emerging, anecdotal evidence, especially in the APRM pioneer countries, indicates that the process has clearly had a discernable impact on governance and socio-economic development, with huge pay-offs. Recent developments in countries that have undergone the review process have demonstrated the strength of the mechanism as an early warning system for emerging issues and potential crisis.

For example, the APRM report on Kenya had anticipated potential political unrest before ethnic related violence broke out in 2007, while the South African report had warned against the xenophobic tensions that erupted in that country in May 2008. Other country reports that have been made publicly available also highlight common challenges across the continent, including the need to manage diversity, curb corruption and strengthen accountability institutions.

The diagnostic strength of the mechanism makes it a promising tool for identifying key areas of intervention and setting priorities for reform. Even though we cannot infer direct causality, there is increased transparency, some degree of accountability and improved economic performance in APRM member countries, especially the pioneers.

Those countries that pioneered the review process have started to implement their programmes of action (POAs) and have taken steps to address some of the issues identified in the country reports. Although it is too early to evaluate the impact of current programmes of reform this is testimony that the APR can contribute substantially to the promotion of good governance. For example, as a direct outcome of the review process Ghana reduced the size of its Cabinet



and passed a long-awaited bill to protect whistleblowers and promote access to information. Rwanda, in turn, reformed its business environment, and various governance indicators show that progress has been made in corruption control, government effectiveness and the transparency of the regulatory frameworks. Kenya also passed laws on witness protection and public procurement following the completion of the review process.

Further, the APRM has helped to focus the governance debate within individual countries as well as in the region. Notably, it has increased the democratic space in countries, given more say to civil society and promoted dialogue among the state, civil society and the private sector.

The focus of discussion on crosscutting issues such as land, elections, aid dependency and corruption, to name but a few, provides the opportunity for intra- and cross-country learning. In so doing opportunities for intra-African technical cooperation and capacity building have been optimised. This is particularly evident in the sharing among African countries of best practices in governance.

## **MAIN ELECTORAL CHALLENGES IN AFRICA**

Overall, Africa has done fairly well since the 1980s in the area of elections in particular, and bowing to the winds of democratic change in general. Though the continent's record on free and fair elections is mixed most countries have embraced elections as an indispensable mechanism for determining their future course. For example, elections are scheduled in 22 African countries in 2010, with the most potentially significant being those of Côte d'Ivoire, Sudan, and Guinea Conakry. Sudan held its presidential and parliamentary polls on 12 April 2010 as a precursor to a referendum on the self-determination of South Sudan, scheduled for 2011, when the six-year interim period set down in the Comprehensive Peace Agreement will come to an end.

This chapter has identified some areas of concern to countries wishing to move towards more successful elections and to change the emphasis from quantitative to qualitative elections which will ensure the credibility, legitimacy and acceptability of electoral outcomes. These require strategic interventions. The main goal should be to reverse the current trend, where elections have recently taken on the character of a liability to democracy, peace and development.

As indicated above elections mean far more than the events on polling day. The electoral process starts with the formulation of rules for political contestation, the registration of voters and political parties, and the final handling of election petitions. Its structure, content and the events on polling day will jointly and severally determine the general acceptability of the outcome.

Accordingly, the following section focuses on the broader electoral challenges in Africa. It is complemented by Appendix 1, which outlines the specific electoral challenges in those countries that have been peer reviewed thus far.

## **MAIN CHALLENGES TO THE CONDUCT OF ELECTIONS IN AFRICA**

### **Formulation of ‘rules of the game’ and the establishment of the administrative framework for electoral governance**

The quality of the rules is fundamental if elections are to be fair. Most African countries have committed to upholding the fundamental rights embodied in their constitutions, as well as to multiparty elections that are free, fair and credible. The majority have enacted legislation to govern the general conduct of elections. In general, constitutional and legislative provisions relating specifically to elections are very limited. Even where they exist, details about the management of elections tend to be inadequate. In some former one-party states such provisions have not been reviewed to conform to the requirements of pluralistic politics.

It is important that all laws relating to the operational management of elections are consolidated under one statute. There is a perceived need to enact constitutional and legal provisions which deal specifically and in detail with electoral issues, including the type of electoral system, frequency of elections, and the establishment of an independent and impartial electoral management body.

### **Civic and voter education**

Voter education takes place to assist EMBs to deliver a free, fair, efficient and cost-effective election. It encompasses the basic information that every voter needs in order to be prepared at the voting station. Improved voter education is particularly necessary where disillusionment resulting from previous experiences has alienated the electorate.

Practically all countries in Africa establish programmes to create public awareness of a citizen’s right and responsibility to vote. However, not all countries have a legal mandate in place to conduct civic and voter education.

For a democracy to survive and flourish a critical mass of its citizens must possess the skills, embody the values and manifest the behaviours that align with democracy. In this regard, civic education should be a continual process, not one tied to the electoral cycle.

### **Voter registration – establishing the eligibility of individuals to cast a ballot**

As one of the more costly, time-consuming and complex aspects of the electoral process, voter registration often accounts for a considerable portion of the budget, time and resources of an election authority. If conducted well, voter registration confers legitimacy to the process. If the registration system is flawed, the entire process may be perceived as illegitimate.

In most African countries the EMB is responsible for compiling a national voters’ roll and undertaking voter registration. The transparency and legitimacy of the process has been disputed in several countries, resulting in the rejection of

election results. No one type of voter registration system is best for all countries and circumstances. It is important to choose the system that is most suitable for the context in which it will be administered.

There are basically three approaches: periodic list, continuous register or list and civil registry. Currency, accuracy and completeness are the three criteria for evaluating performance in voter registration. To score well on these criteria registration must be simple and user-friendly, with no direct financial cost to voters.

### **Campaigning**

Political parties use the period between the conclusion of nominations and the day of the election to mount political campaigns. During this time competing parties tend to ignore the code of conduct and embark on unlawful practices, such as the designation of no-go areas and intimidation of voters, even if the polling day itself is peaceful.

In many countries the state is subsumed by the dominant party and elections simply become an opportunity for misusing government resources and abusing incumbency, with dominant political parties attempting to change constitutional terms of office, control the media, outlaw party activities and engage in coercive and violent election campaigns.

### **Balloting and vote counting**

As voting is generally a geographically dispersed activity which often has to be organised and implemented within very tight time frames, it is absolutely necessary for EMBs to provide a cost-effective voting service for all eligible voters while maintaining high standards of integrity, security and professionalism.

Vote counting is one of the most crucial stages in the election process. Failure to complete the count and transmit results in a timely, transparent and accurate manner can jeopardise public confidence in the elections, and will directly affect whether candidates and political parties accept the final results. Ballot-box stuffing, intimidation by law enforcement agents, connivance of parties with EMBs to falsify results, over-voting – more votes than registered voters, falsification or alteration of results are common phenomena.

Ethnic and economic links are manipulated; violence may ensue, culminating in messy compromise pacts among elites, and bloated cabinets and unresolved issues are left to fester until the next elections.

### **Handling election complaints which may need to be resolved by legal institutions (legal disputes may occur at any time, though)**

Post-election disputes emerge when parties or candidates that have lost elections do not accept the results. It is therefore crucial that mechanisms are put in place to deal with disputes promptly and impartially, as they have the potential

to undermine the integrity of the electoral process and lead to either covert or overt conflict. Post-election violence is rife due to political intolerance and lack of trust in adjudicating institutions, especially courts, some of which take a long time to resolve disputes.

### **Election observation and monitoring**

In recent years election observation has emerged as an important activity in support of democratic transition and universal human rights. Election observers (local and international) should, in principle, add value to the institutionalisation of a firm foundation for multiparty democracy by building trust in the electoral system and outcomes

International observers, though desirable, are often conditioned to participate for only a short period. Invitations to international election observers to monitor an election are among the most controversial issues in Africa. Often the presence of international election monitors in emerging democracies is important as a measure of whether or not an election is free and fair, but sometimes it is regarded as a violation of a nation's sovereignty. A more complete approach requires a long-term observer presence in the country, through various stages of the election process, necessary for a meaningful and democratic exercise.

### **Election management bodies**

The complexity and special skills necessary for election management require that an institution or institutions be responsible for electoral activities.

There are three models of EMBs

- The independent model, where the EMB is institutionally independent from the executive branch of government and manages its own budget (eg, Burkina Faso, Mauritius, Nigeria and South Africa in Africa and Armenia, Australia, Canada, and India). In some cases, two independent bodies may be established; one for policy issues, the other for the execution of elections (Jamaica, Romania, Suriname and Vanuatu).
- The governmental model, where elections are organised by the executive, through a ministry and/or through local authorities. (Examples include Tunisia, Denmark, New Zealand, Singapore, Switzerland, the United Kingdom – for elections and not referendums – and the United States). In Sweden, Switzerland and the United States elections are implemented by local authorities, with the central EMB assuming a coordinating role in Sweden and Switzerland.

- The mixed model – usually two component EMBs with dual structures – a policy, monitoring or supervisory EMB that is independent, and an implementation EMB located within a department and/or local government (eg, France, Japan, Spain and many former French colonies in West Africa, including Mali, Senegal and Togo). There are many variants within the three broad models. EMBs may be permanent or temporary, and may be centralised or decentralised to a certain degree.

Most African countries have election management bodies and a variety of models have been adopted, with a wide range of titles including electoral commission, department of elections, elections council, and elections board. For example, of the 29 member states of the APRM 18 have independent EMBs, eight are mixed and only three are governmental agencies.

A common feature, however, is that many of them have limited independence, unclear mandates and inadequate resources and are partisan. Poor funding and uncertainty about funding often lead to inefficiency, constrained leadership and a potential loss of integrity.

EMB structures are, by and large, products of politico-legal and cultural traditions, and the experience of the democratic evolution in different countries. Factors that determine EMB structures include constitutional and related legal frameworks, reform measures undertaken during transition periods, and the resource endowment of the country concerned. Whatever the model adopted, there are certain essential preconditions and guiding principles for success: independence, impartiality and integrity; transparency and efficiency; professionalism and service mindedness.

### **Political parties**

Sustainable democracy is dependent on the existence of well functioning political parties. They are crucial actors in bringing together diverse interests, recruiting and presenting candidates, and developing competing proposals that provide people with choice.

Political parties are the weakest link in the democratisation process. Key attributes include fragility and structural weaknesses, particularly in parties that are not associated with the government in power. The proliferation of opposition parties means the opposition is fragmented. Often parties have no constituencies, or are ethnically based. Political programmes and financial transparency are non-existent. Internal party democracy is often unknown and many opposition parties disband between elections.

Practices of vote-buying or illegal party finance, the proliferation of defamation and hate speech in campaigns, voter intimidation by party workers, corruption in decision-making and the systematic exclusion of certain sectors of

society constitute examples of how political parties threaten the functioning of democratic systems rather than support it.

Refashioning parties into tools for democratic governance requires bringing them to centre stage in the transition to democracy in Africa. Laws and regulations about campaigning, funding, and the functioning of political parties should be developed to minimise the potential disruptive influence of political parties while still allowing them enough freedom to contest elections.

The freedom of speech and assembly, freedom of organisation, and the right to vote and stand for election are some of the guiding principles. It is common to demand a certain degree of internal democracy in political parties and, even though the concept is not very well defined, some features can be identified. Accountability of party leadership, procedures for consultation with party members (and the electorate as a whole), local and regional presence, and transparent candidate selection are some building blocks for internal democracy.

## CONCLUSION

Democracy is clearly the norm in the 21st century. A decade of democratic institution building in Africa aptly demonstrates that even as progress has been remarkable movement toward fully democratic governance is not linear – it is a long and often bumpy process. Democracy is much more than elections, although credible polls are a critical element. Elections, especially when they are not credible, can be a source of tension and instability, as seen in several African countries. Several policy-relevant conclusions emerge from this discourse.

Firstly, the structure, balance, composition and professionalism of the electoral management bodies are a key component in successful electoral processes that generate legitimate and accepted outcomes. In this regard African countries should strive to create independent and credible election management bodies that are competent and autonomous, protected from partisan politics, and enjoy the support of the citizenry.

Secondly, political parties are critical to the electoral process but it is clear that concerns about funding, policy formulation, programme development, support, religious/ethnic rivalry, corruption and the lack of internal democracy are having a negative impact on multiparty democracy in a number of countries.

It does appear that the concept of multiparty democracy has been taken too far in several African countries, with the mushrooming of political parties. For example, a country such as Benin, with a population of just over three million voters has more than 150 parties. Artificially created parties, whose members do not share common values and democracy-enhancing ideology, are deleterious to good political governance. The party system needs to be the fulcrum of political mobilisation, education and peaceful, fair and free elections. Accordingly, the roles and functions of the political party in Africa need to be properly addressed.

Public funding should be extended to all parties contesting elections, provided they can demonstrate a track record of support in the most recently held elections, for example, based on their share of the popular vote. While data are scanty, anecdotal evidence indicates that many of the proceeds of large-scale corruption in the political governance sphere in some African countries are channelled towards funding elections. The EMB should be responsible for the regulation and use of funds, which beneficiaries must account for. Rules must be established to guide the disclosure of all sources of funding, including private funding of political parties.

Thirdly, elections are a very costly exercise, so international observers tend to arrive on the scene too late and to leave too early. Elections are shaped not only by events that take place on election day but also by events that happen just before registration, during registration, during the campaign period, between the end of the campaign period and the election day, and on the election day. Further, since elections are the launching pads for a long-term democratic process in the course of which institutions for sustaining democracy must be built, it is equally important that the period just after the elections is closely monitored to ensure that there are no obstacles to the consolidation of the democratic process.

Fourthly, in January 2007 the Eighth Ordinary Session of the Assembly of the AU adopted the African Charter on Democracy, Elections and Governance, which 'seeks to entrench in the continent a political culture of change of power based on the holding of regular, free, fair and transparent elections conducted by competent, independent and impartial national electoral bodies'. The charter requires 15 ratifications to come into effect. Since its adoption almost two years ago several countries have signed it, but only three have ratified it. It is imperative that African countries ratify the charter forthwith and include it in their election systems.

Fifthly, the outcome of most democratic elections held in Africa has been challenged. In certain cases leaders of some opposition parties have refused to accept the outcome of an election where the incumbent president has clearly emerged as the victor, even though all observers have declared the election to have been free and fair. Political maturity proposes that the art of winning is not something to be personalised. What really counts is not who wins the elections but whether all the elements of democracy have been fulfilled during the electoral process. In other words, in a true democracy elections are not necessarily about those who win or lose, but about the strict application of the rules of democracy and transparency which accompanies them.

In conclusion, democracy, in all its variations, is preferable to any other form of governance. Nonetheless, it is, and should be, a human-centred process. The people and the stakeholders should be involved in the design and construction of the architecture of the electoral system as well as its implementation. Democratic institutions and processes must derive both in spirit and in reality from the people, and deliver bread to the table.



## APPENDIX I

### Major electoral challenges identified in peer reviewed countries

COUNTRIES	ISSUE	MANIFESTATIONS	RECOMMENDATIONS	IMPLEMENTATION STATUS <sup>5</sup>
GHANA	Lack of internal democracy within political parties. Lack of resources and capacity of the electoral commission, which results in over dependency on donors.	Ethnic voting patterns during national elections. Lack of trust and confidence in the electoral commission. Low participation and representation of women in politics	Provide adequate funding to governance institutions to continue educating citizens about entitlements and responsibilities. Increase resource allocations to the electoral commission to enable it to retain its full independence and integrity. Adopt affirmative action for disadvantaged groups.	Affirmative action policy has been introduced and is being implemented
RWANDA	Limited freedom for political pluralism and competition.	Political parties not able to operate at the grassroots below the provincial levels. Local elections voters line up behind the preferred candidate.  Consultative Forum of Political Parties regulating political pluralism and competition.	Respect of the principle of a secret ballot during local election as stipulated in the Constitution.  More financial resources to be allocated to the electoral commission to strengthen its capacity and shield it from various sources of influence.	Free political pluralism and competition of ideas is being implemented through the passage of several laws which have opened up the political space in a number of ways. They prescribe reachable requirements to register political parties, opens up the space for women and simplifies conditions and procedures for organising meetings and demonstrations.

COUNTRIES	ISSUE	MANIFESTATIONS	RECOMMENDATIONS	IMPLEMENTATION STATUS <sup>5</sup>
KENYA	Weakness of political parties.	<p>Absence of broad-based parties and inclusive political parties cutting across ethnic divides.</p> <p>The politicisation of ethnicity and the existence of private militia.</p>	<p>Need for a reform of the electoral process and political parties.</p> <p>Government and political parties to design and engage conflict resolution mechanisms to reduce factional frictions and defuse ethnic tensions.</p>	<p>In order to enhance transparency, accountability and internal democracy in political parties, the Political Party Bill 2007, which prohibits the registration of parties based on regional, ethnic and religious considerations, has been enacted.</p>
SOUTH AFRICA	Floor crossing. Funding of parties.	<p>MPs are constitutionally permitted to cross over to other parties without losing their seats.</p> <p>Non-disclosure of private funding to parties. This is criticised for allowing influence over and manipulation of the political process and public policy.</p>	<p>Address the adverse effects of floor crossing with a view to strengthening multiparty democracy.</p> <p>Introduce a policy on methods and disclosures of private funding to parties.</p>	N/A

COUNTRIES	ISSUE	MANIFESTATIONS	RECOMMENDATIONS	IMPLEMENTATION STATUS
ALGERIA	State control over the electoral system. Under the Constitution and the 1997 Organic Act on Political Parties, establishment of political parties is subject to the restrictive control and approval of the state authorities.	<p>Registered parties have limited, supervised access to the main broadcast media (radio and television).</p> <p>28 political parties have been approved to date, whereas 39 others have been dissolved through the courts for failure to conform to the law. This has given rise to numerous allegations relating to restrictions on the freedom of political expression.</p> <p>Membership of the elected assemblies and the higher echelons of administration not always fair, with low representation of women, young people, intellectuals and sociological groups.</p>	<p>Extend freedom of access, especially the access of political parties, unions and associations, to the principal media outside electoral periods.</p> <p>Amend legislation to promote political party development and strengthen political expression and provisions related to their establishment, the adoption of constitutions and objectives, and access to the media.</p> <p>Ensure better representation of the country's socio-cultural diversity by adopting selection methods that ensure greater presence of the populations from the South.</p>	N / A

COUNTRIES	ISSUE	MANIFESTATIONS	RECOMMENDATIONS	IMPLEMENTATION STATUS
BENIN	<p>Inability to guarantee just and fair competition in free and transparent elections.</p> <p>The credibility and efficiency of the multiparty system in the light of the proliferation of political parties in Benin.</p>	<p>Diminished credibility of CENA (Independent National Electoral Commission), which is dissolved after every poll, shedding institutional memory.</p> <p>Reluctance to implement an electronic electoral register.</p> <p>Unreliability of electoral lists.</p> <p>High cost of elections.</p> <p>Clandestine financing of campaigns and interference by traditional leaders and religious bodies during campaigns to influence choices, vote bargaining and alliances.</p> <p>Politicisation of the public administration.</p> <p>There are over 150 parties (for 3-million voters), of which only 30 or so meet the requirements of the Charter of Political Parties.</p>	<p>Revise the Charter of Political Parties.</p> <p>Establish a reliable voters' register.</p> <p>Establish a permanent independent national electoral commission.</p> <p>Redefine the framework for financing political parties and electoral campaigns to ensure rigorous control of electoral expenditure.</p> <p>Implement strictly all relevant provisions of the Charter of Political Parties, especially those providing for penalties for parties that do not comply with the provisions.</p>	N / A

COUNTRIES	ISSUE	MANIFESTATIONS	RECOMMENDATIONS	IMPLEMENTATION STATUS
UGANDA	<p>Weak political parties.</p> <p>Poor funding of the electoral commission.</p> <p>Prompt handling of electoral petitions by the judiciary was identified as a best practice.</p>	<p>Parties have only been allowed to operate since the 2005 referendum hence they are still weak because they lack strong, well-established structures, especially at local level.</p> <p>Heavy dependence on donor funds.</p>	<p>Strengthen the institutional capacity and provide public funding for political parties.</p> <p>Enact a code of conduct for political parties.</p> <p>Provide adequate resources for the enhancement of the institutional capacity of the EC, among others.</p>	N / A
NIGERIA	<p>Three presidential and parliamentary elections held in 1999, 2003 and 2007 all marred by irregularities.</p> <p>The judiciary has played a leading role in rectifying fraud in electoral management and in the resolution of intractable conflicts surrounding the 2007 polls.</p> <p>Significantly, the courts nullified some gubernatorial, senatorial and representative elections and ordered reruns.</p>	<p>Powerful influence of an oligarchy intent on holding on to power by any means, including rigging and violence.</p> <p>Competitive elections are generally marred by violence, fraud and the use of money to attain power.</p> <p>Doubts about the impartiality and credibility of INEC, and also the credibility of the electoral system.</p> <p>Absence of internal democracy within political parties. Elections are merely an endorsement of pre-selected candidates.</p>	<ul style="list-style-type: none"> <li>The viability of Nigeria as a democracy hinges on reforming the electoral system.</li> </ul> <p>A stringent national strategy must be developed and implemented by all Nigerians for the 2011 elections so as to ensure a credible outcome</p>	N / A

## NOTES

- 1 The other three are Managing Diversities and Xenophobia, Resource Control and Management and Land, and Corruption. While each African country is unique, there is growing evidence that a number of common problems and challenges confront them. These crosscutting issues are not only present in all the countries which have been peer reviewed, they have been identified in more than one thematic area in the various countries. The search for solutions therefore requires a holistic approach because of the wider impact of these issues on the quality of governance in all its dimensions. They are also issues that require immediate attention.
- 2 The Millennium Development Goals (MDGs) are eight specific time-bound goals to be met by 2015, which aim to combat the many dimensions of extreme poverty – income poverty, hunger, disease, lack of adequate shelter, and exclusion – while promoting gender equality, education, and environmental sustainability. The goals were adopted at the UN Millennium Summit in New York in 2000, the largest gathering of world leaders in history.
- 3 Inspired in part by the events in Kenya, the *Journal of Democracy* (JoD) devoted its April 2008 issue to a critical analysis of the ‘Progress and Retreat [of democracy] in Africa’.
- 4 Member countries are Algeria, Angola, Benin, Burkina Faso, Cameroon, Djibouti, Egypt, Ethiopia, Gabon, Ghana, Kenya, and Lesotho. Others are Malawi, Mali, Mauritania, Mauritius, Mozambique, Nigeria, Republic of Congo, Rwanda, São Tomé & Príncipe, Senegal, Sierra Leone, South Africa, Sudan, Tanzania, Togo, Uganda and Zambia.
- 5 Sourced from information provided by countries in the Annual Progress Report of the Implementation of the National Programmes of Action.

