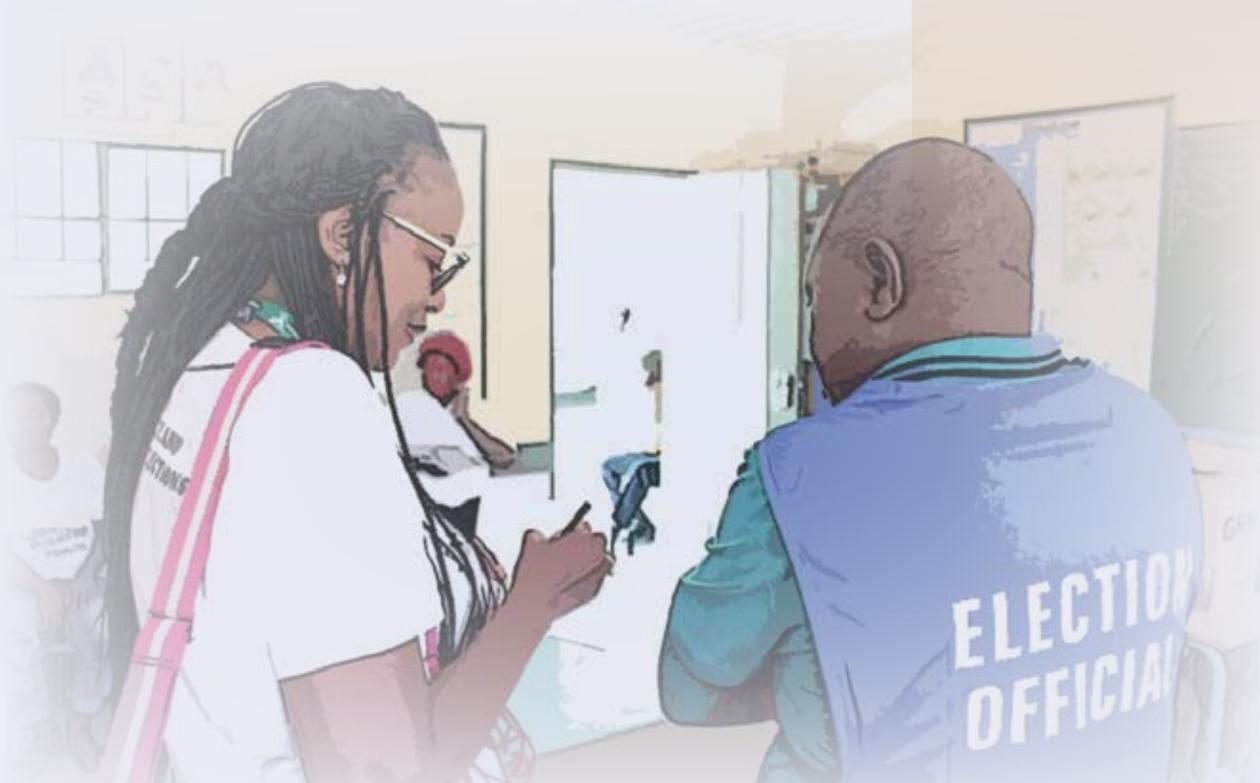


Upholding Electoral Integrity

A Guide to Mitigating Risk
Throughout the Electoral Cycle

by Graham Hopwood and Nangula Shejavali



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Upholding Electoral Integrity

Elections that are compromised by fraud, malpractice and bias deny ordinary citizens their right to participate in their own governance and to hold their elected representatives to account. Ultimately, they undermine both democracy and development.

This guide to mitigating risks throughout the electoral cycle takes a holistic approach to the democratic process rather than just focusing on events around and on polling day

This publication aims to be a key information resource for a variety of election stakeholders including civil society activists, the media, election observers, election management bodies, development agencies and democracy assistance organisations.

The Hanns Seidel Foundation (HSF), a German non-profit organisation promoting democracy, good governance and the rule of law across the African continent, commissioned the publication, which was compiled by the Namibian think tank - the Institute for Public Policy Research. It is the publishers' hope that this guide will further stimulate debate on improving the integrity of elections across Africa.



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Abbreviations and Acronyms

ACDEG	- African Charter on Democracy, Elections and Governance
ACE	- Administration and Cost of Elections
AU	- African Union
ECK	- Electoral Commission of Kenya
ECOWAS	- Economic Community of West African States
EIP	- Electoral Integrity Project
EISA	- Electoral Institute for Sustainable Democracy in Africa
EMB	- Electoral Management Body
EVEP	- Electronic Verification Exit Poll
EVR	- Electronic Voter Registration
HSF	- Hanns Seidel Foundation
ICCPR	- International Convention on Civil and Political Rights
ICT	- Information Communication Technology
IDEA	- Institute for Democracy and Electoral Assistance
IEBC	- Independent Electoral and Boundaries Commission
IFES	- International Foundation for Electoral Systems
INEC	- Independent National Election Commission (of Nigeria)
IPPR	- Institute for Public Policy Research
IPU	- Inter-Parliamentary Union
MMA	- Medai Monitoring Africa
NDI	- National Democratic Institute for International Affairs
OSCE	- Organisation for Security and Cooperation in Europe
SADC	- Southern African Development Community
UNCHR	- United Nations Commission on Human Rights
UNDP	- United Nations Development Programme
UNEAD	- United Nations Electoral Assistance Division

About the Authors

Graham Hopwood has served as the Executive Director of the IPPR since early 2008, having previously worked for the Namibia Institute for Democracy and The Namibian newspaper. He has coordinated the IPPR's Election Watch project since 2009 and has published extensively on issues of electoral integrity in Namibia and southern Africa.

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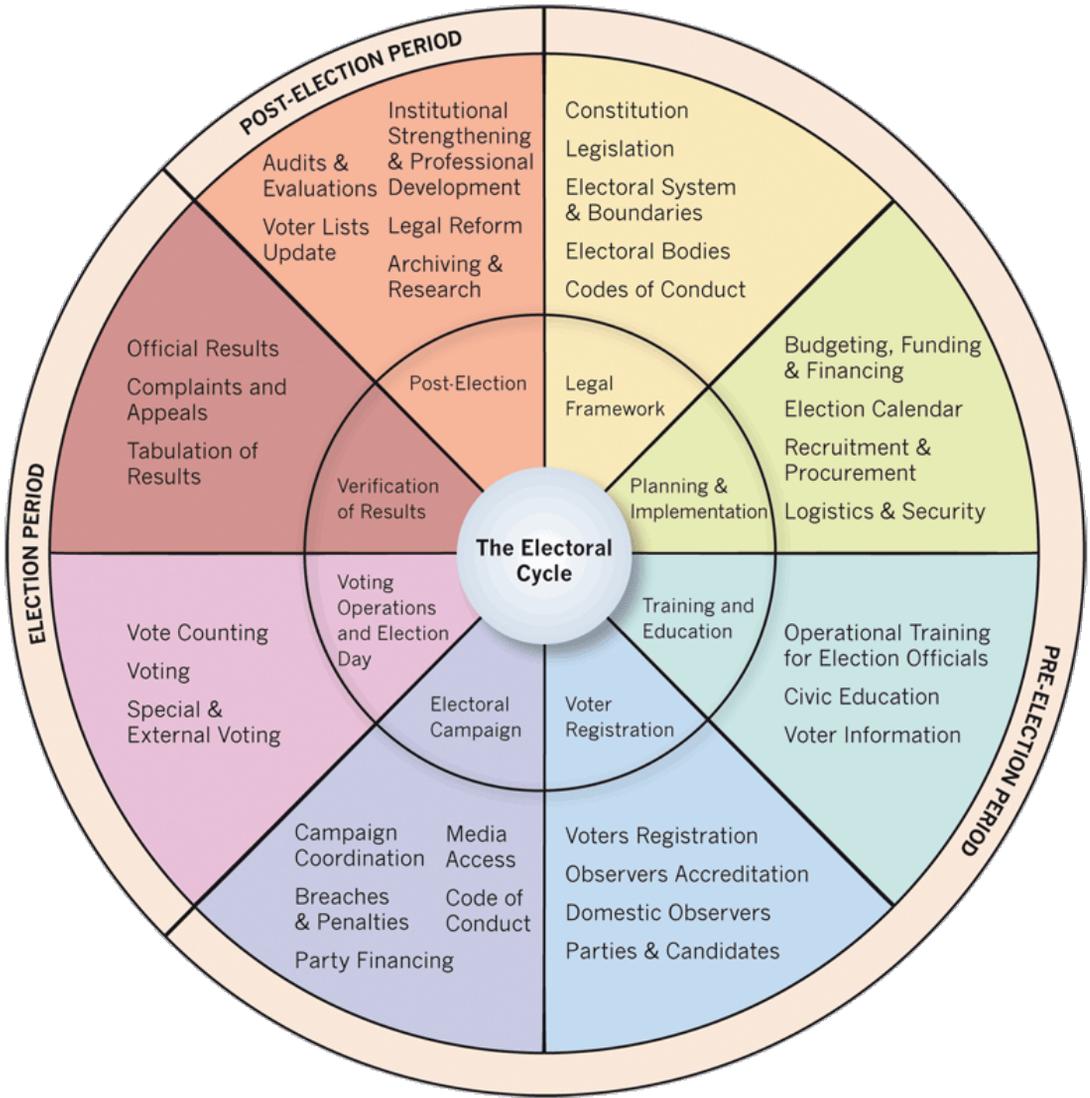
Foreword

Elections are the cornerstone of democracy. Elections that are compromised by fraud, malpractice and bias deny ordinary people their right to participate in their own governance and to hold their elected representatives to account. Ultimately, they undermine both democracy and development.

With this in mind the Southern African Office of the Hanns Seidel Foundation and the Windhoek-based Institute for Public Policy Research organised a workshop on electoral integrity held in Windhoek, Namibia on May 13-14 2014. The workshop brought together eminent African and international electoral experts. The gathering aimed to identify factors that could undermine electoral integrity through the discussion of recent experiences - in Ghana, Nigeria, South Africa, Kenya, Zimbabwe and Namibia, among other sub-Saharan African countries. These discussions were detailed, enlightening and fruitful. One of the proposals that came out of the workshop was the need for a publication that highlights the vulnerabilities that may exist at different stages of the electoral cycle and to provide guidance for addressing these vulnerabilities. The result is this publication which aims to act as a key information resource for a variety of election stakeholders including civil society activists, the media, election observers, election management bodies, development agencies and democracy assistance organisations.

The Hanns Seidel Foundation (HSF), a German non-profit organisation promoting democracy, good governance and the rule of law across the African continent, commissioned the publication which was compiled by the Namibian think tank - the Institute for Public Policy Research. The HSF hopes this publication will further stimulate debate on improving the integrity of elections across Africa.

Dr. Wolf Krug
Hanns Seidel Foundation
Southern Africa Office



The electoral cycle stretches far beyond activities undertaken on Election Day. It encompasses a whole series of activities and processes leading up to an election, which also includes the time between and after elections - referred to as the entire electoral cycle.

Source: International IDEA

Introduction

Electoral integrity = “Any election that is based on the democratic principles of universal suffrage and political equality as reflected in international standards and agreements, and is professional, impartial, and transparent in its preparation and administration throughout the electoral cycle”.

Deepening Democracy: A Strategy for Improving the Integrity of Elections Worldwide, the Report of the Global Commission on Elections, Democracy and Security (September 2012)

In the latter part of the 20th century American political scientist Samuel Huntington described democratisation as a series of waves. A first wave of democratic development in Western Europe and North America rolled forth from the 18th century onwards; a second wave began after World War II in Europe and continued with the start of decolonisation; and then there was a third wave, beginning in the mid-1970s, that saw democratic systems replace authoritarian regimes across the world including in Africa, Asia and Latin America. The third wave intensified with the end of the Cold War and many political commentators believe that it continues today.

Judging simply by the proportion of the world’s population involved in elections, it may seem that global democracy is now in robust health. But for every surge forwards there has been a ‘reverse wave’ with totalitarian regimes and dictatorships sweeping away liberal constitutions and trampling on human rights at various times.

Following the major democratic advances in the 1990s and 2000s – there is a growing sense that the impetus of the last couple of decades is faltering. Although not many countries have returned to outright authoritarianism there are increasing reports of flawed elections and democracies in crisis. The hopes raised by the Arab Spring have, by and large, stalled. From Libya through to Egypt, it has become clear that the removal of dictators alone is not enough to engender a sustainable democratic system.

In the last few years democracy appears to have gone into retreat – hobbled by civil unrest, apathy, authoritarianism, rigged elections, and separatist movements. The emergence of China offering a non-democratic model of development and international plaudits for ‘electoral authoritarian’ states like Ethiopia and Rwanda have undermined the notion that the democratic model is the best one for African nations.

Clearly, there can be no room for complacency. For every peaceful transition of power there is an ageing despot clinging on to power or increasing turmoil in a once stable country.

Democracy concerns much more than elections – citizen participation in decision-making is not simply about turning up on polling day. But credible, free and fair elections remain the cornerstone of any successful democracy.

However, it has become clear that the regular holding of elections is in itself not a meaningful indicator of freedom. Instead it is the quality of those elections that matter. Too often, when elections are put under scrutiny it is evident that playing fields are not level, that intimidation and violence are used as political weapons, and that rigging – both crude and sophisticated – takes place. And concerns about such practices are not only on the rise in the developing world. So-called mature democracies have also seen claims of manipulation, vote buying and intimidation.

Electoral fraud is not simply about the voting and counting processes and often starts much earlier. Rigging can commence as early as the delimitation process when constituency boundaries are shifted to gain political advantage for one party or candidate. Attempts to ‘steal’ elections often commence in earnest with the voter registration process. Registration can be engineered to make sure areas with strong opposition support are under-represented. The artificial inflation of voters rolls, including the presence of ‘ghost voters’ on the final list, makes it possible to obscure the addition of fraudulent votes either through ballot stuffing or the alteration of tallies at the results centre.

For election fraud to be widespread a certain environment has to be created – one that often features a combination or all of the following factors:

- Violence and intimidation
- Heavily skewed media bias, often by the state media
- Vote buying including gifts, benefits and outright bribes for specific sets of voters
- The diversion of state resources towards campaigning by the ruling party/incumbent candidate
- Highly imbalanced state and private funding of parties
- Incompetent and partisan electoral management bodies
- Inadequate, costly and time-consuming mechanisms for resolving electoral disputes.

A concern for the quality of electoral management inevitably means that electoral systems should be scrutinised for weaknesses and loopholes that could allow manipulation and fraud to take place. The need to set standards has been recognised in numerous conventions and charters, among them the African Charter on Democracy, Elections and Governance and the SADC Principles and Guidelines Governing Democratic Elections. It is important that national election laws and practices are in keeping with these standards. Election observers – both domestic and international – have a crucial role to play. Sadly, in recent times there are examples of regional observer missions passing over glaring faults in election processes due to a misplaced sense

of loyalty to the incumbent ruling party and government. Strong, independent institutions and the rule of law are other pre-requisites for elections that are free of fraud.

Ultimately, for any of this to work in anywhere near an optimum manner, there has to be a critical mass of committed democrats both in governments and state agencies and amongst the citizenry. Therefore the importance of civic education should not be overlooked.

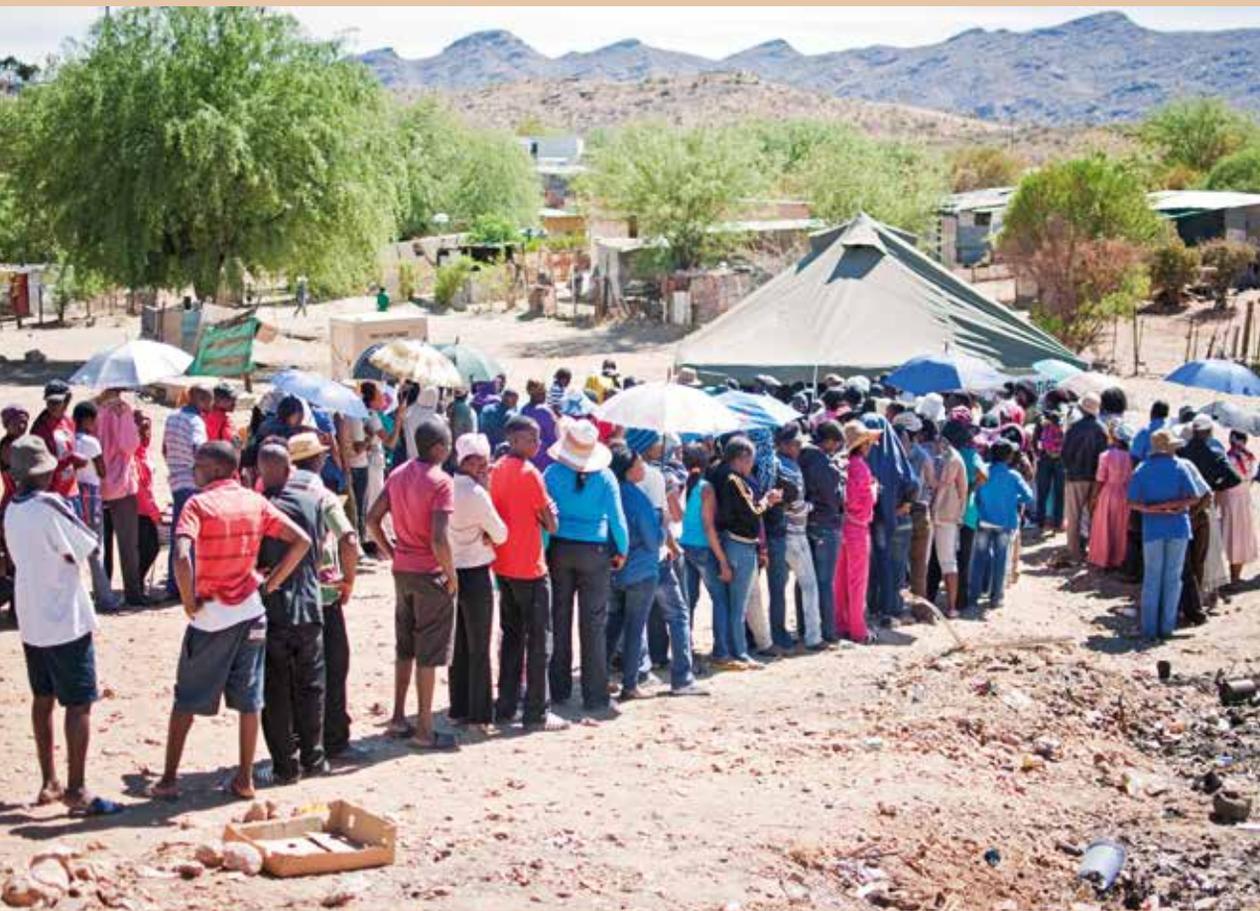
Tackling the risks of fraud is fundamental to establishing electoral integrity. There is no doubt that democracy is the best governance option. We now have plenty of evidence that shows that democracies are more likely to prosper economically and protect human rights and less likely to have civil and external conflicts and experience endemic corruption. But democracy building also requires hard and committed work by states, citizens and international partners. Removing the risks of fraud from the electoral equation is imperative if elections are to be free, fair and credible.

A close engagement with the electoral process and an understanding of the risk factors in any election are crucial if civil society is to play a role in ensuring free, fair and credible elections. There is also the broader task of creating a critical mass of democrats in any society. Ultimately what deters fraud and malpractice is a widely cherished understanding of democracy that does not allow for manipulation of results.

Concerns about electoral integrity are not African alone. Developments in established democracies - such as debates about electronic voting and voter registration in the US since 2000 and postal vote fraud in the UK in 2005 - have shown that issues of integrity are equally important there.

Across the globe it has become clear that heightened awareness, closer engagement, and pre-emptive actions by civil society activists can enhance the quality of electoral processes and ultimately help entrench democratic norms.

This publication aims to offer a guide for African civil society activists to the issues throughout the electoral cycle that require closer examination and checking in order to deter the possibilities of bias, fraud and manipulation. The aim is elections that are “professional, impartial, and transparent in its preparation and administration throughout the electoral cycle.” With improved electoral integrity, African countries can hold up to the rest of the world not tales of bias and rigging but rather examples of best practice.



