# ELECTION DISPUTE MANAGEMENT

## Practice Guide For West Africa

TOWARDS AN ACTIONABLE AFRICAN SOLUTION TO AFRICAN PROBLEM

A WANEP Publication

## About WANEP

The West Africa Network for Peacebuilding (WANEP) is a not-for-profit organisation working in collaborative peacebuilding. WANEP was founded in 1998 as a response to the civil wars that plagued West Africa in the late 1980s. WANEP has National Networks in twelve of the fifteen countries in West Africa and will soon expand to Cape Verde, Mali and Niger. Its Regional Secretariat is located in Accra, Ghana. Currently, WANEP network membership is over 450 Civil Society Organizations (CSOs) spread across its 12 national networks throughout West Africa.

This compelling need to promote credible and transparent elections informs the West Africa Network for Peacebuilding (WANEP)'s initiative to develop a Practice Guide that will contribute to the conduct of peaceful elections in West Africa. The initiative is in line with WANEP's complimentary role to ECOWAS within the framework of a standing Memorandum of Understanding to coordinate Civil Society efforts in conflict prevention in West Africa. Moreover, in consonance with the African Union (AU)'s Constitutive Act of 2002 with the undergirding principle of non-indifference as well as providing African solutions to African problems, this Practice Guide is an important resource for local, national and continental actionable response to the conduct of credible and peaceful elections.

WANEP believes that the practical application of the Election Practice Guide will contribute to the overall vision of ECOWAS and the Africa Union in promoting a stable, peaceful and democratic West Africa and the continent.

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# Acknowledgements

Election Dispute Management Practice Guide For West Africa

# Foreword

*E*lections in the recent past have triggered outbreaks of violence in many West African countries. In addition to the challenges of armed conflicts undermining human development, the conduct of elections has emerged as an exacerbating factor of intra-state hostilities in West Africa. Across the region, there is an undesirable trend in which the organisation of elections comes along with increasing anxiety and fear of political and social tensions amongst the populace and between communities and political parties. Long and unaddressed grievances over bad governance and political exclusion are now finding popular expression in the demand for the conduct of transparent elections that are free, fair and credible. Against this background, the prevention of violent and armed conflict has become the focus of the strategy of the Economic Community of West Africa States (ECOWAS) to enhance human security and promote peace and stability in West Africa. Beginning with the ECOWAS declaration of political principles, to the revised treaty and including particularly the Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security (otherwise known as the Mechanism) signed on 10 December 1999 at Lomé; and the Supplementary Protocol on Democracy and Good Governance adopted at the 25th Summit of Heads of State and Government in Dakar on December 10, 1999, ECOWAS provides leadership for a West Africa collective action in responding to and mitigating crises in the region on the basis of its guiding principles and protocols.

The lingering challenge however, is the respect and compliance regime that is required of these protocols. Whereas West African leaders of the ECOWAS community have demonstrated their resolve to hold one another accountable and ensure the application of the political convergence principles and protocols, the challenge is even more daunting in the area of ensuring that elections are organised to meet the highest standards, while meeting the satisfaction of the electorate. Though disputes are inherent in elections as a result of adversarial political competition; on no account should they become grounds for intra-state feuding, blood shedding and wanton destruction.

This compelling need to promote credible and transparent elections informs the West Africa Network for Peacebuilding (WANEP)'s initiative to develop a Practice Guide that will contribute to the conduct of peaceful elections in West Africa. The initiative is in line with WANEP's complimentary role to ECOWAS within the framework of a standing Memorandum of Understanding to coordinate Civil Society efforts in conflict prevention in West Africa. Moreover, in consonance with the African Union (AU)'s Constitutive Act of 2002 with the undergirding principle of non-indifference as well as providing African solutions to African problems, this Practice Guide is an important resource for local, national and continental actionable response to the conduct of credible and peaceful elections.

WANEP believes that the practical application of the Election Practice Guide will contribute to the overall vision of ECOWAS and the Africa Union in promoting a stable, peaceful and democratic West Africa and the continent.