# **THE ROLE OF THE AFRICAN UNION IN THE PREVENTION, MANAGEMENT AND RESOLUTION OF ELECTION-RELATED CONFLICTS IN AFRICA**

**Francis Ikome**

## **INTRODUCTION**

During most of Africa's post-independence years neither the continent's leaders nor its regional and continental institutions accorded priority to issues of governance. This was because African countries claimed to be focusing on national integration and development rather than on questions of competitive democratic institutions and practices, human rights, separation of powers or political and economic accountability.

Thus, although a majority of African states had fought and won independence on competitive democratic platforms they eventually came to perceive competitive democratic systems as being potentially destabilising for Africa's plural societies. As a result, they dismantled democratic institutions and practices inherited from the colonial era.

One after the other, independent African leaders suppressed opposition parties, replacing them with monolithic one-party states. National parliaments also became rubber-stamp institutions and judiciaries were robbed of independence and neutrality. Media freedom and objectivity were stifled and intellectual discourse became a risky enterprise in some African countries.

The attitude of Africa's inter-state institutions, particularly the continental organisation, the Organisation of African Unity (OAU), towards poor governance was one of indifference. The Charter of the OAU paid little attention to the promotion of governance and human rights. Rather, it celebrated the principles of sovereignty and non-interference in the domestic affairs of member states (Art 2(a)(c) OAU Charter). Member states also pledged to respect and promote the inalienable right to independent existence and to refrain from interfering in each



other's domestic affairs (Arts 3(3), 3(5) OAU Charter). Capitalising on the distrust and suspicion that characterised the Cold War, African leaders hid behind the notion of sovereignty to shield each other from governance imperatives.

The demise of the Cold War removed the protective shield that fostered the culture of impunity. It was also now possible for external actors to scrutinise the domestic politics and governance of African states (Ikome 2007). In the post-Cold War environment issues of democracy, human rights and good governance gained prominence, becoming regular features of inter-African relations and of Africa's dialogue with the North, generating an increased propensity among African leaders to enshrine good governance principles in national constitutions and the enabling laws of regional organisations.

Regional organisations in particular became leaders in the prevention of and responses to the subversion of democracy and good governance (Ikome 2007). Poorly managed electoral processes and the resultant election-related conflicts have been identified as major threats to efforts at democratisation in Africa. By virtue of the principles and norms enunciated by the African Union (AU), successor to the OAU, in its various legal instruments, programmes and processes, it is expected to play a pivotal role in securing the commitment of member states to democracy, the rule of law and constitutional government. This chapter attempts to appraise the role of the AU in the prevention, management and resolution of election-related conflicts on the continent.

The chapter argues that the balance sheet of post-1990 electoral democracy in Africa has been mixed. While elections have contributed to entrenching viable democratic systems in many countries, they have, unfortunately, also contributed to further deepening existing social cleavages in some African polities and have been a source of open conflict, instability and insecurity in some others. And while the AU has been able to evolve constructive responses to some of these conflicts, in some other instances its responses have been either too slow or simply inappropriate. The rest of the chapter is organised as follows: the second section briefly reviews the AU's instruments on democracy, peace and conflict management; the third summarises the role and record of the AU in promoting democracy, peace and constitutionalism; the fourth focuses on the AU's normative frameworks for elections and the management of election-related conflicts, using some recent examples; the fifth appraises the role and record of the AU in preventing, managing and resolving election-related conflicts and the sixth and final section provides the conclusion.

## **AU INSTRUMENTS ON DEMOCRACY, PEACE AND CONFLICT MANAGEMENT**

Although the OAU is generally seen to have achieved very little in the areas of governance and conflict prevention it must be conceded that it did lay the

foundations of its successor, the AU's, governance and peace and security architectures. In essence, during the dying days of the OAU its attitude to democracy, human rights and good governance began shifting away from indifference to increasing concern. It also became more conscious of the negative effects of poor governance on development and its image. It therefore began to take steps to address some of the continent's governance ills.

The first major step in this regard was the Kampala Declaration in 1991, which articulated clearly the core democratic principles of competitive and transparent multiparty elections and human rights for the continent (OAU 1991). The Kampala Declaration was born of the same processes as the one that would emanate from the 2000 Conference on Security, Stability, Development and Cooperation in Africa (CSSDCA), whose first and second 'calabashes' relating to peace, security and political stability have a direct bearing on democracy and good governance (Ikome 2007).

The CSSDCA Declaration specifically states that 'democracy, good governance, respect for human and peoples' rights and the rule of law are pre-requisites for the security, stability and development of the continent' (OAU 2000a, Art 9h; African Leadership Forum 1991). It further espouses three complementary principles that have helped shape the AU's overall approach to the prevention, management and resolution of conflicts (including election-related conflicts), namely:

- the peaceful resolution of disputes must place emphasis on seeking African solutions to African problems;
- the prevention, management and resolution of conflicts provide the enabling environment for peace, security, stability and development to flourish;
- the responsibility for security, stability and socio-economic development of the continent lies primarily with African states.

OAU 2000a Arts 9d, 9e, 9f

The CSSDCA Solemn Declaration led to a memorandum of understanding (MOU) that was reached during the OAU's heads of state summit held in Durban, South Africa, in 2002. The MOU set out ways of achieving peace, security and stability through, among other methods, adherence to the fundamental tenets of plural democratic society such as the promulgation of constitutions that include a Bill of Rights, free and fair elections at constitutionally stipulated intervals, multiparty political systems, separation of powers, an independent judiciary, a free press and freedom of expression and assembly, effective control of the military by a constituted civilian authority and accountability and popular participation in governance. It also provided for the upholding of the principle of constitutionalism and the acceptance of the necessity for a significant improvement

in electoral processes in Africa, including the establishment of truly independent national electoral commissions and other appropriate mechanisms to ensure the transparency, fairness and credibility of elections. The MOU complemented its declaratory statements with clear performance indicators and timeframes for the achievement of set objectives (CSSDCA MOU 2002, arts II(o), II(p), II(r), II(s) and II(t) cited in AU 2009).

Between the adoption of the Kampala Declaration in 1991 and the start of the CSSDCA processes in 2000 Africa's efforts to establish structures and processes to promote democracy, good governance and the rule of law received a further boost during the OAU heads of state and government summit in Harare, Zimbabwe, in 1997, with the adoption of an African Common Position on Unconstitutional Changes of Government (OAU 1997). African heads of state further elaborated on this principle during their summit in Algiers (1999), in what has come to be known as the Algiers Decision on Unconstitutional Changes of Government. A key element of this decision was 'the banning from OAU Summits of all governments that had taken power through a coup since the last Summit' (OAU 1999).

During the summit in Lomé, Togo, in 2000 African heads of state expanded and elaborated on these earlier decisions to produce the Declaration on the Framework for an OAU Response to Unconstitutional Changes of Government (see Ikome 2007). The Lomé Declaration came against the backdrop of the resurgence of the phenomenon of coups d'état in Africa. Coups undermined peace and security and constituted a serious setback to the continent's democratisation project particularly with regard to respect for the rule of law and constitutionalism.

Coups were also perceived as an affront to the basic tenets of both the Harare and Algiers declarations and the CSSDCA processes. The Lomé Declaration was a product of the OAU's recognition that the principles of good governance, transparency and human rights are essential elements for building representative and stable governments, with the potential to contribute to conflict prevention (OAU July 2000, cited in Ikome 2007).

It was the adoption of the Constitutive Act of the African Union in 2000 that firmly placed issues of governance and human rights at the centre of the continent's development agenda. The Act is the fountainhead from which flow the commitments of member states to democratic, representative and responsive governance under conditions of peace and stability. This is borne out by the core principles enunciated by the Act to guide the Union: respect for democratic principles, human rights and the rule of law; respect for the sanctity of human life, condemnation and rejection of impunity and political assassinations, acts of terrorism and subversive activities; and condemnation and rejection of unconstitutional changes of government (AU 2000).

The centrality of governance and elections to the AU is reflected in Arts 3(g) and 4(m), which identify the promotion of plural democratic institutions and principles, popular participation and good governance as key objectives

of the Union. These two articles lay particular emphasis on popularly elected governments while rejecting and condemning, in line with the 2000 Lomé Declaration, unconstitutional changes of government. They also underscore the fact that elections are the most legitimate method for the transfer of power and the only democratic means of expressing popular sovereignty in a representative democracy.

The Constitutive Act recognises the close links among democratic governance, political stability, peace and security on the one hand and Africa's development prospects on the other. Among other things, the Act gives the AU the responsibility for promoting:

- peace, security and stability on the continent;
- democratic principles and institutions, popular participation and good governance;
- and protecting human and peoples' rights in accordance with the African Charter on Peoples' and Human Rights and other relevant human rights instruments.

AU 2000 Art 3(h)

The momentum to advance democratisation on the continent brought about by the letter and spirit of the Constitutive Act was given a further fillip during the 2002 AU Summit in Durban through the adoption of the New Partnership for Africa's Development (NEPAD)'s Declaration on Democracy, Political, Economic and Corporate Governance and its African Peer Review Mechanism (APRM).

The core objective of these declarations is the promotion of democracy and governance through more efficient, more responsive and more accountable leadership. The NEPAD-APRM process is intended to be one through which participating governments voluntarily commit to subjecting themselves to the assessment of their peers against an agreed set of governance standards and principles, including the commitment to organise free, fair and transparent elections. Despite this impressive catalogue of governance instruments and processes, poor governance, political instability and conflict continued. It was therefore recognised that while these diverse instruments had added much value to the continent's democratisation agenda they remained inadequate. Therefore, the need arose to evolve a broader and more binding instrument, capable of addressing the principal sources of instability, which include:

- weak democratic institutions;
- the attractiveness of state power, which is increasingly seen as the major source of elite economic accumulation because of the weak economic base of most African countries;
- external interference;

- flawed electoral processes and the resultant contested outcomes;
- the lack of a culture of democracy and peace;
- the prevalence of identity-based violent conflict;
- poor management of resources and uneven distribution of entitlements;
- politicisation of the security establishment (especially the army);
- ineffective reaction from continental and regional supranational bodies;
- socio-economic deprivation, poverty and corruption.

AU 2005

This effort culminated in the crafting of the African Charter on Democracy, Elections and Governance. Part of the impulse for the process came from the directives, in 2003, from the Central Organs of the Union to the commission, to undertake a comprehensive review of the Lomé Declaration, which had been found to be cast too narrowly (AU 2005, p 3).

One of the major highlights in the execution of this mandate was the continental conference on the theme: 'Elections, Democracy and Governance: Strengthening African Initiatives', organised in Pretoria from 7-10 April 2003 by the AU Commission in partnership with the Independent Electoral Commission of South Africa and the African Association of Electoral Authorities. The conference produced detailed proposals on various facets of Africa's governance challenges alongside elaborate proposals on how to expand the frontiers of democratisation on the continent (AU 2009, p 21).

These proposals later formed the core of the draft Declaration on Elections, Democracy and Governance that the commission presented for consideration to African Heads of State and Government during the 2004 Summit in Maputo, Mozambique. The Maputo Summit mandated the commission to strengthen the declaration to transform it into a charter, which process took place between 2004 and 2007. The charter was finally adopted by AU Heads of State and Government Assembly held in Addis Ababa, Ethiopia, on 30 January 2007 (see AU 2001, p 3; McMahon, 2007).<sup>1</sup>

The charter has been regarded as the most comprehensive human rights and democracy document in Africa, articulating and laying down fundamental principles of good governance (AU 2009). It derives its authority from the Constitutive Act of the Union, particularly articles 3 and 4, which emphasise participatory democracy, constitutionalism, the rule of law, human rights, peace and security as well as sustainable human development (AU 2009, p 22). The charter consolidates various commitments by African governments to those issues of governance perceived to be behind the continent's political instability. It therefore aims to improve on relevant earlier declarations, decisions and instruments concerning governance adopted by both the AU and its predecessor, the OAU.

These include, among others, the African Charter for Popular Participation in Development (1990), the declaration on the political and socio-economic situation in Africa and fundamental changes taking place in the world (1990), the 1995 Cairo Agenda for the re-launch of Africa's economic and social development, the Abuja Treaty establishing the African Economic Community, in particular, Arts 90 and 91, the Grand Bay Declaration of the OAU Ministerial Conference on Human Rights, the Sirte Declaration of 1999, the 1999 Algiers Declaration on unconstitutional changes of government, the 2000 Lomé Declaration on an OAU response to unconstitutional changes of government, the 2001 Solemn Declaration on the CSSDCA and the CSSDCA Memorandum of Understanding (2002), the 2002 OAU / AU Declaration on principles governing democratic elections in Africa and the 2003 protocol relating to the establishment of the Peace and Security Council to the Africa Union (Dia, cited in AU 2008).

The charter seeks to underscore the commitment of AU member states to universally accepted principles and norms of democracy, which include:

- respect for human rights (civil, political, economic, social and cultural) including freedom of expression, freedom of opinion, right of association, freedom of the press and freedom of religion and conscience;
- access to and the free exercise of power in accordance with the rule of law;
- freedom of association, including the right to form political parties;
- the holding of periodic free and fair elections managed by independent electoral authorities and based on a secret ballot and universal suffrage;
- separation of powers and checks and balances between the key organs of government;
- gender equality in the management of public affairs;
- citizen participation through active civil society;
- the constitutional subordination of all state institutions, including the military and police forces, to the legally constituted civilian authority;
- transparency in government activities, accountability, probity, and responsible public administration on the part of governments;
- combating corruption in the management of national affairs;
- the strengthening of the institutional capacity of political parties, parliaments, local government authorities, the judiciary, civil society and other institutions of political participation for the enhancement and sustenance of democracy;
- the institutionalisation of the status of opposition parties;



- an embedded political culture of peace, tolerance and regular free and fair elections to institutionalise democratic governance.<sup>2</sup>

Aside from being one of the boldest steps towards the development of a clear agenda for the institutionalisation and strengthening of a democratic culture and a culture of peace consistent with the Constitutive Act of the African Union the charter also articulates a clear methodology for collective responsibility by AU member states for political, social and economic governance in pursuit of democracy, peace and the development of the continent (see Matlosa 2008). In particular, it recognises the interface between elections, governance, peace and security. It therefore seeks to bind AU member states to hold credible, transparent and legitimate elections that enhance democratic governance and promote peace, security and political stability, which, put together, constitute critical pre-requisites for socio-economic development. For the purposes of achieving legitimate and credible electoral outcomes the charter specifically exhorts member states to:

- establish and strengthen independent and impartial national electoral bodies, responsible for the management of elections;
- establish and strengthen national mechanisms to redress election-related disputes in a timely manner;
- ensure fair and equitable access by contesting parties and candidates to state controlled media during elections;
- ensure that there is a binding code of conduct governing legally recognised political stakeholders, government and other political actors prior to, during and after elections. The code should include a commitment by political stakeholders to accept the results of the election or challenge them exclusively through legal channels.

AU 2007a, b

One of the major reasons why elections tend to be perceived as zero-sum games is suspicion and mistrust arising from inadequate political dialogue. This reality provided the impetus for the charter's emphasis on the need for systemic and regular dialogue among key political players, captured in Art 13, which enjoins 'state parties to take measures to ensure and maintain political and social dialogue, as well as public trust and transparency between political leaders and the people, in order to consolidate democracy and peace' (2009, p 24 para 51).

## **THE ROLE OF THE AU IN PROMOTING DEMOCRACY, PEACE AND CONSTITUTIONALISM IN AFRICA**

The volume and diversity of instruments and principles on democratic governance developed by both the AU and the OAU is impressive. The Charter on Democracy,



Elections and Governance, in particular, compares favourably with some of the most progressive instruments on governance evolved by other intergovernmental institutions. However, the adoption of good laws and the articulation of progressive principles is not enough. The real value lies in implementation, an area where both the AU and its predecessor have faced the greatest challenges.

The first challenge has been coping with Africa's complex political environment, defined in terms, especially, of the large number of states in the continent (53) that differ in both their historical experiences and inheritances and in the realities they face. This has resulted in marked differences in the ways in which individual countries or groups of countries have tended to interpret and perceive the continental governance agenda as defined by the AU/OAU and their related programmes such as NEPAD and the APRM. Some still perceive the agenda as intrusive, which makes it difficult to secure their co-operation.

Secondly, the AU has also faced serious challenges because the rules of the democratic process are yet to be clearly institutionalised. Currently some of those who wield political power are disposed to 'bending' the rules of the game in their favour, while those who perceive themselves as outsiders constantly challenge democratic processes. Ethnicity and religion have been politicised in many African polities, resulting in serious conflicts that have retarded the democratic agenda.

These factors have created problems in terms of the growth and development of AU governance instruments. The Lomé Declaration on Unconstitutional Changes of Government, for instance, focused on strong action against military interventions. The OAU/AU has applied this framework with remarkable success in Comoros, Togo, and Madagascar. However, there is a new threat of incumbent governments seeking to alter constitutions to extend their mandates. There is also the case of Mauritania, where a military coup drew considerable popular support, creating a dilemma for the sustenance of a democratic ethos. Implicitly, therefore, policy frameworks that have been evolved to address some of governance challenges, including ensuing conflicts, have, at times, been overtaken by new dynamics that were not foreseen at the time of the crafting of these frameworks. The challenge then became that of examining ways of broadening these frameworks sufficiently to accommodate more complex situations.

The AU Charter on Democracy, Elections and Governance consolidates and reaffirms various commitments to democratic governance, bringing together all the declarations and principles articulated over the years in a single, legally binding treaty. However, despite the programme initiated by the Department of Political Affairs of the AU since 2007 to sensitise stakeholders about its value and content the pace of the signing and ratification of the charter by member states has remained worryingly slow. As at the beginning of 2009 only 24 members had signed it and only two signatories to the charter – Mauritania and Ethiopia – had ratified it, falling far short of the 15-state threshold required to make it a legally binding document (AU 2009, p 22, paras 43-45).

## **AU ROLE IN THE MANAGEMENT OF ELECTION-RELATED CONFLICTS**

The importance of elections to advancing Africa's governance, democracy, peace, security and stability agenda is reflected in the prominence of election-related issues in all the major governance instruments and frameworks that have been crafted by the OAU/AU over the years. Beyond these general frameworks the OAU/AU has also evolved instruments specifically directed at ensuring credible, transparent and legitimate elections in its member states.

The specific focus on electoral matters is premised on the OAU/AU's belief that elections must be regular, transparent, inclusive, impartial and legitimate. It is recognised that they can either enhance or undermine democracy, peace, security and development. Understandably, the normative underpinning of the AU's framework on elections is that elections must be a political asset rather than a liability (AU 2009, pp 24-25, paras 52-54). In this regard two of the most important instruments developed by the AU are the July 2002 OAU/AU Declaration Governing Democratic Elections in Africa and the July 2002 Guidelines for African Union Electoral Observation and Monitoring Missions.

### **The Declaration on Democratic Elections in Africa**

The 38<sup>th</sup> Ordinary Session of the Assembly of Heads of State and Government of the African Union held in Durban, South Africa, in July 2002 adopted the Declaration on the Principles Governing Democratic Elections in Africa. This declaration sets the stage for continental and regional efforts towards acceptable, credible and legitimate elections conducted on the basis of a level playing field and with the minimum of violence. Among other things, the declaration commits member states to the following core principles:

- Democratic elections are the basis of the authority of any representative government.
- Regular elections are the key to the democratisation process and are therefore essential for good governance, the rule of law, and the maintenance and promotion of peace, security, stability and development.
- The holding of democratic elections is an important dimension in conflict management and resolution.
- Democratic elections should be conducted freely and fairly; under democratic constitutions and in compliance with supportive legal instruments; under a system of separation of powers that ensures, in particular, the independence of the judiciary; at regular intervals, as provided for in national constitutions and by impartial, all-inclusive, competent accountable electoral institutions staffed by well-trained personnel and equipped with adequate logistics.

### **Guidelines for African Union electoral observation and monitoring missions**

The Durban declaration is complemented by specific guidelines on how to observe and monitor elections – designed to facilitate the implementation of its key provisions. These guidelines are predicated on the recognition that election observation and monitoring are an integral part of the democratic and electoral processes, serving critical transparency and legitimacy enhancing roles, particularly against the backdrop of the constant threat that the election results will be contested.

Moreover, when properly constituted and deployed, election observer and monitoring missions have the potential to reduce the prospects and intensity of conflicts before, during and after elections. Depending on the assessment report by an AU pre-election team the AU missions may take one or a combination of the following forms: observation, monitoring, mediation, technical assistance and/or supervision and audit (AU 2009, p 26).