Electoral Integrity & the Legal Framework

RISKS

Election law that does not meet international standards

Weak implementation or disregard of election law

Selective application of the law; inconsistencies in the law

Gerrymandering in boundary setting

Non-adherence to codes of conduct

Laws that do not enjoy the confidence of the electorate

Regulations that are contrary to the intent of the law

The first phase of the Electoral Cycle focuses on the legal framework in place to ensure credible, free and fair elections. The legal framework, which essentially sets the foundation for electoral integrity to exist, ensures that systems are in place for legitimate electoral processes to take place. This is especially important because of the role that elections play in providing “the definitive means for the population to periodically rebalance the distribution of political power.”¹

International IDEA advises that, “The legal framework should be so structured as to be unambiguous, understandable and transparent, and should address all components of an electoral system necessary to ensure democratic elections.”²

¹ Patrick Merloe, 2008. Promoting Legal Frameworks for Democratic Elections. Guide for Developing Election Laws and Law Commentaries. NDI, 2008

² International IDEA, 2002. International Electoral Standards Guidelines for reviewing the legal framework of elections. <http://www.idea.int/publications/ies/loader.cfm?csmodule=security/getfile&pageid=10183>

Some of the legal documents and/or entities that create the environment and space for electoral integrity in terms of this legal framework include national constitutions, legislation, electoral systems and boundaries, electoral management bodies, and codes of conduct. In this regard, the Electoral Knowledge Network states that: “Constitutions enshrine the political freedoms needed for competitive elections. Regulations ensure the fairness of the process, equality of opportunity and accountability of all participants. Codes of conduct help prevent unethical behaviour” (ACE Project, 2014). The constitution – the supreme law of a country – is often seen as laying the ground for electoral systems including sometimes setting out the appointment, structure and functions of a national electoral commission.

The legal framework may also include international agreements such as the International Convention on Civil and Political Rights (ICCPR). In the publication, *International Obligations for Elections: Guidelines for Legal Frameworks*, International IDEA highlights 20 international obligations as key building blocks for elections, “distilled from international human rights documents.” These are:

- Right and Opportunity to Participate in Public Affairs
- Right and Opportunity to Vote
- Right and Opportunity to be Elected
- Periodic Elections
- Universal Suffrage
- Equal Suffrage
- Secret Ballot
- Freedom from Discrimination and Equality under the Law
- Equality between Men and Woman
- Freedom of Association
- Freedom of Assembly
- Freedom of Movement
- Freedom of Opinion and Expression
- Right to Security of the Person
- Transparency and the Right to Information
- Prevention of Corruption
- Rule of Law
- Right to an Effective Remedy
- Right to a Fair and Public Hearing
- States must take necessary steps to give effect to Rights

In addition to international instruments such as those mentioned above, regional agreements may help further to cement the legal frameworks for credible elections. The African Charter on Democracy, Elections and Governance (ACDEG) – adopted by the African Union (AU) in 2007 as a roadmap to encourage better governance across the continent³ – is a good example of this (see end of this chapter for more details on ACDEG). As of the date of this publication, the Charter had been signed by 45 countries, 23 of which have ratified the Charter.⁴

³ NDI, 2014. Promoting the AU Charter on Democracy, Elections and Governance in West Africa. <https://www.ndi.org/WAEON-symposium>

⁴ African Union, 2014. List of Countries which have Signed, Ratified/Accessed to the African Charter on Democracy, Elections and Governance. http://www.au.int/en/sites/default/files/Charter%20on%20Democracy%20and%20Governance_0.pdf

Alongside several other principles, with regards to elections, the Charter reaffirms the commitment to “regularly holding transparent, free and fair elections in accordance with the Union’s Declaration on the Principles Governing Democratic Elections in Africa.” It notes that in order to achieve this, State Parties shall:

1. Establish and strengthen independent and impartial national electoral bodies responsible for the management of elections.
2. Establish and strengthen national mechanisms that redress election-related disputes in a timely manner.
3. Ensure fair and equitable access by contesting parties and candidates to state controlled media during elections.
4. Ensure that there is a binding code of conduct governing legally recognized political stakeholders, government and other political actors prior, during and after elections. The code shall include a commitment by political stakeholders to accept the results of the election or challenge them in through exclusively legal channels.

During a May 2014 workshop on Electoral Integrity hosted by the Hanns Seidel Foundation (HSF) and the Institute for Public Policy Research (IPPR) in Windhoek, Namibia, expert participants deliberated on the various factors that affect electoral integrity. They identified and highlighted potential loopholes within electoral systems that could compromise the integrity of an election, and pointed out electoral breaches that could lead to electoral fraud/malpractice, in the hope that identifying these gaps would lead to solutions for restoring electoral integrity.

With respect to the legal framework, some of the risks to electoral integrity identified during the workshop included (see box).

Examples noted during these deliberations included concerns of gerrymandering in Ghana; the lack of access to information regarding delimitation procedures and decisions in Namibia; selective application of the legal framework in Nigeria; and the watering down of certain constitutional provisions in Kenya. Participants also noted that sometimes electoral malpractice is not necessarily a result of intent to affect the process, but rather, that of a low knowledge base, limited skills, the lack of capacity (or failures to build capacity, ill thought-out procedures, and legal loopholes. This often

ELECTORAL FRAUD RISK FACTORS IN TERMS OF THE LEGAL FRAMEWORK:

- The absence of an electoral law
- Weak implementation or disregard for existing electoral laws
- Selective application of the law in order to suit a certain party
- Amendment of the constitution in favor of such party
- Gerrymandering or unfair delimitation processes
- Restrictions on the presentation and selection of candidates
- Non-adherence to Codes of Conduct
- Limitations on opposition activity

includes voters not knowing what their electoral rights are in terms of the law, and the importance of voter education at this stage of the cycle is therefore incredibly important.

As noted in the introductory chapter, breaches in electoral integrity can easily erode the trust of the electorate in the electoral system. Below are three case examples of lapses in ensuring a sound legal framework for maintaining the integrity of elections.

NAMIBIA – Last minute Electoral Law?

Following Namibia's 2009 election, several opposition parties contested the national election results, claiming that the election had been rigged.

While the Supreme Court ultimately upheld the election outcome (the final judgement was issued almost three years after the election), it ruled that there had been several lapses on the part of the Electoral Commission. It also called for a review of the electoral law, to ensure that some of these gaps were corrected within the legal framework for Namibian elections.

The passing into law of the new Electoral Act only took place on October 8th 2014 – seven weeks before the elections, slated for November 28th, 2014. This is despite the court ruling having been finalised two years earlier.

In addition to the delayed passing of the new electoral law, constitutional amendments affecting government structure and functioning in Namibia were also made in a rushed manner, with limited public consultation. The amendments drew protest from civil society organisations, most notably because of the lack of public consultation, the close proximity to elections, and the cost implications of implementing the changes, which increased the size of the National Assembly from 78 (72 voting, 6 non-voting) to 104 (96 voting, 8 non-voting) members of Parliament.

Although the process of drawing up the new electoral law was praised for being broadly consultative, and for considering the views of the electorate, civil society, and the opposition parties, the delay in tabling the new legislation in parliament and the rushed process in getting it passed as an Act had the potential to undermine the integrity of the election. The risks to electoral integrity of the late passing of the law were clear in the limited training that election officials were able to receive in the weeks leading up to the election, and the various glitches that were observed during the process.

The ECOWAS Protocol prohibits amendments to the legal framework less than six months before election day unless they are sanctioned by a broad political

consensus. International IDEA points out that this is an important safeguard that helps guarantee legal stability and predictability, and reinforce the certainty of the legal framework' In the case of Namibia, this would have been an important principle to follow, to ensure the electorate is confident in the system, and to inspire greater electoral integrity.

KENYA – Selective Application of the Law

In Kenya, many believed that some of the provisions on Leadership & Integrity in Chapter 6 of the Kenyan Constitution were watered down by Parliament and the Courts in determining whether the current President, Uhuru Kenyatta, and his deputy, William Ruto, were competent to stand for elections, given the charges against both men at the International Criminal Court.

The two (alongside four others) had faced the charge of crimes against humanity, in connection with the post-election ethnic violence in 2007-08, during which close to 1,300 people died, thousands more raped and 600,000 displaced. The charges were later withdrawn.

Arguing that the High Court of Kenya exceeded its jurisdiction when adjudicating an integrity suit against the two, one lawyer wrote: "The tumultuous "journey" of the High Court in this case only operates to crowd the competing jurisprudence between the High Court and the Supreme Court of Kenya in the exercise of the powers conferred to them by the Constitution of Kenya."⁵ He states that "From the outset, it is important to note that the final outcome of the case was appropriate to the extent that barring Kenyatta and Ruto from running for office at this point in time would amount to disenfranchisement of the electorate. However, the approach of the court in relation to the issues canvassed is wanting and very confusing. In particular, the approach of the court towards the question of jurisdiction and the political question doctrine is hazy."

Perhaps the bigger issue here is the way in which the law is applied, how it is interpreted, and the consistency with which it is applied, so as not to be a "moving target," as some described the interpretation and verdict that allowed the two to run for office despite the charges against them at the time.

⁵ Maina, M, 2013. Jurisdiction and the Political Question Doctrine: Integrity Suit against Kenyatta and Ruto. Jurist, 20 February 2013. University of Pittsburgh School of Law.

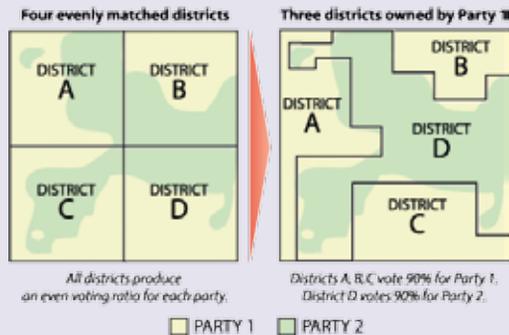
GHANA – Gerrymandering

Gerrymandering is defined as “a practice that attempts to establish a political advantage for a particular party or group by manipulating district boundaries to create partisan advantaged districts. When used to allege that a given party is gaining disproportionate power, the term *gerrymandering* has negative connotations.”⁶

In Ghana, prior to the 2012 national elections, the Electoral Commission reviewed the electoral boundaries for national and local elections per articles 45 and 47 of the constitution.

However, the creation of 45 new constituencies just before the 2012 election was met with controversy and allegations of gerrymandering.

Further, questions about the independence of the Electoral Commission of Ghana abounded, with critics accusing government of intervening in the delimitation process. It has been said that “the electoral commission wanted to create 20 new constituencies, but was forced by the government to create 45 instead.”⁷



An EISA pre-election report noted that:

While the constitutional criteria for delimiting constituencies in Ghana is clear, confusion has emerged with regard to the precise timing of such review and the powers of the electoral commission to independently discharge its mandate with regard to boundaries review. Article 47 (2) of the constitution provides that “no constituency shall fall within more than one region.” The consequence of this provision is that the demarcation of administrative districts in Ghana reflect the elective units, in other words one district one constituency. The responsibility of creating and reviewing administrative district is vested in the minister for local government who is an appointee of the president. When new districts are created, the Electoral Commission must inevitably review the constituency boundaries to conform with the new district.

As a result of the foregoing, the mission noted that the independence of the commission is not absolute especially in regard to matters of constituency delimitation. Indeed, stakeholders pointed out that creation of new districts were done by the two leading parties when they were in power, a move that

⁶ <http://en.wikipedia.org/wiki/Gerrymandering>

⁷ HSF & IPPR, 2014. Electoral Integrity Workshop report.

forced the commission to increase the constituencies. This brought to focus the independence of the commission with regard to constituency delimitation given the overlapping responsibilities between the commission and the ministry of local government. The creation of the 45 new constituencies, for example, raised questions of timing and allegations of gerrymandering by the various stakeholders. The legality of the new constituencies was contested all the way to the Supreme Court.

In both the Namibian and Ghanaian case studies, timing of changes within the context of the legal framework arise as key issues.

A strong legal framework for elections is a pre-requisite for effectively addressing any breaches in electoral integrity, and sets the stage upon which a country's populace can feel that they are able to effectively participate in a credible election. In fact, the Open Government Guide notes that, "The legal framework should guarantee political impartiality of governmental entities, administrative effectiveness and transparency for the numerous complex, time-sensitive, and large-scale processes required for genuine elections."⁸ The Guide presents 14 Recommendations to ensure that the legal framework for elections guarantees the integrity of the vote.

- 1. Set out an inclusive process for appointing an impartial electoral management body (EMB, e.g., election commission),** with clear criteria for selecting its members, requiring broad agreement of the political competitors (e.g., through a super-majority of legislators that includes governing and opposition parties) and the opportunity for public scrutiny of the process. Criteria are likely to include the ability to act impartially towards political competitors, demonstrated personal integrity and capacities to oversee complex electoral processes. In some countries the first criteria is relaxed in favour of management bodies that are designed to achieve political impartiality through a balanced number of representatives from opposing parties. Similar criteria and a selection process that includes opposing political parties are needed for selecting the chief executive officer of the EMB's staff.
- 2. Include budgetary procedures that guarantee the ability of election administration to act impartially** (free and independently from political pressures), effectively (with timely and adequate funding), transparently (budget proposals and the budget documents made publicly available in a timely and easily accessible manner) and accountably (through legislative oversight and public scrutiny).
- 3. Recognise electoral competitors' right to observe all aspects of the election process** to ensure their rights are respected, including to gather information and to seek remedies.

⁸ <http://www.opengovguide.com/commitments/establish-a-legal-framework-for-impartiality-effectiveness-and-transparency-in-elections/>

4. **Recognise the rights of citizens to associate through organizations that monitor electoral processes** (e.g., non-partisan citizen organizations and news media), and require timely accrediting, without unreasonable restrictions, of such organizations to observe all aspects of election administration, including, among others, delimitation of election districts, voter registration, voting, vote counting and electoral results tabulation and transmission.
5. **Require timely publication of all EMB decisions, rules, regulations and an electoral calendar** that includes the dates of all steps in the election process, through announcement of results and seating of elected officials.
6. **Require immediate publication of denials (including rationale) by the EMB or other responsible government entity** of the legal recognition and qualification of electoral contestants (including ballot qualification), legal recognition and accreditation of citizen organizations to monitor the various election processes and accreditation of news media to witness election processes, and include a means for judicial appeal of such denials.
7. **Require that data on critical pre-election processes**, such as delimitation of election districts and related census data, voter registration and voter registries and candidate/party ballot qualification, be made timely available for scrutiny and claims for remedies by persons with a direct interest and impartial election monitors.
8. **Require that election results be publicly posted**, both at the location where ballots are cast and initially counted (e.g., polling stations) and at each point where they are consolidated (e.g., ward, district, regional/provincial and national results consolidation centres); require that results be released immediately at each juncture of results tabulation in a format that includes results recorded at the initial ballot counting location as well as in an aggregated form.
9. **Require that consolidated results be made immediately available through a searchable catalogue** (e.g., a website) that provides access to results recorded at the location where ballots were counted (e.g., polling stations) as well as aggregated results, and ensure that the data's format is reasonably structured for automated processing (analysis); and require that results also be maintained permanently and be publicly available in such easy to analyse formats.
10. **Require that all state-owned and state-controlled mass communications media remain impartial toward all electoral contestants**; include sanctions for non-compliance; provide that data collected by governmental agencies that may monitor the media be made publicly and timely available, and provide that public requests for information from state-owned or controlled media and media monitoring agencies shall receive timely responses.
11. **Provide a mechanism for complaints, review and sanction** concerning any government employee who uses governmental office, resources or employee time to pursue the advantage or disadvantage of an electoral contestant,

and require timely public reports on the number, nature and disposition of such complaints.

- 12. Establish criminal liability for anyone, including government employees, acting in a manner that violates the rights of prospective voters or electoral contestants** (including through bribery, threats of political retribution concerning jobs, scholarships or service provision, violence, threats of violence or other forms of coercion), and require timely public reports on the number, nature and disposition of such cases.
- 13. Provide EMBs with the powers and the financial resources to investigate** on their own initiative possibilities of misfeasance and malfeasance by electoral officials, including any action that could affect an electoral outcome.
- 14. Ensure that access to electoral complaint mechanisms and judicial proceedings concerning electoral processes** are not hindered by unreasonable filing fees and deposits, arbitrary or impracticable procedures and timelines, and ensure that requirements for lodging complaints or otherwise seeking administrative or judicial redress are broadly enough defined to allow the pursuit of any reasonable claim and timely, effective remedies.

The ACE Project argues that, “For integrity purposes, it is important to review the entire legal framework periodically and determine whether changes are needed. It is important to address gaps, overlaps and conflicts among various provisions in the legal framework. Whether designing a new system or revising an existing one, electoral administrators and policy makers would need to take a comprehensive look at all of the different laws, regulations and procedures that help protect election integrity. Electoral administrators must be able to understand how the different legal and administrative pieces fit together, providing a consistent legal framework for promoting and protecting electoral integrity.” (ACE Project, 2014)

Often times, the electoral laws and other legislation that set the framework for elections are well articulated, impressive pieces of legislation. However, it is the implementation of that legislation that may be lacking, and for this reason, Election Observers should monitor the entire election cycle – including the theoretical and practical components of the legal framework – when on an observation mission.

The National Democratic Institute (NDI) for International Affairs offers a checklist with 228 questions to consider for evaluating legal frameworks for democratic elections. These questions cover a number of issues, categorised along 16 key indicators, including: the electoral system, the structure of the legal framework, electoral districts, the electoral management body and its administration, election monitoring, voter registration and voter lists, voter education, legal recognition and the status of political parties, ballot qualifications, election campaign, campaign resources, media, voting, vote counting, results tabulation and results announcement, and complaint mechanisms (see next page). Accompanied by various criteria for each indicator, the

questions seek to meet a number of important goals, as described in the table below, and which essentially cover the 20 international obligations highlighted above as key building blocks for elections.⁹

INDICATOR	GOAL
The electoral system	Ensure that the people have genuine opportunities to participate in government, directly and/or through freely chosen representatives.
The structure of the legal framework	Provide clarity, predictability and consistency with other electoral related laws and assure impartial application of legal provisions.
Electoral Districts	Ensure “equality of the vote” (equal suffrage), relating to the proportions of voters to representatives and ensure against discrimination in boundary delimitation.
Electoral management body and administration	Ensure impartiality, effectiveness and transparency in election administration.
Monitoring	Provide transparency for electoral competitors and the general population to establish the warranted degree of public confidence in the electoral process.
Voter registration and voter lists	Ensure eligible citizens a genuine opportunity to exercise the right to vote, prevent ineligible people from voting and block multiple voting.
Voter education	Ensure that the electorate is sufficiently informed about voter registration, voting choices and voting procedures to provide a genuine opportunity for exercising the right to vote and to make an informed choice among electoral contestants.
Legal recognition and status of political parties	Ensure freedom of political association and political pluralism.
Ballot qualification	Ensure a genuine opportunity to exercise the right to be elected and apply proper criteria for candidacy and listing on the ballot.
Election campaign	Ensure that those seeking election or supporting or opposing referenda and other ballot initiatives have free and fair conditions to organise, impart information and seek electoral support, and ensure that citizens are able to learn about those who are seeking election and understand that they may make their electoral choices free from intimidation, threat of retribution and other forms of coercion.

⁹ NDI, 2008

Campaign resources	Ensure fair conditions for exercising the right to seek to be elected and provide the electorate with information that is relevant to making electoral choices.
Media	Ensure fair and equitable treatment of the electoral contestants and help ensure the electorate receives sufficient, accurate information about the electoral contestants and about issues that are important to the election, so that voters may make an informed choice.
Voting	Ensure that all eligible voters have a genuine opportunity to freely cast a secret ballot, illegal voting is prevented, the will of the voters is registered, fraud is prevented and transparency provides a basis for public confidence in the electoral process.
Vote counting	Ensure that the will of the voters is accurately and honestly counted, recorded and reflected in the official results, fraud is prevented and transparency procedures provide a basis for public confidence in the process.
Results tabulation and results announcement	Ensure that the will of the voters is accurately and honestly tabulated, recorded and reflected in the official results, fraud is prevented and transparency procedures provide a basis for public confidence in the process.
Complaint mechanisms	Ensure due process, equality before the law, equal protection of the law and effective remedies and promote public confidence in the impartiality and competence of administrative and judicial tribunals reviewing electoral complaints and challenges.

Some of the solutions for addressing electoral malpractice in the legal framework stage of the electoral cycle, as outlined by workshop participants, included campaigning for legislative reform in order to remedy any gaps in the electoral system; strengthening electoral systems in a way that makes room for the development and review of legal frameworks for democratic elections; enhancing transparency; and ensuring civic education to ensure citizens' understanding of their rights and the legal framework governing their right to vote.

SOLUTIONS TO IMPROVE ELECTORAL INTEGRITY wrt LEGAL FRAMEWORKS:

- Campaign for legislative reform
- Strengthen electoral systems
- Enhance transparency
- Civic education

Furthermore, ensuring the space for election observation is key, as a means of ensuring transparency and increasing credibility. "Election observation means the purposeful gathering of information regarding an electoral process, and making informed judgments on the conduct of such process on the basis of information collected, by persons who are not inherently authorized to intervene in the process and whose

involvement in mediation or technical assistance activities should not jeopardize their main observation responsibilities.”¹⁰ Importantly, the legal framework should itself contain provisions for the local and international observation of elections, as well as media representatives, political party agents, and candidates.

