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Background

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paper

Mediating
election-related
conflicts

Chris Fomunyoh

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The Centre for Humanitarian Dialogue (HD Centre) is an independent Swiss Foundation dedicated to helping improve the global response to armed conflict. It attempts to achieve this by mediating between warring parties and providing support to the broader mediation community

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This paper builds on discussions at the African Mediation Retreat 2009.

Introduction

Beyond major conflicts in Africa over the territorial integrity of states such as Sudan and Somalia, many recent conflicts on the continent are ignited by grievances over bad governance and exclusionary political practices. In many cases, flawed or failed elections have either precipitated political disputes or aggravated simmering tensions into an outburst of conflict. For example, in the last five years, violent conflicts have ensued from the competition for political power in Africa as demonstrated by dramatic election-related crises in Ethiopia, Kenya and Zimbabwe.¹ While the magnitude of hostilities in all cases may not rise to the level of armed conflict or civil war, invariably, many lives are lost, property destroyed, societies are further polarized and democratization efforts are either stalled or reversed. In some cases, intense and long drawn-out disputes over electoral processes and outcomes raise questions about the legitimacy of the winning party and candidate through the duration of that candidate's term of office.

Election-related disputes raise special challenges, particularly around issues such as: how to revive political will and recreate neutral space for citizen participation and confidence in various aspects of the country's governance process; and how potential mediators from within national boundaries or the international community can walk the fine line of respecting the sovereignty of nation-states while at the same time giving high regard to universal principles such as the responsibility to protect in cases where disputes spill over into full blown conflict. Regional and international actors also face the dilemma of intervening if called upon to do so by one of the parties, and the difficulties of undertaking mediation efforts without the approval and collaboration of the host country government. In Zimbabwe, for example, many observers believe that by limiting mediation efforts within the realm of the Southern African Development Community (SADC – a regional entity in which incumbent President Mugabe held swear over some of the other leaders) to the exclusion of other international actors, the country missed an opportunity to mitigate the negative impact of further polarization and civil strife in the aftermath of the very controversial parliamentary and presidential elections of March 2008.

While there is a general understanding that elections alone do not a democracy make, there is also recognition that multiparty elections are a necessary pillar in democratic governance. The Universal Declaration of Human Rights provides for citizens to have the rights to elect their representatives through regular elections.² As members of the United Nations, all African countries adhere to the Universal Declaration, and many of them cross reference its provisions in the preambles of their respective constitutions. Elections therefore serve a primordial function in every democratic society. In some cases, peace agreements for countries emerging from armed conflict provide a timeframe for elections in a bid to obtain legitimacy for those that win power, and also in the hopes of providing an opening for former belligerents to transform themselves into more positive political actors that resort to ballots rather than

1 According to the British Broadcasting Service News article of October 19, 2006 (<http://news.bbc.co.uk/2/hi/africa/6067386.stm>) in Ethiopia, 193 protesters were killed by police during clashes over the 2005 elections. The International Crisis Group (<http://www.crisisgroup.org/home/index.cfm?id=5316&CFID=68537652&CFTOKEN=24130229>), Africa Report N°137 of February 21, 2008 put the human loss of election clashes in Kenya at 1,000 killed and 300,000 displaced. In Zimbabwe, the Human Rights Watch "Bullets for Each of You" of June 19, 2008 (<http://www.hrw.org/en/node/40483/section/1>) reported 36 deaths and 2,000 victims of violence and torture. The lead Opposition party, the Movement for Democratic Change (MDC) claimed 400 members arrested, 500 attacked, 10 killed and 3,000 families displaced according to the New York Times article, "Human Waves Flees Violence in Zimbabwe" of April 21, 2008 (http://www.nytimes.com/2008/04/21/world/africa/21zimbabwe.html?_r=1&em&ex=1209009600&en=a1c50cf1bc772232&ei=5087%0A).