It is, however, noteworthy that the AU can only observe and monitor elections in member states if it receives a formal invitation from the state. For its part, the AU can only respond positively to such a request if it is received at least two months ahead of the poll. The requirement that a member state issue the invitation underscores the continued importance of maintaining the sovereignty of states despite the fact that it has been watered down in the Constitutive Act. The Guideline on Election Observation and Monitoring allow member states, particularly incumbent governments, too much discretion over who to invite to observe their elections.

There is evidence that incumbent governments that are uncomfortable with what they perceive as the intrusive nature of the AU's governance agenda have declined to extend the requisite invitation. Having failed to apprise itself of the political realities prior to the elections and also having failed to observe them the AU finds itself in a very awkward position when such elections degenerate into violent conflict and it is expected to step in to resolve the problems.

The insistence that invitations to the AU must be issued at least two months before the polling date gives the union ample time to ascertain the extent to which conditions in the country will allow for a fair electoral contest in line with its Declaration on Principles Governing Democratic Elections (AU 2002). However, it would seem that neither the AU nor its member states has been able to abide by the two-month deadline. Even in instances where the deadline has been respected AU observation and monitoring missions have sometimes been unable to deploy enough people to help them to fulfil their mandates efficiently and effectively. As a result, reports of AU election observer missions have, at times, been contested, thus deepening rather than helping to resolve election-related conflicts (AU 2009, p 28).

## **ROLE AND RECORD OF THE AU IN THE PREVENTION, MANAGEMENT AND RESOLUTION OF ELECTION-RELATED CONFLICTS**

The Peace and Security Council (PSC) of the African Union is charged with the responsibility for preventing, managing and resolving conflicts, including election-related conflicts. Article 2(1) of the Peace and Security Protocol specifically defines it as 'a standing decision-making organ for the prevention, management and resolution of conflicts' (Juma 2006, p 66). The PSC is mandated to resolve conflicts through peace-building and peace-making (Arts 3(b)) and 6(e)) and to work towards the promotion of peace and stability with the goal of ensuring the security of the people, to protect and preserve human dignity, life and property for the attainment of sustainable development (Art 3(a) and 6(a)). It is also mandated to mould constructively a long-term partnership with sub-regional peace and security bodies and the United Nations. Equally significantly, it is mandated to undertake reconstruction activities to prevent post-conflict societies from relapsing into conflict.

In addition, it is required to put in place a common continental defence policy and to work towards the promotion and respect of good practices in areas such as political and economic governance, the rule of law, basic freedoms, human rights and international humanitarian law (Art 3(f)). Most significantly, it is to work relentlessly towards the anticipation and prevention of conflict through early warning and preventive diplomacy (Art 6(b)). More specifically, Art 7(a) empowers the PSC, in consultation with the chairperson of the commission, to 'anticipate and prevent disputes and conflicts, as well as policies that may lead to genocide and crimes against humanity (Juma 2006, p 65; Bassomo 2008).

Because of the recognition that poor governance has been a major source of conflict the AU's governance agenda has been closely linked to the responsibilities assigned to its Peace and Security Council. There is also a growing awareness that some of Africa's recent conflicts have emanated from flawed electoral processes and the associated contestation of electoral outcomes.

Election-related conflicts may arise at any stage in the three-phase election cycle. Therefore, to institute a useful process of checking electoral malpractices and managing election-related conflicts there must be active engagement with various stakeholders throughout the three phases. Although at the time of the establishment of the AU's PSC election-related conflicts were not as rife as they are now, the PSC's four-pronged approach: prevention, management, resolution and post-conflict reconstruction and development lends itself to the requirements of active engagement with Africa's electoral processes and possible election-related conflicts.

### **The prevention of election-related conflicts**

Of all the responsibilities of the PSC and Africa's peace and security agenda, conflict prevention, including the prevention of election-related conflict, stands

out as a distinctive priority because of its contribution to saving both lives and material resources. It has, therefore, in principle, adopted a proactive approach to resolving conflicts, with an emphasis on early responses to potential conflict situations and a process of active mediation, employing the instrument of special envoys and special representatives, including its Panel of the Wise.

The AU has recognised that elections are a potential source of conflict and political violence either because of acute socio-economic inequalities or politicised ethnic, religious and racial divisions or because of deep-rooted political tensions among the major players in various polities, especially political parties. It has, therefore, instituted the practice of sending pre-election fact finding and assessment missions to countries holding elections (AU 2009, p 26). It is noteworthy, however, that frequently those charged with the responsibility to prevent conflict either fail to pick up the signs or pick up the signs but fail to do anything about them.

The AU is aware that early warning and preventive diplomacy are among the building blocks of conflict prevention, so, understandably, early warning systems and indicators have been at the centre of its peace and security strategy. Not only is the development of early warning systems crucial for the effective anticipation and prevention of conflicts it is also a prerequisite for timely responses by various stakeholders. Art 12 of the PSC Protocol provides for the establishment of a Continental Early Warning System (CEWS) to facilitate the anticipation and prevention of conflict.

Article 12(2) defines the structure and composition of the CEWS as follows:

- An observation and monitoring centre, to be known as 'the Situation Room', which is located at the Conflict Management Division of the African Union and is responsible for data collection and analysis.
- The observation and monitoring units of the Regional Mechanisms for Conflict Prevention, Management and Resolution (Regional Mechanisms), which shall be linked directly through appropriate means of communication to the Situation Room and which shall collect and process data at their level and transmit the same to the Situation Room.

The draft roadmap developed by the AU on the development of a Continental Early Warning System identified the objective of such a system as being to provide 'timely advice on potential conflicts and threats to peace and security to enable the development of appropriate response strategies to prevent or limit the destructive effects of violent conflicts' (AU 2008, p 2).

The functioning of the CEWS is contingent on effective coordination and collaboration among the AUC, regional economic communities (RECs) and other relevant stakeholders such as the United Nations and its agencies,

other international organisations, research centres, academic institutions and non-governmental organisations (NGOs) (Art 12(3)). It is also anchored in the development of an early warning module based on well-defined political, economic, social, military and humanitarian indicators, which are used to analyse developments within the continent and to recommend the best course of action (Art 12). Meanwhile, it is expected that the chairperson of the commission will use the information gathered through the CEWS to advise the PSC about potential conflicts and threats to peace and security on the continent and, more importantly, to recommend the best course of action to prevent them. On their part, member states are responsible for facilitating early action by the PSC and/or the chairperson based on early warning information (Art 12 (6)).

Since 2006 sustained efforts have been made to put the CEWS into operation; however, it is yet to emerge as a dependable mechanism for managing election-related conflict, particularly pre-election tension. If it is to serve this purpose the PSC must, according to a recommendation emanating from a brainstorming session in 2008 between the African Union and Regional Mechanisms for Conflict Prevention, Management and Resolution, among other things:

- improve the monitoring of potential developments in the countries concerned during the pre-election phase, including through early warning systems;
- strengthen election observation by deploying missions with adequate strength ahead of the election, with a view to gaining a more comprehensive view of the situation and, if necessary, making recommendations to the stakeholders to guarantee the transparency of the electoral process;
- effectively combine the resources of the AU and the competent regional organisations, including the deployment of joint evaluation and election observation missions;
- undertake, whenever required, preventive peace supporting operations;
- ensure that Africa, through the missions deployed on the ground, is in a position to speak with one voice, with the necessary authority and objectivity, about the transparency of the electoral processes and ensure that these processes are fully owned by Africa.

AU 2008, p 3

As with other types of conflict, the challenge of containing the escalation of electoral conflicts goes beyond information gathering and analysis. It embraces appropriate and timely intervention by those charged with this responsibility, failing which, the entire mechanism is useless (AU 2009, pp 310-31; Moolakkattu, quoted in Bassomo 2008, p8).



### **Panel of the Wise**

The Panel of the Wise is becoming an increasingly critical pillar of the PSC. Provided for by Art 12 of the Protocol on the Establishment of the Peace and Security Council, it is a structure that is intended to provide strategic support to the PSC and the chairperson of the AUC in areas of conflict prevention, management and resolution.

With particular regard to conflict prevention, the panel is mandated to 'carry out fact-finding missions as an instrument of conflict prevention in countries and / or regions where the Panel considers there is a danger of conflict either breaking out or seriously escalating' (AU 2007). It is, therefore, strategically positioned to give meaningful assistance to the PSC and the chairperson of the AUC to forestall election-related disputes before they escalate into full-blown conflicts (AU 2009, p 32).

### **Technical and governance assistance as a conflict prevention strategy**

Election-related conflicts in Africa have been explained largely in terms of the reluctance of incumbent governments and governing parties genuinely to open the political space for competition with the opposition, pre-existing socio-political and economic problems and the politicisation of ethnic, religious and cultural cleavages.

However, the lack of institutional and human capacity in key governance institutions in many African states is also an explanation of the poor management of electoral processes and the resultant conflicts. This deficiency is usually compounded by a lack of civic education with regard to the rules governing elections and the available avenues through which grievances may be channelled.

In many countries both electoral bodies and other stakeholders such as political parties and civil society organisations have been found to have a skewed understanding of electoral processes. Against this background, technical assistance from the AU to various national stakeholders, particularly election management bodies, political parties and civil society would be very helpful. Both the 2002 Guidelines for Election Observation and Monitoring Missions and the 2007 Charter provide for such assistance. However, it is doubtful whether the AU itself has the capacity to do this and whether it has sufficient financial resources to embark on such a mission, in light of the large number of African countries that would need such assistance.

### **Election observation and monitoring as a conflict prevention strategy**

The observation and monitoring of elections play a critical role in ensuring the credibility, transparency and integrity of electoral processes and the legitimacy of



their outcomes for various electoral stakeholders. When properly constituted and implemented, observation and monitoring are vital tools for conflict prevention, management and resolution in countries holding elections.

Since 2002 the AU has been guided in its election monitoring and mediation role by its Declaration on the Principles Governing Democratic Elections in Africa; and the Guidelines for Election Observation and Monitoring Missions. From 2007 these two instruments were strengthened by the African Charter on Democracy, Elections and Governance. The first step in the AU's strategy to prevent election-related conflicts after the receipt of an official invitation from a member state is for the chairman of the commission to send an exploratory mission prior to the elections. The object of such a mission is to obtain useful information and documentation and to brief the chairperson on whether the necessary conditions have been established and the environment is conducive to holding transparent, free and fair elections in conformity with AU principles (AU 2007, Art 20; AU 2009). Based on its assessment of the political environment and related technical aspects of the elections, the pre-election assessment team advises the chairman on the scope and mandate of the AU mission and what form it should take: observation, monitoring, mediation, technical assistance and supervision or auditing (AU 2002, p 6).

Unfortunately, for several years the AU has only been able to intervene in the national elections of member states through observer missions, the least intrusive of the five forms of intervention available to it. In essence, the union, through the intermediary role of its commission, particularly the Department of Political Affairs, has, since the early 1990s, observed more than 200 elections in a majority of the 53 member states (AU 2009, p 34).

Although AU observer missions have become well-entrenched norms, their effectiveness has been constrained by a number of factors, not least the fact that member states have total discretion as to whether to invite the AU to observe an election. Other constraining factors have included the difficulty of assembling the requisite professional expertise, securing the appropriate planning information and the difficulty of rallying the necessary financial and other resources (AU 2009, p 35).

Election observation and monitoring missions should play a key role in diminishing conflict before, during and after elections (AU 2002, p 1). However, in sending only observer missions, whose powers are limited to issuing informed and unbinding judgements on electoral processes and outcomes, the AU's impact on conflict prevention has been very limited. Nevertheless, with the establishment of special units charged with Democracy and Electoral Assistance (DEAU) and the Democracy and Electoral Assistance Fund (DEAF), it is hoped that the organisation's capacities will be strengthened and broadened to enable it to embrace the remaining forms of interventions provided by the Guidelines for AU Electoral Observation and Monitoring Missions (AU 2009, p 35). The Panel

of the Wise has strongly recommended the following strategies to enhance the effectiveness of election observation missions:

- Enhance the capacity of the DEAF to plan, organise and coordinate AU electoral missions.
- Mobilise financial resources through the DEAF to ensure that the AU is capable of providing the requisite resources for its missions.
- Ensure the smooth coordination of efforts between electoral missions coordinated by the Department of Political Affairs and election-related strategic interventions by the Panel of the Wise.
- AU missions must ensure a more systematic and coordinated relationship between their efforts and those of the RECs.

AU 2009, pp 35-36

### **Conflict management: Mediation of post-election disputes**

Despite the rules and norms evolved by the AU and various regional economic communities, electoral outcomes have continued to generate controversy, with many of them unfortunately, turning into violent conflicts. As the custodian of African peace and security the AU has been expected to play a leading role in the management and resolution of such conflict. However, it has, in the past, concentrated its energies narrowly on election observation, neglecting the role of mediator provided for by its own legal instruments. Therefore, apart from issuing statements calling for conflicting parties to exercise restraint and to engage in dialogue, the AU has not demonstrated robust and decisive leadership in the resolution of election-related conflicts in the recent past.

In 2005 the AU was confronted with the challenge of serious violence that erupted in Ethiopia in the aftermath of poorly managed parliamentary elections. Opposition supporters took to the streets of Addis Ababa in June in protest against what they described as vote rigging by the incumbent government. Security forces responded by opening fire, killing about 40 people. Opposition supporters were quick to accuse the AU of indifference and of behaving like its predecessor, the OAU, which rarely criticised member governments. The AU's official condemnation of the violence and numerous meetings between the then chair of the commission, Alpha Konare, and Ethiopian Prime Minister Meles Zenawi, instead of being regarded as genuine efforts to help resolve the crisis were perceived as some form of solidarity with the incumbent at the expense of the aggrieved opposition. Although the AU was represented as an observer at the Ethiopian National Elections Complaints Investigation Panels held between 29 June and 20 July 2005, which helped to broker a political compromise among the main protagonists, it did not play a leading role and the opposition continued to doubt its neutrality.

In 2007 Nigeria's first attempt to engineer a peaceful democratic transition from one civilian ruler to another ran into serious trouble because of allegations of

rigging and electoral fraud. In the post-electoral violence that ensued more than 200 lives were lost and property was destroyed. Although Nigeria is one of the most powerful nations in the AU and has championed many of its democracy and governance instruments it has never really had an enviable governance record. As is the case with many other post-election crises the AU could only appeal for moderation, while entrusting real mediation efforts to the sub-regional body, the Economic Community of West African States (ECOWAS).

Probably of even greater significance was the post-election crisis in Zimbabwe, which seemed to split AU member states into pro- and anti-President Robert Mugabe camps. The election crisis became the focus of debate at the 11th AU Summit held in Sharm el Shaik, Egypt, in July 2008. However, the summit eventually adopted a resolution that applied no sanctions against Mugabe's government, nor did it insist that its core principles on the conduct of elections be upheld. Rather, it urged the two main parties in Zimbabwe to negotiate a solution to their differences.

The AU endorsed the Southern African Development Community (SADC) mediation effort and its chief mediator, then South African President Thabo Mbeki. After much wrangling and several faulty starts SADC succeeded in brokering a fragile government of national unity. Although it would seem that the AU and SADC had no option other than to encourage the formation of a unity government, the apparent reluctance of the AU to be firm with the Zimbabwean leadership, particularly over its visible flouting of major AU governance and election principles, suggests that the imperative of solidarity among African leaders continues to complicate the AU's role as an honest and unbiased mediator in national conflicts.

Another interesting test case for the African Union was the shocking violence that flared up in Kenya after the December 2007 general elections. In light of Kenya's image as a successful model of democratic transition as well as its strategic economic position, the post-election violence attracted an unprecedented flurry of diplomatic interventions, from Africa and beyond.

The violent nature of the conflict also partly explained the determination of various external players to step in to resolve it. The AU's intervention, particularly through the good offices of a panel of eminent African personalities led by former UN Secretary General Kofi Annan was exemplary and facilitated the brokering of a compromise government of national unity. However, the multiplicity of mediators in the conflict muddled the process, making it difficult to ascertain the exact role of the AU in bringing about the outcome.<sup>3</sup> Nevertheless, although the emerging trend of establishing governments of national unity in post-election crises in Africa is very disturbing in that it violates core principles of democracy, including those enunciated by the AU in its various instruments, doing so appears to have helped avert the outbreak of full-blown civil wars in both Kenya and Zimbabwe.<sup>4</sup>

## CONCLUSION

The end of the Cold War brought about a marked change in the attitude of African leaders to issues of governance and human rights. At the continental level it set in motion the processes that led to the transformation of the OAU into the AU and placed issues of governance, democracy and human rights at the centre of inter-African diplomacy.

The OAU, in its dying days, initiated processes that sought to improve on the continent's governance and human rights record. The emergent AU elaborated and broadened these processes, altering considerably Africa's institutional structures of principles, norms and instruments intended to entrench democratic governance on the continent. These instruments address, among other things, minimum standards for the conduct of elections, such as independent and impartial electoral management bodies, fair and inclusive representation of all segments of society, protection of minorities, involvement of civil society, gender equity, the role of the opposition, independence of the judiciary, and freedom of the media.

The Constitutive Act of the AU, the NEPAD-APRM processes and the Charter on Democracy, Elections and Governance all emphasise the importance to the institutionalisation of democratic systems of free, fair and transparent electoral processes. There has also been awareness in the AU that, to the extent that properly managed electoral processes have the potential to deepen democracy and entrench peace and security, poorly managed elections could have the opposite effect.

Recently election-related conflict has emerged as a serious threat to the continent's governance agenda and its democratic gains. By virtue of the principles and norms enunciated by the African Union in its various legal instruments, programmes and processes, it is expected to play a pivotal role in securing member states' commitment to democracy, the rule of law, and constitutional government. While the AU has attempted to prevent some conflicts and to manage those that have erupted, it faces enormous challenges in its efforts. As a result, its attempts to prevent, manage and resolve post-election conflicts have had mixed results.

## NOTES

- 1 See also Matlosa 2008 for an interesting insider's perspective and for details on the various phases in the evolution of the charter.
- 2 See, generally, AU 2005, p 10. It is noteworthy that, unlike the narrow focus of earlier governance instruments crafted by African leaders, the charter is more broadly cast, to embrace both persuasive measures and coercive/punitive interventions. Firstly, it recognises that political instability on the continent has originated from poor domestic governance, and therefore envisages putting in place a strong and credible mechanism for monitoring the national politics of African states – to serve as a kind of early warning mechanism to signal brewing domestic tensions before they degenerate into violent conflict. Secondly, the charter has an inbuilt sanctions regime, aimed at facilitating the shift from the exclusively persuasive character of earlier similar AU instruments to some level of coercive diplomacy.
- 3 For insights into the multiplicity of mediators in Kenya's post-election crisis, see Kisiangani 2009.
- 4 For some interesting insights into negotiated national unity governments in Kenya and Zimbabwe, see variously, Kisiangani 2008 and 2009; Murithi 2008 and Atuobi 2008.

## **THE ROLE OF THE SOUTHERN AFRICAN DEVELOPMENT COMMUNITY IN MEDIATING POST-ELECTION CONFLICTS**

### *Case Studies of Lesotho and Zimbabwe*

**Khabele Matlosa**

#### **INTRODUCTION**

Lesotho experienced post-election political violence following its 2007 election. A year later, after Zimbabwe's general elections in March 2008, the same happened, although the situation there was more serious. The violence in Zimbabwe escalated in the run-up to the presidential run-off poll of June 2008. In both cases, internal remedies to de-escalate the violence and manage it constructively failed, as warring parties maintained their polarised positions. In the process, the violence compromised political stability, peace, security, and development in the two countries.

When internal efforts to manage the post-election conflicts in the two countries failed, the Southern African Development Community (SADC) intervened, with the support of the African Union (AU). In Zimbabwe, SADC deployed the then South African President, Thabo Mbeki, to mediate the resolution of the post-election crisis, leading to the signing of the Global Political Agreement (GPA) in September 2008. The GPA led to the establishment of an inclusive government in February 2009 involving the two factions of the Movement for Democratic Change, MDC-Tsvangirai (MDC-T) and MDC-Mutambara (MDC-M), and the Zimbabwe African National Union-Patriotic Front (ZANU-PF). Since its formation the inclusive government has faced tremendous challenges and its future remains bleak and uncertain. Should the parties complete the constitution-making process a referendum will precede fresh elections in 2011.

In Lesotho, SADC deployed the former president of Botswana, Ketumile Masire, who brought together the key protagonists, the ruling Lesotho Congress for Democracy (LCD) and opposition parties, including the main opposition All

Basotho Convention (ABC), to seek a peaceful settlement to the political crisis. While the Masire mediation made a considerable contribution to the resolution of the conflict, the future of external mediation is uncertain.

After persistent efforts supported by the SADC Secretariat Masire handed the task over to the troika of the SADC Organ on Politics, Defence and Security Cooperation (OPDSC) and the SADC Summit Troika in Kinshasa, Democratic Republic of Congo (DRC), in September 2009. At the same time, the heads of churches in Lesotho, led by the retired Anglican Bishop Philip Mokuku and the Christian Council of Lesotho (CCL), took up the mediation from Maseru. The internal mediation faced significant problems from the outset, particularly since the two parties could not agree on the agenda and a memorandum of understanding for the talks which should prepare the ground for local government elections in 2010 and the general elections in 2012.