Importantly, election observation should be seen as a holistic exercise that takes into account the entire electoral cycle, including the legal framework. Observers often overlook this important stage in the cycle, focusing on the practice or implementation of the law during elections, without pointing to any gaps within the law itself.

In observing whether the legal framework creates the space for elections of high integrity, elections observers would do well to consider the fundamental building blocks of a credible, free and fair election, as well as to explore – in depth – the resources presented in the previous pages from the NDI, International IDEA, and the Open Government Guide. Additional information on these resources can be found in the Further Reading section.

In addition to the above resources, given the focus of this manual on sub-Saharan Africa, Election Observers should place a keen focus on ensuring that the legal framework supports the commitments made by states that are party to the African Charter on Democratic Elections. In the Guidelines For African Union Electoral Observation And Monitoring Missions, member states committed themselves to the following rights and obligations under which democratic elections are conducted¹¹:

- i. Every citizen shall have the right to participate freely in the government of his or her country, either directly or through freely elected representatives in accordance with the provisions of the law.
- ii. Every citizen has the right to fully participate in the electoral processes of the country, including the right to vote or be voted for, according to the laws of the country and as guaranteed by the Constitution, without any kind of discrimination.
- iii. Every citizen shall have the right to free association and assembly in accordance with the law.
- iv. Every citizen shall have the freedom to establish or to be a member of a political party or organisation in accordance with the law.

¹⁰ International IDEA, <http://www.idea.int/publications/ies/upload/15.%20Election%20observers.pdf>

¹¹ African Union, (date). Guidelines For African Union Electoral Observation And Monitoring Missions, <http://www.achpr.org/instruments/guide-elections/>

- v. Individuals or political parties shall have the right to freedom of movement, to campaign and to express political opinions with full access to the media and information within the limits of the laws of the land.
- vi. Individual or political parties shall have the right to appeal and to obtain timely hearing against all proven electoral malpractices to the competent judicial authorities in accordance with the electoral laws of the country.
- vii. Candidates or political parties shall have the right to be represented at polling and counting stations by duly designated agents or representatives.
- viii. No individual or political party shall engage in any act that may lead to violence or deprive others of their constitutional rights and freedoms. All stakeholders should refrain from, among others, using abusive language and/or incitement to hate or defamatory allegations and provocative language. These acts should be prohibited by designated electoral authorities.
- ix. All stakeholders in electoral contests shall publicly renounce the practice of granting favours, to the voting public for the purpose of influencing the outcome of elections.
- x. In covering the electoral process, the media should maintain impartiality and refrain from broadcasting and publishing abusive language, incitement to hate, and other forms of provocative language that may lead to violence.
- xi. Every candidate and political party shall respect the impartiality of the public media by undertaking to refrain from any act which might constrain or limit their electoral adversaries from using the facilities and resources of the public media to air their campaign messages.
- xii. Every individual and political party participating in elections shall recognize the authority of the Electoral Commission or any statutory body empowered to oversee the electoral process and accordingly render full cooperation to such a Commission/Body in order to facilitate their duties.
- xiii. Every citizen and political party shall accept the results of elections proclaimed to have been free and fair by the competent national bodies as provided for in the Constitution and the electoral laws and accordingly respect the final decision of the competent Electoral Authorities or, challenge the result appropriately according to the law.

The African Charter on Democracy, Elections and Governance (ACDEG)

The African Charter on Democracy, Elections and Governance (ACDEG) was adopted by the 8th Ordinary Session of the African Union (AU) Assembly, held in Addis Ababa on January 30, 2007. It was developed as part of the African Union's stated emphasis on promoting democracy and good governance in member states.

The document had to be ratified by 15 states before it actually entered into effect and became binding for ratifying states. This milestone was passed on February 15, 2012. As of the date of this publication, ACDEG had been signed by 45 states and ratified by 23. But the rate of ratification has slowed dramatically in the last few years indicating a lack of political will in the AU and across the continent to promote the values and standards enshrined in ACDEG.

The Charter stresses adherence to the principles of democracy, rule of law and human rights; and has a strong emphasis on supremacy of constitutions and separation of powers. It is particularly concerned with promoting the constitutional transfer of power.

Once a country has ratified ACDEG, national laws and regulations should be in conformity with the Charter. The Charter provides a solid platform for civil society to engage in promoting electoral integrity.

ACDEG is not a perfect document and should rather be seen as a first step to promoting democracy, good governance and the rule of law across Africa. In countries that have ratified ACDEG, civil society activists can use it to hold the government, parties, the EMB, and other stakeholders to the highest standards of electoral integrity. In countries that have yet to ratify it, civil society activists can push their governments towards accepting the continental standards as soon as possible as means of promoting electoral integrity.

Countries that have ratified the Charter (year of ratification in brackets):

- Benin (2012)
- Burkina Faso (2010)
- Cameroon (2011)
- Chad (2011)
- Cote d'Ivoire (2013)
- Djibouti (2012)
- Ethiopia (2008)
- Ghana (2010)

- Guinea-Bissau (2011)
- Guinea (2011)
- Lesotho (2010)
- Mali (2013)
- Malawi (2012)
- Mauritania (2008)
- Nigeria (2011)
- Niger (2011)
- Rwanda (2010)
- South Africa (2010)
- Sahrawi Arab Democratic Republic (2013)
- Sierra Leone (2009)
- Sudan (2013)
- Togo (2012)
- Zambia (2011)

POLLING STATION



Planning, Training & Education

RISKS

Voters are not aware of their rights

Election officials are poorly trained and/or partisan

Election procurement is biased

There is insufficient funding for the EMB

Civil society is disengaged

Poor timing of information

Inaccessibility of information

Training and education are key steps in the electoral cycle, and include operational training for election officials, civic education, and voter information. This component of the cycle is imperative because it essentially ensures that voters, voter educators/civil society, election officials and election observers are cognizant of their tasks, and are able to carry them out with the requisite information and knowledge needed to uphold the integrity of elections. Beyond the sharing of information, the content and timing of training and education efforts are also critical to the success of the election process, and to ensuring the integrity of the system.

The importance of voter education cannot be understated. The UN notes that “In every election, voter and civic education are necessary to ensure that all constituents—men and women alike—understand their rights, their political system, the contests they are being asked to decide, and how and where to vote. For an election to be successful and democratic, voters must understand their rights and responsibilities, and must be sufficiently knowledgeable and well informed to cast ballots that

are legally valid and to participate meaningfully in the voting process.”¹ Because an election essentially presents the opportunity for citizens to determine the leadership they want for their countries, it is critical that they are fully aware of their rights, and the processes for exercising those rights.

Additionally, given the gravity of elections, it is also important that designated election officials are well educated and trained on election procedures, in order that they may facilitate the electoral process in a way that adds to its integrity. Oftentimes, the legal frameworks around elections are well-written pieces of legislation that seek to entrench strong democratic values in the societies they serve and meet certain ideals. However, those responsible to carry out this legislation need to be well versed in the workings of the system in order to adequately protect the integrity of the electoral process.

In addition to educating and training the general populace and election officials, it is also important that party agents and election observers are well versed in the workings of the electoral system, the potential for breaches in the electoral integrity of the system, and key issues to look out for in order to ensure that a free, fair and credible election takes place.

Risks identified for this stage included voters not being clear on their rights and on election processes; having poorly trained election officials; a disengaged civil society; and the poor timing and accessibility of information. The identified risks make it clear that there is a broad responsibility to educate all those involved in the electoral system – including the electoral management body, parties taking part in the election, organisations represented by election observers, and civil society at large.

Various international instruments speak to the importance of voter and civic education for elections, and the importance of this stage being captured in the legal framework of country electoral systems. In a survey of several universal and regional instruments, the United Nations Commission on Human Rights (UNCHR) “draws attention to what it considers common elements of electoral law and procedure that ensure elections are conducted freely and fairly and under the rule of law”² with regards to education, and states that:

124. Funding and administration should be provided for objective, non-partisan voter education and information campaigns. Such education is especially critical for populations with little or no experience with democratic elections. The public should be well informed as to where, when and how to vote, as well as why voting is important. They must be confident in the integrity of the process and their right to participate in it.

125. Literature should be widely available and should be published in the various national languages to help ensure the meaningful participation of all eligible

¹ <http://www.un.org/womenwatch/osagi/wps/publication/Chapter5.htm>

² Training Manual on Human Rights Monitoring Chapter XIV: Election Observation

voters. Multimedia methods should be employed to provide effective civic education to people with various levels of literacy. Voter education campaigns should extend throughout the territory of the country, including to rural and outlying areas.

In a publication titled *Good Commonwealth Electoral Practice*, the Commonwealth Secretariat adds the following important points with regards to the education and training stage of the electoral cycle, and the considerations that should be made to promote electoral integrity in the cycle:

42. Appropriate and effective, non-partisan public education programmes, though not always the responsibility of an electoral body, are an essential feature both in countries where a voting “culture” is being developed as well as in established democracies. As such, they should be adequately funded and professionally organized and target particular groups (e.g. women, minority groups, the disadvantaged, and school children). Where practicable, national election practices can be built in to school election procedures and election education centres can be established in appropriate locations.
44. The cost of public education programmes should be minimised by public service broadcasting facilities being made available at little or no charge.

The considerations by the UNCHR and the Commonwealth Secretariat above are complementary to recommendations made by participants in the May 2014 HSF/IPPR Electoral Integrity Workshop, wherein the notion of incorporating teachings on democracy and elections in schools was highlighted as an important component of the education and training stage. In this regard, the focus would be civic education, as opposed to voter education. The distinction between the two is clarified by the ACE Project, which notes that³:

Basic Civic Education deals with broader concepts underpinning a democratic society such as the respective roles and responsibilities of citizens, government, political and special interests, the mass media, and the business and non-profit sectors, as well as the significance of periodic and competitive elections. It emphasizes not only citizen awareness but citizen participation in all aspects of democratic society. Civic education is a continual process, not tied to the electoral cycle.

Basic Voter Information refers to basic information enabling qualified citizens to vote, including the date, time, and place of voting; the type of election; identification necessary to establish eligibility; registration requirements; and mechanisms for voting. These constitute basic facts about the election and do not require the explanation of concepts. Messages will be developed for each new election. These activities can usually be implemented

³ <http://aceproject.org/ace-en/topics/ve/vea/default>

quickly (although sufficient planning is still required). Election authorities are typically required to provide this type of information, although contestants in the election and civil society organisations will also do so.

By conducting civic education with young people in schools and universities, the active participation of young people in the political process, and particularly in elections, can be greatly enhanced. This is especially important in preparing young people who will be going to the polls for the first time, in order to ensure that they have a strong understanding of how the electoral process works, as well as what they are able to achieve through their vote. Beyond this, civic education also promotes the active citizenry of young people, makes them better aware of their rights and responsibilities, and ultimately “empowers and prepares the next generation of leaders to have a voice in the way they are governed”⁴. Civic education from a young age essentially enhances participation, and should therefore be prioritized.

With regards to the role of voter education in preventing integrity problems, the ACE Project states that, “Voters need to understand their rights and duties under the constitution and election law of their country so that they can meet their obligations in a responsible manner. Informed, responsible voters help safeguard electoral integrity. They do not make false statements that might disrupt or disturb an election. They do not act illegally, intimidate other voters or try to tamper with the election results. They turn out to vote because they understand the importance of participating in the electoral process.”⁵

Without sufficient education, it can be hard to eliminate abuses such as vote buying or tampering through intimidation, especially in countries with high unemployment, low incomes and security problems. Voters may not be aware of their rights or the mechanisms that are used to protect the secrecy of their vote, or what motivates politicians or their supporters to attempt to buy their vote.

A good education programme will inform voters about their rights, how to exercise them and the way the electoral system works. It should also explain the effects of corruption and the need for integrity in public service and the electoral process.

The Role of EMBs in Voter Education

The ACE Project notes that when it comes to voter education, “First time voters, the elders, the illiterate and those with special needs are among the priority groups to be educated. Changes in election technology, for example the introduction of computer touch screens, or in election practices such as voting by mail, will necessitate general voter education efforts.”⁶

⁴ IFES, 2014. <http://www.ifes.org/Content/Galleries/Y/Youth-Power-of-Democratic-Change.aspx>

⁵ <https://aceproject.org/ace-en/topics/ei/eif/eif05>

⁶ ACE Project, 2013. Civic and Voter Education. <http://aceproject.org/ace-en/pdf/ve/view>

With regards to the role of the EMB in educating voters, International IDEA's Electoral Management Design Handbook states that⁷:

Voter education and information is a responsibility which is increasingly being added to EMB functions. Some EMB legal frameworks have clearly provided for EMB conduct of voter education and information, as is the case in Antigua and Barbuda, Latvia, Lithuania, Thailand and Togo, while others, including those of Indonesia and Sweden, have not. It is preferable for an EMB's legal framework to include a voter education and information function, as this is indispensable for democratic consolidation, especially in emerging democracies where both the art and the essence of voting are yet to be mastered and internalized. However, it would be harmful for the EMB or any other body to be given exclusive voter education and information rights or powers to restrict who may conduct voter education and information.

Voter education and information is too important, and its implementation too complex, to be left to an EMB alone. Political parties, civil society, corporations and government agencies such as education systems may all have an important complementary role to play to help ensure that voters have all the information they need to make informed choices. An EMB's voter education and information responsibilities could be partially or wholly delegated to other institutions, including civil society organizations. In Ghana, for example, there is a sister commission to the EMB which is responsible for civic and voter education and information. In Thailand, the EMB is empowered to outsource voter education and information to private organizations.

As noted by International IDEA, while the EMB should play a strong role in voter education, this is a responsibility that has to extend to civil society, political parties, observation missions, and other entities with an interest in seeing a free, fair and credible election. During the Electoral Integrity workshop, participants also emphasized the need for civic education on democracy and elections to be incorporated into secondary school curricula, in order to engrain, from an early age, a deeper understanding of governance, leadership, and the role of the citizen.

The Role of Civil Society in Voter Education

In addition to EMBs, civil society has an important role to play in educating and informing the electorate about their right to vote, the meaning and practice of democracy, and their responsibilities as voters. This voter education is especially important for targeting certain sections of the electorate such as women, youth, marginalized communities, first time voters, and so forth. In **South Africa**, for example, "EISA, in cooperation with the South African Catholic Justice and Peace Committee and

⁷ http://www.idea.int/publications/emd/upload/EMD_inlay_final.pdf

the Cooperative Research and Education (Core), partnered with community-based organisations to engage in voter education. The project developed a full voter-education programme, which among other activities trained 45 voter educators with an emphasis on youth and women in particular, to conduct voter education in communities in Gauteng.”

Another example exists in **Namibia**, where in both the 2009 and 2014 National Assembly and Presidential Elections, the Institute for Public Policy Research (IPPR) carried out the Election Watch project. The project – which had a strong social media (Facebook & Twitter) presence in the 2014 election, serves as a platform that provides voter education, and briefing information for civil society activists, journalists, students, and voters in general. It also provides a platform for civil society’s and citizens’ views of the electoral process; provides ‘early warnings’ of possible problems in the electoral process; points out positive examples and experiences within the democratic process; and promotes Namibian, African and international benchmarks on elections and democracy. The project produced a number of bulletins as inserts in a leading newspaper, and continued in its education efforts for the regional and local government elections in 2015.



The private sector can also play a role in creating platforms upon which voter education can take place. In **Nigeria**, for example, MTN created a mobile app called ‘BetterMe’, which was designed to “enhance voter education and deepen the democratic process in the country.” Launched alongside the INEC and National Orientation Agency (NOA), it was described by Nigeria’s Director of Voter Education as “a major platform for voter engagement and a big step forward in Nigeria’s quest for participatory democracy and enhancing their participation in the electoral process.” The app “enables subscribers to seamlessly access information relating to the elections, from the comfort of their mobile phones. A subscriber can access information on candidates for the elections, their plans and manifestoes as well as the strategic thrust and policy direction of the various political parties, among others from the convenience of the mobile phone.”



Training of Electoral Officials

In terms of the training of electoral officials, however, the EMB needs to play a prominent role in ensuring that staff tasked with implementing electoral systems are knowledgeable about the legal framework and skilled in the running of a credible election based on this framework. In this vein, the SADC Principles and Guidelines Governing Democratic Elections – for example - notes that one of the key responsibilities of member states is to “Establish impartial, all-inclusive, competent and accountable national electoral bodies staffed by qualified personnel, as well as competent legal entities including effective constitutional courts to arbitrate in the event of disputes arising from the conduct of elections”.

In this regard, the ACE Electoral Knowledge Network notes that, “If the electoral administration doesn’t have an adequate staff it may encounter integrity problems resulting from ignorance or error. Hiring the right person for a job will make the system work better, eliminating many potential integrity problems. The right person is usually someone with professional experience, attitude and training and upholds principles of professional conduct.”

The Network also provides a number of important considerations that EMBs should take into account in order to “create an election management body with a professional, honest and dedicated staff” that promotes electoral integrity. These include developing a strict staffing procedure (including determining internal structure and creating and distributing a detailed organizational chart that may also serve as a monitoring tool); recruiting through competition on the basis of merit; establishing written personnel policies and distributing these to all employees (including standards of professional behavior and a code of ethics); offering competitive pay for professional staff in order to attract the best talent while also ensuring high productivity and curbing any temptation; ensuring supervision and providing training for continuous skills enhancement⁸.

One strong reason why the legal framework should empower an EMB to conduct voter education and information as a way of consolidating democracy is that otherwise the government will be reluctant to fund it, citing as the reason that this function is not part of an EMB’s official mandate. – International IDEA

Training and education of election officials can take various forms. The Association of European Election Officials notes that: “Professional members and staff of the election management bodies (EMBs) need appropriate skills, practice and a commitment to the principles of electoral management such as fairness, impartiality, independence, transparency, accessibility, and professionalism. Staff development for the EMBs may take a number of basic forms, such as customised short-term informal

⁸ Ibid.

training, the mentoring of staff by senior EMB or another organization's officials, and also long-term formal training in the form of courses or academic development programmes."⁹ This training can cover a range of issues relating to the electoral system, and should, importantly, be continuously updated to include changes and developments in the electoral system – whether in terms of changing legal frameworks, the introduction of new technologies, or otherwise. It is important that all legal considerations and new information is known by the EMB in good time, to ensure that the adequate training of electoral officials is conducted in the required time.

Education and Training – New Voting Technologies

With the introduction of new technologies in the election process, it is also important that the education and training of electoral officials and the voters at large, be sensitive about the use of these technologies. The use of biometric machines for voter registration and identification, for example, has become more popular – used in Ghana's 2012 election, Kenya's 2013 election, and Namibia's 2014 election, to name but a few. In Namibia, the Electronic Voting Machine was used for the first time in an African election, and while its use was groundbreaking, this also demanded that voters were adequately prepared, educated and informed about the use and working of the EVM.

With regards to the introduction of these new technologies, the National Democratic Institute states that¹⁰: "Voter education and information are critical elements in building voters' confidence in newly introduced technologies. EMBs should be strategic and proactive in providing information on how to vote, how the overall system works, why the new technology has been adopted and methods to ensure the system's integrity. Voter education strategies should consider the target audiences and use different types of outreach methods based on how different segments of voters commonly access information. Particular consideration should be given to targeting groups, such as voters with disabilities, and rural and elderly voters, that may be less comfortable with technology. It is also important to provide opportunities for voters to try out the new voting equipment in person. Election observers have a responsibility to assess the adequacy and effectiveness of voter education efforts and make recommendations on how any identified gaps can be filled."

The introduction of new voting technologies has several important implications for election observation. The OSCE Handbook for Observation of New Voting Technologies recommends that election observation missions be staffed with at least one technical expert, and that the mission fully understand whether these technologies ensure that the key principles of elections – including 'the secrecy of the vote and the guarantee that the results fully reflect voters' choices'¹¹.

⁹ <http://www.aceeeo.org/en/special-projects/training-for-election-officials>

¹⁰ <https://www.ndi.org/e-voting-guide/voter-education-and-information>

¹¹ OSCE Handbook for Observation of New Voting Technologies

The use of new technologies for voter education should also be considered, particularly in terms of youth voter education and engagement. In the past few years, social media has played an increasingly prominent role in educating the electorate about elections and the functioning of their democracies. International IDEA's 2013 Annual Democracy Forum on Youth Participation in Politics and Elections recommended that these 'new forms of expression' be embraced in order to effectively educate, engage and inform youth populations. It stated that "Information Communication Technologies (ICTs) and social media have changed the way in which citizens can interact with their elected representatives, make their voice heard and hold governments accountable, giving them a whole new range of opportunities to interact with their representatives. This is especially true for those who are increasingly using social media and ICTs – youth. By facilitating access to a large number of contacts and to information, social networking websites, blogs and the internet in general enable youth to voice their concerns and in some cases to 'dialogue' directly with their politicians."¹²

The sharing of information on these platforms is also true for civic and voter education, and electoral management bodies and civil society organisations across the continent are increasingly using social media as one of several means to educate prospective voters. In **Kenya**, for example, the website 'Got to Vote' provided important voter information for voters on where to register to vote, and focused on positive messaging for the 2013 Presidential Election in that country. The *Wall Street Journal* described the site as "an alternative to the government source, which requires viewers to wade through bulky documents"¹³.