2 Article 21 of the Universal Declaration of Human Rights: (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures (<http://www.un.org/en/documents/udhr/index.shtml#a21>)

3 The former Revolutionary United Front rebel movement in Sierra Leone transformed itself into a political party after the peace agreement in 1999, and contested elections until its members decided to disband in 2007 (Christo Johnson, “Ex-rebel RUF party bows out of Sierra Leone polls,” *Reuters*, July 9, 2007, <http://www.reuters.com/article/latestCrisis/idUSL09886760>). Similarly, Burundi’s last remaining rebel group, the Forces for National Liberation (FNL) registered as a party in April 2009 with plans to participate in national elections in 2010 (“Burundi’s last rebel group becomes a political party,” *Reuters*, April 22, 2009, <http://af.reuters.com/article/burundiNews/idAFLM53786720090422>)

4 “The 1992 elections were the first ever held in Angola. Preparation for elections thus had to begin with constitutional amendments to make competition permissible, the formation of electoral institutions, and the adoption of new laws. All these tasks were carried out under great time pressure in order to meet the September 1992 deadline. As a result, issues were not discussed and negotiated sufficiently among the political parties. Whether the institutions chosen were also faulty is a matter of contention – there is no agreement about what would be the “right” institutions for a country like Angola. But it is clear that the parties had very little faith in the fairness of the process and that they were not willing to live with the outcome” Source: Marina Ottaway. “Angola’s Failed Elections.” in *Postconflict Elections, Democratization & International Assistance*, ed. Krishna Kumar (Boulder, CO: Lynne Rienner Publishers, Inc., 1998), 139.

bullets to make their voices heard.³ If properly organized, elections, even when conducted as part of a post-conflict agreement or strategy can in fact lend legitimacy to the government that emerges; as was the case with the post-conflict election in 2005 in Liberia won by current President Ellen Johnson Sirleaf. Conversely, failed elections can exacerbate further conflict. For example, an attempt to hold competitive multiparty elections in Angola in 1992 — the first such effort since the country achieved independence in 1974 — reignited armed conflict supposedly because the parties were not prepared or the elections were premature.⁴

Overall, by their very competitive nature, elections in fragile states generate extensive political activism and participation, and generally add stress to existing political systems and their nascent institutions. Activities surrounding elections tend to bring to the fore issues such as the right of free association as citizens and candidates engage in campaign activities across the country; the independence and impartiality of the judiciary, which may be called upon to rule on election-related grievances, and needs to assure citizens that they can obtain fair and equitable recourse through non-violent means; the professionalism and neutrality of the military, the police and other security services; and the faith of citizens in civil discourse and tolerance of diverse viewpoints. When poorly conducted, elections exacerbate tensions and can spark conflict in transitional societies with fragile institutions.

Elections, even when successful, cannot be considered an end in themselves. Rather, elections need to be viewed as a means to achieving the greater aspirations of good governance by citizens in a democratic society or in a democratizing environment. Elections should be viewed as an important step in the continuum of ongoing political and social interactions among citizens and leaders in a given nation-state, involved in negotiations and frequent renewal of the social compact and not be treated solely as a technical exercise that takes place on election day. A holistic or comprehensive approach to elections allows political actors and various stakeholders to identify flash points or early warning signs for potential conflicts, so as to be better prepared to seize opportunities for eventual monitoring and mediation by national and international actors. Such a comprehensive approach views elections through the broader prism of political (as opposed to technical) undertakings, and the full array of conflict mediation tools ought to be activated or deployed to prevent or quickly resolve election-related conflict.

How elections are managed, and responses to election related tensions by various stakeholders – prior to, during and after elections – underscore the linkages between mediation activities and election monitoring by both domestic and international groups. Experience has shown that there is a nexus of overlapping interventions possible when seeking to conduct peaceful elections in conflict prone societies, predicting flashpoints for potential conflicts around elections, and contemplating concrete steps that could be taken to mitigate and mediate conflicts that emerge there from. Also, there are many different forms that mediation can take, at each phase of the electoral process. Traditionally, while much effort is focused on preventive mediation – addressing disputes prior to the eruption of violent conflict, in some cases,

“crisis response” mediation will be required, as was in both Kenya and Zimbabwe. Each form of mediation takes a specific approach and requires different actors and strategies. Reviewing the full electoral process through the lens of mediation is therefore important.