This chapter analyses the mediation efforts in Lesotho and Zimbabwe by first delving into the factors that caused the electoral violence. In investigating SADC's role in the search for political solution in both countries, the chapter also discusses how its mediators approached the mediation and the challenges they confronted during the process. The next section provides a conceptual entry point, followed by a theoretical foundation for subsequent discussion. This is followed by an exploration of why elections in Lesotho and Zimbabwe are conflict-ridden. After discussing SADC's mediation efforts and their outcomes, the chapter concludes with key observations and lessons for more effective SADC interventions in future election-related conflict in Southern Africa.

## **THEORETICAL AND CONCEPTUAL ENTRY POINTS**

The political economy of electoral conflicts raises fundamental theoretical questions about the motives that drive election-related violence. This chapter postulates that there are three crucial factors: elite struggles for state power; structural inequalities emanating principally from the skewed distribution of national resources, especially land; and politicised identity cleavages, particularly ethnicity, race, religion and region.

The combination of the politics of survival, neopatrimonialism and clientelism in situations where the economic base is weak increases the value of state power. For the political class retaining or capturing state power is paramount, even if means using violence. The way to accumulate power is to wield it, especially if the private sector is weak. In their effort to retain state power elites often politicise social identities and ethnic cleavages.

Fierce elite struggles for state power and battles over state resources marked the post-election conflicts in both Lesotho and Zimbabwe. These conflicts have, however, not been characterised by politicised social identity such as ethnicity to the scale witnessed in Kenya after its 2007 general election.



From the above theoretical entry point, this chapter focuses on four main concepts: democracy, elections, conflict and mediation and their roles in Lesotho and Zimbabwe.

## Democracy

Democracy has three meanings in Southern Africa. First, in its narrow sense, it is procedural and limited to elections. The second form is where it assumes institutional dimensions that promote and protect civil and political rights that go beyond elections. The third, and highest, form relates to the socio-economic factors that underpin democracy. It is important to emphasise that in all three variations elections are central, even though, on their own, they do not amount to democracy. Box 1 illustrates the dual role of elections in either promoting or inhibiting democratisation.

### Box 1

#### Do elections promote democratisation or autocratisation?

Elections make DEMOCRATISATION more likely if:

- they serve to make *repression* 'expensive' and counterproductive and spur the opposition to unify and mobilise;
- they make a policy of *tolerating* the opposition seem to the rulers as though it will make their rule more legitimate, *but* in fact they trigger the defection of state actors to the opposition and create self-fulfilling expectations about the continuation of competitive politics.

Elections make AUTOCRATISATION more likely if:

- they serve to make *repression* 'cheap', easy to target at opposition leaders, or even unnecessary;
- they make it possible for the regime to control *toleration* of the opposition, to split the opposition, and to use elections as a vehicle for patronage;
- they simply make *toleration* too costly for the incumbents.

Box 1 illustrates that in some instances elections can promote democratisation while in others they can anchor autocratisation. When democratic institutions are either non-existent or dysfunctional governance rotates around individual leaders rather than institutions. Where there is a personality cult and weak institutions democracy is bound to become highly conflictual and violent, particularly during elections, as stakes become higher. Electoral conflicts often lead to loss of life, threaten the social fabric of society and affect the economy (Matlosa 2007b; Nwonwu 2008).

While on the face of it a number of SADC countries have embraced multiparty democracy, there are variations in their state of 'democraticness' (to borrow Sørensen's (2008) concept). A majority of them are merely electoral democracies with serious institutional and political deficiencies. The current democratic momentum in Southern Africa today is marked by uncertainty because of its lack of firm institutionalisation. Years of one-party and military rule have dampened the ability of democracy to flourish in many SADC countries. Democratic institutions (including political parties) are still fragile and have a long way to go before they mature. In many of these countries

polities have little in the way of institutional heritage of political competition. Consequently, attempts to democratise have often been both messy and non-linear either threatened by reversal ... The point is that the institutional logic of patronage and clientelism, frequently exacerbated by ethnic and religious rivalries, and informed by a traditionally important political role for the military, remains at the heart of political competition in Africa, making the imminent widespread establishment of consolidated democracies highly unlikely.

Haynes 2001

The continent's democracy models are qualified variously as 'delegative democracy', 'hybrid democracy', 'façade democracy', 'guided democracy', 'semi-democracy', 'pseudo-democracy', 'illiberal democracy', 'choiceless democracy', 'fake democracy', 'virtual democracy', 'limited/restricted democracy' (see, eg, Haynes 2001; Schedler 2002; Lindberg 2006a; Lindberg 2006b; Sørensen 2008; Lindberg 2009).

All these qualifications point to the fact that the democratisation processes are not smooth and seamless. Not all countries are making progress towards the institutionalisation and sustainability of democratic governance. Some (including Botswana, Mauritius, Seychelles, South Africa and Namibia) are making incremental progress and have not had protracted political violence for a long time. Others (including Angola, DRC, Malawi, Lesotho, Zambia, Tanzania) have reached a 'democratic standstill' and have experienced differing degrees of election-related violence.

In Tanzania election violence has characterised the islands of Zanzibar and Pemba. Zimbabwe and Madagascar have experienced democratic reversals marked not only by election-related political violence but also by the increasing militarisation of politics and politicisation of the security forces. The worst cases are countries such as Swaziland, which have not even started the democratic transition. Swaziland still remains in the tight grip of an absolute monarchy.

Of the countries considered in this chapter Lesotho underwent its democratic transition in 1993, although its democratisation trajectory remains both fragile and conflict-ridden. Despite building solid foundations for democratisation in 1980 upon its independence, Zimbabwe started retrogressing in the late 1990s.

## Elections

Elections are mechanisms for choosing leaders to run national and community affairs with a clear mandate on behalf of citizens for a specified period. They are the democratic means of choosing representatives of the people, the basis for a thriving multiparty democracy and the affirmation of popular sovereignty. According to Paul Collier (2009, p 2) 'elections are the institutional technology of democracy. They have the potential to make governments more accountable and more legitimate. Elections should sound the death knell to political violence.' For Lindberg (2006a, p 1) elections are

an institutionalised attempt to actualise the essence of democracy: rule of the people by the people. Every modern definition of representative democracy includes participatory and contested elections perceived as the legitimate procedure for the translation of rule by the people into workable executive and legislative power. Elections alone are not sufficient to make democracy, yet no other institution precedes participatory, competitive and legitimate elections in instrumental importance for self-government.

The principal significance of elections for democratic governance rests on five main principles: accountability, competition, participation, legitimacy and transparency. Using the power-of-elections thesis Lindberg has demonstrated that African countries that hold regular elections have gradually improved the respect and protection of civil liberties and democratic practices. He argues that 'successive cycles of elections are likely, with time, to lead to democratic improvements as measured by civil liberties ratings' (Lindberg 2006b, p 149). He emphasises the self-reinforcing and self-improving quality of elections, the more often they are held, irrespective of their relative freeness and fairness (Lindberg 2006a, p 2; Lindberg 2006b, p 139) and concludes that 'the more successive elections, the more democratic a nation becomes' (Lindberg 2006b, p 149).

This conclusion should not be confused with Terry Karl's (1986) notion of the fallacy of electoralism, as Lindberg himself recognises that elections can

either reinforce democratisation or act as a political veil for autocratisation, as illustrated in Box 1.

The intrinsic value of elections is evident in Lesotho and Zimbabwe. However, the instrumental value of those elections in advancing peace, security and stability has eluded them. While Lesotho has experienced electoral conflict since 1970 the intensity of political violence has subsided since the reform in 2002 of the electoral system from first-past-the-post (FPTP) to mixed member proportional (MMP). However, the re-emergence of political violence in the 2007 elections reminds us that the instability of the political system is a function of the electoral system, the political culture, and the type of leadership. In Zimbabwe, election-related violent conflict has been a feature of the political system since 2000, when the MDC, after its establishment in 1999, contested its first election. Unlike in Lesotho the integrity of elections in Zimbabwe has been tarnished by disparate election management bodies (EMBs), which have commanded little, if any, public trust and confidence. This problem was compounded during the elections of March and June 2008.

## Conflict

Politics is about conflict because it is a contest about who gets what, when, and where. However, conflict is not always synonymous with political violence. Broadly defined, conflict is both a cause and an effect of incompatibility of values, interests and goals between and among actors/parties. According to Maundi, Zartman, Khadiagala & Nuamah (2006, p 4),

conflict refers to parties' attempts to pursue incompatible ends. *Thus conflicts are intrinsically non-violent; they turn violent, but violence is not their inherent aspect, only a potential form or means that conflicts may adopt* (my emphasis).

Paul Collier (2009, pp 1-2) reminds us that

political violence is both a curse in itself and an obstacle to accountable and legitimate government. It is a curse because the process of violent struggle is hugely destructive. It is an obstacle because where power rests on violence, it invites an arrogant assumption that government is there to rule rather than to serve.

Election-related violence is a manifestation of deep-seated structural problems in society which are accentuated or amplified during elections. Conflict turns violent if belligerents pursue incompatible goals through a zero-sum approach such as winner-takes-all systems at the expense of positive-sum systems. There is a growing consensus in electoral governance discourse that single-member plurality electoral systems are more conflict-prone than proportional representation (PR) ones.

One of the explanations for the political crisis in Zimbabwe is the FPTP system. During the 2000 constitutional referendum the draft constitution, which was rejected, had proposed the adoption of the MMP system for the election of members of Parliament. The issue of electoral system reform features prominently in the current constitution-making process. There are two views about the constitutional debate in Zimbabwe: the progressive view that proposes reform of the electoral system towards more proportionality and the conservative school that argues for the retention of the current single-member plurality system. All political actors in Lesotho have accepted that one of the major causes of election-related violent conflict from 1970 was the FPTP system. The system was changed to MMP after the post-election conflict of 1998 and the change did reduce the conflict. The conflict over the general election of 2007 was not triggered by the electoral system as such, but by the manipulation of the new electoral model by elites who sought to exploit its compensatory mechanism to gain political mileage. Both the ruling LCD and the main opposition ABC tried to gain in both the constituency vote and the party list vote. The distortion of the MMP model triggered protracted conflict over the allocation of PR seats, a problem that persists.

## Mediation

Mediation is the process of bringing conflicting parties to the negotiation table to seek a peaceful settlement of their conflict. It is the third-party facilitation of resolution of a conflict through dialogue, premised on win-win or positive-sum outcomes. Maundi, Zartman, Khadiagala & Nuamah (2006, p 5) remind us that the objective of mediation

is not to assist either party to gain outright victory over its adversaries, but to break the impasse and bring the parties to a level where they would be able to settle for a win-win outcome. Mediators help them to move from generally desirable but untenable zero-sum victories to relatively malleable compromise solutions. Mediation then makes sense when parties to a conflict abandon the option of a zero-sum outcome and embrace a desire for a compromise outcome.

The literature identifies various types of mediation (Maundi, Zartman, Khadiagala & Nuamah 2006; Khadiagala 2007). However, for the purpose of this chapter the focus will be on two components: state mediation, whereby a state mediates a conflict in another state, principally because such a conflict poses a direct / indirect threat to its own national interests. According to Maundi, Zartman, Khadiagala & Nuamah (2006, p 16),

regardless of its size and strength, a state may be motivated to initiate or accept an intermediary role in an internal conflict if that conflict affects its

national interests. The degree of a conflict's impact on a state's national interest is a function of the state's moral principles, its physical proximity to the conflict and closeness of its bilateral relations ... A state sharing borders with the state in conflict will be motivated to initiate mediation as a result of the conflict's contagion and demonstration effect.

This was the motivation for Mbeki's acceptance of the SADC mediation mandate in Zimbabwe. Although SADC had a stake in the resolution of the Zimbabwe conflict, South Africa had a more pressing national interest in such a resolution.

The second mediation strategy is through intergovernmental organisations. Maundi, Zartman, Khadiagala & Nuamah (2006, p 18) further remind us that

intergovernmental organisations' intermediary role is motivated by their members' interests and the interests of the organisations' executive secretariats ... Intergovernmental organisations decide or agree to mediate when their members see it as in their interests to do so rather than taking sides or staying unengaged.

As it did in Zimbabwe, the post-election conflict in Lesotho posed a serious threat to South Africa's national interest. The threat was even greater than that posed by the Zimbabwe conflict because Lesotho is surrounded by South Africa. Because of this, South Africa had an urgent interest in mediating the conflict.

However, behind the diplomatic veneer, relations between Lesotho and post-apartheid South Africa were soured by the military intervention of the South African National Defence Force (SANDF) in 1998 following another post-election political crisis (Matlosa 2007a). Although relations between the two countries have improved since 2000 Lesotho is still suspicious of South Africa heavy-handedness. Although Botswana assisted South Africa during the military intervention of 1998, there is not as much antagonism towards Botswana as there is towards South Africa. It was not, therefore, surprising that SADC agreed to engage Masire as its mediator in the post-election conflict in Lesotho.

### **Conflict-ridden elections**

Although elections represent a battle for state power they are not synonymous with political violence. According to a recent United Nations Development Programme (UNDP) report on 'Elections and Conflict Prevention: A Guide to Analysis, Planning and Programming', 'elections do not "cause" violence. Instead, the root causes of conflict are often found in deep-rooted economic, social or political issues in dispute and the allocation of power among various social forces that the electoral process affects' (UNDP 2009, p 4).

The most recent elections in Lesotho and Zimbabwe triggered political violence (see Matlosa 2008; Matlosa 2009). The three explanations for election-

related conflicts in these countries are: weak democratic institutions, dominance of personality politics over institutions and polarised societies which become even more volatile during electoral contests.

The key issues that precipitated the election-related conflict in Lesotho included: factionalism within parties, opportunistic party alliances and the creation of alliances which had the effect of distorting the MMP electoral model and its compensatory mechanisms. To its credit, Lesotho's independent electoral commission (IEC) made its stance on this matter clear in its report on the 2007 elections, stating that:

In preparation for participation in the contest for parliamentary seats in the 2007 National Assembly election, the Lesotho People's Congress (LPC), the Basutoland African Congress (BAC) and one section of the Basotho Congress Party (BCP) approached the IEC with a view to soliciting advice on how to proceed in their intention to form an alliance to contest the elections as one political entity. They were advised to register that entity in terms of Section 35 of the National Assembly Elections Act 1992, thus the birth of the Alliance of Congress Parties (ACP). On the other side of the spectrum, the Lesotho Congress for Democracy also approached the IEC soliciting advice on how they could form informal alliances with some other party, the IEC advanced the same advice that was given to LPC and other parties. The LCD did not heed IEC's advice and went ahead and formed what they called an informal alliance with the National Independent Party (NIP) and the same was done by the All Basotho Convention and the Lesotho Workers Party. This was how the formal and informal alliances finally came into being.

IEC 2007, p 12

The IEC's explanation points to a serious loophole in Lesotho's electoral legislation about the formation of party coalitions and how these coalitions contest elections within the framework of MMP. This legal lacuna is also manifested in the way the National Assembly operates, with party coalitions perceived as misplaced political entities. This is, in part, due the long tradition of FPTP, which was the system in Lesotho between 1966 and 2002. With the move towards PR coalition politics became the norm, hence the need for clear-cut electoral rules and procedures. This called for far-reaching electoral law reform in Lesotho, accompanied by parliamentary reform.

The 2007 election was preceded by a bitter split in the ruling LCD, the subsequent emergence of the ABC and the formation of political alliances by both parties which essentially undermined the letter and spirit of the MMP system. This alliance formation influenced the distorted allocation of parliamentary seats following the 2007 general election because the compensatory mechanism of the MMP allocated more seats to the bigger parties (ie, the LCD and the ABC)



instead of rewarding the smaller parties as it is intended to do (Elklit 2008; Matlosa 2008). A number of election observer missions raised concerns about the possible negative effect of the unholy political alliances between big and small parties (see Matlosa 2008). The post-election period was marked by protracted violent conflict, which compelled SADC to intervene following unsuccessful efforts to find a homegrown solution.

In Zimbabwe, the key issues that precipitated the election-related conflict included: lack of public trust/confidence on the EMB, an opaque and sluggish election management system, the securitisation of electoral politics<sup>1</sup> and the politicisation of the security sector and the controversial and violence-ridden presidential run-off.

While the elections of March 2008 were relatively calm and peaceful, with the parliamentary poll won by the Tsvangirai-led MDC-T, the presidential race did not produce an outright winner, as required by the electoral law. This development compelled the election management body to organise a second round for the presidential election. This run-off poll was marred by violent conflict leading to a boycott by the MDC-T, which, effectively turned the run-off into a charade.

The ruling ZANU-PF ran the one-horse race with President Mugabe unopposed in a predictable plebiscite. All international observers judged the run-off to be an electoral ritual lacking credibility and legitimacy because it was marred by political violence and run by government-controlled institutions. The political stand-off between ZANU-PF and the MDC-T led to SADC intervening to bring the parties together. The result was the signing of the GPA and the establishment of an inclusive government in February 2009. The government has never been united and has been marked by controversy and disagreement among the participating parties.

It is in this context that SADC intervened in both Lesotho and Zimbabwe in an attempt to bring political stability and peace and obviate the risk of what it saw as a threat to regional peace and security.

## **A CRITICAL ASSESSMENT OF SADC MEDIATION EFFORTS**

### **Lesotho: Stalemate**

The conflict that followed the 2007 general election pitted the LCD against a group of five opposition parties led by the main opposition ABC. Initial efforts to manage the conflict through local mechanisms did not bear fruit. SADC became involved partly because, since the 1994 political crisis it had been the external guarantor of Lesotho's democracy, a responsibility shouldered by South Africa, Botswana, Mozambique and Zimbabwe (see Matlosa 2007a).

On 28-29 March 2007, an Extra-Ordinary SADC Summit of Heads of State and Government was convened in Tanzania to deliberate on the political crises in the DRC, Lesotho and Zimbabwe. With regard to the Lesotho crisis, and in

response to an official request from Lesotho Prime Minister Pakalitha Mosisili, the summit decided 'to send a SADC delegation at Ministerial level to go and assess the situation as requested by the political parties' (SADC 2007a, p 2). The summit was followed by an official fact-finding mission to Lesotho by the Ministerial Troika of the OPDSC in April 2007.

The troika identified seven factors that had triggered the post-election conflict:

- Manipulation of the MMP electoral system;
- Unfair allocation of parliamentary seats;
- The uncertain legality of the party alliances;
- The unruly behaviour of youth supporters of parties;
- The lack of respect for the electoral code of conduct;
- The appointment of new ministers from the NIP party list.
- The lack of communication among political leaders.

SADC 2007b, pp 2-4

The troika made several recommendations about the management and resolution of the conflict. The four most important were:

- That the Government of Lesotho initiate a formal dialogue with a view to resolving political problems between the opposition parties and the ruling party with SADC to facilitate the internal political dialogue.
- That SADC consider nominating one Eminent Person from among the former presidents to facilitate and supervise the process of the political dialogue.
- That the process of internal dialogue begin immediately to pre-empt the possibility of repeated waves of tension.

SADC 2007b, pp 5-6

The troika's report was tabled at the ministerial meeting of the organ in Dar es Salaam in May 2007. It was here that Masire was nominated to facilitate the dialogue. Masire was formally appointed in June 2007 by President Jakaya Kikwete of Tanzania, the then chairperson of the OPDDC. His role was five-pronged: to hold consultative meetings with all stakeholders, to develop a structured plan for the dialogue, to initiate a dialogue among the relevant parties and stakeholders, to facilitate the process and to compile and submit a report on the process and its outcome to the chairman (*Lesotho Times* 16 July 2009).

The first round of talks started in mid-June 2007. By July 2009, when Masire relinquished his task, he had undertaken seven missions to Lesotho. The key players were the ruling party, opposition parties and civil society organisations.

The main agenda of the dialogue process revolved around six issues:

- An enabling environment for a successful dialogue
- Consideration of certain democratic parliamentary processes
- The status of election-related court cases versus the need to facilitate the dialogue
- Reviewing and safeguarding the MMP model and agreeing on the process for doing so
- Review of dialogue process and outcomes
- Institutionalisation of a sustainable culture of dialogue, a code of conduct and political tolerance

Although all stakeholders agreed on the agenda and the road map for the dialogue process there were a number of problems. One of the major issues that impeded an agreement was the simultaneous pursuit of litigation and mediation in relation to election results and the allocation of parliamentary seats, which tarnished the mediation process and frustrated the mediator's efforts. As a result of a judgement handed down by the High Court of Lesotho on 2 July 2008 on election petitions brought before the court by the leader of the MFP the process was thrown into disarray. The court ruled, inconclusively, that the MFP had no *locus standi* to bring the matter before the court and the court itself had no jurisdiction to hear the matter (*Public Eye* 9 October 2009). A seminar of experts which was to have reviewed the way the electoral model had been used during the election was never held. The seminar had five-pronged terms of reference: to advise on the nature and objectives of the MMP system, to advise on the differences between the mixed member proportional system and a mixed member parallel system, to establish the merits and demerits of the MMP model as applied in the election of February 2007, to establish and advise on whether the allocation of seats following the 2007 election complied with the MMP model and to make recommendations on how the legislative and other processes should be improved.

However, the parties never signed the memorandum of agreement that sought to commit the ruling and opposition parties to a well-defined course of action. There were two schools of thought about the course of action. The first, which was espoused by the ruling party, was that whatever defects the experts identified should not be rectified immediately, but should form part of an electoral reform agenda ahead of the forthcoming general election of 2012. The second school, espoused by opposition parties, was that whatever defects the experts would identify, especially in respect to the allocation of PR seats in the National Assembly, should be rectified immediately instead of waiting for the next general election.