Another Kenyan site that 'kept tabs on Kenya's democracy'¹⁴ and kept voters updated on happenings throughout the election period (including reported incidents of violence), was Uchaguzi. According to the Ushahidi (parent company) website, "Uchaguzi's aim is to help Kenya have a free, fair, peaceful, and credible general election. Uchaguzi's strategy for this is to contribute to stability in Kenya by increasing transparency and accountability through active citizen participation in the electoral cycles. This strategy is implemented through building a broad network of civil society around Uchaguzi as the national citizen centred electoral observation platform that responds to citizen observations." Details of this platform are provided in chapter 4 which describes the Electoral Campaigns stage of the Cycle.

¹² International IDEA, 2013. Annual Democracy Forum 2013: Youth Participation in Politics and Elections, Background Paper. <http://www.idea.int/about/upload/background.PDF>

¹³ <http://online.wsj.com/articles/SB10001424127887324178904578342160621330212>

¹⁴ Ibid.

Education and Training of Party Agents

Party agents play an important role in observing the election process, and ensuring that it is carried out in a free, fair and credible way. According to NDI, the main objectives of having party agents are to:

- Identify human error and rigging: be alert and know the election procedures in order to uncover mistakes and rigging;
- Bring problems to the attention of polling officials; and
- Collect information about the election: provide their party/candidate with information about the conduct of the election at the polling station they are deployed to

The training of political party agents in carrying out these objectives is incredibly important, as they need to be familiar with the entire election cycle, and should be able to discern any risks to electoral integrity in the process.

Kenya's electoral commission (IEBC), in collaboration with NDI, EISA, UNDP and the Norwegian Ministry of Foreign Affairs published an Election Agents' Manual in 2013, that considered new aspects of the constitution, and the revised electoral law, embodied in the Elections Act and the Political Parties Act. The Manual serves as a decent example of the various aspects that need to be considered in the training of political parties, including what it means to be an agent, the roles, responsibilities, qualifications and accreditation of party agents, the legal framework within which agents will operate, the electoral process, and communicating and reporting observation findings. It also provides a checklist for party agents, with checklist items for various stages of the election day process – including 'opening of the polling station', 'polling', 'closing of the polling', 'counting and tallying of votes', and a section for critical incidents¹⁵.

Key Considerations

Essentially, it is important to understand that the training and education stage of the Election Cycle should be ongoing, and cannot simply take place right before an election. Civic education should begin early – during primary and secondary schooling if possible. And the training of those involved in the election process should encompass the full cycle and take place at regular intervals. As noted above, a number of important considerations need to be made in order to ensure that electoral integrity is protected. The NDI offers several key considerations that should be made by EMBs and by civil society, party agents and observation missions, with respect to voter education and information:

¹⁵ National Democratic Institute for international Affairs and the Independent Electoral and Boundaries Commission, 2013. Election Agents' Manual.

KEY CONSIDERATIONS: VOTER EDUCATION AND INFORMATION

For Implementing Bodies

- Has a comprehensive plan for educating and informing voters about the new technologies been developed and have sufficient resources been allocated to conduct voter education and information activities?
- Does the public outreach strategy include detailed information about how to vote as well as how the overall system works?
- Have strategies been developed for how to react to stakeholder comments or media stories about the voting and counting technology?
- Is a set of Frequently Asked Questions (FAQ) available for reference to election commissioners, senior managers and public relations personnel that include responses to common and often-repeated criticisms of electronic voting machines?
- Are opportunities available for the public to engage with the new voting equipment in person in the pre-election period?
- Are targeted efforts in place to address voter education for specific populations such as the elderly, minority ethnic/language groups, and youth?
- Is voter information available at polling stations?
- Are polling officials sufficiently prepared to answer any questions about the voting machines?

For Oversight Actors

- Has the EMB developed a comprehensive plan for voter education, including sufficient time and resource allocation?
- Does the EMB strategy for voter education identify target audiences and incorporate a variety of media sources and other mediums through which those target audiences commonly consume information?
- Has the EMB provided opportunities for citizens to engage with the new voting equipment in person?
- Has the EMB made extra efforts to engage target groups, such as the elderly and disabled, via specialized voter education messages and campaigns? Have voters from minority language groups received voter information in their language?
- Have civil society groups actively engaged in voter education efforts themselves, and have they received the necessary technical information on the new technologies from the EMB to produce effective voter education materials?
- Have civil society assessed the adequacy and effectiveness of EMB public outreach efforts? Has any public opinion polling been conducted to gauge the readiness of voters?

Planning - Watching the EMB

Another key stage in the election cycle is 'Planning and Implementation', which, for the most part, relates to the Electoral Management Body. Elements of this stage include budgeting, funding and financing; the election calendar; recruitment and procurement; and logistics and security.

This component of the election cycle, alongside the legal framework, essentially sets the tone for how the elections are run, the faith the public has in the system and the EMB tasked with running the elections, and the integrity of the electoral process.

Sometimes, planning by the EMB is undermined by a lack of funding made available through the national budget. Civil society should remain engaged throughout the electoral cycle with the EMB and should be particularly concerned about monitoring the planning stages for the next election during which key decisions are made about how the election will be organised.

Independence of the EMB: It is crucial that the EMB is impartial and this will be largely based on having independent figures as election commissioners and top managers. Civil society should monitor closely how key officials at the EMB are recruited and selected. Ideally, commissioners should be chosen through a process that is open to public scrutiny, so that even the interview process is open to the public.

Procurement: Ensuring there is no connection between political parties/candidates and electoral procurement is crucial for electoral integrity. In Kenya in 2013, one political party was involved in the supply of servers used in the voter registration process. "Despite huge investments of around US\$100 million, much of the technology failed. This technology should have ensured the integrity of vote, but failed to do so at end of day. Also, the sharing of servers between the electoral body and one of the candidates in the election was a matter for grave concern in Kenya. Since the representatives of a party were sharing systems and results with the EMB, the party could have potentially changed these results and therefore the overall outcome of the election.

Voter Registration & Electoral Integrity

RISKS

- Deliberate under-registration in certain areas
- Inflation of voters register through fraudulent means
- Failure to update register on regular basis
- Failure to remove the deceased leading to 'ghost voters'
- No independent verification of the voters register
- Parties and other stakeholders have no or restricted access to the register
- The register has many errors and duplicate names

The voters register, the list of all eligible voters in a country, is a crucial element in ensuring and maintaining electoral credibility, integrity and legitimacy. By maintaining a comprehensive, reliable and accurate voters register, the electoral management body recognises citizens who are eligible to vote.

An inaccurate voters register makes it likely that some voters have more than one voting card and could increase the temptation to commit fraud. There is also the possibility that vote rigging could be arranged by ensuring certain people have more than one card and/or that people are given the cards of people who have passed away (ghost voters). If the number of registered voters is artificially inflated, this creates the possibility that results will be altered or manipulated.

Registration processes can also disenfranchise voters by excluding them or making it difficult for certain groups or communities to register to vote. Registration authorities

can effectively determine the outcome of an election by ensuring registration efforts are effective in an area that supports the ruling party while hardly bothering to register those living in opposition-supporting parts of the country.

In addition to minimising voter fraud and manipulation, an accurate and comprehensive voters register increases citizens' confidence in the credibility of an electoral process and helps to confer legitimacy on it.

Inclusive voter registration

Every adult citizen of a country should have a chance to register to vote. For registration to be inclusive, potential voters should know about the registration process and how to take part. Registration should take place in a way that allows for easy access and equal opportunity.

No group or community should be excluded from the voter registration process. There may be a need to reach out to specific groups such as residents of remote rural areas, marginalised communities, people with physical disabilities, and communities that may have been displaced by conflict or natural disaster. Registration campaigns should make special efforts to reach sections of the population who may not have historically participated in elections.

Voter registration drives ahead of elections can be important means of voter education and electoral mobilisation. Voter education campaigns should explain a citizen's rights and duties in a democracy and explain practical information, such as what documents to bring to the registration point. Voter education should be carried out in all the relevant vernaculars and utilise all types of media.

Inclusive and clean voter registers are pre-requisites for the legitimacy of elections. Conversely, if a voters register is flawed it can undermine the credibility of the electoral process.

Automatic vs opt-in registration

In some countries, such as Australia and Indonesia, voter registration is mandatory. However, in most democracies voter registration remains a right that can be exercised at the discretion of each citizen. In both cases it usually the primary responsibility of the EMB to make voters aware of the importance of voting and the opportunities to register, but all other stakeholders including political parties and civil society can complement these efforts with their own awareness-raising campaigns.

Countries tend to adopt either one or a combination of the three following options for voter registration:

- Periodic registration

- Continuous registration
- Use of a civil registry/population register

Periodic registration: This takes place usually in the run-up to an election when periods (usually a few weeks) are set aside for citizens to register. The voters' register that is produced may remain valid for several years. Further (or supplementary) periods of registration are held so that voters can update their details and new voters can join the register. This approach can be costly as it involves reaching out to all citizens usually through voter education, extensive media campaigns and the creation of registration points nationwide.

Continuous registration: The EMB maintains a list of all currently eligible voters. Citizens can add their names or change their details at any time at specific offices usually run by the EMB. This is done by voters visiting registration points countrywide which could be the offices of the EMB but could also be government offices. As long as voters are kept informed of how to update their details or join the register, there may be no need for an intensive voter registration drive before an election. To ensure the list is regularly updated the EMB may ask for data from other government agencies such as tax authorities and whichever government department controls the deaths register.

Civil Registry/Population Register: Governments may keep a civil registry or a population register which contains a range of information on all citizens such as name, address, age and identification number. The voters register is produced from information contained in the civil registry/population register. In this system the basic voters register is created from the civil registry/population register. Citizens should have the right to inspect the register to check for accuracy and any need to update it.

Technology

Technology is starting to play a central part in the voter registration process in many countries. Biometric voter registration usually uses fingerprints and facial features to uniquely identify each voter. This should make it easier to 'clean' the voters register of duplications while making voter fraud harder to achieve. However, such technology does require adequate training of officials in order to avoid 'operator errors' and also technical back-up to deal with glitches that might occur.

Gaining access

It is important that the voters register is made available for inspection by the public and also parties and civil society. It should be made available in an electronic format that enables digital analysis by civil society organisations, as long as it cannot be altered and privacy requirements are respected. Allowing such scrutiny can add to the confidence of voters that the register has been fairly and accurately drawn up.

Individual voters should also be able to check that their entry is correct online (as happens in South Africa). Voters should be allowed opportunities to point out errors and request corrections.

Common types of registration fraud

- Foreigners are allowed to register
- Under-age voters are allowed to register
- Multiple registrations take place

Voters can also be disenfranchised through not having the right documents to register as a voter. Tom Mboya, a Kenyan civil society activist, has noted the “question of IDs has disenfranchised many people, because it can be difficult to access IDs, with some regions being more problematic than others.”

Something to think about:

Have minors voted?

A country’s registered voter list shows a substantial number of newly registered voters, amounting to an increase of approximately 10 percent from the previous election. Forty-five per cent of them are from the north, a ruling party stronghold. And 30 percent are from the central region, where the party also dominates. The remaining 25 per cent are in the south, where the opposition has had its strongest showing in recent elections.

This imbalance is surprising, because the population of the south is about three times those of the north and centre together. The opposition parties suspect the ruling party of having registered minors in the north and centre with the help of government employees.

The allegation is unsupported by evidence, but on election day, observers at voting stations notice a large number of voters who seem to be adolescents from the centre and north.

- Adapted from Handbook for Journalists During Elections, Reporters Without Borders/Organisation Internationale de Francophonie

Using the voters register to subvert an election

Perhaps the most brazen manipulation of a voters register in recent times came in Zimbabwe's 2013 election. Zanu-PF led by Robert Mugabe won the July 31 election with more than 60 percent of the vote, beating longtime rival Morgan Tsvangirai by about 1 million votes. Mugabe has ruled the southern African nation since independence in 1980.

An Israeli company called Nikuv International Projects was given the responsibility of drawing up the voters register. The opposition Movement for Democratic Change alleged that the voter registration has been manipulated so that on election day thousands of people were turned away after their names were not found on the voters' roll, and others found their names in constituencies and wards they did not reside in. A local non-governmental organisation, the Zimbabwe Electoral Support Network, estimated that 750,000 people were turned away from polling stations. In addition, some people appeared on the voters' roll more than once, raising suspicions of double voting, whereas the names of thousands of dead people were still listed on the roll.

Pliant soldiers and national service recruits were also bussed into some areas to bolster Zanu-PF's support, critics alleged.

The tainted election drew condemnation from the US and Britain. African observers mostly gave it a stamp of approval, with the exception of Zimbabwe's neighbor Botswana, which demanded an audit of the voters roll.

The fact that the voters register was only published a couple of days before the polls was already a major contravention not only of the AU Charter and the SADC Principles but also Zimbabwe's own electoral law.

An inflated and highly inaccurate register, as appears to have been the case in Zimbabwe, can be used to allow all manner of irregularities including the alteration of actual results and the stuffing of ballot boxes.

Carousel voting is a method of vote rigging in elections which alludes to fair-ground carousel rides. It involves busloads of voters being driven around to cast ballots multiple times. Voters are usually recruited through offers of payment. Most allegations of carousel voting occur in Russia and other eastern European countries, although it was reported to be taking place in Zimbabwe in 2013. Multiple voting exploits lax registration measures and poor checking procedures in polling stations. Election officials can also be complicit in allowing multiple voting to take place. However, schemes such as 'carousel voting' can also be exposed if one of the recruited voters agrees to act as a whistleblower.

Why turnout matters

An accurate voters register is a prerequisite for obtaining accurate voter turnout figures. A low turnout can impact on the credibility of an election. The artificial inflation of a voters register can allow for manipulation of results. Such a register will also make it difficult to gauge turnout accurately.

Factors affecting turnout

- Disenchantment with the political system and/or the ruling party can lead to voters staying away from the polls
- Conversely, contentment with the way the country and/or constituency is being governed may lead to a sense of indifference about the importance of voting
- A predictable result can mean that only core supporters turn out to vote for the dominant party expected to win while supporters of other parties see little point in participating
- Inaccurate and/or outdated voter registration data can lead to voters being turned away
- The perceived importance of an election. For example a local or regional election may not be seen as important as a national one
- Poor voter education and information
- Party boycotts
- Socio-economic factors, such as the poor feeling marginalised from political decision-making
- Practical factors such as residents being outside the constituency at work during voting hours and the accessibility of polling stations
- Violence and intimidation in the run up to an election can scare voters away
- A low-quality campaign, which includes a high level of mudslinging and little discussion of grassroots issues, can also turn voters off parties and candidates

What can be done to boost turnout?

- Electoral bodies should ensure voters are fully informed in all the relevant languages and through various media about the election
- The electoral body should carry out supplementary registration to ensure residents have the right to vote
- The number, locations and opening hours of polling stations should facilitate as many voters as possible turning out
- Assistance should be available to disabled voters
- Political parties should adhere to official codes of conduct which bar intimidation and should educate their supporters about the need for tolerance
- Political parties should run energetic, positive campaigns and not indulge in negative campaigning. It is important to concentrate on issues that affect residents in the constituency
- Political parties should organise GOTV (Get Out The Vote) activities to ensure their supporters cast their ballots



4

CHAPTER

Electoral Integrity during Election Campaigns

RISKS

Intimidation, violence

Misuse of state media

Abuse of state resources

Skewed campaign funding

Vote buying

The campaign stage of the electoral cycle comprises various activities, including campaign coordination, media access, breaches and penalties, party financing, and codes of conduct for the campaign process. This phase in the cycle often draws the greatest controversy in the run-up to elections, because incumbent candidates and parties are often perceived or found to use state resources – including state media – as functionaries of their campaign activities. In addition, if codes of conduct (where they exist) are not honoured, the campaign period may be marked by shows of intolerance, incitement to violence, and the use of dubious means to attract the vote of the electorate.

International IDEA notes that fundamentally, the legal framework should set the basis for fair electoral campaigns to take place, by clearly stating “what type of conduct and behaviour is prohibited during the electoral campaign”, and setting out the “procedures and mechanisms for dealing with complaints and disputes during the campaign”, backed by a credible sanctions regime. The Institute goes on to say that the legal framework should ensure that:¹

- There are no unreasonable restrictions on the right to freedom of expression and whatever restrictions there are should be set out in the law.

¹ International IDEA, <http://www.idea.int/publications/ies/upload/9.%20Democratic%20electoral%20campaigns.pdf>

- Every party and candidate has equitable access to the media, especially the electronic media, to undertake their campaign.
- Where state or private funding is permissible, every party and candidate has equitable access to resources to undertake a credible election campaign.
- No party or candidate (especially the ruling party) is favoured, financially or otherwise through the availability or use of state resources, over the other parties and all stakeholders in the election process have an equal chance of success.
- No party or candidate threatens or does violence to another party or candidate, or incites anyone to violence or otherwise impedes the freedom to campaign.
- All parties and candidates should normally cease active campaigning one or two days prior to polling day, allowing the electorate to weigh the options and to exercise their franchise freely and without undue pressure.

Some of the key issues continuously raised during election campaigns include media coverage, campaign financing, campaign violence and party codes of conduct. These four themes are explored in a little more detail below.

Media Coverage

During the May 2014 HSF Workshop on Electoral Integrity, participants highlighted several factors that could potentially threaten electoral integrity during the election campaign stage of the cycle, if not dealt with carefully. Risks highlighted included unfair media access, with state media often being “strongly aligned and deferential to the ruling party”², and media reports often focusing on reporting on political personalities, rather than on the issues that affect the country’s people, and how parties propose to tackle these issues. A participant noted that in Zimbabwe, for example, “Radio and TV are state-controlled, and with the political party propaganda, this gives the incumbent party an unfair advantage.”³ Media access can become a major source of contention during the campaign period, because media is essentially the platform upon which parties are able to appeal to the electorate and publicise their plans, policies, manifestos, etc.

The Media Institute of Southern Africa (MISA) is clear on the role that the media can and should play in ensuring the integrity of elections, noting that “freedom of expression and political debate is fundamental to free, fair and genuinely democratic elections”; and that to effectively play its role, “media need both access to information and the freedom to freely and safely communicate their findings.”⁴ MISA goes on to highlight certain preconditions necessary for free, fair and credible elections, as far

² Hopwood, G. 2014, HSF Electoral Integrity Workshop, May 2014.

³ Coltart, D. 2014, HSF Electoral Integrity Workshop, May 2014.

⁴ Media Institute of Southern Africa, 2015. <http://www.misa.org/component/k2/item/2957-media-freedom-essential-during-upcoming-2015-african-elections?Itemid=101>

as the media is concerned. (It is important to note that these pre-conditions apply to the entire electoral cycle, and not merely to the election campaign stage). They are⁵:

- Measures to create an environment in which a pluralistic media sector can flourish.
- The repeal of laws that unduly restrict freedom of expression and protection against liability for disseminating statements made directly by political parties or candidates.
- Effective systems to prevent threats and attacks against the media.
- Rules against discrimination in the allocation of political advertisements.
- Any regulatory powers to be exercised only by independent bodies
- Clear obligations on public broadcasters, including to inform the electorate, to strictly respect rules on impartiality and balance, and to grant equitable access to all parties and candidates.

Several incidents of unfair media access by opposition parties can be cited across the continent. In addition to the example of unfair media access in Zimbabwe noted above, MISA points to Botswana for an example of media freedoms being quashed. There, *Sunday Standard* editor, Outsa Mokone was arrested and briefly detained in the days leading up to that country's 2014 elections, on charges of 'seditious intention'. Mokone described his arrest as a "government campaign to intimidate the media into submission in the run-up to general elections (that were) scheduled for October 24."⁶ (though the report itself was not related to the elections). "Another local journalist, Thobo Mothoka of the *Telegraph* newspaper, said that the arrest of Mokone was just one of the many attempts by the government to silence dissenting views and intimidate those seen as obstacles to the ruling party's attempts to hold on to power."⁷ The *Sunday Standard* is known for exposing corruption in Botswana's central intelligence agency. According to MISA, "Reporter Edgar Tsimane, who wrote the story that led to Mokone's arrest, remains in exile in South Africa."⁸

In Zambia's Presidential by-election held in January 2015, an analysis by MISA Media Monitoring Africa (MMA) noted that 23 percent of stories were biased; that several topical issues were left out of media coverage, with stories covering election campaigns rather than highlighting key policy issues and analysing manifestos, and that women's voices were largely unheard in media coverage on the elections. Part of the concluding statements of this report are noted on the next page, with some insights on how the media should be contributing to ensuring electoral integrity.