With over 20 national elections expected to take place in Africa in 2009 and 2010, there is a growing interest in obtaining a better understanding of mechanisms that could enhance the efficacy of mediation efforts around elections so as to mitigate humanitarian crises and make a long lasting positive impact on the governance process, especially for countries engaged in post-conflict reconstruction and reconciliation.

1

Electoral processes: phases, flashpoints and mediation opportunities

To facilitate the identification of possible entry points for mediation efforts around elections, it is advisable to further disaggregate the electoral process into small pieces of stand alone activities or stand alone processes, and within these, identify potential flash points or opportunities for preventive mediation.

a) Electoral framework and architecture

In Africa, as in other parts of the world, the success or failure of an electoral process is predicated in large part on the nature of the legal instruments that define its overall political context and its various components. Embodied in constitutions and election laws, these instruments usually determine whether a process would be inclusive and equitable to all contestants and their supporters, and whether prospects exist for a level playing field. Generally, the process by which these instruments are adopted, whether by public referendum, peace agreement, laws passed by a representative body or enacted after broad citizen input, do influence public perceptions of the fairness of the national architecture on elections. The more citizens view the framework as fair and non-partisan, the greater the chances that the implementation of such framework would be peaceful and effective. On the other hand, a legal framework that is partisan and geared towards inhibiting the effective participation in election of specific individuals or segments of society, as was the case in Zambia in 1996, and Cote d'Ivoire in 2000, is likely to stoke the flames of conflict.

In Zambia, in the lead up to national elections, the incumbent government of President Frederick Chiluba adopted constitutional amendments setting new

conditions for presidential candidates, one of which required that to contest the election, a candidate must be at least second generation Zambian. This amendment barred the candidacy of former President Kenneth Kaunda as questions were raised about his Zambian citizenship, even though he had ruled the country from 1964 – 1991. Despite efforts by SADC leaders, especially then South African President Nelson Mandela to have the elections postponed so as to mediate a compromise between the two sides, Chiluba was recalcitrant and proceeded with the election. As incumbent president, Chiluba may have felt he controlled all the trappings of power and the apparatus of the state, and probably felt more secure in withstanding criticism for a flawed election than allowing Kaunda to run with the risk of losing power in a competitive poll. Despite being declared the winner, Chiluba’s legitimacy was weakened throughout the tenure of his second term, just as Mandela had warned when he stated on November 12, 1996 that “the election would lack credibility”.⁵

5 According to the Human Rights Watch, “President Mandela dispatched South African Judge Richard Goldstone to Lusaka on November 14, four days before the election, as his special envoy to confer with the Election Commission [of Zambia] and convince them that elections needed to be postponed. (“Zambia: The Reality Amidst Contradictions - Human Rights in Zambia since the 1996 Elections”, *Human Rights Watch*, July 1, 1997, Vol. 9, No. 3: <http://www.hrw.org/en/reports/1997/07/01/human-rights-zambia-1996-elections>)

In the lead up to national elections in Cote d’Ivoire in 2000, a similarly partisan electoral framework caused a sizeable segment of the population to feel disenfranchised because of their ethnic or regional affiliation and identity. Unfortunately, General Guie and the military junta that ruled the country at the time was more interested in having General Gueï run as a candidate in the same election than create the environment for an inclusive and credible election. General Guie’s unwillingness to allow improvements of the electoral framework was the stumbling block to attempted mediation by leaders of the Economic Community of West African States (ECOWAS). Although general Guie eventually lost the election to Laurent Gbagbo, many of the individuals who felt shut out of the political process organized a violent overthrow of President Laurent Gbagbo’s government two years later. The 2002 coup d’état was aborted, but an armed conflict ensued from which Cote d’Ivoire has still not recovered.