The high stakes involved in the post-election political impasse, combined with the profundity of political polarisation in Lesotho, drove the political parties

into zero-sum solutions to the conflict. Each held its polarised position with none prepared to move towards a compromise or positive-sum solution, a situation that precipitated a crisis in the mediation process. The ruling party accused the mediator of bias towards opposition parties and publicly declared that it had no confidence in him. Opposition parties, for their part, had considerable confidence in the mediator but complained about poor communication from the SADC secretariat. They also complained that when the Lesotho crisis was discussed at SADC summits or ministerial meetings only the ruling party was invited to give its input.

As a result of the breakdown in the mediation process Masire visited Lesotho on 9 July 2009 to advise the key stakeholders that he was relinquishing his role and handing the task back to SADC. Before he did so he identified five main points that are worth highlighting:

- The MMP electoral model was not applied properly during the 2007 general election.
- The alliances between the LCD and the NIP and between the ABC and the Lesotho Workers Party defeated the spirit of the MMP compensatory mechanism.
- There was a further distortion in the allocation of parliamentary seats.
- There was need for legal reform to ensure the expeditious adjudication of election petitions in court.
- The issue of the leader of opposition in Lesotho's National Assembly should be resolved through appropriate legal reform.

Masire 2009

These are some of the issues Masire shared with leaders during the SADC Summit of Heads of State and Government held in Kinshasa, DRC, on 8 September 2009 at which he was persuaded to stay on as SADC envoy in Lesotho. Masire reluctantly agreed, on condition that his terms of reference were redefined and that all stakeholders in Lesotho agreed to his continued involvement. The summit also decided that the OPDSC should pay renewed attention to the crisis in Lesotho and implored the Ministerial Committee of the Organ (MCO) to remain engaged to find a durable solution. Pursuant to this decision an Extra-Ordinary Meeting of the MCO was held in Johannesburg, South Africa, on 16 September 2009 to deliberate on Madagascar, Zimbabwe and Lesotho. The meeting decided to dispatch a further troika to Lesotho to meet the government, political parties and other relevant stakeholders. This was done in October. The troika had the following brief:

- To consult with all the stakeholders in the Kingdom of Lesotho

- To assess progress on dialogue since Masire's last visit
- To assess the role of the Eminent Person
- To assess the progress and the role of the Christian Council of Lesotho (CCL)
- To write a report; and make recommendations to the summit

Following its consultative meetings in Lesotho the MCO Troika made five recommendations. Firstly, that the Basotho should continue to engage in dialogue and bring the process to an end. Secondly, that SADC and the CCL should work together to help find a lasting solution to existing challenges. Thirdly, that the leaders of government, the opposition parties and the CCL should engage in a close dialogue and reach agreement on a give and take basis. Fourthly, that appropriate amendments be made to the electoral laws. Fifthly, that an election date be set as a matter of urgency.

The report was adopted by the Summit of the OPDSC held in Maputo in November 2009. In the meantime, the Heads of Churches of Lesotho initiated a local mediation process starting in July 2009, after Masire's departure. The main parties were the government, the Independent Electoral Commission and all registered political parties. The chief convenor was Bishop Philip Mokuku, who was assisted by the heads of other churches. The dialogue was hosted by the UNDP and partially funded by Action-Aid and Ireland Aid. The three-pronged agenda of the local dialogue initiative included the need for common understanding of the court judgement on post-election disputes; the allocation of PR seats and the position of the leader of the opposition.

From the outset the initiative faced formidable obstacles and, at the time of writing, little headway had been made. Its prospects, therefore, look pretty bleak, judging by the record of the SADC mediated process which took close to two years without any concrete results as the parties used delaying tactics, refusing to move from their polarised positions and pointing accusing fingers at each other. As mediator Masire found himself caught in the crossfire and, if he were to resume his position the first challenge would be to regain the confidence of all the stakeholders (especially the LCD). The second challenge would be to harmonise the SADC mediation process with the local mediation process initiated by the heads of churches and the third to exhort parties to move away from their polarised zero-sum positions towards compromise. The first and third challenges are the most difficult. The second one less so.

The ruling party does not seem prepared to reconsider its opposition to the SADC mediator. It will also prove difficult to steer politicians away from their fixed and polarised positions. In the final analysis, the key point is the need to find a durable solution to Lesotho's electoral crisis if the country is to avoid major problems during the election scheduled for 2012. In the immediate future, the current political tension in Lesotho may poison the environment ahead of the

local government election, originally slated for 2010 but, with the concurrence of all the political parties, now postponed to 2011.

Although prospects for a speedy resolution of Lesotho's post-election crisis seem bleak SADC has not lost hope. On 21-22 February 2010 the SADC OPDSC Troika undertook a mission to Maseru. Headed by Mozambican President Armando Guebuza and including King Mswati III of Swaziland and Zambian Minister of Defence Kalombo Mwanza, the troika met all the key stakeholders with a view to rekindling SADC's facilitation of the mediation process. Upon concluding its mission the troika proposed that:

- SADC will support the Christian Council of Lesotho in its role as mediator in the post-electoral political dialogue;
- SADC will appoint, with immediate effect, a team of facilitators to assist the CCL, providing technical support and facilitating communication with the relevant SADC structures;
- SADC will assist in mobilising financial resources to support the mediation process.

SADC 2010

The troika proposed that the CCL, with assistance from the SADC team of facilitators, should reconvene a multi-stakeholder dialogue forum which would, *inter alia*, agree on a roadmap comprised of:

- a list of major contentious issues and how to handle them, including, among others, the allocation of responsibilities among the different stakeholders;
- a list of major issues on which parties generally agree;
- a timeframe for the review of the Constitution;
- a timeframe for the review of the electoral laws

SADC 2010

In March 2010 all those involved – 18 political parties, the government and the IEC agreed on a roadmap, which included five main issues:

- (a) Reallocation of parliamentary seats
- (b) Financial implication of the seat reallocation
- (c) The official leader of the opposition
- (d) Amendment of the Electoral Act
- (e) Amendment of the Constitution

Of these, the main issues of convergence were (d) and (e). The other three issues remain a bone of contention. While at the time of writing the light at the end

of the tunnel of mediation and talks about Lesotho's post-election crisis was flickering, similar uncertainty marked the resolution of the post-election stalemate in Zimbabwe. It is to this that the next section turns.

### **ZIMBABWE'S FRAGILE INCLUSIVE GOVERNMENT**

SADC's involvement in Zimbabwe's political crisis started in 2002 when the situation began to have adverse effects on governance and development as well as on peace, security, and stability in Southern Africa. SADC's intervention began after the March 2007 Tanzanian summit, which appointed Thabo Mbeki as SADC mediator. The primary goal of the mediation was to find a solution to the governance crisis that would also set the stage for the recovery and reconstruction of Zimbabwe's ailing economy. According to a Brian Raftopoulos (2008) Mbeki approached the inter-party dialogue with three objectives in mind:

Firstly, both parties should agree to hold parliamentary elections in 2008. Secondly, they should agree on the steps to be taken to ensure that all concerned accept the outcome of the elections as representing the will of the people of Zimbabwe. Thirdly, that there should be agreement by all political parties and other social forces on the measures that should be implemented and respected in order to facilitate a legitimate election.

The mediation process started in June 2007 and was concluded in September 2008. The initial agenda agreed to by the parties to the talks included:

- the Constitution
- the electoral laws
- security legislation
- communication and media
- political climate

(see Matlosa 2009 for details)

Although the negotiation process was slow it secured modest achievements, including amendments to the Electoral Act, the Zimbabwe Electoral Commission Act, the Public Order and Security Act, the Access to Information and Protection of Privacy Act and the Broadcasting Services Act. All these reform measures led to the amendment of the Constitution to give effect to the changes. However, in the midst of the negotiations the ruling ZANU-PF called an election in March 2008. The two MDC factions protested the announcement of the election date before a constitutional review process had taken place, while ZANU-PF insisted that the election would go ahead, leading to a deadlock in the negotiations.

The negotiations, originally scheduled to last two weeks, took longer than had been anticipated. By the time the next SADC Heads of State and Government



summit took place in Johannesburg, in August 2008, no agreement had been reached on several key issues. The summit, divided about how to handle the crisis (Matlosa 2009), decided not to deliberate on it but instead to delegate the responsibility for doing so to the OPDSC. This approach created two centres of power in SADC, a problem that has dogged it since the establishment of the OPDSC in 1996. Even though the OPDSC was accorded the power to search for a regional solution to the Zimbabwe crisis it did not make substantial progress because of disagreements among the parties about the modalities of an inclusive government.

The signing of the GPA on 15 September 2008 helped resolve the political crisis and induced a measure of optimism. Entitled the 'Agreement Between the Zimbabwe African National Union-Patriotic Front (ZANU-PF) and the Two Movement for Democratic Change (MDC) Formations, on Resolving the Challenges Facing Zimbabwe', this deal covered agreements on a wide-range of issues that formed the initial agenda contained in the MoU. The key elements of the power-sharing agreement establishing an inclusive government were:

- retention of the executive presidency with Robert Mugabe still at the helm of the state;
- a call for the lifting of targeted international sanctions;
- commissioning of a land audit;
- a referendum on the new constitution to be held within 18 months of the signing of the agreement;
- setting up of a mechanism for national healing;
- re-training of the security establishment in human rights and democratic governance;
- establishment of a national youth training programme;
- no by-elections within the following year;
- public media to provide fair and balanced reporting;
- government to process journalists' applications to work in Zimbabwe;
- foreign funded radio stations to be discouraged;
- encouragement of Zimbabweans expatriates to return home;
- gender parity to be a major consideration in all spheres of government, especially the Cabinet.

When the parties failed to reach agreement on the implementation of the GPA, SADC convened an Extra-Ordinary Summit of Heads of State and Government in Pretoria in January 2009 that took the following decisions:

- (i) The parties shall endeavour to cause parliament to pass the Constitutional Amendment Act 19 by February 5, 2009.

- (ii) The prime minister and the deputy prime ministers shall be sworn in by February 11, 2009.
- (iii) The ministers and deputy ministers shall be sworn in on February 13, 2009, which will conclude the process of the formation of the inclusive government.
- (iv) The Joint-Monitoring and Implementation Committee (Jomic), provided for in the Global Political Agreement, shall be activated immediately. The first meeting of Jomic shall be convened by the Facilitator on January 30, 2009, and shall, among other things, elect the chairpersons.
- (v) The allocation of ministerial portfolios endorsed by the SADC Extraordinary Summit held on November 9, 2008, shall be reviewed six (6) months after the inauguration of the inclusive government.
- (vi) The appointments of the Reserve Bank Governor and the Attorney-General will be dealt with by the inclusive government after its formation.
- (vii) The negotiators of the parties shall meet immediately to consider the National Security Bill submitted by the MDC-T as well as the formula for the distribution of the Provincial Governors.

SADC 2009a, p 2

Some of these decisions have not been implemented, including the appointment of the reserve bank governor, the attorney-general and provincial governors. Because of the government's reluctance to implement these decisions the MDC mounted a campaign to have SADC exert more pressure on ZANU-PF ahead of the Summit of Heads of State and Government held in September 2009 in the DRC. The MDC was to be disappointed. The summit only issued a diplomatic statement noting 'progress made in the implementation of the Global Political Agreement' and calling on the international community 'to remove all forms of sanctions against Zimbabwe' (SADC 2009b, p 2).

Mbeki's mediation role in Zimbabwe was complicated when he lost the leadership of the African National Congress in December 2007. In September 2008 he resigned as president of South Africa and from then on his role as mediator remained low key. Despite this, the mediation process did have some success. Among the important milestones were:

- The signing of the GPA in September 2008.
- Enactment of the Constitution of Zimbabwe (Amendment No 19) Act, laying the foundation for the establishment of the inclusive government.
- The installation of the inclusive government in February 2009.

- Restoration of peace, stability and free political activity.
- Progressive economic recovery and stabilisation.
- Progress with the establishment of such democracy protection institutions as the Electoral Commission, the Human Rights Commission and the Media Commission.
- Slow, but encouraging, progress with the constitution-making process spearheaded by the Parliamentary Select Committee (PSC).
- The institution of the Joint Monitoring and Implementation Committee, a multi-party committee to monitor the implementation of the GPA.

Despite these achievements the GPA remained fragile because of the acrimony, distrust and bad blood between MDC-T and ZANU-PF. The two parties remained worlds apart, with the MDC-M playing the role of a political bridge between them.

Both MDC-T and ZANU-PF have raised issues that threaten the GPA. For MDC-T, these include the position of the governor of the reserve bank, the position of the attorney-general, the appointment of provincial governors, the appointment of permanent secretaries and the refusal to swear in and subsequent arrest of Roy Bennett, deputy minister of agriculture-designate.

ZANU-PF has raised the issues of international sanctions, the perception that the international community has a regime change agenda, pirate radios and parallel government. Outwardly, the inclusive government seems to be in good political health, but inwardly it continues to be paralysed by the disagreements between the main political players.

Among the problems have been the arrest of MDC-T activists and political leaders. According to one media source 'At least 17 MDC legislators have been arrested since the beginning of the year on charges ranging from theft and public violence to rape and playing music that denigrates Mugabe' ([www.zimonline.co.za/article.aspx?article=5327](http://www.zimonline.co.za/article.aspx?article=5327)). Concerned about this political harassment of their supporters the MDC-T decided to disengage from interaction with ZANU-PF until SADC has resolved the deadlock.

The party suspended its participation in the regular weekly Cabinet meetings as well as in some national events. Following a SADC Extra-Ordinary Summit held in Maputo, Mozambique, in November 2009 MDC-T returned to the inclusive government with assurances from SADC and South Africa's President Jacob Zuma, now SADC's mediator in Zimbabwe, that the major issues of contention will be addressed in a subsequent round of negotiations.

The monitoring of progress on the implementation of the GPA has increasingly shifted from Mbeki to the OPDSC Troika. During the September 2009 meeting in Johannesburg it was decided to undertake a review of the

implementation of the GPA. The SADC Secretariat was directed to develop terms of reference and a roadmap for the review mission. In October 2009 the Ministerial Troika of the Organ, comprising foreign ministers from Mozambique (current Chair of the Organ), Swaziland (outgoing chair) and Zambia (incoming chair) visited Zimbabwe to conduct the review. The four main terms of reference for the MCO mission to Zimbabwe were:

- to consult with all stakeholders in Zimbabwe;
- to assess progress on the implementation of the GPA;
- to write a report;
- to make recommendations to the summit.

The ministerial team recommended that:

- political parties should engage in a dialogue in order to find a lasting solution to the outstanding issues towards the full implementation of the GPA;
- the MDC-T should reconsider resuming its involvement in the activities of the Cabinet and the council of ministers in the inclusive government as a matter of urgency;
- political parties should comply fully with the spirit and intent of the GPA and SADC Summit Communiqué of 27 January 2009;
- political parties should not allow the situation to deteriorate and hamper further progress on the gains made thus far.

Bill Watch 2009

The team also reiterated the summit's decision of 8 September 2009, which urged the international community to remove all forms of sanctions against Zimbabwe.

After further diplomatic efforts by President Joseph Kabila, the current chairperson of SADC, in November 2009, SADC held an Extra-Ordinary Summit of the OPDSC in Maputo that adopted the report of the MCO mission, which recommended dialogue within 15 days to resolve all outstanding issues. President Jacob Zuma formally replaced Mbeki as mediator.

At the end of November Zuma visited Zimbabwe to get an update on progress. Following this visit the South African government announced Zuma's new facilitation team, which included Charles Ngcakula, Advisor in the Presidency; Mac Maharaj, the Presidential Special Envoy and Lindiwe Zulu, International Relations Advisor in the Presidency.

Since its establishment the facilitation team has undertaken numerous visits to Harare and met with all key political stakeholders to discuss ways of resolving

the political crisis. Zuma, too, has visited Harare on several occasions, bringing together negotiators from all sides. Thus far, the following has been achieved:

- A roadmap for constitutional review process has been agreed upon and a timetable for the review process and the referendum put in place.
- A new election management body has been appointed.
- A new human rights commission has been set up.
- An electoral reform process is underway.
- Media and other relevant laws are being reformed

However, the constitutional review process is painstakingly sluggish and it is doubtful that it will be completed in 2010, paving the way for a referendum in 2011. In the circumstances it might be difficult to hold a fresh election in 2011. Realistically, this election could then take place in 2012.

## **CONCLUSION AND LESSONS LEARNT**

Lindberg is correct about the self-reinforcing and self-improving quality of elections – regular elections in Lesotho and Zimbabwe have contributed to gradual democratisation. However, this only relates to the intrinsic value of elections. With regard to the instrumental value of elections, in neither country have they contributed to the institutionalisation of a culture of peace; instead, they have triggered violent conflict and political instability that could not be resolved through homegrown conflict management mechanisms, a failure that prompted the intervention by SADC mediators, with mixed results.

In both countries post-election conflict is a manifestation of fragile democratic institutions and the dominance of personalities in governance. The conflicts have been compounded during elections as the political stakes escalate. In the absence of local remedies to manage and resolve these conflicts SADC has intervened, with the support of the African Union. But despite SADC's intervention, the solution may not be sustainable because of the entrenched personality cults that cloud national interests and make it difficult for the belligerent parties to move away from their zero-sum positions to positive-sum solutions.

The three main conclusions of this chapter are:

- In both countries national-level mechanisms for the prevention, management and resolution of violent election-related conflicts are weak and ineffective.
- The weakness and ineffectiveness of national-level mechanisms has shifted the responsibility for conflict resolution to SADC as part of its regional integration mandate.
- SADC's mediation efforts in Lesotho and Zimbabwe have been severely

limited by two main factors – the organisation's own internal capacity constraints and the high political stakes in post-election conflicts that make parties less inclined towards win-win solutions.

What lessons can we draw from these two cases about SADC mediation in election-related conflict situations? First, in Lesotho SADC opted to use an elder statesman as a mediator, while in Zimbabwe it used a sitting head of state to facilitate dialogue. It may serve SADC in future to rely more on former heads of state and government as mediators. This is a pragmatic approach that could obviate the tension between regional and national interest in the mediation process. It is encouraging that SADC is now in the process of establishing a Panel of Elders ready to be deployed in future conflict situations. Once the panel is established SADC should rely solely on it.

Secondly, the issue of national sovereignty in conflict situations cannot be ignored. Both the AU and SADC are sovereign political entities. Although they have committed themselves to regional integration and embraced the new notion of non-indifference, they still harbour the vestiges of parochial sovereignty that tend to undermine regional integration, peace building and democracy. In Lesotho and Zimbabwe the mediators faced the challenge of governments retreating into narrow sovereignty when this strategy suited them. Governments perceive SADC as the champion of political integration when it suits the ruling elites, but any attempts by SADC to intervene to hold these elites accountable are seen as external actors unduly interfering in domestic affairs.

Thirdly, SADC needs to build its own internal capacity for mediation. In both countries opposition groups complained that its interventions tended to favour and bolster ruling parties that controlled governments. Communication between SADC and all the parties was scanty and sporadic. Capacity constraints forced mediators to depend on their own governments for technical assistance. There is a need for adequate technical support for mediation efforts from the SADC Secretariat in Botswana. In this regard, SADC's current efforts to establish a mediation support unit (MSU) is a step in the right direction. The MSU will be complemented by regional reference group experts who will advise the Panel of Elders as SADC mediators.

Fourthly, SADC member states should avoid dealing reactively with election-related conflicts. Although all countries know when elections are scheduled they often ignore the fact that they are likely to cause conflicts. It is imperative for SADC to ensure the effectiveness of the early warning system to identify hot spots and intervene timeously to prevent the outbreak of violence. If SADC is to intervene effectively it should invest more in preventive diplomacy, strategies and mechanisms. It is also incumbent upon the community's member states to set up effective institutional mechanisms and prudent strategies for the prevention, management and resolution of election-related conflict.

Election management bodies, political parties and civil society organisations should play a pivotal role in all these mechanisms. Some useful lessons may be learnt from SADC members such as South Africa, which have highly institutionalised and effective conflict resolution mechanisms. In South Africa election-related conflicts are handled by the IEC, party liaison committees, conflict management panels, the electoral court and, finally, the Constitutional Court (see the chapter by Mosotho Moepya in this volume). This is a useful model from which important lessons can be drawn for good practice in the management of election-related conflict.

Finally, SADC should insist that its mediation efforts be undergirded by principles of inclusivity and transparency. Inclusivity should ensure that participation in the negotiation processes takes into account the interests of social groups including civil society organisations, women, youth, and people with disabilities. Similarly, transparency should entail opening up the negotiation and dialogue processes to the general public. Mediation should not be shrouded in secrecy when elections themselves take place under a spotlight. If the dialogue is confined merely to the political elites and conducted in secrecy the most likely outcome is an elite pact which may not be supported by the electorate.



## **ECOWAS AND ELECTION-RELATED CONFLICT IN GUINEA-BISSAU AND NIGERIA**

**Ade Adefuye**

### **INTRODUCTION**

The outbreak of conflict and later on civil wars in Liberia (1989-1996, 1999-2003) and Sierra Leone (1999-2002) forced the Economic Community of West African States (ECOWAS) to change its objectives and strategies because of the realisation that the objectives of economic development and integration need to be based on political stability, democracy, human rights, the rule of law and elections that reflect the will of the people. The attempt to resolve the conflicts in Sierra Leone and Liberia led to a situation in which resources that could have been used for economic development were diverted to resolving conflicts.

The key innovations in the 1993 ECOWAS Treaty include:

- The introduction of the principle of supranationality in the application of decisions reached by the Authority of Heads of State and Government, the highest organ of ECOWAS.
- The establishment of supranational institutions – the Community Court of Justice, the Community Parliament and the ECOWAS Bank of Investment and Development (EBID) – to monitor the application of decisions and to arbitrate as necessary.
- Cooperation on political matters.