⁵ Ibid.

⁶ Baatweng, V. Al Jazeera, 18 September 2014. <http://www.aljazeera.com/news/africa/2014/09/botswana-na-mounts-crackdown-sunday-paper-201491411223106412.html>

⁷ Ibid.

⁸ MISA (2015)

MMA conclusions on Media and the 2015 Zambia Presidential by-elections

Overall, these results show trends that indicate that the Zambian media is clearly not doing enough to report elections in a way that enables the electorate to participate as fully informed citizens. Event-based coverage has led to some of the key issues such as health and education being sidelined and despite being over 50% of the population, children's issues were also nearly invisible. The poor performance around gender both in terms of sources and gender-focused coverage is indicative of media that marginalize the backbone of the Zambian economy.

That nearly a quarter of items were identified as biased is also cause for concern, but the relatively high number of election stories overall demonstrates a media keen and willing to engage on the crucial issue of elections. It would appear with the exception of FDD, media and political leaders spent more time on their personalities and their opponents than on reporting the issues central to Zambian citizens. For media to fulfill their democratic responsibilities, it is critical that they give voice to the voiceless and adopt a citizens' perspective to their stories.

It is citizens, after all, who are the majority consumers of the media.

-MISA Zambia, 2015. Media Monitoring Interim Results

A number of recommendations (many of which emanated from the HSF workshop) with regards to the role of the media in ensuring elections of integrity through unbiased and professional reporting that reflects the plurality of electoral offerings in any election can be made:

- Editors should be encouraged to allow journalists to specialise in election coverage, so as to raise the quality and content of reports before, during and after the campaign period, and to ensure that elections are not just a single news event
- Training should be provided for media practitioners, in general, on best practices in election coverage, including in the use and application of data, to allow for more effective, data-backed analysis
- In order to provide more in-depth and broader assessments of the election process, and to hold it to the ideals set out in the legal frameworks, media should be integrated into domestic observation activities
- Media should be encouraged to use tools and technologies that could help them to better monitor electoral processes throughout the cycle
- The partisanship of both state and private media should be addressed; media houses should be encouraged to separate their respective biases from reporting on elections. As MMA recommended in the case of the Zambian

election, the focus of reporting should rest on fulfilling their ‘democratic responsibilities’ in informing and educating the citizenry on the issues that truly affect them

- In order to enhance their channels of information, political parties – especially opposition parties who often feel disenfranchised by state media coverage – should explore social media as a sound platform to have their voices heard. The power of social media in the election campaign process has received much attention and coverage in the past few years, and could be a formidable platform for parties in Africa, where the youth make up large proportions of the continent’s population

Campaign Finance

Another major risk identified during the campaign stage of the electoral cycle revolves around political funding or campaign financing. This aspect is especially important because the amount of financing is a major determinant of the level of campaigning that parties are able to carry out, their reach across their countries, the amount of media advertising they can place, and the strength of their presence during other parts of the cycle (e.g. transport of party agents to remote areas for election observation, etc.).

USAID’s Office of Democracy and Governance’s Money in Politics Handbook highlights four risks associated with political finance:

- **Uneven playing field**—the risk that large sums of money in politics give undue advantage over others and constrains competition
- **Unequal access to office**—the risk that certain sectors of a population lacking money are prevented from running for office or getting meaningful representation
- **Co-opted politicians**—the risk that those who donate funds will control the politicians they finance
- **Tainted politics**—the risk that dirty or illicit money will corrupt the system and undermine the rule of law

Transparency with regards to campaign finance is critical as a means of reducing corruption within government. CNN reports that according to UK corruption monitor Chandu Krishnan, “an ever-increasing amount of money in elections is a global problem. In many countries across the world, the cost of elections is increasing. If parties and politicians can’t find the resources from the state, there is an increasing desperation to seek them from private sources -- and that is where the corruption comes in.”⁹

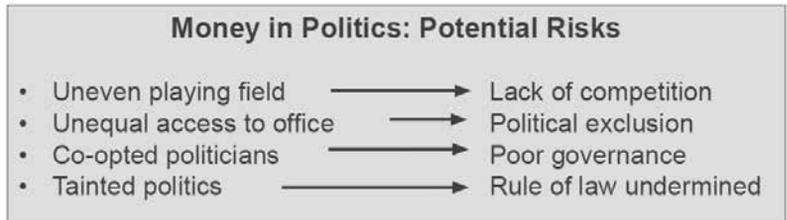
⁹ Thomson N., 2012. CNN, 2012. International Campaign Finance: How Countries Compare. <http://www.cnn.com/2012/01/24/world/global-campaign-finance/>

The Open Society Justice Initiative points out that “corruption in the financing of election campaigns can take three forms”¹⁰:

1. Quid pro quo donations, where parties or candidates receive campaign resources in return for favorable treatment
2. Candidates’ or parties’ misuse of state and public administrative resources for electoral purposes
3. Bribery of voters and election officials

The OSJI notes that “all three harm the public interest directly or indirectly, by influencing election outcomes undemocratically, or by leading to political decisions that primarily suit sectoral or private interests.”¹¹

All three forms of corruption in campaign financing above have often been cited in the African context, with incumbent parties especially, often being accused of using state resources to fund their electoral campaigns.



In a 2009 briefing paper on campaign financing in Nigeria that remains relevant today, IIG found that “Candidates invest large amounts of their private savings to contend in the elections. This means that only individuals willing to invest large amounts of money become candidates.” It also found that “Money distorts the candidate selection process within parties and largely influences who wins the elections,” and that “Electoral laws governing how parties should secure and spend their funds are ineffective as there is a lack of knowledge about them. As a result such laws have limited enforceability.” IIG recommended that the Nigerian government should strengthen the ability of the Independent National Electoral Commission (INEC) to monitor campaign finance. It should also demand greater accountability from candidates on their campaign spending. Enforcing such rules will be an important step forward towards improving the democratic process and stability of the country.”

In its 2011 election, although the electoral law “gives the country’s election commission the right to set a maximum spending limit for parties, the commission neglected to do so before the 2011 election”¹². And although the 2011 election was recognised as a vast improvement on previous elections, “the lack of restraint on political spending is a worrying development for election monitors.”¹³

¹⁰ Open Society Justice Initiative, 2005. Monitoring Election Campaign Finance – A Handbook for NGOs (pg. 14).

¹¹ Ibid.

¹² Thomson N., 2012. CNN, 2012. International Campaign Finance: How Countries Compare. <http://www.cnn.com/2012/01/24/world/global-campaign-finance/>

¹³ Ibid.

During a 2014 conference by the Centre for Democracy Development in West Africa that focused on the state of campaign financing in Nigeria ahead of the country's elections set for February 2015, CDD Director Idayat Hassan stated that "for meaningful elections in Nigeria to take place, monitoring and enforcement of laws regulating campaign finance must be strengthened and taken seriously."¹⁴

A number of other recommendations were made to curb dubious campaign financing sources in Nigeria¹⁵:

Recommendations offered by the participants included establishing a collaboration that includes INEC, civil society organizations, relevant agencies and political parties; enhancing civic and voter education among political parties and the electorate; strengthening internal democracy within political parties; funding of political parties by the federal government; enhancing INEC's ability to investigate and persecute violators and capacity building among political party leaders.

These recommendations closely match those made at the Electoral Integrity Conference, in which participants also emphasized the critical importance of transparency in campaign financing, particularly in terms of looking at the use of state resources for campaigning by the ruling party. In addition to those noted above, key considerations for enhancing this transparency include:

- Advocate for enhanced access to information on campaign finance data, to ensure that media, civil society and political parties are able to inspect political finance source information
- Include information and topics on campaign financing in voter and civic education efforts to ensure that the public is knowledgeable of the various issues that exist around campaign finance
- Improve disclosure laws to ensure that the amount and source of all political

While each country has to design its own disclosure system, some lessons can be learned from the last few decades of financial reporting regulations worldwide.

1. Disclosure is the cornerstone of political finance oversight. Without effective disclosure, other regulations like spending limits or bans on certain types of contributions are nearly impossible to enforce. Getting the disclosure system right is therefore crucially important for addressing the problems that political finance regulations are intended to target.
2. Effective oversight of political finance is normally beyond the reach of any single actor. By making the information public, the political finance regulator can get assistance from media and civil society (and indeed from competing political parties) in monitoring the finances of candidates and political parties.
3. Creating a completely watertight disclosure system is most likely impossible. Care should be taken to ensure that no glaring loopholes are left in the reporting requirements (such as only demanding reporting during a very brief campaign period or excluding political parties or candidates from the reporting obligations).
4. At the same time, it is important to ensure that the disclosure requirements do not place an undue burden on the contestants. Overly complicated reporting requirements discourage compliance and often add little valuable information. Indeed, huge quantities of information are likely to make it more difficult for regulators, media and civil society actors to find the really interesting pieces of data.
5. In line with the above, make sure that the disclosure system takes into account local factors, such as the burden on the political finance regulators and the reporting bodies; the level of financial expertise and literacy among candidates; the technologies available for reporting and dissemination and the timeframe available for the submission, auditing and publication of financial reports.
6. Introducing disclosure requirements necessitates an open dialogue with those who are set to report, including discussions on the detailed reporting systems and training sessions with political party and candidate representatives.
7. Be prepared to reform any disclosure system over time. New systems always require fine-tuning, whereas even established systems need to be reviewed regularly to adjust to variations in how political finance functions overall in the country.

¹⁴ Center for Democracy Development in West Africa, 27 August 2014, <http://blog.cddwestafrica.org/tag/campaign-finance/>

¹⁵ Ibid.

financing is fully disclosed. Several best-practices exist to ensure that disclosure systems are functional (see insert on right from IFES)¹⁶

- Enhance regulations on party financing, without curbing healthy competition between political parties
- Link any abuses in campaign financing to anti-corruption laws and efforts
- Ensure party Codes of Conduct are clear on campaign financing regulations, and enhance political party education efforts in this regard

USAID's Money in Politics Handbook presents these reform approaches to control money in politics:

Approach	Implementation	Expected Outcome	Potential Risks
1. Contribution Limits	Legal cap on contributions	Less funding	More disguised income
2. Contribution Bans	Law excluding certain contributors	No illegal contributions	New organizations or "front persons/fake names" recruited to circumvent bans
3. Spending Limits	Legal cap on spending	Less expensive campaigns	Disguised over-spending
4. Campaign Time Limits	Legal cap on campaign period	Less money required	Underground and "off-season" campaigns
5. Public Disclosure	Law requiring timely financial reporting	Honest reporting and public accountability	Dishonest reporting and untimely information
6. Public Financing	Various	Less corruption and lower election costs	Little effect on private fundraising or reliance on large donors
a) Money to parties	Disbursement based on percentage of votes or seats won in last election	Curtailment of private funding	Continued pursuit of private funding
b) Money to candidates	Disbursement based on percentage of votes or seats won in last election	Curtailment of private funding	Continued pursuit of private funding
c) Tax incentives	Taxpayer deductions and credits	More smaller donors	Little public interest
d) Free or discounted broadcast media	Government provision or low-cost private provision	Equal air time	Persistent incumbent advantage
e) Other subsidies	In-kind products and services	Less expensive campaigns	Persistent incumbent advantage

Campaign Violence

During the campaign phase, the risk of election-related violence may become very real, as parties mobilise their supporters to vote for them. Emotions and tempers may fly high during this period, as loyalties are asserted, impassioned politicians fail to mind their language, and extremist supporters cross lines of civility, potentially resulting in "psychological and physical violence directed against candidates, party activists and supporters, and violence directed against women and other marginalized

¹⁶ Ohman, M. & Zainulbhai, H. (2009). Political Finance Regulation: The Global Experience. IFES, 2009.

or vulnerable groups.”¹⁷ In conflict-prone areas and in cases where political parties are particularly ethnically based, “the electoral campaign may be marked by aggressive and inflammatory rhetoric,” and it is critical that electoral management bodies find ways to curb any form of inciting language or violence. According to International IDEA, “this may include investigating and sanctioning perpetrators. Security sector agencies should maintain a safe environment for political party candidates, activists and citizens to organize and participate in the campaign activities. Other non-state and state actors should promote peaceful and democratic electoral campaigning as well as monitoring, recording and reporting about incidents.”¹⁸

Several countries across sub-Saharan Africa have experienced some level of campaign violence in the past few years. Some recent examples include election violence in Côte d’Ivoire, Kenya, Nigeria, and Zimbabwe; and, on a smaller scale in Cameroon, Democratic Republic of Congo, Liberia, Equatorial Guinea, Gambia, Guinea, Madagascar, Sierra Leone, Senegal and Uganda, with coups in Guinea-Bissau and Mali in 2012.¹⁹

The widespread violence that erupted during and after Kenya’s 2007 election is proof of just how sensitive and volatile elections can become, especially when deep-seated ethnic tensions exist in a climate where political parties are based on ethnic lines. During the Electoral Integrity workshop, however, some unique and innovative positive developments in curbing campaign violence in future elections in Kenya were also highlighted as potential best practices for other countries. One such example was the development of Ushahidi – a platform that makes use of technology to track and/or report on election violence, as a solution for responding to issues of intimidation and violence in the campaign stage.

At the workshop, Daudi Were of Ushahidi described the national sense of shock at the violence that ensued during and after the 2007 election, and the speed with which it occurred, and noted that this spurred the team of developers at Ushahidi to think about ways to “categorise, locate and archive these incidences.” Using a basic mobile phone, this platform can now be used for election monitoring, reporting incidences of violence, and other applications, in a way that speaks to the idea of “digital



¹⁷ International IDEA

¹⁸ Ibid.

¹⁹ The Nordic-Africa Institute. Electoral Violence in Africa. Policy Notes, 2012/2013

humanitarianism.” Ushahidi launched the Uchaguzi platform for the 2013 election as a joint initiative to monitor the election, with goals to “share the information from the crowd, verify details and respond. We give voice and amplify issues by describing and mapping reports.”²⁰

ABOUT UCHAGUZI

Uchaguzi’s aim is to help Kenya have a free, fair, peaceful, and credible general election. Uchaguzi’s strategy for this is to contribute to stability in Kenya by increasing transparency and accountability through active citizen participation in the electoral cycles. This strategy is implemented through building a broad network of civil society around Uchaguzi as the national citizen centred electoral observation platform that responds to citizen observations. Uchaguzi, is a joint initiative between Ushahidi, Constitution & Reform Education Consortium (CRECO) and Hivos Foundation with support from Canadian International Development Agency (CIDA).

Uchaguzi is coordinated through the Uchaguzi platform which is built on and by Ushahidi. Through the Uchaguzi platform Kenyans are able to keep an eye on the vote and provides avenues through which they can report, with any technology available to them, any incidences significant to the election. For the purposes of Uchaguzi the electoral process is perceived as a permanent and recurrent cycle, in which every stage, and not just the Election Day, counts.

Uchaguzi facilitates unprecedented collaboration between wananchi (citizens), election observers, humanitarian response agencies, civil society, community based organisations, law enforcement agencies, digital humanitarians etc. to monitor elections in near-real time.

By amplifying the voices of ordinary citizens, Uchaguzi allows citizens to continue to play a positive role in elections before and after voting. Uchaguzi mobilises citizens to be directly involved in protecting their vote and electoral process. Together with our partners we have measures to verify information we receive, measures to escalate information that needs a response, and measures to monitor that response.

(Ushahidi, 2015)

²⁰ <https://wiki.usahidi.com/display/WIKI/Uchaguzi+-+Kenyan+Elections+2013>

International IDEA provides this set of considerations to mitigate campaign violence during elections²¹:

A. Improved electoral management and justice	B. Improved electoral security	C. Improved infrastructure for peace
5.1 Collaborate with other agencies to ensure comprehensive monitoring of media campaigning at the national and sub-national level.	5.5 Maintain close cooperation and coordination with EMBs through a joint election operations centre.	5.10 Create forums to facilitate discussion and consensus relating to the implementation of the political party campaigning code of conduct and enforcement mechanisms.
5.2 Establish mechanisms for the monitoring of political party campaign rallies in order to compile data on the use of inflammatory rhetoric and hate speech.	5.6 Provide physical security to prominent electoral actors which may face security threats during the campaign period.	5.11 Promote peace activism at the national and sub-national levels to deflate tensions and conflicts arising from inflammatory campaigning.
5.3 Ensure that those responsible for violations of the campaigning rules and the instigation or perpetration of electoral violence are sanctioned.	5.7 Provide physical security at electoral campaigning events.	5.12 Establish structures and mechanisms for monitoring and reporting on provocative political party campaigning in the media and political party rallies.
5.4 Maintain close collaboration and information exchange with the security sector agencies throughout the campaign period at the national and sub-national level.	5.8 Enhance security arrangements to protect marginalized and vulnerable groups, including women and minorities, during the campaigning phase.	5.13 Share reports on violations of campaigning rules, in particular the use of inflammatory language and hate speech, with the EMBs, prosecutor's office, security sector agencies and media.
	5.9 Cooperate with electoral actors and the broader public to increase their security awareness and promote their constructive engagement in preventing and mitigating electoral violence.	

Anticipating election violence in Nigeria's 2015 presidential, parliamentary and state gubernatorial and assembly elections, the International Crisis Group set out a number of recommendations to various players in the election²².

To the government of President Goodluck Jonathan:

1. Step up efforts to contain the conflict in the north east and ensure elections are held in all states, particularly by strengthening security services, improving coordination with state governments and implementing regional security arrangements in concert with neighbouring countries.
2. Direct publicly the heads of the Nigeria Police Force and other security agencies to act lawfully and impartially with all parties and individuals participating in the elections.

To the president, major political parties and their candidates:

3. Avoid inflammatory rhetoric, publicly denounce violence, pledge to respect rules, in particular the Code of Conduct for Political Parties, and pursue grievances through lawful channels.

²¹ International IDEA, 2013. The Guide on Action Points for the Prevention and Mitigation of Election-related Violence (Support document to the Electoral Risk Management Tool).

²² International Crisis Group, 2014. Nigeria's Dangerous 2015 Elections: Limiting the Violence. Crisis Group Africa Report N°220, 21 November 2014

4. Respect party constitutions and particularly allow democratic candidate selections.

To leaders of regional, ethnic and religious groups:

5. Organise national, regional, ethnic and inter-faith public forums to jointly and publicly commit to non-violence, and establish channels of communication and contingency plans to respond to large-scale communal violence.

To the National Assembly:

6. Ensure speedy passage of the amended Electoral Act.
7. Approve urgently supplementary funds for INEC to meet its logistical requirements.

To the Independent National Electoral Commission:

8. Intensify efforts to build relations with all parties, particularly opposition parties, including holding constant consultations to discuss and explain major decisions, sparing no effort in trying to increase confidence and ensuring transparent relations with all parties, individuals and civil society.

To the Nigeria Police Force and other security agencies:

9. Improve security arrangements for the elections by training more personnel for election duties and strengthening capacity to gather information, monitor developments and analyse threats; strengthen ongoing efforts to curb the influx and availability of illegal arms particularly in violence-prone areas; and ensure the newly established Elections Security Planning and Monitoring Unit is well resourced, firmly led and instructed on international best practices.
10. Direct publicly all officers to ensure neutrality in relations with all parties and apply exemplary sanctions against any officer who fails to comply.

To civil society organisations and mass media:

11. Engage more actively with youth leaders especially in poor urban and rural areas, strengthen participatory early warning and early response systems, and raise timely alerts of possible violence.
12. Ensure factual and balanced reporting of all election-related developments, and avoid publishing hateful, divisive and inflammatory statements.

To the UN, EU and other international partners:

13. Sustain ongoing capacity building programs for major institutions involved in the elections, particularly INEC and the police, and increase technical and financial support to relevant civil society organisations.
14. Deploy observer missions for longer periods before and after the votes to monitor the process more comprehensively.
15. Create a common donor forum for collectively messaging and pressuring President Jonathan, political parties and their candidates, security agencies and all other stakeholders to act lawfully and prevent or mitigate violence.

(International Crisis Group, 2014)

In mitigating the risks present at this stage of the cycle, both the International IDEA mitigation considerations and the Crisis Group recommendations include (and require) having a well informed civil society that conducts observation activity throughout the election cycle, and not only on election day, so that the risks and potential for campaign violence can be picked up and mitigated at an early stage. Additionally, another important aspect of curbing campaign violence is ensuring that political party codes of conduct speak strongly on this issue, with clear definitions of how those in breach of these codes of conduct will be punished/penalised.