In contrast to the Ivoirian situation a decade earlier in 1991, the National Democratic Institute for International Affairs (NDI) helped broker the end of a stalemate on Senegal’s electoral system that had thrust the ruling party and the opposition into a polarized national debate, with the opposition threatening to boycott participation to all future elections in the country. They considered the electoral system fraught with loopholes for fraudulent practices and inequalities, whereas the ruling party saw the opposition’s take on the issue as a means to destabilize the country. After holding extensive consultations with leaders of both sides and representatives of Senegalese civil society, the Institute issued a report with 14 recommendations of concrete steps that needed to be taken to improve access to the electoral process for parties, candidates and citizens. All Senegalese parties embraced the NDI report and subsequently worked in a bi-partisan manner to reform the country’s election law by enhancing transparency and fairness to all parties.⁶

6 National Democratic Institute for International Affairs, *An Assessment of the Senegalese Electoral Code* (Washington, DC: National Democratic Institute for International Affairs, March 1991)

Electoral framework issues also pertain to the neutrality of the election administration or management body. In the last two decades, many African countries have created independent election commissions with the authority to organize all aspects of the electoral process, replacing elections run by Ministries of Interior or Local Government, under the direct influence

of the incumbent government. Although in the recent case of Kenya, the independent election commission is alleged to have been influenced during the tabulation of results by partisan pressures from political contestants, this trend is on the wane. Importantly, many in Kenya point to an overinflated confidence in the ability of the ECK to manage any disputes or face the political pressure in the December 2007 elections.

The success of recent elections in Liberia (2005), Sierra Leone (2007), and Ghana (2008) are attributed in large part to the independence of the election commissions of these countries. The electoral outcomes were accepted by all parties in Liberia and Sierra Leone – two countries recovering from protracted conflict – as well as in Ghana where the margin of victory was razor thin and, if disputed, could have set the stage for unending contestation with potential for conflict. Election management bodies have to be independent both in terms of roles and responsibilities as well as in terms of resources allocated for the conduct of the polls. In the noted case of Nigeria, the election commission lacks autonomous funding and depends on public funds being channeled to the commission through the Executive branch of government. In almost every situation, the party that heads the Executive branch or the incumbent government would have a vested interest in the outcome of the election, which thereby raises prospects for an inherent conflict of interest. The successes of cases such as Ghana underscore the importance of supporting impartial national institutions and other mechanisms in the long term lead up to the elections as the best means of preventive mediation.

When electoral commissions are not independent, or sufficiently credible, alternative channels of dispute resolution become extremely important. Such channels would include access to recourse through the courts system, or other specially constituted bodies that address election related disputes. The effectiveness of these institutions in acting as specialized locals for mediation will also depend on their perceived impartiality and credibility. In the absence of credible national mechanisms, third party mediation may be considered.

b) Access to the political sphere for candidates and voters

The mass mobilization of citizens during an election campaign period increases chances for conflict among supporters of competing candidates and parties. It also creates avenues for opportunistic leaders to stir negative emotions and sway public opinion or manipulate their supporters in ways that can exacerbate tensions and spark conflict. The role of local level mediation – often through traditional authority and civil society leaders – to mitigate tensions is of particular importance in this period. A legal framework and a political environment that place onerous obligations on candidates interested in running for public office, or inhibit their ability to campaign freely in all parts of the country, can generate frustrations that can easily escalate into conflict. On the other hand, when candidates have easy access to placing their names on the ballot, enjoy equal access to publicly-owned or state-run media, and travel the country and campaign freely, then the potential for conflict is diminished.

Similarly, when citizens can easily register to vote and ascertain that their names will remain on the voter rolls, their voter cards will be issued in a timely manner, and they will not be denied the right to cast their ballots, the chances of complaints and conflict around elections are reduced. The South African elections of 1994 are a case in point as close to 20 million South Africans – compared to only two million in the 1989 parliamentary election during the apartheid era – many of whom were voting for the first time, queued in lines over a three-day period to cast their ballots. In a radical departure from the restrictive and exclusionary practices of the apartheid era, no formal voter register was prepared; instead, voters were allowed to present identity cards to prove citizenship, and even this requirement was enforced with flexibility. At the same time, steps were taken to avoid multiple voting such as using indelible ink to mark the fingers of voters that had cast their ballots and deploying thousands of domestic and international observers at polling sites across the country. Not only did this free and open access of voters add legitimacy to the outcome of that election; it also defused a lot of the tension and pre-election violence in parts of Kwa Zulu Natal.