In 1999 ECOWAS adopted a Protocol Relating to the Mechanism for Conflict Prevention, Management, Peacekeeping and Security and identified factors that could inhibit the achievements of the organisation. One of these factors was the existence of conflicts, hence the importance of establishing mechanisms to avoid the outbreak of conflict and to deal with them. For this reason, ECOWAS created a number of organs such as the Defence and Security Commission, the Council

of the Wise, and an ECOWAS Ceasefire Monitoring Group (which will be transformed into the ECOWAS Standby Force).

In Dakar in 2001 heads of government altered the protocol by means of an addendum, entitled the Supplementary Protocol on Democracy and Good Governance, to deal with the issue of democratic transition through credible elections. The protocol contains two sets of principles to promote democracy and good governance, the rule of law and human rights in member states. ECOWAS expected the protocol to stem violent electoral conflicts arising from political marginalisation and exclusion.

This chapter highlights the extent to which member states have complied with these articles in the conduct of elections; it shows that the fact that the provisions of the protocol are not adhered to contributes to election-related controversies and conflicts. These conflicts are exacerbated by the fact that in most of the political parties the process of selecting candidates to contest elections is undemocratic.

The chapter uses as case studies legislative and presidential elections in Guinea-Bissau in 2009 and the presidential election in Nigeria in 2007 to demonstrate the fundamental defects in the preparation for elections in West Africa. It also discusses the role of ECOWAS in managing these conflicts and the limits to its effectiveness in resolving them.

## **PRINCIPLES GOVERNING ELECTION MANAGEMENT IN ECOWAS COUNTRIES**

The two major principles in the Protocol on Democracy and Good Governance are constitutional convergence and democratic elections. Of particular relevance to this chapter are the principles of democratic elections outlined in Section II, Art 2(10). These deal specifically with election management and organisation. This article contains the framework for the promotion of credible, transparent and violence-free elections. Among the principles are:

- The election management body (EMB) should be independent and neutral and should have the confidence of all the political actors.
- No substantial modification should be made to the electoral laws during the last six months before an election is held, except with the consent of a majority of the political actors.
- Elections must be organised on the dates or at the periods fixed by the law.
- Women have equal rights with men to vote and be voted for, and to hold public office at all levels of governance.
- A voters' roll must be produced, drawing upon a reliable register of births and deaths.

- The voters' roll must be prepared in a transparent and verifiable manner, with the collaboration of the political parties.
- The electorate should have access to the voters' roll whenever the need arises.
- The preparation and conduct of elections and the announcement of results should be handled transparently.
- Adequate arrangements should be made to hear and dispose of petitions relating to the conduct of elections and the announcement of results.
- Election-related civil society organisations should be involved in educating the public on the need for peaceful elections.
- A candidate or party that loses an election should concede defeat in accordance with the law.
- All holders of power at all levels should refrain from acts of intimidation or harassment of defeated candidates or their supporters.

Based on those principles the protocol identifies a role for ECOWAS in elections in member states, including the provision of assistance for the purposes of conducting an election and dispatching missions to countries to monitor the election. The president of the ECOWAS Commission can authorise the following types of mission to any member state conducting an election: fact-finding mission, exploratory mission and observer mission.

An exploratory mission will:

- gather information about the conditions under which the election will be conducted;
- collect pertinent information relating to the candidates or political parties;
- meet candidates, party leaders, government authorities and other regional bodies;
- gather any useful information that may provide a clear picture of the situation in the country;
- prepare a report.

The way these principles and practices operate will be analysed in the case of Nigeria's parliamentary, gubernatorial and presidential election of 2007 and the legislative and presidential elections in Guinea-Bissau in 2009. The chapter will show that failure to comply with the agreed procedure for conducting credible and violence-free elections led to the outbreak of violence in both countries. In addition, the chapter will argue that both institutional weakness in the structure of ECOWAS and political instability in Nigeria and Guinea-Bissau contributed to limiting the ability of ECOWAS to prevent the violence.

## GUINEA-BISSAU

With a population of 1.6-million people Guinea-Bissau has one of the lowest GDPs per capita in the world. Long colonised by Portugal, it achieved its independence following armed rebellion led by the African Party for the Independence of Guinea and Cape Verde (PAIGC) under the leadership of Amílcar Lopes Cabral. Until 1984 Guinea-Bissau was ruled by a revolutionary council. The first multiparty elections were held in 1994 and João Bernardo 'Nino' Vieira was elected president. But an uprising by the army in 1998 led to the Vieira's overthrow, leading to a civil war. The elections held in 2000 brought Kumba Yalá to power.

Guinea-Bissau is an example of the damaging effects on political and economic stability of military involvement during the liberation struggle. The PAIGC sees itself as having the automatic right to control the country and strong ethnic sentiments permeate all sections of the society, especially the army and the civil service. The army has remained the most vital institution in the political equation. Furthermore, the majority ethnic group, the Balanta, who comprise about 40 per cent of the population, constitute about 60 per cent of the army. A substantial part of the country's budget goes to the salaries of military officers.

Because of its strategic location, especially its relative proximity to South America, Guinea-Bissau has become a transit point for drug cartels heading for Europe and, in the absence of good governance and strong institutions to combat crime, drug trafficking has infiltrated the political and security institutions leading to the criminalisation of politics and the corruption of the moral and social fabric of society.

Over time, poor economic and financial management has exacerbated poverty, contributing to the collapse of infrastructure, mass youth unemployment, non-payment of salaries, and poor functioning of state institutions. The politicised and highly ethnicised military is a threat to the principles of democratic control of the security agencies. In the period before the 2008 election a growing culture of impunity resulted in political murders committed because of the absence of an effective system of law enforcement.

### Prelude to the 2008 legislative elections

Apart from endemic military coups politics in Guinea-Bissau has been characterised by the split in the PAIGC which led to the emergence of a number of political parties led by individuals with military backgrounds. After the first general elections President Vieira instituted a market economy and a multiparty system. His administration was, however, accused of corruption and autocracy. He was dismissed from office by the Balanta-dominated army, which then embarked on a transition programme that included two rounds of presidential elections in 1999 and 2000. These elections were won by Kumba Yala, a Balanta whose Social Renovation Party (PRS) had split from the PAIGC.

As president Kumba Yala had an uneasy relationship with the leader of the army, General Ansumane Mane. Yala's autocratic leadership style was evidenced in attacks on the judiciary and the media, arbitrary policy changes and the dismissal of ministers. These actions provoked another coup, led by General Verissimo Correia Seabre, who appointed a committee for the restoration of democracy and constitutional order, headed by a businessman, Henrique Rosa, and Arthur Sanhaas, the country's prime minister (IRIN News 7 May 2010).

The new authorities organised a legislative election which resulted in the emergence of Carlos Gomes Junior as prime minister in 2004 (IRIN News 7 May 2010). In 2004 Vieira returned from Portugal and a month after his return Kumba Yala, who had been deposed in September 2003 by a military coup, declared himself the rightful head of state and, briefly and illegally, occupied the office of the president before the army removed him. Both Kumba Yala and Vieira were among the candidates for president in an election that was won by Vieira (IRIN News 28 June 2005). When Junior refused to accept the outcome of the election outcome Vieira dismissed him and appointed Aristide Gomes as the new prime minister. These frequent changes of government had an adverse effect on the political and economic system, making it difficult for the state to meet its obligations to the people.

In 2006 the trade unions called a strike over civil service wage arrears, at which point ECOWAS intervened, paying the salaries of teachers and helping to mobilise donors to organise a conference that raised \$262.51-million to assist Guinea-Bissau. The reason for the intervention was that ECOWAS realised that the problems in Guinea-Bissau were affecting development in the region. ECOWAS, therefore, became the convener of and starting point for international involvement in Guinea-Bissau. As far back as 1999 the United Nations established a UN Peacebuilding Support Office (UNOGBIS), which has coordinated all UN involvement in Guinea-Bissau's peace process. At same time, Portugal has also tried to restore peace and security.

In July 2006 the community of Portuguese language countries (CPLP) held its annual summit in Bissau to promote recovery in Guinea-Bissau. This was followed, in September 2006, by an International Contact Group on Guinea-Bissau that convened in New York as a result of a joint initiative of ECOWAS and CPLP. The contact group planned the donor roundtable mentioned above. The conference agreed to disburse the funds after the country regained political stability.

This was the situation when Guinea-Bissau held its legislative elections in August 2008. All former presidents, prime ministers and heads of the army were in the country and participated actively in the campaign and preparation for the elections. In accordance with the principles of democratic elections by which ECOWAS was mandated to provide technical assistance to member countries, the ECOWAS Commission donated \$500 000 to the electoral commission to assist it in its preparations.

The elections, which were observed by ECOWAS, the European Union, the Community of Portuguese Language Countries and the African Union, were generally peaceful and the observers declared them free and fair. The PAIGC won with an absolute majority of 67 of the 100 parliamentary seats. Kumba Yala's PRS came a distant second, with 28 seats.

Kumba Yala announced that he would not accept the result because elections had not been held in some of his party's strongholds. But when the Supreme Court ruled that the results were free, fair and transparent Kumba Yala kept his peace. Before the elections he and many of the political and military leaders had pledged to the ECOWAS observer team that they would accept the outcome. Kumba Yala was said to have reached an agreement with Vieira to form a coalition government but after his protest against the conduct of the election the relationship between the two broke down.

A small section of the Balanta-dominated army attempted to assassinate President Vieira in November 2008. His residence was attacked, but he managed to escape. At this point ECOWAS decided to intervene through a joint ECOWAS-UN Mission that visited Guinea-Bissau after the attempted assassination. The mission consisted of the president of the ECOWAS Commission, the chairman of the ECOWAS Council of Ministers and Said Djinnit, Special Representative of the UN Secretary General in West Africa.

While in Bissau the mission held extensive discussions with the principal stakeholders to calm the atmosphere. Similarly, a meeting of the ECOWAS Mediation and Security Council was held in December 2008. At the meeting President Vieira requested the international community, through ECOWAS, to provide for his protection because he had lost confidence in the armed forces to guarantee his safety. In the absence of any concrete response to his request Vieira's government invited a group known as *Aguentas*, former combatants in the 1998-99 Guinea-Bissau civil war now based in Guinea (Conakry) but loyal to Vieira, to take care of his security.

The presence of this group of soldiers increased the tension between President Vieira and the armed forces and the armed forces disarmed the *Aguentas*, alleging that the group was trying to assassinate General Batista Tagme Na Waie, the head of the armed forces. The tension between Vieira and Tagme was so palpable that it was obvious that there would soon be an explosion. Tagme was reported to have hinted that he suspected that the president was trying to assassinate him and, should this happen, the armed forces should assassinate the president. On 1 March 2009 a bomb blast at military headquarters claimed the life of General Tagme and a few hours later a group of soldiers stormed the presidential residence and assassinated Vieira in a revenge attack.

ECOWAS and the AU condemned the incident and President Alhaji Shehu Musa Yar'Adua of Nigeria dispatched a six-member ECOWAS ministerial delegation and the ECOWAS Commission president to Guinea-Bissau to hold

extensive consultations with the key stakeholders to check the escalation of the political and security crisis. They were instructed to find ways of stabilising the situation, including the organisation of a presidential election. ECOWAS managed to get the Nigerian president, in his capacity as ECOWAS chairman, to donate \$500 000 to pay the salaries of the military, who had threatened to strike and disrupt the election. The presidential election, held in July 2009, was won by Bakai Sanha of the PAIGC.

The legislative elections of 2008 and the post-election violence which ECOWAS has attempted to deal with are not isolated incidents. The events that occurred in the period during and after the elections, leading to the two assassinations, are part of a continuum of political and military upheaval which have become a permanent feature in Guinea-Bissau. The post-election assassinations are indicative of a dysfunctional state of affairs where law and order do not exist. ECOWAS officials and the political leadership agreed that the challenges facing Guinea-Bissau are daunting, since there is a lack of trust among political leaders at all levels of government. This situation has exacerbated poverty and contributed to the absence of strong law enforcement measures to deal with the problem of drug trafficking.

Many international stakeholders believe that one way to solve the problem is to undertake security sector reforms that will ensure the modernisation of the defence and security system. The ECOWAS Mediation and Security Council meeting on 9 April 2009 mandated the holding of a meeting on security sector reforms in Praia, Cape Verde. The round table on Guinea-Bissau's security sector reform was held on 20 April 2009 (UNSC /9632 [www.un.org/News/Press/docs/2009/sc9632.doc.htm](http://www.un.org/News/Press/docs/2009/sc9632.doc.htm)).

The purpose of the roundtable on restructuring the security sector was to identify steps to get the military to support a security sector reform programme and to address the compelling need to provide protection for the leaders. A total of 29 countries from Africa, Europe, America and Asia participated in the meeting, which included representatives from ECOWAS, the EU and the UN as well as agents of the UN on drug control. Delegates decided to take action on matters such as demobilisation, pension fund creation, barrack rehabilitation, and the reform of the security and justice sectors.

In addition, there was consensus about the need to combat drug trafficking and the establishment of a trust fund for sector reform. It was believed that until the security system is reorganised and stabilised election days might continue to be peaceful but the basic causes of insecurity would continue to cause post-election violence.

ECOWAS lacks the resources to deal with the situation on its own. The drug barons and the civil and military leaders are backed by external forces whose capacity for violence exceeds the resources of ECOWAS. A number of people have blamed ECOWAS for not responding on time to the demand by Vieira for



protection when he asked for it in 2009 but the reality is that ECOWAS does not have the capacity to respond to such a request. The Standby Force created by the ECOWAS Monitoring Group (ECOMOG) is now being trained, but it is uncertain whether its mandate will include the protection of leaders in individual countries. These are some of the limitations of ECOWAS in its efforts to guarantee peace and security in the region.

### **NIGERIA: LEGISLATIVE, GUBERNATORIAL AND PRESIDENTIAL ELECTIONS 2007**

The 2007 elections in Nigeria marked the first transition from one democracy to another. ECOWAS did all it was supposed to do before the elections but it could not live up to the expectations of the Protocol on Democracy and Good Governance in the post-election period. The structure of ECOWAS and the relative importance of Nigeria in the ECOWAS system seem to have prevented ECOWAS from dealing effectively with the aftermath of the elections.

From January 2006 ECOWAS collaborated continuously with the Nigerian authorities and relevant stakeholders in the electoral process. It also monitored the progress of preparations through its early warning mechanism and the political affairs department. ECOWAS followed the process leading to the elections closely, including the reform of the Electoral Act, the population census of 2006, the party primaries and the political campaigns.

In accordance with the processes outlined in the Principles of Democratic Elections, the president of the commission dispatched a high-level fact finding mission led by Sir Dawda Jawara, former president of The Gambia, to the country in February 2007. While in Nigeria the mission held extensive consultations with key stakeholders, including then President Olusegun Obasanjo, state authorities and federal ministers, political parties, the Independent National Electoral Commission (INEC), the Economic and Financial Crimes Commission, security agencies, development partners, civil society organisations and the media.

The mission noted that because of the late release of funds to the INEC, the introduction of new registration technology and the inadequacy of registration equipment the voter registration exercise had not been conducted well. It also noted that although the party primaries and electoral campaigns were relatively orderly they were characterised by a lack of internal party democracy, the imposition of candidates and some level of violence and incidents of intimidation.

As a result of these observations ECOWAS engaged critical stakeholders in the Nigerian political process on a number of key issues it wanted resolved before the election. It urged the authorities to embark on a number of actions to avoid raising tensions, causing violence and undermining the integrity of the election. It urged that professional bodies, including the Bar association, medical

associations and university teachers should be recruited to act as role models and help to ensure that polling stations were responsibly manned. It asked the federal and local authorities to ensure that security personnel were deployed in the vicinity of polling stations and that weapons were barred from these areas and severe sanctions were imposed on those who failed to comply.

Parties and candidates were urged to sign an undertaking that they would accept the result of the elections if they were declared free and fair. Finally, parties and candidates were urged to refrain from using inflammatory language in the run-up to the elections, to refrain from inciting their supporters to act in ways that might lead to violence, and to seek redress through legal channels. ECOWAS publicised this appeal to the authorities at federal and state levels but the parties ignored it.

### **ECOWAS'S ASSESSMENT OF THE ELECTIONS**

The ECOWAS Observer Mission was not impressed by the conduct of the elections, declaring that they could have been organised more credibly and competently. The elections were marred by several organisational and procedural lapses and by the incompetence of electoral and party agents as well as lapses in security. Their integrity was undermined by substandard facilities; unsuitable polling centres, without polling booths; poor quality and inadequate protection of sensitive electoral materials and unacceptable lateness in the opening of the polling stations. These factors undermined the secrecy of the vote and facilitated electoral irregularities, violence and the questionable collation of results. There were some places in which, though elections had not taken place at all, figures were manufactured and presented as results; incidents of open stuffing of ballot boxes and cases of missing ballot boxes. The mission blamed the electoral commission as well as all political parties and their leaders. It declared that in several states incumbents of the dominant parties at both national and state level used their position to maximise the advantage of incumbency and capture votes by fair and foul means. The mission called for immediate and urgent reform of the Electoral Act and electoral practice to prevent a future occurrence of the anomalies observed in these elections.

The 2007 elections are generally regarded as the worst ever conducted in Nigeria and, though ECOWAS condemned their conduct, its report was milder in its criticisms than those of other international observer teams such as the Commonwealth, EU and the Carter Center. In apparent deference to the importance of Nigeria to ECOWAS and the need to retain the goodwill of its leaders the observer team said that:

Having carefully considered all factors relating to the conduct of the elections against the overriding concerns for stability and uninterrupted transition in

Nigeria, the ECOWAS Observer Mission believes that it is in the interests of Nigeria to consider the elections as having been legitimately held and valid.

Other observer groups were less convinced. The International Crisis Group described the elections as the worst-organised and most massively rigged in Nigeria's history. The United States-based Centre for Environment, Human Rights and Development said that a staggering 110 incidents of political violence were reported by 31 monitors in the South-South Zone. In eight of these incidents nine people were killed and there were 11 cases of torture, resulting in physical harm to more than 28 people; there were seven incidents of destruction of property, 32 of hijacking of election materials and 10 of intra-party clashes.

In general, both local election monitors and international observers joined defeated candidates and parties in denouncing the conduct of the elections. The Transition Monitoring Group (TMG), an umbrella watchdog comprising more than 70 Nigerian civil society organisations which had monitored the 1999 and 2003 elections, concluded that the poll was so fatally flawed that it should be re-run. The Domestic Electoral Observer Coalition called for the results of the gubernatorial and state assembly elections in at least ten states as well as the presidential election to be annulled.

The Nigerian Bar Association (NBA) declared the elections the country's worst ever, as did the umbrella workers' union, the Nigerian Labour Congress. Leaders of the two main religious groups, the Christian Association of Nigeria (CAN) and the Nigerian Supreme Council for Islamic Affairs (NSCIA) jointly noted that INEC had accepted fake results in many states and that the elections were a national tragedy. Preliminary reports by international observers were also critical. The West African Civil Society Forum (WACSOFF) and the European Union Election Observation Mission reported that the election fell short of generally accepted international standards for credible, free, fair and transparent elections. The Commonwealth Observer Mission stated: 'Overall, in organisational terms, these elections fell short of the standards Nigeria had achieved in 2003 and certainly well below those to which Nigeria is committed.'

## **NIGERIA IN ECOWAS**

ECOWAS observers were aware of the reaction of local and other international observers to the conduct of the elections, including the call for its outright cancellation. All international observers except ECOWAS and the AU condemned the poll outright. But beyond pointing out the inadequacies of the poll ECOWAS observers did not call for its outright condemnation and even stated that was in the interests of Nigeria to consider the results valid.

Quite a number of observers, including some members of the staff of the

commission, were strongly opposed to this conclusion and expressed their opposing opinions in newspapers and magazines. It was reported that when Dawda Jawara, the leader of the observer team, was asked to declare the elections invalid he retorted that he could not be party to such a declaration against Nigeria.

The reasons for this attitude can be found in the role and importance of Nigeria in ECOWAS. With a population and resources which far exceed those of the rest of the countries in West Africa combined Nigeria has played a dominant role in the organisation; a role that makes ECOWAS member states reluctant to take decisions that might alienate whichever government is in power. It was feared that a declaration that the 2007 election was not credible would incur the wrath of the new government, thereby negatively affecting relations between it and ECOWAS. There were also concerns that Nigeria's provision of more than 66 per cent of ECOWAS's budget might be endangered. For this reason it is assumed that ECOWAS needs Nigeria more than Nigeria needs it. This explains the contradictions between ECOWAS's findings on the conduct of the polls and its opinion on the validity of the exercise.

The above attitude limited the extent to which ECOWAS could be active or involved in managing the events that occurred in the post-election period. The government that was installed, headed by Yar'Adua, admitted the elections were flawed and said the government would take steps to remove the defects in the electoral process. A high-powered panel consisting of eminent jurists, lawyers and academics was set up to reform the electoral process.

The panel met for more than a year, during which memoranda were received from various sections of society on how to go about correcting the flaws. Neither ECOWAS nor any of its officials submitted a memorandum. The panel published its findings and made two vital recommendations, both of which the government rejected. The recommendations were that there was a need to depoliticise the appointment procedure for the chair of the electoral commission and a need to ensure that election disputes were settled legally before political office holders took up their positions.

ECOWAS kept silent on this internal process. It is difficult to know whether, as an organisation located in Nigeria, it would have countenanced involvement in issues that are within the purview of domestic policy or whether the ECOWAS Treaty permits it to render judgement on such issues. It is conceivable that ECOWAS would have been more proactive in electoral matters if these issues had not involved Nigeria.