Party Codes of Conduct

One of the most important ways to mitigate the risks identified during the campaign period is through the use of political party codes of conduct, which clearly outline and define ethical behavior for political parties and candidates, and stipulate repercussions for breaches of such code.

According to the Inter-Parliamentary Union, “a code of conduct can be viewed as a tool which contributes to freedom and fairness; to effective choice; to a representative and credible process; to transparency and accountability; to inclusive practices; to reducing adversarial relationships; and to the emergence and consolidation of a democratic political culture. If it is effective, a code of conduct will promote consultation and discussion across party lines, in the interests of a ‘good’ election, but also more generally in promoting confidence among the participants and expectations within the electorate.”²³

Understanding the importance of party codes of conduct, at a 2009 Colloquium on African Elections held in Ghana and attended by leaders from election management bodies, political parties, security services, civil society and media from 25 sub-Saharan countries, a major recommendation made to political parties was: “Commit to peaceful actions at all times, especially during electoral periods, sign and enforce codes of conduct, and educate party leaders and activists to honor their provisions.”²⁴ Chapter 7 (Article 17) of the AU Charter on Democracy, Elections and Governance, too, notes the importance of codes of conduct. In re-affirming state parties’ “commitment to regularly holding transparent, free and fair elections in accordance with the Union’s Declaration on the Principles Governing Democratic Elections in Africa” the Charter commits state parties to “Ensure that there is a binding code of conduct governing legally recognized political stakeholders, government and other political actors prior, during and after elections. The code shall include a commitment by political stakeholders to accept the results of the election or challenge them through exclusively legal channels.”²⁵

²³ Goodwin-Gill, G, 1998. Codes of Conduct for Elections. The Inter-Parliamentary Union, 1998.

²⁴ Accra Communique of the Colloquium on African Elections. 14 November 2009. NDI. <http://www.afrimap.org/printerNewsArticle.php?id=2309>

²⁵ African Union, 2007. AU Charter on Democracy, Elections and Governance.

But it is not so much the presence of these codes, as the implementation of them, that is important, and participants at the Electoral Integrity workshop highlighted the need to move beyond simply having political parties sign off on these codes, to ensuring that they are punished/penalized when in breach of these codes. Several examples of political party codes of conduct exist, and the International Institute for Democracy and Electoral Assistance's model *Code of Conduct for Political Parties Campaigning in Democratic Elections* sets a strong tone for many of these, as it incorporates best practices, considers various issues across the electoral cycle, and synthesises a number of party codes of conduct from across the world in a voluntary code of conduct. The Institute's model includes a number of issues, such as the application of the code (i.e. defining what is meant by "party" and who the code applies to), the principles of the code, compliance with the code and the existing electoral laws, campaign management practices, the election process, issues around intimidation and violence, language and symbols, abuse of position and corruption, and communication beyond the election.

The ACE Project also makes note of media codes of conduct for election reporting, based on media ethics and standards. These include reporting the truth, minimising harm, acting independently and being accountable to the public. Tanzania's Media Code of Conduct for Election Reporting is shown in the insert below.

MEDIA CODE OF CONDUCT FOR ELECTION REPORTING IN TANZANIA

Adopted by the Editors Forum Workshop held Mt. Uluguru Hotel, Morogoro, on 13 August 2010 and endorsed by the stakeholders meeting at Pearl Blue Hotel, Dar es Salaam, on 18 August 2010.

Preamble

- We, practitioners and other stakeholders in the media industry:
- Recognizing the significance of the forthcoming General Election;
- Guided by the desire to ensure the success of this democratic process; and
- Determined to ensure that voters make an informed choice;

HEREBY agree on and adopt a Code of Conduct for covering the Elections as follows:

Objectivity

- Journalists should provide fair, balanced and impartial reporting by giving equitable space and airtime to all sides of an issue and to give an aggrieved party and the complainant the right to reply.

- Notwithstanding the foregoing, all journalists who are contesting political positions should stop or resign from practising journalism until the nomination or election process is completed
- Journalists should refrain from giving special favour to their colleagues who are contesting in the election.

Truth

- Journalists covering elections must seek the truth and report it precisely and soberly.
- Media houses should do the utmost to correct promptly any published or aired information that is found to be inaccurate.

Response to the needs of voters

- Journalists must provide the electorate with information and civic education in a form easily understood, to enable them to make informed choices.

Encouraging Free Speech

- The media should encourage the public to express their opinion and views and should give them opportunities to do so.

Confidence Sources

- Journalists should observe professional ethics regarding the sources of information obtained in confidence, but they should not use such information as an excuse to propagate their personal opinion.

Hate Speech and Incitement

- When reporting the opinions of those who do advocate discrimination or violence on any grounds, including race, gender, language, religion, political or other opinions, and national or social origins, journalists should do the utmost to put such views in a clear context and to report the opinions of those against whom such sentiments are directed.

Promote Democratic Values

- The media should promote democratic values such as the rule of law, accountability, good governance and political tolerance.

Media House Obligation

Media Houses and owners have an obligation to:

- Ensure impartial, fair and balanced coverage of elections and give equitable access to all candidates and political parties because it is in the national and people's interest to do so;

Promote unity, peace, and stability.

- Commit themselves to contribute towards the achievement of free and fair elections by developing the capacity of their respective media institutions and refraining from interfering in editorial independence.

Investigate issues

- Journalists should have the responsibility to investigate and expose issues and practices pertaining to elections in order to facilitate fair play and level the socio-political playing ground.

Advertorials

- Media houses should identify and charge equal rates to advertorials from all political parties but desist from publishing or airing advertorials, commentaries and columns that seek to create hatred and endanger national peace and security.

Media and the Election Acts

- Media, like all other stakeholders in the election process, must strictly adhere to the Election Act and understand clearly the Elections Expenses Act and regulations, and expose practices that violate it.

Media and Civil Society

- The media should work in partnership with civil society in providing civic and voter education, training as well as monitoring and evaluating the entire electoral process.

Professional offences

Journalists shall regard the following as professional offences:

- Plagiarism
- Malicious misrepresentation
- Slander, libel or unfounded accusations
- Acceptance of a bribe in any form in consideration of either publication or suppression.

Opinion Polls

Media Houses should take care in reporting the findings of opinion polls. Any report should include the following information:

- who commissioned and carried out the poll and when
- how many people were interviewed
- where and how they were interviewed
- the margin of error

Media and Marginalised Groups

- Journalists should promote the participation of the marginalised, including women, the disabled and the youth to take part in political leadership, they should also refrain from coverage that is biased, reinforcing existing prejudices against such groups.
- Media should encourage the above group to contest, irrespective of their political affiliation, by raising public awareness of their importance in public life, and by rebuking all moves aimed at suppressing them. Journalists should also show the public the great leadership potential that lies in the marginalized groups.



Voting Operations & Election Day

RISKS

Selective disbursement of election resources to certain areas

Secrecy of ballot compromised

Multiple voting

Lack of party agents and independent observers

Lack of security for voters around and inside polling stations

Lack of opportunities to report irregularities

Poorly trained officials who make mistakes and cause delays

The 'Voting Operations and Election Day' stage of the cycle includes the actual voting process, including any special and external voting (e.g voting at embassies abroad) that needs to take place, and the counting of votes.

As voting takes place over a wide geographical area and within a strict timeframe, organising an election in which all voters can participate while maintaining high standards of integrity, security and professionalism can be a major challenge for electoral management bodies.

Every voter has the right to a free, fair and credible voting process and to have non-discriminatory and equal access to the electoral system.

From the Namibian Bill of Fundamental Voters' Rights and Duties

As *The Economist* magazine wrote in March 2012, "The only poll that counts, supposedly, is election day - but for the sophisticated vote-rigger that is terrible advice. Election day is too late. If you go around beating up your opponents' voters, stuffing ballot boxes and making up results, someone somewhere is bound to complain."

It is often said that if an election is to be rigged the key actions will either take place well before election day or afterwards during the counting and announcing processes. Actual polling often passes off peacefully enough. Observer missions sometimes make the mistake of judging the freeness and fairness of an election by the orderly manner in which voters conduct themselves rather than examining all the other electoral processes that take place both before polls open and after they close.

However, there are a number of key factors about polling day that could indicate that the election is being manipulated. First of all, the distribution and placement of polling stations should be considered. If polling stations are concentrated in areas of ruling party support but sparsely distributed in opposition areas - this should set alarm bells ringing. In addition, to encouraging a higher turnout in ruling party areas, this kind of unfair distribution can also mean that independent observers find it hard to monitor all the polling stations in a ruling party heartland - simply because of the high number. The EMB should be able to provide a clear rationale for the placement of polling stations - such as serving a certain number of population as identified by the last census. Each polling station should serve a similar number of potential voters.

Sometimes, it is not simply about the number of polling stations. Electoral officials and/or materials can be late arriving in certain areas causing polls to open late.

This brings us to a problem that can be prevalent in one-party dominant states like South Africa, Namibia and Angola where only the ruling party has the capacity to send party agents to all polling stations countrywide. This can result in a situation where only the electoral officials, the police and the agents of a single party are present in the polling station for the voting and for the counting. Civil society observation and monitoring efforts should place a special emphasis on being present in such areas, which can also become 'no-go zones' for opposition campaigning before the election.

There is also a tendency to ignore what happens in any special ballots or advance polls for specific members of the society (e.g. security personnel and electoral officials). These should also be carefully monitored with particular focus on how results are determined and where and how the physical evidence of results - whether ballot

boxes or electronic voting machines - are stored pending the confirmation of results after the main election day.

Some countries with remote populations use mobile polling stations in an attempt to reach as much of the population as possible. Namibia, for example, which has the second lowest population density in the world after Mongolia, usually has more mobile polling stations than fixed stations. These mobile polling stations visit two or three locations during election day, according to a set schedule. It is important that the movements of such polling stations are tracked and that particular attention is given to how they store and transport sensitive election materials such as ballot boxes and ballot papers.

The day on which polling takes place varies from country to country. Some countries also make election day a public holiday in order to encourage a higher turnout. This can backfire if the holiday takes place near a weekend or around the time that many workers are paid - since sections of the population might use the opportunity purely for relaxation or travelling.

Some countries usually hold elections on a Sunday to enable as many voters as possible to participate while others always choose a week day. Very few countries hold elections over more than one day. If this happens, observers and civil society activists should make special note of how election materials, ballot boxes and ballots are stored overnight - with a focus on security to prevent any interference, ballot stuffing etc.

Polls should also close at a consistent time across the country with the electoral laws stipulations being strictly applied by electoral officials and security officers. Sometimes an EMB can decide to allow some polling stations to stay open if there were particular problems or delays. However, sometimes officials allow polling stations to stay open without such a decision being taken - allowing tens or even hundreds of voters to cast ballots long after the official end of voting. While this may be done to placate queues of voters who have been waiting a long time to exercise their democratic right, it can also be used to boost results in certain areas that might be favourable to particular parties.

Other key risks on election day are:

- Multiple voting which may be linked to multiple registrations (see Voter Registration chapter). To prevent this it is important to monitor whether electoral officials are verifying the identity of voters and marking them as having voted on a list of registered voters. In many sub-Saharan African countries indelible ink marks and even invisible ink marks are used on voters' thumbs or fingers as an extra measure to prevent repeat voting. Sometimes the use of low quality or incorrect concentrations of ink can mean that voters can wash the marks off and still return to vote again. All voter verification procedures

should be carefully checked to ensure they are working optimally to prevent repeat voting

- Compromises to the secrecy of the ballot such as through assisted voting. Sometimes party officials are involved in assisting elderly, disabled or illiterate voters to cast ballots. This is normally illegal as only neutral electoral officials should perform such a function.
- Fraudulent activity after the close of polls when paperwork is completed and ballot papers are reconciled and prepared for counting.
- Election day violence and intimidation - although often rare on polling day, such tactics can be used to intimidate voters and cause voter stayaways in certain areas. Voters need to feel secure and protected when casting their votes.

Voters, observers, civil society activists, party agents and others should be able to report any irregularities through a clear system - which could mean making a representation to a presiding officer or another EMB official or writing up complaints in an official incident book. This should be clearly set down in the electoral law.

Civil society organisations can map and track election day incidents through platforms such as Uchaguzi. This also helps civil society networks and forums to know where and when they should intervene to bring matters to the attention of the EMB, the media and other stakeholders.

Be Your Own Observer

Even if not an official observers, civil society activists can monitor polling by recording their own experiences of voting. The following checklist, based on a guide for Namibian civil society activists, gives an idea of the aspects of voting that can be monitored.

- Were you clearly informed in good time of the voting procedures and where you could vote?
- Were you required to show your voter's registration card and was its validity checked?
- Was the voters' register available and was your named marked off or taken down by polling officers?
- Were there adequate measures to ensure the secrecy of the ballot?
- Were voter education materials available at the polling station?
- Was there any material that could be classified as party propaganda (such as party colours) within or in the area of the polling station?
- Was the polling booth set up properly and in a way that ensured the secrecy of the ballot?
- Was your hand checked for indelible ink marks using ultra-violet light?

- Was your thumb marked with indelible ink and was the strength of the ink adequate?
- Were there any party agents or election observers present at the polling station?
- Did the voting go smoothly or were any problems experienced?
- Did women and minorities feel safe when voting?
- Did voters who cannot read easily understand the ballots? Were appropriate arrangements made for blind voters?
- Did voters easily understand the voting instructions?
- Were there enough electoral officials to make sure the voting process went smoothly?
- Were the officials trained and knowledgeable regarding their duties?
- Were there security arrangements to protect people going to vote, as well as to protect the materials being used in the election?

The Media and Election Day

Once the polls have opened, the role of the media changes from what it was during the campaign period - and specific rules may be devised to govern this shift. In practice, the shift may have taken place earlier as sometimes an embargo is placed on political campaign reporting, opinion poll reporting, direct access broadcasts or advertisements one or two days before the elections.

The question of media access to the polling stations themselves can sometimes be a cause of some tension - most of it unnecessary. What the media require, for the most part, is fairly general access - film or still photographs of queues of potential voters, of people actually casting their vote and so on. Often journalists are given a degree of access that is not granted to the general public. Sometimes non-voters are excluded from polling stations altogether - an attempt to avoid last-minute intimidation - but journalists who can produce their accreditation should be exempt from this. However, it needs to be made absolutely clear to the media that, despite this privilege, they are subject to the same legal constraints as everyone else. Therefore nothing that they do inside a polling station (or anywhere else, for that matter) may constitute intimidation or influence on the election process. It should also be made clear that journalists' access to polling stations is only under the strict control and with the agreement of the election officer presiding.

Some electoral laws or guidelines lay down specific restrictions on news coverage as well, on the basis that late coverage of campaign issues could have an undue influence. In particular, there can be a prohibition, voluntary or statutory, on reporting opinion poll findings.

There are, of course, a variety of factors that may influence the vote as it progresses. Voter turnout is an important issue. In practice these issues can usually be resolved by professional practice and sensible self-regulation. The British Broadcasting Corporation offers these guidelines to its producers on election day coverage:

Polling day reporting at all elections must avoid any references to election issues and, until the close of poll, we restrict ourselves to factual news about the election. Public opinion polls and reviews of the morning papers may be included. So too may statements of news importance by the parties, but we must ensure that counter-statements by opposing parties are broadcast as well.

Adapted from the ACE Electoral Knowledge Network

Technology cuts fraud risk in Nigeria

Technology appeared to play a decisive role in ensuring Nigeria's 2015 elections were more credible than they have been in the past.

The ruling People's Democratic party has railed for weeks about new biometric voter cards and associated card readers, introduced by the Independent National Electoral Commission to eliminate some kinds of fraud. They were unconstitutional, insufficiently tested and risked creating dangerous frustrations on polling day due to delays in accrediting voters, PDP officials claimed. Western diplomats and civil society activists suggested the party's real worry was that the technology — designed to lock automatically as soon as the full quota of eligible voters at each polling station have been accredited — would do what it was meant to: prevent fraud. On the day, despite multiple glitches, the permanent voter cards (PVC) appear to have curbed the multiple voting and ballot stuffing that has marred previous elections in Africa's most populous country. In some areas, polling agents struggled to get card readers working for the simple reason that they had not taken off a protective plastic screen from the finger pad. On polling day, other failures were more mysterious. Four separate card readers failed to identify the finger prints of outgoing President Goodluck Jonathan who joked afterwards that he could hardly be a ghost voter. Given the huge logistical exercise involved in a Nigerian election, the fallout was very limited. According to INEC in only 300 of 150,000 polling stations nationwide did the technology fail outright, necessitating an extension of the vote.

- Adapted from the *Financial Times*, March 31 2015

Counting

Integrity problems may arise at the polling station or counting centre where the ballots are counted and/or tabulated. They may be the result of a genuine mistake or a deliberate effort to manipulate the outcome.

- * Counting should be done as soon as possible after the polls close
 - The longer that ballots remain uncounted, the higher the risk of tampering with the results. Before beginning the count, however, it is important to ensure that the site is secure and observers are present.
- * The voter's intention must be properly determined
 - A voter may mark the ballot but miss the designated box or space, making it difficult to know how to count the vote. Too strict an interpretation of the rules may invalidate an otherwise valid vote.
- * Accuracy of the count must be ensured
 - The following should be applied to guarantee the accuracy of the count. Good management of the count is essential, as is proper training of all the counters. A transparent count with observers present is highly desirable.

Machine counting (tallying) removes the subjectivity involved in assessing the validity of ballots and can help ensure an impartial count. Machine counting also eliminates many other human errors, as well as opportunities for manipulating the count and the results. However, a machine cannot determine a voter's intention if the voter made an extra mark on the ballot or did not mark it exactly in the spot that can be read by the machine. Although the intention is clear, the ballot may be rejected.

Machines are not infallible and, if not programmed or maintained properly, they will yield incorrect results. For instance, in the 2000 elections in the United States, shortcomings of the voting machines used in the state of Florida gave rise to an unprecedented electoral and legal tangle involving the Democratic and Republican parties. The race in that state was extremely tight and it was decided that the votes would be recounted by hand because the defeated candidate believed that the machine results were inaccurate. The recount was halted by the US Supreme Court, however, on the grounds that it was not universal, and therefore could tilt the results.

* Adapted from the ACE Electoral Knowledge Network



Electoral Commission
of Namibia

6

CHAPTER

Electoral Integrity & the Verification of Results

RISKS

- Unreasonable delays in the announcement of results
- Denial of stakeholder access incl. observer, party agents
- Failure to publish detailed results down to district and polling station level
- Discrepancies between provisional and final results
- Failure to make results available in accessible manner

The Verification of Results stage of the electoral cycle includes the tabulation of results, the communication of official results of the voting exercise, and complaints and appeals that may arise. This stage forms the second part of the 'election period' component of the electoral cycle, and is incredibly important because it involves informing citizens of the outcome of their democratic right and exercise of voting, and ensuring that a platform exists to question such outcome. The process "spans from the counting and announcement of results at the polling station level, to the final allocation of the seats announced by the designated authority."¹ And because "the credibility of the entire electoral event might depend on how these activities are dealt with," this stage requires "transparency, expediency and effectiveness" as "even without any political interference or bias, a poorly managed result verification exercise will create undue suspicions and can impact negatively the elections."² Some aspects of the previous stage (Voting Operations and Election Day) of the cycle spill over into

¹ EC, UNDP & International IDEA, 2008. Management of Electoral Results. *Joint Training on Effective Electoral Assistance Brussels*, 1-5 December 2008

² Ibid.

this stage because it involves vote counting, but the main focus of this chapter will be on tabulation and what happens thereafter.

Several challenges to electoral integrity exist during this part of the election cycle. Some of the risks identified by participants at the Electoral Integrity workshop in May 2014 include:

- Fraud during tabulation and announcement of official results
- Non-compliance with required processes (e.g. issues in the movement of ballot boxes, potential for box switching, bloating of results, etc)
- Discrepancies in results-verification

International IDEA posits that the key challenge is balancing accuracy with speed and transparency. Other risks include³:

- Poor technical management (e.g. technology failure, data capturing, administrative errors)
- Lack of understanding of electoral system and results aggregation system
- Unrealistic expectations from all stakeholders (incl. EMB), especially with the introduction of new technology
- Biased, unclear or inadequate complaints and appeals procedures

The following pages look at some of the key risks and mitigation strategies regarding:

- the tabulation and announcement of results
- appeals, complaints and challenges to elections

A number of resources that provide best practices in dealing with these issues are also provided.