However, the registration of voters and the delineation of constituency boundaries can also be a source of political manipulation and therefore of conflict. For example, problems with voter registration in Somaliland have led to delays in the election process and increased tensions and a governance crisis that could further diminish that territory's ability to gain international recognition. The delineation of constituency boundaries has been a source of tension in the Kenyan electoral process and the Kriegler Commission, which spearheaded the post election mediation process in Kenya, strongly recommended that the practice be rendered more objective and transparent. In a country such as Sudan that still must conduct a census, voter registration and delineation of constituency boundaries, each one of these steps could be a potential flashpoint for contentious disagreement among various political actors. Again, this points to the importance of impartial national institutions that enjoy the confidence of the public and all the parties, to work to mediate the multiple interests around registration and constituency boundaries.

Conflict-provoking incidents relating to the difficulty of access for candidates and voters during an electoral process are easily discernable in the pre-election period, and careful monitoring of political activities at that time can facilitate early detection of pointers to whether the election would be violence-free and successful, or not. In the case of Kenya, some candidates were unable to travel freely to all parts of the country, and pre-election messages by some parties, often spread in local languages, appealed to ethnic identification and incited fear of, and hostility towards, fellow compatriots of different ethnic origins. While diplomatic pressure from the international community was placed on the leaders of the parties to behave responsibly, inciting messages continued, and escalated dramatically with the disputed results. Greater focus on the challenges that emerged in the pre-election period and a concerted effort to address them through mediation efforts by many of the parties involved in the observation of the electoral process may have reduced the outburst of crisis that led to over 1,000 deaths.

c) Polling day activities

Given heightened sensitivities around elections, good election laws usually provide confidence-enhancing measures that contribute to civil conduct on polling day. For example, election laws in most countries provide for the secrecy of the ballot and for voters to cast their ballots free of any encumbrances. Such laws also provide for vote counting to be conducted in public view, generally at the polling site where the ballots were cast, with preliminary results announced at the same site. They would also make provisions for the announcement of official results in a timely manner. However, in some transitional societies, actions by some polling officials and party representatives violate the law and are susceptible to generating conflict.

For example, the Democratic Republic of Congo (DRC), during the historic transition elections of July, 30, 2006, election day was relatively peaceful, but as word spread around the country that the collation of election results may have been chaotic in some polling stations, tensions began to rise. To its credit, the Independent Election Commission of the DRC moved to announce partial results sooner than the initial date of August 20, thereby helping defuse some of the tension that had begun to build. In an environment in which citizens' lack trust in the election administration body, delays in the announcement of results would generate suspicions that the electoral outcome could be tampered with. This is usually compounded by the absence of independent media or other sources of credible information in most transition societies.

The probability that misconduct on polling day can generate conflict has been enhanced by modern day technology where fast communication tools such as portable phones and independent radio can relay to a nation-wide audience any unacceptable developments that may have occurred in only a few polling stations or constituencies. However, public information management is key to meeting citizens' expectations that tend to rise around results. Sometimes, the population may have greater access to information – but often still a limited understanding of the mechanics of an electoral process – this can lead to tensions as the public expect one result and may be unwilling to accept another. In many African countries where voting patterns differ among constituencies in rural and urban centers or where voting habits tend to follow ethnic and regional affiliation, the announcement of partial results, if poorly managed, can raise suspicions of tampering with the tabulation of votes. In such circumstances, it becomes extremely important to ensure that the electoral management body is proactive in its handling of public information, and is viewed as an impartial actor. With respect to preventive mediation mechanisms, having inter party committees, or agreed codes of conduct that are respected by political parties and their supporters, and consistent and responsible public information messages on polling day can help mitigate tensions.