Initially ECOWAS, in its involvement in the Nigerian election attempted to put its principles about democratic elections into practice. The pre-election fact-finding mission observed the preparations for and events leading to the election and suggested steps to ensure the conduct of a credible election, all of which were adhered to. Its observations on the conduct of the election tallied

with those expressed by domestic and international observers, but when it came to pronouncing on the validity of the elections the commission seems to have allowed its concern for stability to overshadow its objectivity.

The perceived influence and effect of Nigeria on the continuity of ECOWAS programmes and the need to secure a good relationship with the Nigerian government caused the organisation to shy away from the conduct expected of an international organisation of its calibre.

ECOWAS's credibility with regard to the Nigerian election ended with the announcement of the result. There must be a functioning ECOWAS before the principles of democracy and good governance can be implemented in the West African region, including Nigeria. ECOWAS did not emulate the courage displayed by the Commonwealth in dealing with the issue of sanctions against apartheid South Africa and that of the United Nations in dealing with the issue of the Iraq war. In many academic gatherings in West Africa ECOWAS's silence about the abuse of democracy during the 2007 Nigerian elections has remained a constant source of criticism. It will continue to be criticised unless ECOWAS can demonstrate its contribution to the holding of a credible election in Nigeria in 2011.

## CONCLUSION

It is evident that although ECOWAS has attempted to protect the sanctity of its Protocol on Democracy and Good Governance and has encouraged the compliance of member states with its provisions the issues obstructing its implementation are deep rooted and frequently beyond its control. These issues have to do with weak political institutions and the lack of a political environment conducive to political stability as well as to inefficiencies in the election management bodies and the absence of a democratic and development oriented ethos among the political elite.

It has been difficult to find political leaders who can rise above primordial and partisan interests to guarantee fair and transparent elections. The ECOWAS Commission has therefore continued to work more closely with a broad section of civil society and other international stakeholders to facilitate the domestication of its Protocol on Democracy and Good Governance in member states. This, it is hoped, will ensure that members of the community see it as their document and influence electoral commissions, political parties, the security forces and other stakeholders to observe its provisions. This may also enhance the impact of ECOWAS on democratic consolidation in member states.

Nigeria remains a regional power in ECOWAS and is looked to by the other states to provide moral leadership in stemming the tide of democratic reversal that threatens the region. If Nigeria put its house in order by deepening democracy and ensuring the conduct of credible elections this will be an encouraging sign

to other West African countries. But if future elections are not credible the region should be ready for a wave of democratic reversals that will produce widespread conflict and insecurity.

A window of opportunity is the growing pressure on the Nigerian government by civil society for the adoption and implementation of the key recommendations of the Uwais Electoral Reform Committee (on the de-politicisation of the appointment of the INEC chair and the judicial resolution of election disputes before winners are allowed to assume office). The Nigerian government should accept these recommendations, which may restore the confidence of stakeholders in the electoral process and thus dramatically reduce election-related conflict.

ECOWAS could also help to reduce election-related violence by contributing to facilitating a technology-driven electoral process to enhance transparency and ensure that all stakeholders accept the process. The lack of openness in the electoral process has contributed significantly to the breakdown of trust and has heightened tensions and violence. It has also led to some stakeholders and political parties becoming frustrated. Technology, if properly deployed to enhance accuracy, transparency and credibility in areas of voter registration, voting and the processing of results, will greatly assist in the conduct of credible, free and fair elections.

Another element that is crucial if the scourge of election-related violence is to be arrested is that the youth must become engaged in politics. Currently young people, who are largely unemployed and unskilled, have become pawns in the violent political game perpetrated by the elite in both Nigeria and Guinea-Bissau. Many of them are enlisted as foot soldiers for the major political parties, who have illegally acquired arms which are used to unleash destruction on their opponents. There is a need, therefore, to provide a social safety net for the youth.

It is also essential for political parties to subscribe to the ideal of internal party democracy. This will ensure that there is healthy competition for political office and will guarantee free and fair elections. Recognising the critical role of political parties in reducing election-related conflict, one of the objectives of the Democracy and Good Governance Section of the ECOWAS Commission is to help build the capacity to contribute meaningfully to the process of democratising ECOWAS member states by seeking to ensure that political parties subscribe to internal party democracy in conducting their affairs and in their decision making. In addition, it has tried to strengthen the capacity of the Electoral Assistance Section in order to implement post-election fact-finding missions to member states which have held elections in order to ensure the implementation of the recommendations of the ECOWAS election observer missions. These activities will no doubt contribute to reducing election-related violence in ECOWAS member states.



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# CONCLUSION

**Khabele Matlosa, Gilbert M Khadiagala and Victor Shale**

As this book has demonstrated vividly one of the major democracy deficits confronting contemporary Africa is surely electoral violence. In recent times violent conflicts have erupted after electoral contests in a number of African countries, including Nigeria, Lesotho, Kenya, Zimbabwe and Tanzania (mainly in Zanzibar). While these conflicts have been costly for democracy, development and peace in these countries, they have thrown up numerous lessons about when and how elections become a curse for democracy.

This volume has focused on this problem principally with a view to suggesting how African countries should craft prudent policy / institutional frameworks which will ensure that elections become an asset rather than a liability for democracy. The main research and policy question the volume addresses is simply this: 'When exactly do elections become a curse and a cure for democratic governance and political stability in contemporary Africa?' This is the major conceptual thrust that preoccupies all the chapters.

Most of the chapters were inspired by the bold aspiration and determination of the majority of African peoples and states to evolve democratic norms and practices to enhance consolidated democracy and sustainable human development under conditions of durable peace. In addition, the chapters have provoked thinking on some critical issues in the broad spirit of deepening the policy dialogue about strengthening the existing structures of pluralism and participation. Thus most of the prescriptions have centred on how to recapture Africa's democratic momentum by designing electoral mechanisms and institutions that resolve conflicts, expand participation and foster inclusiveness.

As one of the impediments to democratic consolidation, electoral violence is an apt theme that has permitted examination of questions surrounding the consolidation of democracy and electoral processes in Africa. With regard to the causes of electoral violence, the consensus seems to have gravitated around two central concerns: first, profound socio-economic and political differences arising from weak and inadequate governance, ethnic and regional cleavages and poor leadership; second, deficiencies in electoral institutions, particularly election management bodies (EMBs).

In most cases these two factors feed on each other: for instance, the failure of EMBs to deliver fair and free outcomes often catalyse social, economic, and political cleavages that result in violent conflict. By the same token, in deeply divided societies elites may manipulate the weak electoral system to prevent opponents



from gaining power through elections; as a result, aggrieved groups that are denied power resort to violence to correct political marginalisation. Irrespective of their origins and causes, the book has argued that remedies for electoral conflict lie in purposeful and creative attempts by national actors to establish tolerant political cultures underwritten by new constitutional and electoral systems.

While deep-seated economic and political cleavages are soluble in the long term and in the context of committed leadership and national dialogue, there is an urgent need to construct durable rules that stabilise competition. In this respect the design of electoral systems is critical, since they determine the fate of electoral outcomes. The book has also underscored the significance of EMBs having conflict prevention and management systems to enable them to handle cases of violence that may emerge at any stage of the electoral cycle.

National, regional, and international actors have perennially prescribed crafting constitutional and electoral systems that pre-empt conflicts, while facilitating efforts to deal with the structural sources of conflict. This book has reiterated the need for investment in institutions for competition and pluralism because experience shows that countries that have attempted to construct transparent rules of competition have, over the years, gradually build the capacity to reduce some of the worst forms of electoral manipulation and fraud. But there is also a recognition that institution-building does not follow a linear trajectory; rather it is an experimental process and countries often face reversals such as electoral conflicts.

While the volume has provided generic theoretical and policy discussions of electoral violence in Africa and how best it can be managed constructively it has also featured numerous case studies, including those of Nigeria, Kenya, South Africa, Lesotho, Zimbabwe, Tanzania (Zanzibar) and Guinea-Bissau. Much of the spotlight has focused on Kenya and Zimbabwe, given the intensity of the electoral violence and the amount of energy that has been invested in resolving these two conflict situations. The way the two countries are overcoming the problems occasioned by electoral violence is critical to generating some lessons on the theme of institution-building as an experimental process. In both countries the absence of a constitutional framework was a partial cause of the electoral uncertainty that led to post-election violence.

After the formation of governments of national unity both Kenya and Zimbabwe embarked on creative efforts to undo the circumstances, evidenced by the writing of new constitutions. The Zimbabwean referendum is scheduled for August 2011. In the Kenyan referendum, which took place on 4 August 2010, an overwhelming 66.9 per cent voted for the new constitution with 30.7 per cent voting against (Independent Electoral Commission of Kenya 2010). For the constitution to be adopted the law requires 50 per cent plus one in the national ballot and at least 25 per cent of the votes in five of the country's eight provinces (EISA 6 August 2010).

This was the second referendum on the constitution held in Kenya since the reintroduction of multiparty democracy in 2002. The first was in November 2005 when two political archrivals were pitted against each other with the Orange group campaigning against and the Banana group for the proposed constitution. On that occasion the Orange group won and the constitution was rejected. At the time the country had not been exposed to the election-related conflict that, still fresh in the public psyche, no doubt influenced the Yes vote in the 2010 referendum.

It is also interesting to note that in another constitutional referendum – in Tanzania (Zanzibar) on 30 July 2010 – two-thirds of the 200 000 Zanzibaris voted to form a unity government after the October 2010 elections in an effort to pre-empt the electoral violence that has beset the island since the advent of multipartyism in the 1990s. As a result of this decision the party that emerges victorious in the October polls will control the presidency and the two runner-up parties will both provide vice-presidents. The runner-up parties may also be invited to nominate some ministers, depending on the results of the elections.

It is worth noting, though, that new constitutions on their own may not resolve the many problems that confront these three countries in respect of state-society relations and the political engineering of the governance realm. Without a willingness to make constitutions work, the process of democratic consolidation is unlikely to be realised. Moreover, as Baregu aptly reminds us in his chapter, constitutions do not automatically translate into constitutionalism. One of the malaises of democratic governance in Africa is surely the cancerous political culture of ostensibly progressive constitutions devoid of a culture of constitutionalism. Through this trend the political elites, with their preoccupation with the form rather than the substance of the democracy project, have essentially paid lip service to democratisation.

Elsewhere in Africa the practices that have constrained the resurgence of pluralistic polities are starting to resurface. Two most worrying trends include the resurgence of military coups, leading to unconstitutional changes of government in many countries and the deliberate manipulation of constitutions by incumbent presidents to prolong their tenure in state house.

Recent examples are Uganda, Cameroon, Algeria and Guinea, to name just a few. These developments are taking place despite the adoption of the African Charter on Democracy, Elections and Governance by the African Union during its Summit of Heads of State and Government Assembly in Addis Ababa, Ethiopia, on 30 January 2007. This charter explicitly prohibits these negative tendencies in Africa's evolving governance architecture.

Be that as it may, adopting, signing and ratifying progressive declarations like the African democracy charter is one thing, while translating these declarations into a living political culture and a culture of constitutionalism is quite another. Recently, military regimes have reared their ugly heads in Niger, Guinea, and Madagascar, projecting a pessimistic outlook that the gains made in fostering

participatory multiparty states are progressively waning. Thus, as Kofi Annan observed in May 2010, while there is still optimism about the prospects for democratic consolidation in Africa most African leaders are backsliding on their democratic commitments: 'There are still too many instances of corruption, of elite capture of resources, of growing inequality in work and opportunity, abuse of electoral processes and selective adherence to the rule of law,' Annan said. Furthermore, some countries, such as Burundi, the Democratic Republic of the Congo and Rwanda, which have emerged from civil wars, are facing political turbulence as they prepare for upcoming elections. The conditions that created civil wars in these countries in the 1990s are now being recreated in a familiar pattern: the repression, intimidation, and demonisation of opponents by ruling parties, stringent restrictions on the media, and curtailment of civil liberties. If poorly organised elections were to ignite renewed civil wars it would be a huge burden for neighbours and the international community that invested considerable resources in the restoration of peace and security in these countries.

Questions of democratic consolidation in Africa need to focus not just on constitutions and electoral systems but also on other supportive components of democratisation. For instance, there is a need for vigorous discussion about the quality of political parties as key building blocks of democracy. Parties with solid programmes are critical instruments for organising interests and are also the arenas for training future leaders.

In most countries political parties as vehicles for representation still leave a lot to be desired; hostage to individualistic tendencies and factionalism, political parties have continued to check the maturation of pluralism across Africa. If they are going to ascend to power, political parties need to prepare effectively for these roles. Good constitutions and electoral systems are not going to make much difference if the individuals who lead the parties perpetuate the undemocratic practices and patterns of one-party states. Likewise, there is less attention paid to the quality of legislative institutions – parliaments, congresses, and national assemblies in Africa.

While the legacy of executive interference in legislative prerogatives remains pervasive in some countries, for the most part legislatures in the era of democratisation have yet to seize the opportunities of pluralism to put an imprint on political life. Instead, legislative institutions and actors face the same challenges that typify politics: corruption and the pursuit of narrow self-interest, ethnic and regional fragmentation and institutional lethargy.

The book has also emphasised that continental and regional actors will continue to affect the construction of conflict prevention and management measures. Regional economic communities (RECs) such as the Southern African Development Community, the Economic Community of West African States and the East African Community have played a crucial role in mediating post-election conflict in their neighbourhoods. The role of RECs in this regard is fundamental,

as they form a critical part of the African Union (AU). Since 2008 the AU has tried to take an active role in mobilising collective efforts to meet the problems linked to electoral disputes. Both the Department of Political Affairs and the Department of Peace and Security of the AU have complemented their efforts in the prevention, management and resolution of electoral violence in different parts of the African continent. In particular, the Department of Political Affairs has coordinated election observation in various AU member states. Since 2007 it has also mounted a vigorous campaign, together with the Pan-African Parliament, for the signing, ratification and application of the African Charter on Democracy, Elections and Governance. The department adopted the new African Governance Architecture in Banjul, The Gambia, on 2-7 August 2010. This is bound to shape the trajectory of the current democracy project in Africa, hopefully for the better. However, the proof of the pudding is in the eating.

Through the Panel of the Wise the AU Peace and Security Council has committed itself to boosting the African capacity and the national, regional, and continental levels to observe and monitor. As most of the chapters have shown, these measures supplement existing instruments and conventions on advancing democracy, peace, and security on the continent. As before, however, the ability of continental and regional institutions to be effective in the creation of norms and standards of democracy and good governance will hinge fundamentally on leadership, role models, and peer pressure.

The obstacles to the transmission of the values and norms of democracy lie in the persistence of adherence to sovereignty. Nonetheless, the ability of African countries to learn best practice from neighbours will remain a significant element in the search for a common core of principles that underpin the African inter-state system.

The final message that this volume has canvassed is simply that when two elephants fight, it is the grass that suffers. It is not clear whether or not the political elites appreciate this stark reality. In many instances, where political violence follows elections, the actions of the power elites are at the centre of the conflict. In many countries the elites mobilise votes by politicising existing social cleavages, particularly ethnicity. When violence breaks out it is mostly the ordinary people who suffer more than the political elite who, either by design or default, instigated the violence.

As this volume counsels, this situation calls not only for a paradigmatic change of political mindset among Africa's political elites but, much more strongly, for visionary leadership in Africa. Without strong and robust institutions steered by visionary leaders Africa's democracy project is doomed to failure. In the end, the current democracy experiments are bound to generate more violent eruptions than to build durable peace, which, itself, is a *sine qua non* for sustainable human development. The more the elephants fight, the more the grass will continue to suffer.

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# INDEX

- ABC See: All Basotho Convention  
 Abuja Treaty 182  
 Abuya, E.O. 91  
 ACP See: Alliance of Congress Parties  
 Action Group (Nigeria) 97  
 Acton, *Lord* 29  
 AD See: Alliance for Democracy  
 Adedibu, Lamidi 104  
 ADR See: alternative dispute resolution  
 African Association of Electoral Authorities 181  
 African Association (Zanzibar) 118  
 African Charter on Democracy Elections and Governance (2007) 169, 181-184, 234, 236  
 African Charter for Popular Participation in Development (1990) 182  
 African Common Position on Unconstitutional Changes of Government (1997) 179  
 African Governance Architecture (2010) 236  
 African Party for the Independence of Guinea-Bissau and Cape Verde 222, 225  
 African Peer Review Mechanism 161-163; democratisation stance 180-181; governance monitoring role 158; Kenya review process 161-162; African Union 82, 129, 169, 224, 228, 236; conflict resolution stance 178; democratisation role 177, 179-184, 194; Madagascar 20; mediation in Kenya 74; technical and governance assistance 190; Zimbabwe stance 193  
 Afro-Shiraz Party (Zanzibar) 119-120  
 Afro-Shiraz Union (Zanzibar) 119  
 Afrobarometer surveys 59, 82, 88  
 AG See: Action Group  
*Aguntas* (Guinea-Bissau) 224  
 Alao-Akala, Christopher 104  
 Alemika, E.E. 101  
 Algiers Decision on Unconstitutional Changes of Government (1999) 179, 182  
 All Basotho Convention (Lesotho) 60, 204-205  
 All Nigeria People's Party 100, 104, 111-112  
 Alliance of Congress Parties (Lesotho) 204  
 Alliance for Democracy (Nigeria) 100  
 alternative dispute resolution 72-73, 77-79; See also: conflict resolution  
 Anafu, Moses 124  
 Annan, Kofi 74-75, 88, 129, 141, 193, 235  
 ANPP See: All Nigeria People's Party  
 Anyaoku, Emeka 124  
 APRM See: African Peer Review Mechanism  
 Arab Association (Zanzibar) 118  
 ASP See: Afro-Shiraz Party  
 Assenov, A. 88-89  
 ASU See: Afro-Shiraz Union  
 AU See: African Union  
 Audu, *Prince* Abubakar 104  
 authoritarianism 14-16, 18, 22, 24, 27, 37, 39, 82, 199, 201, 235; Nigeria 93, 95-97; Swaziland 200; Uganda 40; Zimbabwe 61-63, 65; Azar, Edward 71-73  
 Bakari, Abubakari Khamis 125  
 Baregu, Mwesiga 87  
 Basotholand National Party (Lesotho) 58  
 Bastian, S. 42  
 Basutoland Congress Party (Lesotho) 58, 204  
 Bates, Robert 41-42  
 BCP See: Basutoland Congress Party  
 BDP See: Botswana Democratic Party  
 Bennett, Roy 75  
 BMD See: Botswana Movement for Democracy  
 BNP See: Basotholand National Party  
 Bongo, Omar 20  
 Botswana Democratic Party 54  
 Botswana Movement for Democracy 54  
 Branch, D. 130-131  
 Brett, L. 78  
 Buba, Timothy 110  
 Burton, John 70, 73, 76-77  
 Burton, Michael 18  
 Cabral, Amilcar Lopes 222  
 Cairo Agenda (1995) 182  
 Camara, Dadis 26

- Cameron, David 54  
 candidate nomination, Kenya 143  
 Carothers, T. 40-41  
 Carter Center 227  
 CCM See: Chama Cha Mapinduzi  
 Centre for Environment, Human Rights and Development 228  
 CEWS See: Continental Early Warning System  
 Chama Cha Mapinduzi (Zanzibar) 117-118, 120-125  
 Charter on Democracy, Elections and Governance 183-184, 190, 194  
 Cheeseman, N. 130-131  
 Chissano, Joaquim 62  
 Christian Association of Nigeria 228  
 Christian Council of Lesotho 197, 210  
 Civic United Front (Zanzibar) 117-118, 120-125  
 Clark, John 24  
 coalitions 55, 84-85; DRC 41; Guinea-Bissau 224; Kenya 33-34, 57; Lesotho 204-205; Rwanda 40; Zanzibar 120  
 Cold War, demise 177, 194  
 Collier, Paul 23-24, 27, 38-39, 44, 49, 200-201  
 Commonwealth 124, 227  
 Community of Portuguese Language Countries 223-224  
 Conference on Security, Stability, Development and Cooperation in Africa 178-179, 182  
 conflict management systems 77-79, 91, 146-153  
 conflict resolution 69, 73, 76-77; AU stance 178; election observation role 186, 190-193; governance assistance 190; Guinea-Bissau 222-226; Nigeria 112-115, 226-230; OAU stance 179; Panel of the Wise 190; South Africa 146-153; technical assistance 190; Zanzibar 125-126; *See also*: alternative dispute resolution  
 conflict types 70-72  
 consociational democracy 84-86  
 Constantino 78  
 constitutional issues 15, 21, 28-32, 35-36, 76-77, 164, 178, 234; Kenya 32-34, 86, 133, 140-141, 233-234; Nigeria 97; South Africa 143-144; Zanzibar 35, 120, 122, 125; Zimbabwe 87, 213, 216  
 Constitutive Act of the African Union (2000) 179-180, 183-184  
 Conte, Lansane 26  
 Continental Early Warning System 188-189  
 Costantino 78  
 Coups d'état 234; Africa 179; definition 23; economic issues 24; Guinea 82-83; Guinea-Bissau 222-223; Madagascar 60-61, 83; Mauritania 82-83; Nigeria 108; types 24-27, 36  
 court ruling, Lesotho 60, 207  
 CSSDCA See: Conference on Security, Stability, Development and Cooperation in Africa  
 CUF See: Civic United Front  
 Dalein, Cellou 26  
 Daramond, Ayo 103  
 Dariye, Joshua 109  
 DEAF See: Democracy and Electoral Assistance Fund  
 DEAU See: Democracy and Electoral Assistance Unit  
 Declaration on Democracy, Political, Economic and Corporate Governance 161, 180  
 Declaration on Elections, Democracy and Governance (Draft) 181  
 Declaration Governing Democratic Elections in Africa (2002) 185  
 Declaration on Principles Governing Democratic Elections 186, 191  
 Delimitation, Kenya 133-134, 141; South Africa 148  
 Democracy and Electoral Assistance Fund 191-192  
 Democracy and Electoral Assistance Unit 191  
 democratisation 21-22, 82, 198-200, 235-236; AU role 177, 179-184; consociational 84-86; controlled transition 40; election nexus 14, 49, 76, 81-82, 88, 90-91, 157-160, 177, 185, 198-201, 232; gradualism 41; international community role 44; Kenya 88; Madagascar 61; models 199; NEPAD stance 180; OAU stance 194; Nigeria 93; premature 40; Southern Africa 198-201; third wave 14  
 Djinnit, Said 24, 224  
 Doe, Samuel 26  
 Domestic Observer Coalition (Nigeria) 228  
 dominant party system, Lesotho 59; Madagascar 60