Tabulation & Announcement

The ACE Project Electoral Knowledge Network provides a great deal of information on various considerations regarding the ballot counting and results verification process, as well as on the transmission of results. A major recommendation that it makes in countering any of the challenges or risks to electoral integrity highlighted above is that transparency and the presence of contingency plans are critical to electoral integrity. It states: “Transparency is very significant, particularly at the time of the release and transmission of interim results. Representatives of political parties and candidates should sign and have a copy of the statement of the vote and should be allowed to witness the transmission of the corresponding results to the electoral management body. Such transparency of actions is essential in the acceptance of the general outcome of the election.”

The Project goes on to state: “Communications technology plays an increasingly important role in the transmission of voting results. If the supporting systems used

³ Ibid

by the electoral management body fail, postponement of interim results can ensue, creating numerous administrative, technical, security, and logistical problems. In addition, such failures tend to be politically embarrassing to the electoral management body.” To counter this issue, it recommends ensuring that contingency plans are in place to deal with any failures in the communication of results. “The selection of a contingency plan is driven by local context and circumstances in that particular jurisdiction. In some circumstances, prior agreement with security forces to use their communications equipment can be negotiated, or partnership or collaboration with private companies to use their facilities can be made as a backup plan.”⁴

Some of the key principles for an effective verification and count, according to a manual by the UK Electoral Commission, include⁵:

- All processes are transparent, with a clear and unambiguous audit trail.
- The verification produces an accurate result. This means that the number of ballot papers in each box either matches the number of ballot papers issued as stated on the ballot paper account or, if it does not:
 - the source of the variance has been identified and can be explained, and/or
 - the box has been recounted at least twice, until the same number of ballot papers is counted on two consecutive occasions
 - The count produces an accurate result, where the total number of votes cast for each candidate and rejected votes matches the total number of ballot papers given on the verification statement for the constituency
- The verification and count are timely.
- The secrecy of the vote is maintained at all times.
- The security of ballot papers and other stationery is maintained at all times

To avoid the risk of electoral fraud during this part of the cycle – particularly in terms of the risks noted earlier – the integrity of election officials is especially critical. Election officers should remain objective and their conduct should be above board and transparent.

In terms of the announcement of the result, the following factors should be considered by Returning Officers⁶:

- Decide on the exact location in the count venue where the result will be declared and who will be on the platform at this time. The platform should be accessible for all those who need to get up on it.
- Any announcement equipment should be in place and checked before the count begins.

⁴ The ACE Project Electoral Knowledge Network, 2015. <http://aceproject.org/ace-en/topics/vc/vce/vce04/vce04c>

⁵ UK Electoral Commission, 2015. UK Parliamentary general election in Great Britain on 7 May 2015: guidance for (Acting) Returning Officers. http://www.electoralcommission.org.uk/__data/assets/pdf_file/0006/175389/Part-E-Verifying-and-counting-the-votes.pdf

⁶ Ibid

- Double-check that the result is accurate, and that it is written in the form of words for oral delivery in order to avoid any errors. Media representatives will be keen to ensure that their transmission of results is accurate and so may ask for a written copy to be issued at the time the announcement is made.
- It is a requirement to provide public notice of the name of the candidate(s) elected, the total number of votes given to each candidate and the number of rejected ballot papers under each heading.
- Once a result is declared, it is final and cannot be amended.

The role of the media and election observers is also important in assuring that the way in which results are tabulated and announced is in accordance with the legal framework that has been set out for elections.

The speed and accuracy with which results are tabulated and then announced by the EMB or designated authority is key. Who makes the announcement differs from country to country. International IDEA notes that, "It is common for electoral legal frameworks to give the function of certifying and announcing election results to an EMB, and to prescribe a time period within which the results must be announced: this is the case, for example, in Armenia, Cambodia, Honduras, Poland and South Africa. In a few cases these functions are given to the Constitutional Court, as in Niger, or the Constitutional Council, as in Cameroon and France. In Denmark, the legislature is responsible for validating the results of national elections. The chief justice of Zambia is the returning officer for the presidential election and is thus responsible for announcing its results. The National Technical Committee on Elections which was set up following the 2001 general elections recommended that the EMB take over the function of returning officer for the presidential election."⁷

The media has an important role to play in making sure that preliminary and verified results are announced timeously. Care should be taken in the announcement of results – whether preliminary or verified, as violence may be sparked if this is not handled carefully. The important role of the media can be evidenced in Zambia's 2011 election, where riots were reported in Kitwe and Ndola over slow results and a "ban on the media from announcing results not verified by the electoral commission."⁸ It was believed by some parties, at the time, that "results were being deliberately delayed because the government knew they had lost the election."⁹

The ACE Project provides some insights on how the media can more accurately and effectively report election results:

⁷ International Institute for Democracy and Electoral Assistance, 2006. Electoral Management Design: The International IDEA Handbook.

⁸ BBC News Africa, 2011. Zambia poll: Riots in Kitwe and Ndola over slow results. 22 September 2011. Retrieved from <http://www.bbc.co.uk/news/world-africa-15019198>

⁹ Ibid.

Provision of a Media Centre will enormously facilitate media access to results. The mechanisms of counting will vary enormously between centralised and decentralised systems. For the purposes of media reporting, the significant point is whether results are released centrally or locally. If the latter, then media reporting is also likely to be decentralised.

What is particularly important, however, when results emerge gradually - especially true of a first-past-the-post constituency system - is that all results are reported promptly and accurately. This is a means of public scrutiny of the counting process and lessens the possibility of manipulation of the count. It is therefore a potentially important media function.

The role of observers in the tabulation and announcement of results is an important one. During aggregation/tabulation, observers should watch out for issues such as the swapping of results (including transposition error), ensuring that all candidates' names are written out in full, and any doctoring of figures. The AU Election Observation Manual also notes that observers should ensure that results are announced within the timeframe set out by the legal framework, that results are published fully, and how results are welcomed. The Manual highlights the following considerations for this stage of the election¹⁰:

Some of the aspects observers are expected to assess and report on during this stage include:

After the vote count, AU observers are expected to follow the aggregation process. The aggregation of the results is a crucial step in an election, and requires transparency and accuracy to ensure acceptance of election results by the contesting parties and candidates, as well as the general public. Results from counting centres and/or electoral districts are transmitted to the national level immediately after counting. Depending on the electoral laws of a particular country, results from counting centres may go through the electoral district, which then sends them to the national level.

At local/national level, there is a team that receives these results directly from counting centres or electoral districts. These results will also include results of any special ballots. The team responsible for aggregating results directly transmits the progress reports for each electoral district. Representatives of political parties and candidates, and observers, including the media, should have access to the mechanism put in place, which includes the results centre itself and spread-

¹⁰ African Union Election Observation Manual,

sheet(s) or a board listing all districts so that they can observe the results as they come in.

The electoral management body should release results as soon as possible. All types of ballots must be included before the official results. Observers observe whether the official results are announced by the authorised body, whether the results are released within the timeframe set by the country's legal framework, whether a summary of the final results is published and whether party and candidate representatives as well as the general public welcomed the results.

This stage also requires that members of observer missions consider the various stages leading up to this point, before making a pronouncement on the elections they have observed. This issue came out clearly during deliberations in the workshop, in which participants raised the concern that observers often turn a blind eye to the fraud and malpractice activities that take place, for the sake of *stability*. An example provided in this respect was in the observation of the 2013 elections in Zimbabwe, which, despite evidence of fraud, was endorsed by observers simply because there was no violence. "There is too much focus on stability, and not enough on the importance of credible elections, and of free and fair elections. We need to look beyond this (stability) and insist on democratic elections."¹¹

In addition to putting mechanisms in place to ensure the objectivity of election officials, as well as to have the media and elections observers play their roles in objectively publishing the results of an election, and pronouncing the credibility of an election, election verification exit polls (EVEP) have also been recognised as a good means of checking election results for insights on the vote count while awaiting official results. The objective of a EVEP is to "audit or verify the accuracy of vote counts" in targeted constituencies, giving pollsters a sense of what a final outcome may look like. Freeman, Warren and Singer state that, "Exit polls are widely acknowledged to be one of the most important elements in helping to ensure an honest election. But this is true only if the poll is conducted with appropriate methodological rigour, if the processes are transparent, and if the data made available."¹² It is important to note that due to the comprehensive nature of exit polls, if EVEP results differ significantly from the actual reported results in the targeted precincts, it is reasonable to conclude that something is wrong with the official count, especially considering that exit poll methodologies have normally proved quite reliable. Notwithstanding, an EVEP is still a survey and may suffer from the many problems that any survey may experience (e.g. weather, interviewer interaction, distance restrictions, etc.).

***Instructions for conducting an election exit poll can be found here:**
http://electiondefensealliance.org/files/Do_Your_Own_Exit_Poll.pdf

¹¹ HSF & IPPR, 2014. Electoral Integrity Workshop Report.

¹² Freeman, Singer & Warren, 2006. The Need for Independent US Exit Polls. 4 July 2006.

Another important component is the role of civil society in the elections verification process. The African Public Policy And Research Institute (APPRI) and the Institute For Justice And Reconciliation (IJR) suggest that “Civil society should be empowered to be able to undertake its oversight responsibility more effectively. The challenges may differ from country to country, but a general observation is that in all the countries, the space created for civil society to function is very limited. The importance of a strong civil society in a democracy can hardly be emphasised. It assists governments to be anchored on the needs and aspirations of the general society, thus create a people-centred and productive environment.”¹³ While voter education is, to a large extent, the prerogative of the EMB, civil society also has a key role to play. It is important that civil society exercise its mandate fully – particularly in ensuring that citizens are well aware of the electoral process, their rights, and their responsibilities at all stages of the cycle, including in the verification and announcement of results, as well as in lodging complaints and appeals, as will be addressed in the next section.

Appeals & Complaints

Another key part of this stage of the cycle is the complaints and appeals process. “Election challenges can be quite disruptive to the electoral and political processes. They can delay the finalisation of election results, which in turn can delay the first meeting of the new parliament and the formation of a government. This situation can destabilize a sensitive political environment, and lead to civil unrest. For these reasons, it is important that election challenges are dealt with quickly, efficiently, and with maximum transparency and accountability. This requires proper planning, allocation of significant resources, training of staff, a robust public information campaign and an effective public relations strategy.”¹⁴

The Carter Center acknowledges that at the international level, there are agreed upon models for electoral dispute resolution, and that most proposed standards and best practices are general in nature. This makes it difficult to provide conclusive guidelines on how this should be handled. Needless to say, however, “failure to create and implement effective mechanisms to resolve electoral appeals can seriously undermine the legitimacy of an entire electoral process. At the same time, there are often numerous impediments to effective dispute resolution, including incomplete, vague, inconsistent, duplicative, or overly complex rules and procedures; weak or insufficiently autonomous electoral and judicial institutions; lack of training; and political or other interference.”¹⁵

As is the case with tabulation and aggregation oversight, speed and transparency are important components of this aspect of the cycle. In a paper on the role of elec-

¹³ African Public Policy And Research Institute (APPRI) and the Institute For Justice And Reconciliation (IJR), 2011. Towards Ensuring Free And Fair Elections: SADC/Zimbabwe Road Map: Civil Society Role And Challenges. Workshop Report.

¹⁴ Ibid.

¹⁵ The Carter Center, 2010. Guide to Electoral Dispute Resolution.

tions in emerging democracies and post-conflict countries, FES notes that “Election Commissions are an element important but not sufficient to fully alleviate the fears of the electorate and opposition parties that the outcome of elections may be manipulated. The existence of an Electoral Complaints System in which the people have trust therefore is essential. To achieve this element of trust, complaints and appeals processes have to satisfy at least three basic requirements concerning (1) speed, (2) transparency and (3) accessibility. As long as they are met, it does not matter whether the body hearing the cases is permanent or temporary, formal or traditional, or whether the function is fulfilled by an existing law court, a subcommittee of the national election commission, or an independent organisation.”¹⁶

Complaints are handled in different ways across the continent, but the African Charter on Democracy, Elections and Governance provides a basic framework for how State Parties should conduct elections and handle disputes to elections. Article 17 states that in re-affirming their commitment to “regularly holding transparent, free and fair elections in accordance with the Union’s Declaration on the Principles Governing Democratic Elections in Africa”, State Parties shall:

1. Establish and strengthen independent and impartial national electoral bodies responsible for the management of elections.
2. Establish and strengthen national mechanisms that redress election related disputes in a timely manner.
3. Ensure fair and equitable access by contesting parties and candidates to state controlled media during elections.
4. Ensure that there is a binding code of conduct governing legally recognized political stakeholders, government and other political actors prior, during and after elections. The code shall include a commitment by political stakeholders to accept the results of the election or challenge them through exclusively legal channels.

EISA provides the following overview (last updated 2010) of how election disputes are handled in various countries:

COUNTRY	PROCEDURE
ANGOLA	All decisions of the National Electoral Commission (CNE) on challenges to voting irregularities and counting tabulations are heard by the Constitutional Court, but must be filed within 48 hours of notification of the decision of the CNE.
BOTSWANA	Election petitions are heard by the High Court. Petitions must be submitted within 30 days of the announcement of the result disputed. If petitions are withdrawn the costs devolve on the petitioner.

¹⁶ Kuhne, W., 2010. The Role of Elections in Emerging Democracies and Post-Conflict Countries: Key Issues, Lessons Learned and Dilemmas. Friedrich Ebert Stiftung – International Policy Analysis

DRC	Teams of mediators are deployed during the election period to resolve disputes. Petitions are heard by the courts.
LESOTHO	The Independent Electoral Commission (IEC) appoints a tribunal to hear and rule on complaints. Election petitions against IEC decisions are heard by the High Court. Petitions must be submitted within 30 days of the end of the election period and the petition must be heard within 30 days of lodging.
MADAGASCAR	All complaints and disputes heard by High Constitutional Court
MALAWI	Election petitions and complaints are handled by the Malawi Electoral Commission (MEC). Appeals against the MEC rulings are made to the High Court. Election petitions of the Presidential result must be received by the High Court within 48 hours of closing of polls.
MAURITIUS	No formal conflict resolution mechanisms. In the event of electoral disputes, petitions are heard by a court with at least two judges sitting on the bench. Election petitions must be submitted to the courts within 21 days after the date of the return of results.
MOZAMBIQUE	Petitions are made to the National Electoral Commission (CNE) within two days of the results being published. Appeals against decisions made by the CNE are made to the Constitutional Council within three days of the decision being published and must be decided on within 5 days.
SEYCHELLES	In the event of a dispute over the results, the Constitutional Court has authority to hear complaints. Decisions may be appealed in the Seychelles Court of Appeal.
SOUTH AFRICA	The Independent Electoral Commission (IEC) and its officer are empowered to resolve objections, appeals and code of conduct disputes through conciliation. Election petitions are heard by the courts with the Electoral Court acting as final court of appeal. Parties must submit complaints within 48 hours of the announcement of results.
SWAZILAND	High Court adjudicates petitions regarding elections.
TANZANIA	Presidential election results are not subject to challenge under the law. Election petitions for parliamentary elections must be presented to the High Court within 14 days of the announcement of results. Resident Magistrates hear cases for local elections if submitted within 30 days of the announcement of results

ZAMBIA	Election petitions are heard by the High Court. Petitions must be lodged within 30 days of the disputed results being declared. The ECZ is empowered to resolve conflicts and disputes through conciliation or mediation and to set up conflict management committees to resolve disputes.
ZANZIBAR	The constitution prohibits enquiry by the courts into “anything done by the Electoral Commission in performance of its functions.” The Electoral Act provides for other petitions to be heard by the High Court
ZIMBABWE	Multiparty liaison committees are set up by Zimbabwe Electoral Commission at national, provincial and constituency level to attempt to resolve electoral disputes; election Petitions are heard by Electoral Court

In addition to meeting the requirements of speed, accuracy and transparency, observance of the rule of law, as set out in the electoral legal framework is critical, and should be the foundation upon which these three tenets rest. The Global Commission on Elections, Democracy and Security posits that “The integrity of elections hinges on the strict observance of the rule of law—the capacity and norms that ensure that governments are accountable by law, that citizens are equal under the law, that law-making and enforcing are not arbitrary, and that laws respect human rights. When applied to elections, this means that action must be taken against incumbents or entrenched political interests seeking to manipulate the electoral process. Strong independent courts are needed to protect the rights of all voters, political parties and candidates, to enforce free and fair electoral procedures, and to prosecute violations of the electoral process. For elections to have integrity, electoral justice must be done, and citizens must see that it is done.”¹⁷ In dealing with complaints and appeals, observing the rule of law is especially important, as outcomes can only be fair and credible in this way. The Commission understands the challenge that this may pose as “The rule of law is deeply political, because it alters and constrains the use of power. It is also deeply social and cultural, because it works best not through enforcement and coercion, but through everyday compliance.”¹⁸ However, despite these challenges, it is necessary for ensuring that the rights of citizens to democratically elect the parties that will best represent them are respected, not only when it comes to appeals, but throughout the electoral cycle.

The AU Election Observation Manual highlights some of the important aspects of handling complaints during elections, and the role that observers should play in this regard¹⁹:

¹⁷ Global Commission on Elections, Democracy and Security, 2012. Deepening Democracy: A Strategy for Improving the Integrity of Elections Worldwide. Commission Report, September 2012.

¹⁸ Ibid.

¹⁹ African Union Election Observation Manual.

Following the aggregation, the results are announced. Depending on the country, a court of law or the EMB is the authority responsible for officially declaring the election results. Suspicions and reduction in the degree of acceptance of election results are often as a result of the delay in the announcement of results.

AU observers are expected to establish whether the laws of the country provide for a specific timeframe in which results must be announced, in order to reduce uncertainty and minimise potential conflict or fraud and follow up on other post-election matters.

Following the announcement of results, candidates may not accept the outcome of the election, which may result in complaints or challenges on voting irregularities, counting procedures and aggregation and appeals.

The complaints process

Post-election disputes emerge when candidates do not accept the results. These disputes have the potential to undermine the integrity of the electoral process. It is therefore very important that mechanisms be put in place to deal with them. Election dispute resolution is an important aspect of the election cycle that impacts significantly on the outcome of an election. Often the legal framework of the country provides for appeals against the election results and any other matters related to the conducting of the elections.

Procedures for complaints and appeals vary from country to country. Complaints and/or challenges to voting irregularities, counting procedures and aggregation are heard and decided on by the body empowered by the law of the country.

Such body may be an EMB, election tribunal or court of law. Complaints and/or challenges are often filed within a certain timeframe, and appeals on the decisions are heard by the high court. Observers during this time attempt to assess whether the judiciary is perceived as being independent. During this time, observers may be approached with complaints. It is important that they remember that their role is limited to observation and that they do not have the power to resolve complaints or intervene. Observers should encourage complainants to follow the proper channels in the country for appeals and to keep them informed of any developments.

After assessing and gathering evidence, the observers are expected to report to the Mission head offices. The AUEOM will assess the overall complaints and appeals process and make findings public after consulting with candidates and political parties regarding the process.

As noted by the Carter Center, it is difficult to provide specific best practices that work across the board, as several factors determine the application of the law based on the legal framework present in each respective country. However, there are several guidelines that may be used to ensure that appeals, complaints, and other disputes are resolved in a manner that ensures electoral integrity. Some of these guidelines include:

- **European Commission for Democracy through Law (Venice Commission) Code of Good Practice in Electoral Matters. Guidelines and Explanatory Report (2002)**

The EC guidelines in this document set out various considerations for effective systems of appeal, highlighting the key requirements that these systems should have – e.g. the nature of the system, how they should be regulated, the powers that they should have, etc.

- **NDI, Promoting Legal Frameworks for Democratic Elections, 2008**

The NDI's complaint mechanisms are set out with the goal to: 'Ensure due process, equality before the law, equal protection of the law and effective remedies and promote public confidence in the impartiality and competence of administrative and judicial tribunals reviewing electoral complaints and challenges.' The guidelines present a number of important questions on how complaints are addressed, recommending that the legal framework on which elections are based set clear 'complaint procedures for all elements of the election process that address who has standing to file complaints or other legal actions, what administrative body or court has jurisdiction concerning the complaint or other legal action, what administrative law or judicial procedures apply, including rules for burdens of proof, presenting evidence and witnesses, the timelines for filing complaints or other legal actions, processing and ruling on them and for any appeals processes; Provides for timely resolution of electoral related complaints and other legal actions; Provides redress for electoral related complaints, including effective remedies and accountability for violators of electoral rights; and Includes transparency mechanisms that promote public confidence in the process.'