d) Managing lingering grievances in the immediate post-election period

In a number of African countries, while election day activities can be peaceful, the announcement of official results and the adjudication of election-related disputes, or the delay in the adjudication of the disputes, have sparked conflict. Generally, it is an indicator of citizens' confidence in the independence of the judiciary that when they disagree with an electoral outcome they take their grievances to the courts and refrain from violent acts. It is therefore a mark of frustration over the non-respect of the rule of law by the election bodies or other relevant governmental entities that pushes aggrieved parties to take the law into their own hands. That may explain in part the violence that erupted in Kinshasa, the Democratic Republic of Congo in August 2006 shortly after the results of the first round presidential election were announced, as well as the heavy clashes that erupted in November after the announcement of the final results that showed Joseph Kabila defeating his political rival Jean-Pierre Bemba in the run off. By November 21, the Supreme Court building was set on fire as the court examined complaints of electoral fraud even as exchange of gunfire erupted between members of Kabila's presidential guard and soldiers loyal to Bemba. A few days after the Supreme Court's validation of the results, Jean Pierre Bemba asserted that although he did not believe the election had been fair, he would accept the announced outcome "for the greater national interest and to preserve peace and to save the country from chaos and violence."⁷ In the cases of Kenya and Zimbabwe, while the protagonists to the dispute of the electoral outcomes did not expressly call on their supporters to engage in violent acts, the poor conduct of the polls, especially the vote counting and announcement of results, compounded lingering mistrust and hostilities generated during earlier phases of the electoral process. In contrast to the experience in Kenya and Zimbabwe, a more healthy and transparent management of winner-loser relations occurred in Ghana. Sitting President Kuffour was not a candidate in the election, yet he maintained high visibility and used the 'bully pulpit' of the presidency to call repeatedly for peaceful conduct by all parties and their supporters. Despite the closeness of the final result, when election results were announced, the losing candidate accepted defeat and congratulated the winner, who in turn was magnanimous in victory. Tensions calmed down measurably as Ghanaians were pleased to continue fostering the consolidation of the country's nascent democracy.

7 "DRC: Bemba condemns poll ruling but ready to lead opposition," *IRIN News*, November 29, 2006, <http://www.irinnews.org/report.aspx?reportid=61677>

2

Impediments to mediation of election-related conflict

There is a growing realization that investments of time and human resources in mediation can avert conflict and a further deterioration of the overall political and economic well-being of a country. For example, Kenya and Ghana experienced competitive and close elections within a one-year interval and present instructive case studies on the roles of both domestic and international actors. However, while the 2008 elections were peaceful in Ghana, the 2007 elections turned violent in Kenya. The stark differences of these two examples provide important insights into the possibilities of mediation internally to prevent increase in tensions (as in the case of Ghana) and the failure of such preventive mediation in Kenya, even though the subsequent rapid regional and international response to mediate the resulting crisis mitigated the overall negative impact.

Several indicators of conflict existed in Kenya prior to the elections of December 2007. For example, use of inflammatory campaign rhetoric was widespread and was likely to exacerbate ethnic rivalries; the election commission lacked cohesion within its management structure as new commissioners had been appointed in the lead up to the elections and under contentious circumstances; there was no mechanism in place for an independent verification of election returns by non-partisan organizations; and state resources were being used for the political campaign of the incumbent. Confidence in the judiciary in Kenya is low, particularly among leaders and supporters of opposition parties; therefore, they were reluctant to seek redress before the courts when the crisis escalated.

Despite the various means by which confidence can be increased, local mediation fostered and credibility of elections enhanced, partisan self-interest of some political actors oftentimes hamper mediation efforts in election related disputes

a) Scarcity of nonpartisan domestic actors

The principal reason why it is difficult for domestic actors to intervene and resolve conflict around national election stems from direct accusations or perceptions of partisanship. Often, it is hard to find credible individuals with the power to convene who have not taken sides in the internal politics of the country or who are not perceived as favoring one candidate or the other. In some countries, efforts have been made to circumvent that obstacle by forming a broad representative body that may include religious and traditional