- donor assistance 15, 42, 46, 50,  
Guineau-Bissau 223; Kenya 128-129, 133
- drug trafficking, Guinea-Bissau 222, 225
- East African Community 235
- Economic Community of West African States  
83, 235
- conflict resolution 219-221; Guinea-Bissau 221-  
226; Niger 16; Nigeria 193, 221, 226-230;  
Nigerian importance to 229; Standby  
Force 220, 226
- ECOWAS See: Economic Community of West  
African States
- Egwu, S.D. 101, 103
- EISA 53, 64, 78
- election campaigns 165
- election disputes 78, 165-166; adjudication 48-  
49; Kenya 140; Lesotho 60, 207; Nigeria  
102;
- election management bodies 166-168, 232-233;  
empowerment 91; independence 46,  
49, 51; Kenya 129-130, 132-135, 138-140,  
160; Lesotho 204; Nigeria 98, 102, 104,  
113-114, 226, 231; South Africa 144-147,  
153; Zanzibar 120, 122-123; Zimbabwe  
205
- election observation 166, 169; AU stance  
186, 190-192, 236; conflict resolution  
role 186, 190-193; Guinea-Bissau 224;  
Nigeria 227-230; Panel of the Wise 191-  
192
- election-related conflict 13, 15, 42, 45, 73,  
81-83, 232-233, 236; AU role 187, 192-  
194; causes 117-118, 120-121, 203,  
Kenya 132-133, Lesotho 197, 204, 206,  
Zimbabwe 216-217; competition aspect  
70-71; conflict cube 70; definition 94-  
95; early warning 188-189; electoral  
process attributes 46-47, 65; Ethiopia  
192; Kenya 19, 20-22, 32, 35, 45, 56-  
58, 74, 83, 86, 128; Lesotho 58-60,  
196-197, 201, 203-205; Madagascar  
19-20, 60-62, 200; minority votes 48;  
Mozambique 45; nature of 72-73;  
Nigeria 92-93, 96-115, 192-193, 227-  
231; party liaison committees 147, 150;  
proportional representation 49; PSC  
stance 187-190; reduction factors 48;  
Sierra Leone 45; South Africa 147-151;  
statutory prohibition 93; typology 17-  
21; Zanzibar 35, 117-118, 200, 205;  
Zimbabwe 20-22, 62-65, 201, 205,  
211-216
- election results, Kenya 136-139; non-  
acceptance 18, 74, 86-87, 90, 169
- elections, adherence to 91; Afghanistan  
(2009) 74; Africa 157; APRM member  
states 158; challenges 164-168, 170-  
174; conflict solving aspects 37-40,  
42; democratisation role 14, 49, 76,  
81-82, 88, 90-91, 157-160, 177, 185,  
198-201, 232; DRC 40-41; free and  
fairness aspects 45, 49, 52-53, 91-92,  
159, 164; Gabon (2009) 20; Ghana  
22; governance nexus 179-180;  
Guinea-Bissau (2009) 220, 222-226;  
international community role 44;  
Kenya (1992) 19; Kenya (1997) 19;  
Kenya (2007) 32, 35, 56-57, 73-74, 128-  
130, 132-141, 160-161; Lesotho (1970)  
58; Lesotho (1985) 58; Lesotho (1993)  
58-59; Lesotho (1998) 58-59; Lesotho  
(2002) 60; Lesotho (2007) 60, 196; local  
government Zimbabwe (2002) 64;  
Madagascar (2001) 19; Niger (2009)  
16; Nigeria (2003) 100-101; Nigeria  
(2007) 102-105, 192-193, 226-228, 231;  
Nigeria (2008) 105, 109; norms and  
standards 17, 21, 53; observation and  
166, 169; pre-institutionalisation 39;  
qualitative 163; South Africa (1994)  
143-144; Togo (2005) 20; Zanzibar  
118, 120-124; Zimbabwe (2000) 63-  
64; Zimbabwe (2002) 64; Zimbabwe  
(2005) 64; Zimbabwe (2008) 64-65,  
73-74
- electoral process See: elections
- electoral reform 15, 17; Kenya 129; Lesotho  
60, 201, 204; Nigeria 113, 231
- electoral systems 53, 65, 233; conflict  
promotion 42-43, 51, 201-202;  
democratisation role 52-53; fair  
representation 48-49, 52; Kenya 35;  
Nigeria 113
- electoral violence See: election-related  
conflict
- electoral-cycle approach 130-131
- ethnicity 15, 18-19, 86, 232, 235-236; Guinea-  
Bissau 222; Kenya 57, 130-132, 197;

- Madagascar 61; Nigeria 92-93, 95, 97, 101, 105-112; Zanzibar 119, 126
- European Commission 94
- European Rapid Response Force 44
- European Union 135, 139, 224, 227-228
- Eyadema, Faure 20
- Eyadema, Gnassingbe 20
- Fearon, J.D. 38
- federal system, Nigeria 97
- Federo debate, Uganda 35
- first-past-the-post 48-49, 53-54, 65, 85; Botswana 54; Great Britain 54; Kenya 35, 56; Lesotho 58-60, 201, 204
- Forces Vives, Madagascar 61
- founding elections 14, 157
- FPTP See: first-past-the post
- Fujimori, Alberto 25
- Fukuyama, Francis 52
- Galtung, J. 94
- gender issues, Kenya 140-141; Nigeria 95
- Global Political Agreement (Zimbabwe) 196, 205, 212-215
- Goldberg, S.B. 78
- Gomes, Aristide 223
- governments of national unity 21, 87; Madagascar 20; problems 74-75; Zanzibar 125, 234; *See also*: power-sharing
- GPA See: Global Political Agreement
- Grand Bay Declaration 182
- Green, Mark 121
- Guebuza, Armando 210
- Guidelines for African Union Electoral Observation and Monitoring Missions 185-186, 190-191
- Gutu, Obert 89
- Hamad, Seif Sharif 120, 123, 125
- Harris, P. 87
- Harry, Marshall 100
- Higley, John 18
- Hobbes, Thomas 73
- Hoeffler, A. 23-24
- Holmes, H. 28
- human needs considerations 73, 75-76
- Human Rights Watch 99, 104, 107
- Huntington, Samuel 14, 51
- Ibrahim, Jibrin, 95
- IDASA 104, 115
- Idris, B. 107
- illiteracy See: socio-economic conditions
- Independent Review Commission (Kenya) 129-130, 132-141
- Indian National Association (Zanzibar) 118
- indigene*/settler divide, Nigeria 107-109
- institutions/institutionalisation 13, 14-17, 35, 199, 218, 232-233, 235-236; institutionalisation before elections concept 38-39; liberalisation debate 76-78; Kenya 129; Zimbabwe 204; *See also*: institution concerned
- Inter-Party Advisory Council (Nigeria) 114
- Inter-party conflict, Lesotho 204-206, 209; Nigeria 99-100, 104, 111; Zanzibar 121-125; Zimbabwe 212-215; *See also*: parties concerned
- Interim Political Authority (Lesotho) 60
- International Contact Group on Guinea-Bissau 223
- International Crisis Group 228
- International IDEA 94
- IPA See: Interim Political Authority
- IPAC See: Inter-Party Advisory Council
- IREC See: Independent Review Commission
- Jang, Jonah 109-110
- Jawara, Sir Dawda 226, 229
- Jonathan, Leabua 58
- Jos (Nigeria), violence 107-111
- Joseph, R. 95
- Junior, Carlos Gomes 223
- Kabila, Joseph 215
- Kagame, Paul 25
- Kagwanja, Peter 19
- Kampala Declaration (1991) 178-179
- KANU See: Kenya African National Union
- Karl, Terry 200
- Karume, Abeid Amani 120, 125
- Kenya African National Union 19
- Khadiagala, Gilbert 51, 88, 201-203
- Khama, Ian 54
- Kibaki, Mwai 33, 56-57, 74, 83, 86, 128, 132, 135, 138-139, 141, 160

- Kikwete, Jakaya 206  
 Kivuitu, Samuel 132  
 Klopp, Jacqueline 19  
 Konare, Alpha 192  
 Kriegler Commission (Kenya) 129  
 Kriegler, Johann 129  
 Ladoja, Rasheed 104  
 Laitin, D.D. 38  
 land issues, Zimbabwe 63  
 Langa Commission (Lesotho) 59  
 Langa, Pius 59  
 Lar, *Chief* Solomon Daushep 108  
 LCD See: Lesotho Congress for Democracy  
 Le Van, Carl 88-89  
 Lederach, Jean-Paul 73  
 legitimacy issues 27-28, 34-36; DRC 41; Kenya 32-33; Nigeria 96-97  
 Lekhanya, Justin 58  
 Lesotho Congress for Democracy 58-60, 204-205  
 Lesotho People's Congress 204  
 Lesotho Workers Party 60  
 Letsie III, *King of Lesotho* 60  
 liberalisation / institutionalism issues 76-78  
 Lijphart, Arend 84-85  
 Lindberg, S. 41-42, 49, 200, 216  
 Locke, John 73  
 Lofchie, M. 119  
 Lomé Convention (2000) 179-182, 184  
 LPC See: Lesotho People's Congress  
 Luckham, R. 42  
 LWP See: Lesotho Workers Party
- Magna Carta 29  
 Maharaj, Mac 215  
*Maijimbo* debate 35  
 Makulilo, A. 123  
 Mandela, Nelson 143  
 Mane, Ansumane 223  
 Mann, Simon 26-27  
 Marema-Tlou Freedom Party (Lesotho) 58, 207  
*maridhiano* process, Zanzibar 125  
 Masire, Ketumile 196-197, 203, 206, 208-209  
 Matlosa, Khabele 82, 88-89  
 Mato, Alhaji Aminu 107  
 Maundi, 201-203  
 Mbeki, Thabo 65, 75, 88, 193, 196, 203, 211, 213-214  
 MDC See: Movement for Democratic Change
- MDC-M See: Movement for Democratic Change-Mutambara  
 MDC-T See: Movement for Democratic Change-Tsvangirai  
 media, Kenya 135  
 mediation, AU role 193-194; definitions 202-203; Ethiopia 192; Kenya 74-75, 88, 129; Lesotho 196-197, 203, 205-211; Nigeria 193, 226-230; South Africa 72  
 Zanzibar 124; Zimbabwe 75, 88, 193, 196, 203, 205, 211-216; *See also*: mediator concerned  
 Mehler, Andreas 84, 87  
 mercenaries 26-27  
 Merchant, C. 78  
 MFP See: Marema-Tlou Freedom Party  
 military rule See: authoritarianism  
 mixed member proportional system 55-56; Lesotho 56, 60, 201, 204, 206  
 MMP See: mixed member proportional system  
 Moghalu, Kingsley 74  
 Mohammed, Alhaji Muktar 107  
 Mohammed, Murtalla 108  
 Mokhehle, Ntsu 58  
 Mokuku, Philip 197, 209  
 Mosisili, Phakalitha 59-60, 206  
 Movement for Democratic Change (Zimbabwe) 63-65, 75, 83, 213  
 Movement for Democratic Change-Mutambara (Zimbabwe) 64, 196, 211, 214-215  
 Movement for Democratic Change-Tsvangirai (Zimbabwe) 64, 196, 205, 211, 213-214  
 Mozzafar, Shaheen 16  
 Mswati II, *King of Swaziland* 210  
*Muafaka* Accord I (1999) 124  
*Muafaka* Accord II (2001) 122, 125-126  
*Muafaka* dialogue (2008) 121  
 Mueller, S. 33  
 Mugabe, Robert 62, 64-65, 83, 193, 205  
 Mukangara, D. 121  
 multiparty democracy 20, 28, 157, 199; Lesotho 58; Tanzania 31; Zanzibar 117, 120-123, 126  
 Museveni, Yoweri 40  
 Mutambara, Arthur 64-65, 83, 89  
 Mwanza, Kalombo 210

- NACOREV See: National Campaign on Reduction of Electoral Violence
- National Campaign on Reduction of Electoral Violence (Nigeria) 115
- National Council of Nigerian Citizens 97
- National Independent Party (Lesotho) 60, 204
- National Party of Nigeria 98
- National Rainbow Coalition (Kenya) 32
- NCNC See: National Council of Nigerian Citizens
- NEPAD See: New Partnership for Africa's Development
- New Partnership for Africa's Development 161; democratisation stance 180
- Ngcakula, Charles 215
- Ngoma, Naison 27
- Nguema, Teodoro Obiang 27
- Nigerian Bar Association 113, 228
- Nigerian Peoples' Party 98
- Nigerian Supreme Council for Islamic Affairs 228
- NIP See: National Independent Party
- Nkomo, Joshua 62
- Northern Peoples' Congress (Nigeria) 97
- NPC See: Northern Peoples' Congress
- NPN See: National Party of Nigeria
- NPP See: Nigerian Peoples' Party
- Nuamah, K. 201-203
- Nwogu, I. 107
- Nyalali Commission Report 28, 31
- OAU, democratisation stance 194
- OAU Response to Unconstitutional Changes of Government (2000) 179
- OAU See: Organisation of African Unity
- Obasanjo, Olusegun 98, 103, 109-110, 226
- Obeng, Kwesi 15
- Odinga, Raila 56-57, 74, 83, 130, 138, 141
- ODM See: Orange Democratic Movement
- Ogundiya, I.S. 24
- Okoosi-Simbine, A.T. 95
- Oliver Lyttleton Constitution (Nigeria) 97
- one-party rule 176; Madagascar 61; Zimbabwe 62-63; *See also*: authoritarianism
- OPDSC See: SADC Organ on Politics, Defence and Security Cooperation
- Operation Boleas (Lesotho) 59
- Operation Maluti (Lesotho) 59
- Operation Murambatsvina (Zimbabwe) 64
- Orange Democratic Movement (Kenya) 32, 56-57, 132, 234
- Organisation of African Unity, governance stance 176-178
- PAIGC See: African Party for the Independence of Guinea-Bissau and Cape Verde
- Panel of the Wise 236; election observation stance 191-192; PSC relationship 190
- Paris, Roland 38-40, 76
- party liaison committees (South Africa) 143-153, 218; demarcation 148; election debriefings 151; election results 149-151; election timetable 149; election-related conflict 147, 150; electoral legislation 147-148; electoral staff 148-149; IEC role 146-147; lessons from 151-153
- Party of National Unity (Kenya) 56-57, 130
- Pasali, Danladi 110-111
- PDP See: People's Democratic Party
- Peace and Security Council (AU), conflict resolution 187-189; Panel of the Wise relationship 190
- People's Democratic Party (Nigeria) 96, 103-104, 111-113
- People's Redemption Party (Nigeria) 98
- PLAISEC See: Plateau State Independent Electoral Commission
- Plateau State Independent Electoral Commission (Nigeria) 110, 112
- PLC See: party liaison committees
- PNU See: Party of National Unity
- political associations, Zanzibar 118-119
- political history, Guinea-Bissau 222; Madagascar 61; Zanzibar 118-120; Zimbabwe 62-64
- political parties 159, 167-168, 235; democratisation factors 54; funding 53; Kenya 133, 140-141; Nigeria 96, 227, 231; South Africa 146; Zanzibar 122-123; *See also*: specific party concerned
- Post-election conflict See: election-related conflict
- poverty See: socio-economic conditions
- power sharing 74-75, 81-82, 158; conditions for success 87-88; cultural issues 85; harmful effects 85-86; Kenya 87-88, 90-91; minority veto 85; secrecy elements



- 89; theory 84; transitional measure 87;  
Zanzibar 125; Zimbabwe 83, 88-91; *See*  
*also*: governments of national unity
- pre-election conflict *See*: election-related  
conflict
- proportional representation 54-55, 65, 85
- Protocol on Democracy and Good Governance  
220, 230
- Protocol Relating to the Mechanism of  
Conflict Prevention, Management,  
Peacekeeping and Security (1999) 219
- PRP *See*: People's Redemption Party
- Raftopoulos, Brian 211
- Rajoelina, Andry 20, 26, 61-62, 83
- Rakotoharison, Jean 61
- Ramaema, Elias 58
- Ramanantsoa, Gabriel 61
- Ratsirahonana, Norbert 61
- Ratsiraka, Didier 19, 61
- Ravolamanana, Marc 19-20, 27, 61-62
- Rawlings, Jerry 26
- reconstruction 39
- referenda, Kenya 34, 86, 128, 133, 140-141, 233-  
234; Madagascar 61; Zanzibar 125-126,  
234; Zimbabwe 63, 196, 202, 233
- Reilly, B. 52, 87
- revolution, Zanzibar (1964) 120, 126
- Reynolds, A. 52
- Rosa, Henrique 223
- Rousseau, Jean-Jacques 73, 87
- Rwanda, genocide 40
- SADC 53, 83, 235; Madagascar stance 20, 62;  
mediation 196-197, 216-218, Lesotho 59,  
203, 205-211, 216, Zimbabwe 74, 203,  
205, 211-217; Zimbabwe unity stance 65
- SADC Organ on Politics, Defence and Security  
Cooperation 197, 206, 208-209, 214
- SADC Parliamentary Forum 53, 64
- Salihu, A. 95
- sanctions, Madagascar 62
- Sandole, D.J.D. 71
- Sanha, Bakai 225
- Sanhaas, Arthur 223
- Schedler, Andrew 16
- Seabre, Verisim Correia 223
- security agencies, Nigeria 101
- Shirazi Association (Zanzibar) 118
- Sirte Declaration (1999) 182
- Smith, L. 86
- Snyder, Jack 38-40
- social conflict 75; definition 70-72; protracted  
72-73, 76
- socio-economic issues 21, 38, 69, 76, 89, 197-198,  
203, 232; Guinea-Bissau 222; Kenya 128;  
Madagascar 61; Nigeria 95-96; Zanzibar  
121; Zimbabwe 63, 75
- Solemn Declaration on the CCSDCA (2001) 182
- South African National Defence Force,  
intervention Lesotho 203
- South African National Peace Accord 77
- Southern African Development Community  
*See*: SADC
- Soyebi, Solomon 104
- state, definition 42
- Straus, Scott 44
- Supplementary Protocol on Democracy and  
Good Governance (2001) 220
- Tagme, Batista 224
- Tanja, Mamadou 16
- Tekere, Edgar 63
- Thabane, Tom 60
- Thatcher, Mark 26-27
- The Bottom Billion* 27
- third wave democracies, definition 14;  
Madagascar 61
- Tobi, Niki 109
- Toulou, Lucien 51
- Transition Monitoring Group 228
- transition politics, Zanzibar 122-123
- Tsiranana, Philbert 61
- Tsvangirai, Morgan 63-65, 83, 89
- UN Peacebuilding Support Office (Guinea-  
Bissau) 223
- UNDP *See*: United Nations Development  
Programme
- UNEAD *See*: United Nations Electoral  
Assistance Division
- United Nations Development Programme 39,  
94, 100, 128-129, 203, 209
- United Nations Electoral Assistance Division  
100
- United Party of Nigeria 98
- UNOGBIS *See*: UN Peacebuilding Support  
Office

UPN See: United Party of Nigeria

Ury, W.L. 78

Vieira, João Bernado 222-225

violence See: election-related conflict

vote counting 165; Kenya 135

voter behaviour, kinship role 48

voter education 164, 190; Kenya 140; Nigeria  
99, 102, 114-115

voter registration 164-165; Kenya 133-134, 140;  
Nigeria 226; Zanzibar 123

voter turnout, Kenya 135

Wangome, Jimmi 23

Weber, Max 42

West African Civil Society Forum 228

Williams, Funsho 103

Wolcott, Sara 43

women See: gender issues

Yala, Kumba 222-224

Yar'Adua, Alhaji Shehu Musa 113, 224, 229

Zafy, Albert 61

ZANU-PF (Zimbabwe) 62-63, 75, 83, 211-214

Zanzibar Freedom Committee 119

Zanzibar Nationalist Party 119-120

Zanzibar and Pemba People's Party 119-121

Zartman, William 201-203

ZCTU See: Zimbabwe Congress of Trade  
Unions

Zenawi, Meles 192

ZESN See: Zimbabwe Election Support  
Network

ZFC See: Zanzibar Freedom Committee

Zimbabwe Congress of Trade Unions 63

Zimbabwe Crisis Committee 64

Zimbabwe Election Support Network 64

Zimbabwe Unity Movement 63

ZNP See: Zanzibar Nationalist Party

Zoellick, Robert 27

ZPPP See: Zanzibar and Pemba People's Party

Zulu, Lindiwe 215

ZUM See: Zimbabwe Unity Movement 63

Zuma, Jacob 62, 74-75, 214-216

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