- **OSCE/ODIHR, Existing Commitments for Democratic Elections In OSCE Participating States, 2003**

- **OSCE/ODIHR, Resolving Election Disputes in the OSCE Area: Towards a Standard Election Dispute Monitoring System, 2000 - Generic Guidelines for Election Dispute Resolution**

The guidelines put forward in this document provide several general principles that are important for any resolution process. They further set out the procedures that signing parties adhere to, and speak to issues around accessibility and transparency, the time factors around resolution proceedings, admissibility of complaints and appeals, how systems are enforced, and ensuring consistency in the interpretation and application of election dispute provisions

Important excerpts from the above-mentioned guidelines, that are related to dispute resolution and the handling of electoral complaints and appeals can be accessed here: <https://aceproject.org/ero-en/regions/mideast/SY/the-carter-center-guide-to-electoral-dispute>

In wrapping up this chapter, below are some key issues and guiding principles offered by IFES, 'regarding electoral complaint adjudication and dispute resolution that are derived from international experience'²⁰, that speak to the issues raised in the electoral integrity workshop, and that respond to the various key challenges identified within this chapter:

- 1) Election cases involve a difficult combination of two important elements. First is the substance itself – fundamental human rights of democratic participation. These rights include seeking political office, supporting political parties and candidates, and voting. The second element is time constraints. Most election disputes and complaints need to be resolved within the compressed time schedule of various stages of the election process. Candidates must be certified and election results validated. The old saying that 'justice delayed is justice denied' is especially true in this area of election complaint adjudication and resolution of disputes. It is difficult to balance the seriousness of election-related grievances with the pressure for election authorities and courts to act quickly. Reasonable deadlines and timetables for adjudicative procedures must be established within the law to allow for a fair but speedy process.
- 2) Clarity in election laws and implementing regulations is essential. The legal framework must identify and empower existing bodies, such as courts and election commissions, or new institutions such as electoral courts, to properly and quickly handle these complaints and disputes. Ambiguous or conflicting jurisdictions among courts and administrative bodies are confusing and unfair to political parties, candidates, the news media and the voting public. The law must clearly define responsibility for receiving and handling different types of complaints and disputes, for investigation, for preliminary adjudication and the appeals process, and for the finality of decision-making in resolving complaints and disputes.
- 3) Election laws must also provide clear rules and procedures for where, when, how, and in what form complaints or demands must be filed, including standards for sufficiency of evidence. The format and formal requirements for election complaints should be clear and specified in the election law or in implementing regulations that are developed by election management bodies. An officially approved form that is made widely available would be a good basis

²⁰ Dahl, R., 2008. Electoral Complaint Adjudication and Dispute Resolution: Key Issues and Guiding Principles. Speech: 2008 General Assembly of the Association of Asian Election Authorities. Taiwan, 22 July 2008.

for ensuring that complaints are better crafted and more complete in their statement of facts and legal allegations.

The law also should be clear about who can bring complaints and is entitled to seek administrative or judicial remedy. That may include specifying that only parties or candidates are entitled to bring complaints regarding some issues, and that complainants must have personal knowledge of the facts and/or a personal stake in the outcome, such as a citizen who is denied a rightful place on the voter registry.

Implementing regulations should explain the requirements for the nature and sufficiency of evidence. A balance should be struck between seeking a complete factual record without being overly burdensome and unfair to the complainant. There should be a clear statement of facts and of the nature of the dispute or allegations. The law should require signed and sworn statements by witnesses, except in extreme circumstances where the safety of witnesses could be jeopardized. Reasonable but tight deadlines and time limits should be established for complainants and for the adjudicative bodies that deal with these cases.

- 4) Transparency in the process by which complaints are accepted and resolved should be encouraged. The need for confidentiality during the course of investigations and internal decision-making by an adjudicative body is understandable. However, the adjudicative process should be open, to the extent basic information about cases can be revealed as they are pending to permit political participants and the public to monitor them, and to avoid false rumors and conspiracy theories. Most importantly, the process should provide full transparency after final adjudication as to the reasons for decisions and the evidence to support the decisions. Decisions of adjudicative bodies and their reasons for decision-making should be published and made available on the Internet.
- 5) Civic education can play an important role in improving the complaint process and encouraging citizens, civil society and electoral participants to do a better job of focusing their complaints and stating allegations. Public understanding of rules and procedures, and public confidence in the fairness and openness of the adjudicative process, is fundamental to assuring widespread acceptance of the legitimacy of the outcomes of elections.

The Post-Election Period

RISKS

Legal challenges/disputes not being dealt with effectively, fairly or timeously

Post-election violence over a disputed election result

Lack of due process when fraud/malpractice discovered

Post-election fatigue undermines effective evaluation of the previous election and reform processes

All stakeholders take their eye off the ball - lack of motivation

Civil society and media fail to engage with post-election period

Election observers produce only superficial assessments

The post-election period of the electoral cycle usually features the hearing of any disputes relating to the conduct and/or result of an election. In addition, there are usually audits and evaluations of the previous election, the updating of voters registers, institutional strengthening and professional development (particularly relating to the EMB), as well as research and archiving of records. Legal reform, preferably preceded by public consultation and research, also takes place in this period.

Switching off

This stage in the electoral cycle can be between three and five years long. This should be ample time to review past electoral practices and processes and complete any reforms that might be necessary. However, the post-election period can be marked by apathy and inaction from virtually all stakeholders. Initially, post-election fatigue can set in. Elections are huge logistical exercises that can sap the energies and resources of the EMB, the political parties and civil society. As the dust settles after many elec-

tion campaigns there is a tendency for those who should be at the heart of seeking improvements to the electoral process to sit back and even ‘fall asleep’ when serious evaluation of past electoral practices and a pro-active approach to reform is required. As a result, concerns about fraud and manipulation that may have been aired during the election campaign and announcement of results are not investigated further and possible remedial actions are not discussed. The necessary reforms and changes are not made - and then suddenly a country is back in its pre-election phase with the EMB actively preparing for an upcoming ballot. If political parties, the media civil society and other stakeholders now pronounce themselves on issues that were left over from or had become clearer since previous elections, the EMBs and governments argue that there is no longer enough time to address such matters. As a result, problems that affected previous elections repeat themselves and are even amplified at the coming polls.

The media’s role

The media can play a crucial role in checking the arbitrary use of power and demanding accountability from the government and its institutions. Post-election reporting is one of the most important elements of election coverage and of political reporting more generally. Reporters should continue to scrutinise electoral authorities and elected officials, through assessing their promises, actions, and policies, as time progresses.

The media have three key roles during the electoral cycle:

1. Fulfilling a watchdog function to ensure free and fair elections
2. Carrying out voter education and communicating vital election information
3. Providing platforms for parties and candidates to express their political opinions and convey their policies.

The most common critique of the media’s coverage of elections is that it is mostly superficial and often partisan.

Reporting often focuses primarily on the campaign trail, emphasising politicians’ stump speeches. In particular much print media space is given to verbal clashes between candidates and parties – often not policy issues, but rather on personal factors and historical grudges.

Across much of Africa the dominant broadcasting mediums are aligned to the state and therefore tend to be deferential to the ruling party while either ignoring or casting aspersions on the opposition.

This is not surprising. Journalism schools still teach that two key news values are prominence and conflict. The more prominent the personality, the more column inch-

es or broadcast time they receive. Readers we are told love conflict – a fiery exchange of words, a dramatic showdown makes for a good story.

There's a new school of thinking in some journalism circles – that elections ultimately are not about politicians but the people and therefore it is the citizens' concerns and reactions that should be foregrounded in news coverage.

Reporting on electoral fraud and malpractice often requires a reporter to engage closely with electoral law and regulations and to understand electoral processes in some detail.

In addition, it would seem very few journalists are ready to seriously engage with issues of electoral law reform. Coverage of parliament is often poor – the passing of laws having major impacts on ordinary people is hardly mentioned in news reports.

In response to such criticisms – journalists often say that the pressure of deadlines and limited scope for specialisation in smaller, private media houses means that it is difficult to find the time to focus on what can be knotty issues to unravel. The same factors are put forward as reasons why investigative journalism in general is so under-developed.

Journalists in state-aligned media often argue that their editors would not allow stories exposing malpractice or serious problems with the electoral law to be aired. Having said this there are opportunities for the media, civil society and academia to link up and close some of these gaps.

There are several ways forward for electoral integrity activists:

1. Seek buy-ins from media houses and senior editors to encourage specialisation among journalists including setting up of specialist election units within the newsroom.
2. Developing short training courses is crucial.
3. Start to work with media long before elections – to promote the idea of elections being about a long-term cycle rather than a single event.
4. Encourage media houses to develop data journalism skills. Journalists also have to do the maths. Big data and data visualisation matter. These tools can pick up problems in election results, voter registration numbers etc.
5. Integrating the media into domestic observation operations; developing the idea of citizen journalists – not too far from the idea of observers.
6. Try to get the best out of state-aligned media despite their aversion for some kinds of stories. Civil society can provide specialist commentators
7. Help journalists to explain the context – the pattern of events, the larger picture, the regional comparisons.
8. Encourage the media to separate any editorial lines they adopt from the reporting function.

9. Develop analysis tools and models with the media
10. Promote innovation including online coverage e.g. social media via Facebook and Twitter

What can be done to avoid post-election inertia?

- Civil society organisations should stay engaged with the electoral cycle, calling for improvements in electoral management and electoral laws where necessary.
- The media should also report on and investigate fraud allegations and risks that emanated from the past election and continue to follow any reform processes closely.
- Political parties can sometimes raise complaints and then forget about them once the counting and announcing has taken place. They should be consistent regarding raising problems in the electoral process. In addition, they should lobby for the changes they want to see in the EMB and electoral laws rather than waiting until another election is imminent.
- The EMB should enter a period of reflection on its past performance and then propose necessary reforms that would lead to better-run, problem-free elections.

Post-election disputes

An effective electoral justice system is a key element in ensuring that elections are free, fair and credible. Many countries around the world use their regular court systems to hear electoral disputes, but the results are rarely satisfactory because of the time delays involved. In Africa Ethiopia, Kenya, Tanzania and Uganda rely on this method. There is always a risk that the court will only come to a final opinion after the elected body has taken up office. Sometimes cases citing election regularities are thrown out because the time is not available to hear them and they risk upsetting the constitutional order.

Increasingly, however, countries are adopting systems in which a separate electoral court deals with election disputes. Sometimes these courts are staffed with dedicated judges and run almost as a special division of the High Court or Supreme Court. In other countries the electoral court is autonomous from the judiciary, legislature and executive. The electoral court option is often seen as a Latin American model with several of the countries that shifted to democracy during the 'third wave' of democratisation in the 1980s and 1990s using the system. In South Africa the Electoral Court has the status of the Supreme Court. Its members are appointed by the President upon the recommendation of the Judicial Service Commission and must include three judges and two other citizens. It must deal with cases quickly and appeals against decisions of the Independent Electoral Commission have to be decided

on within three days. In most of these countries the electoral court gives a final ruling in a limited timeframe. Some of these bodies are headed by judges while others have specially selected members.

Dedicated electoral courts can either operate permanently or temporarily during the relevant times of the electoral cycle, but they do need adequate funding to operate properly.

Perhaps the key aspect of electoral courts is that they can operate intensively to make decisions in shorter timeframes than normal courts. The judges that head them are able to put in long hours because they are free of other cases. Electoral courts can set reasonable deadlines within the legal process and deliver judgements expeditiously and not after the elected body has already been installed in office. They can also relax rules for admission of evidence. Instead of affidavits and evidence being ruled out of order on technicalities, a specialised court can minimise formal requirements. Hence an affidavit will not be rejected because it is phrased incorrectly. It can also ensure that parties' costs are reasonable and that any bonds or guarantees required do not undermine access to electoral justice.

In order to entrench the independence, credibility and functionality (particularly the funding) of such courts, a constitutional amendment may be needed on top of changes to the electoral law.

Electoral courts are not the only game in town, but they are increasingly being seen as the most effective means of resolving electoral disputes. There are also other possibilities of setting up pre-court arbitration systems, making it possible for the Supreme Court to hear cases immediately and directly, or installing a new constitutional body to deal with conflicts.

There is no magic formula for resolving electoral disputes. Each country should come up with its own system depending on its legal traditions, its political culture and quite simply what works best in practice. There is also a danger of emphasising dispute resolution mechanisms over the prevention of disputes in the first place.

*For more on election dispute resolution mechanisms see 'Electoral Justice: The International IDEA Handbook' which can be downloaded from <http://www.idea.int>

Electoral Justice and the Electoral Cycle

Electoral disputes do not only arise during or after the electoral process. Parties have the right to lodge a complaint at any period during the electoral cycle. An electoral dispute system needs to provide mechanisms to ensure that all electoral actions and decisions in the different periods of the electoral cycle comply with the law. An

efficient system must be able to provide mechanisms that deal with challenges that may arise from:

PRE-ELECTORAL PROCESS

- Decisions related to electoral district boundaries
- Updating of voter registration
- Information on the electoral process
- Determinations on whether to grant, reject or cancel the registration of political parties

ELECTORAL PROCESS

- The nomination or registration of lists of candidates
- The conduct of the campaign
- The distribution and placement of polling stations
- The appointment of polling officers
- The accreditation of election observers
- Process of voting
- Vote count
- Announcement and publication of results

POST-ELECTORAL PROCESS

- Political parties' funding and how funds were used
- Reviews of the declaration of candidates' campaign expenses
- Reviewing boundaries of electoral districts

The good and the bad of electoral reform

Electoral reform can be initiated for both good and bad reasons. When, for example, an authoritarian regime like the Gambian government seeks to amend the electoral law to introduce very high fees for candidate registration it is clearly an attempt to further weaken an already struggling opposition (see <https://news.vice.com/article/gambia-raises-presidential-election-fees-by-nearly-1000-percent>).

But when a more democratic country like Namibia introduces changes that require a political party to have signed up supporters across at least half the country's regions it raises little controversy because it is an attempt to incentivise all parties to have national bases and is a decision taken after national consultation. Often, however, major changes can be self-serving for the ruling party and also for the EMB rather than in the interests of democracy - it is just too tempting for a dominant ruling party to manipulate the system to further entrench its power.

Hence, if electoral systems are to be seen as legitimate by the majority of the population, reforms should be made in an open and accountable manner.

The legitimacy of an electoral system is closely linked to the process through which changes are made. Broad consultations, including national public hearings, are far more likely to produce an electoral law that is supported by most parties and accepted by the citizenry.

When a country moves on from autocratic rule it is likely that a new electoral law and possibly a new or much revised constitution is necessary to ensure an effective break from the past.

Electoral reforms imposed under authoritarian rule, with little input from parties, civil society, or the public are usually highly suspect. The intent behind such reforms is often to prevent certain electoral outcomes, particularly opposition gains. In the long run, the legitimacy and sustainability of an electoral system also depend on the amount of consultation and the extent to which it effectively addresses past problems. Sound legal drafting processes are also crucial - with the right technical expertise being utilised within an acceptable timeframe.

The role of research

Post-election evaluations and surveys receive little attention, yet they can play an important role in highlighting issues and trends in the post-election period. Researchers can also help to create an informed debate about legal reform and institutional strengthening. Close analysis of election-related data can reveal possible fraud and manipulation. However, it is vital that EMBs make election statistics, such as full registration and result data, available in forms that can be analysed.

The Electoral Integrity Project is an example of how post-election research can enrich assessments of electoral trends and performance. The Afrobarometer, a non-partisan survey research project, also assesses citizen attitudes on democracy and governance including elections.

Post-election violence

The most notorious example of a post-election period going seriously off the rails in recent times is the Kenyan election of 2007. Many were caught by surprise when widespread violence broke out in Kenya following the elections of December 27 2007. In the end more than 1,200 people were killed and some 600,000 displaced - having to move to temporary camps. A similar number of people sought refuge with friends or relatives.

What were the warning signs and triggers for this unprecedented electoral violence in Kenya?

Delay in results announcement - An unexplained two-day delay in announcing results led to heightened suspicions that electoral outcome was being 'cooked' in some way.

Results lacking credibility - Discrepancies between presidential and parliamentary turnouts in the same constituencies, which suggested the vote for President Mwai Kibaki had been inflated.

Concerns ignored - The EMB, the Electoral Commission of Kenya (ECK), pronounced Kibaki as the winner of the election despite widespread concerns about the legitimacy of the vote in some areas. He was sworn in on the same day.

Biased EMB - The ECK's independence had been undermined. Before the election President Kibaki appointed 19 of the 22 members of the ECK in contravention of the convention that there would be multi-party representation on the Commission.

Judiciary compromised - Two days before the election, Kibaki appointed five new judges to the High Court, which had the mandate to hear electoral disputes.

Hate speech - Inflammatory statements and songs broadcast on vernacular radio stations and at party rallies, text messages, emails, posters and leaflets all contributed to the post-electoral violence.

Parties with ethnic support bases - In the lead up to the 2007 elections, the two coalitions vying for government – the Orange Democratic Movement (ODM) and Party of National Unity (PNU) - were strongly supported by ethnically-rooted political constituencies.

State failed to protect citizens - Unsurprisingly, opposition leader Raila Odinga and his supporters rejected the declared victory of incumbent Mwai Kibaki, alleging it was the result of rampant rigging. The fact that key state institutions like the EMB had lost credibility meant that those protesting felt they lacked legitimate, formal, and reliable channels for their complaints to be heard. Violence quickly spread, fanned by ethnic tension and economic exclusion. It took international intervention through the African Union's Panel of Eminent Persons, led by Kofi Annan, to bring the rival political groups to the negotiating table

*Adapted from Deepening Democracy: A Strategy for Improving the Integrity of Elections Worldwide by the Global Commission on Elections, Democracy, and Security

Election observers or electoral tourists?

Election observation is widely seen as an important way of ensuring the integrity of elections, particularly in societies that have recently become democracies.

International organisations such as the African Union, Southern African Development Community, Organisation for Security and Co-operation in Europe, the European Union, and the Council of Europe regularly deploy election observation teams.

When election observation works it acts as a deterrent to any attempts to subvert the election outcomes and gives confidence to voters that the process is free and fair.

However, international observer missions have at times been criticised for being poorly organised and not taking their role seriously enough. Often they are geared almost totally around polling day. However, the real problems during an election might occur during the campaign when violence and intimidation can take place and afterwards when the result and the integrity of the process are brought into question. Often election observation missions almost immediately proclaim an election as free and fair just because the polling days were peaceful while ignoring problems in the run up to the election and having left the country before disputes over the results develop.

The SADC Principles and Guidelines Governing Democratic Elections say that SADC observer teams should be deployed at least two weeks prior to polling taking place, but do not specify what should happen after the vote.

Sometimes the legitimacy of an observation team is questioned, particularly if the observer mission is from a former colonial power or has members who are perceived as coming from a hostile country. This can be the case in Africa where European or American observers have sometimes been barred from witnessing elections.

However, the African Union accepts the principle that the involvement of local and international observers improves the integrity of electoral processes.

Observation teams are usually required to have a formal invitation from the government or electoral management body. Observers usually have to follow a code of conduct normally imposed by their sponsoring agency. This outlines matters such as how observers should behave, the importance of impartiality and what they must do if they suspect irregularities.

Even before it sends an observation mission, the sending agency should deploy a team to evaluate whether:

- The constitution and legal framework guarantee fundamental freedoms and human rights
- The electoral management body is independent and impartial
- The rights of observers are guaranteed
- The level of political violence
- There are fair rules for the funding of political parties
- Voter education is non-partisan and co-ordinated throughout the country
- There is equitable use or access to public resources for election campaigning
- The registration of voters is done without discrimination
- There is equitable access to the public media for all contesting parties and candidates

An assessment on these grounds should be made in order to establish whether basic standards have been met for the holding of free and fair elections.

The mandate and scope of a mission should also be clear. For instance there is a difference between monitoring and observing. Observation involves gathering information and making an informed judgement. Monitoring involves having the authority to intervene in an electoral process if relevant laws or standard procedures are being violated or ignored.

To avoid accusations of “electoral tourism,” there should be an adequate time period for observers to do their work; observers should be properly qualified and trained; and observers should have a national as well as a regional focus i.e. not just focusing on localised problems.

Further reading

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African Charter on Democracy, Elections and Governance

SADC Principles and Guidelines Governing Democratic Elections

Upholding Electoral Integrity

Elections that are compromised by fraud, malpractice and bias deny ordinary citizens their right to participate in their own governance and to hold their elected representatives to account. Ultimately, they undermine both democracy and development.

This guide to mitigating risks throughout the electoral cycle takes a holistic approach to the democratic process rather than just focusing on events around and on polling day

This publication aims to be a key information resource for a variety of election stakeholders including civil society activists, the media, election observers, election management bodies, development agencies and democracy assistance organisations.

The Hanns Seidel Foundation (HSF), a German non-profit organisation promoting democracy, good governance and the rule of law across the African continent, commissioned the publication, which was compiled by the Namibian think tank - the Institute for Public Policy Research. It is the publishers' hope that this guide will further stimulate debate on improving the integrity of elections across Africa.



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