authorities and civic leaders to serve as a buffer between competing political forces in advance of or during the election process. This was the case with the National Council of Churches of Kenya, and the Council of Christian Churches and the Federation of Protestant Churches in Madagascar. At the same time, it is important to avoid or limit the intervention of religious or traditional leaders if their involvement would further exacerbate the conflict by reinforcing existing fault lines among the political contestants. For example, the ongoing political conflict in Madagascar is, arguably, rendered more difficult as the principal protagonists belong to different religious faiths, and seem to enjoy the backing of the organization formed by churches of their denomination. Similarly in Cote d'Ivoire, the election-related crisis around the 2000 elections also had a religious fervor that could easily have exacerbated the undercurrent of the southern Christian versus the northern Muslim divide in the country.

When local solutions are not possible, the ability to draw in third party support needs to be considered. A contribution of both domestic and international actors could be envisioned even if, prior to a full escalation of a crisis, it is not always possible to get support for external involvement.

b) Unwelcome regional and international actors

Most incumbent governments are reluctant to admit the existence of tensions or the prospects of failed elections in their home country, which makes it difficult for external actors to intervene in election-related disputes either in the pre-election or immediate post-election period. Despite new norms and standards of democratic governance adopted by regional bodies such as the African Union [with its charter, and the New Partnership for African Development (NEPAD) and the peer review mechanism], the Economic Community of West African States (ECOWAS), and the Southern Africa development Community (SADC), autocratic regimes in countries such as Zimbabwe and Mauritania are unwilling to accept mediation efforts by regional or international actors. Similarly, attempts at preventive diplomacy in Cote d'Ivoire prior to the 2000 elections, and in Guinea prior to the December 2008 coup d'état, were inhibited by an unwillingness of incumbent regimes to acknowledge the existence of tensions or flashpoints for conflict in those countries.

Identifying means by which non-state actors can play a more discreet role in advancing mediation options in such environments should be explored. However, if many of the key actors involved in the country in the lead up to elections will be closely involved in the monitoring of the elections, extraordinary steps would need to be taken to avoid the potential conflict of interest between serving as an observer with the obligation to share one's findings with the public, and being a mediator which may require less public declarations in order to maintain the confidence of the protagonists in the mediation efforts.

c) Avoiding potential conflict of interest between mediation and election monitoring

The potential for complementarities between election observation missions and mediation efforts does exist. Election observation missions – in both the pre-election period and on election day – gather useful data and insights on the political context and overall electoral process and thereby easily can identify flashpoints for potential conflict. On the other hand, mediation efforts are more likely to be successful in their mission in a given country if they have sufficient information on the immediate and remote causes of the conflict, and the role of various institutions or individuals in generating or mitigating tensions. Building synergies between election observers and mediators can be mutually beneficial to each set of actors and to the electoral and political processes of the country. The very sensitive nature of elections may require avoiding circumstances where the same individuals or organizations play both roles of observation and mediation in the same country during the same electoral cycle.

d) Security sector reform and conflict prevention around elections

Given that the security environment of a country is a major determinant in the ability of different actors to mediate should crises emerge during different stages of the electoral process, security sector reform is crucial in countries emerging from armed conflict or that may be undergoing major political transitions. Nevertheless, the timing of such reforms and their possible impact on the electoral calendar needs careful consideration to ascertain whether it is feasible to disarm and demobilize all armed groups or restructure the military prior to national elections or to hold elections within a short timeframe prior to total demobilization and disarmament and demobilization. While a cessation of hostilities is a prerequisite for peaceful elections, more effective security sector reform is likely to be sustained if undertaken by a government that has the legitimacy to govern and credible oversight bodies such as legislatures that are representative of a cross section of the country.

e) Pre-set objectives to mediate election-related conflict, and moving expeditiously on concrete steps to identify solutions to resolve election-related conflict

With the rapid escalation of the crisis in Kenya, third party mediation, through the African Union mandated Panel of Eminent African Personalities, led by H.E. Kofi Annan was put in place. The resulting arrangement — a power sharing agreement between the main contestants of the elections — has raised questions about the utility of power sharing in relation to electoral disputes in the region. The situation in Kenya was unique in that, unlike in Zimbabwe for example, all of the parties and many of their supporters realized that arriving

at a clear victor through recounting and retallying the votes, or by organizing new elections would not have been possible as some of the voting materials and records had been destroyed during the violence. Nevertheless, one of the key lessons to be drawn from the experiences of both Kenya and Zimbabwe is that power sharing should not be viewed as a panacea in mediating election related conflicts. In fact, the Kenya example highlights the importance of identifying opportunities for preventive mediation in the various early stages of the elections, in order to mitigate such a crisis.

In Ghana, in the lead up to the December 2008 elections, extensive civic and voter education took place on the need for peaceful and transparent elections; the election commission was viewed as independent and credible; and the commission had established an inter-party advisory committee to foster open and regular communications with all political parties. The inter-party advisory committee met regularly to be briefed by the election commission to resolve grievances raised by any of the parties. The committee frequently issued joint communiqués co-signed by representatives of all Ghanaian political parties calling for peaceful and transparent elections and civil conduct by their supporters. Ghanaian civil society organizations also formed a broad coalition of well trained domestic observers who monitored all aspects of the election process and conducted a quick count of election returns through a parallel vote tabulation that allowed citizens to cross check the veracity of the official results announced by the commission. The outgoing Head of State used his high offices to make repeated calls for peaceful and credible elections. In the last days of what was an extremely close election, and as a mark of confidence in the impartiality of Ghanaian courts and respect for the rule of law, the ruling party petitioned the court to forestall the announcement of official results until its grievances were heard. In other highly polarized environments, party supporters could easily have resorted to violence and street demonstrations. Significantly, the losing candidate was quick to accept defeat and to congratulate the winner who, in turn, was gracious and conciliatory in victory.

3

Main recommendations and the way forward

The above listed impediments have not dampened completely the interest and success in mediating election-related disputes. The continuum of various phases of the electoral process therefore provides viable entry points that could allow for early interventions to resolve, mitigate or obviate conflict, and some of the following recommendations could help enhance a more effective approach to election-related conflicts in Africa:

- Urging the African Union to reinforce the role and deployment of the ‘Council of the Wise’ as a tool of preventive diplomacy around elections on the continent, preferably beginning as early in the election cycle as possible;

- Strengthening independent election bodies where they already exist, and creating them in the rest of the African countries, to minimize the management of elections by partisan entities;
- Creating – or strengthening where they already exist – inter-party advisory committees that facilitate dialogue and free flow of information among political parties, and between the election management body and political contestants and parties;
- Guaranteeing the rule of law and the independence of the judiciary so as to enhance citizen confidence in seeking redress to electoral grievances through the court system rather than by violent means;
- Enacting media laws that guarantee equal access to public media for parties and candidates, and encourage ethical and professional conduct by journalists;
- Encouraging the negotiation and adoption by political parties of self-regulatory codes of conduct that promote civil behavior and acceptable conduct by candidates and their supporters;
- Encouraging involvement of broad based groups of civil society leaders – where appropriate – to support local level mediation of tensions arising from the electoral process throughout the elections – during campaigning, polling, counting, verification and announcement of results;
- Supporting greater communication and synergy throughout the electoral process between external actors supporting election observation and those that can undertake mediation processes as required;
- Enabling election authorities and civil society organizations to undertake nonpartisan civic and voter education that promotes peaceful and credible democratic elections; and
- Encouraging domestic and international organizations to conduct nonpartisan election monitoring in conformity with the adopted ‘Declaration of Principles for International Election Observation’⁸ that sets the norms and standards for effective election monitoring with emphasis on long term observers and pre-election missions before election day, as well as continuous involvement in the post-election period.

8 The ‘Declaration of Principles for International Election Observation and the Code of Conduct for International Election Observers’ was launched in October 2005 at the United Nations. It has been endorsed by 32 intergovernmental and international nongovernmental organizations that are engaged in the process of improving international election observation. http://www.ndi.org/files/1923_declaration_102705_0.pdf