*Emmanuel Bombande*
*WANEP-Executive Director*

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# Executive Summary

## Introduction:

*T*his is a practice guide on election dispute management produced for use in West Africa, but hopefully with relevance beyond the perimeter of the sub-region. The need for this kind of document must be obvious to all in light of recent developments in West African democracies. With the arrival of the democracy wave in the early 1990s, much of West Africa has ironically lived, not in the peaceful ambience usually associated with the government of the people for the people by the people, but in mortal peril, especially during the election season. Voting has come to be associated with orgies of violence, and the usual legalistic mechanisms for resolving electoral disputes have proved inadequate for ensuring that aggrieved and disenchanted people and parties do not resort to violence in articulating and pursuing their electoral positions in the event of disputed electoral outcomes. This is the problem that this practice guide makes an effort to tackle, the problem of the recourse to violence when parties are faced with unresolved electoral issues. It is a problem that become endemic in many a West African country.

The commencing premise is that disputes are good for a democracy. Through disputes the shortcomings of the democratic system are made explicit. In democracies such as those of West Africa, electoral disputes are important avenues through which such marginalized groups like women can make demands for gender-sensitive change in the electoral culture. Through disputes the opposition can stand up to the ruling incumbency and insist that the Election Management Board does the job of an impartial umpire. So disputes are not the problem. The problem is the recourse to violence in airing electoral disputes. The problem is the lack of satisfaction expressed by parties to electoral disputes when they seek redress and remedy from the election dispute management system.

This practice guide takes a broad view of the issues that are embedded in the problem of election dispute management. It briefly stakes out the historical global situation in which a return to democratic governance was witnessed in a number of countries in the West African sub-region starting from the 1990s. It uses a conflict-studies approach to unravel the clusters of issues and stakeholders that are connected with election disputes, and it treats the election cycle as a trajectory along which conflict parameters travel, arriving at bloody culmination during the electoral season if nothing is done at the earlier stages to douse tensions and transform negative energies.

*The Context of the Practice Guide:*

Governance in many a country in the West African sub-region is ostensibly democratic. But the reality, as we all know, is very far from the ideal. One way in which the truth about these democratizing states is revealed is in how they handle electoral issues and election disputes. Elections and the elective principle lie at the heart of modern-day democracy. If the electoral system is not being properly managed, then the democracy we are talking about is more or less a masquerade. The fact of the matter is that the elective principle is meant for the peaceful resolution of the struggle for power, and not to aggravate it. The opposite, unfortunately, is what obtains more often than not in our sub-region when electoral matters arise—the entire polity gets heated up to boiling point; politicians employ underhand and coercive strategies to capture power; and citizens live in fear for their lives and property. It is in this dire context that it has become imperative to reconsider the role of the Electoral Management Boards (EMBs) in West Africa, and to commence the work of strengthening our EMBs to enable them handle election disputes better without parties having to resort to violence. It is hoped that the guide will provide relevant stakeholders with basic information on how to respond to the disputes thrown up by the conduct of elections.

*Contents of the Dispute Guide:*

The guide is broken into four related sections. The first deals with background issues in the conduct of a democratic election. It starts with the identification of key stakeholders in an election process namely the election management body (EMB), political parties willing to field candidates, and the eligible ordinary citizens willing to vote and be voted for during elections. These stakeholders could be further broken into three generic groups: the primary, secondary and shadow parties. The primary stakeholders consist of the election management body, political parties and candidates, government, and the electorate. The secondary stakeholders include civil society organisations, the media, donor community and electoral assistance agencies, election monitors/observers, and suppliers/contractors. The third are shadow parties. These are stakeholders who are not readily visible but with strong interests in the electoral process especially the outcome of elections. Shadow parties are usually very powerful but difficult to identify, may show their interests in the electoral process in various ways such as heavy funding of a particular political party or candidate that will protect their interests, or even sponsoring a dispute or conflict in the internal politics of a party or in the camp of a perceived threat to the party or candidate of their interest. They must be carefully managed.

The election process involves a wide range of activities that include the establishment of the legal framework for elections; putting in place the institutional framework for the conduct of election and managing problems resulting from elections; party formation or consolidation; party primaries for nominating candidates; independence of the EMB; campaigns; balloting and counting; declaration of results, and management of disputes arising from the declared results. Any of these issues could lead to a conflict. Disputes ignored or not dealt with as and when due often have adverse effects on the future of elections.

Electoral democracy depends to a large extent on winners of elections winning freely and fairly and the losers acknowledging that the results of the elections are legitimate. Similarly, citizens' confidence that votes are cast anonymously and without coercion, and that the reported election results accurately reflect the collective will of the voters is essential. Although trustworthy elections are essential to democracy, achieving them requires balancing security, cost, and convenience. Disputes arise in an election when and

where voters and politicians alike do not have trust in the process. Of course, voters' trust in elections does not come out of the blue. It emerges from a combination of the mechanisms and procedures used to record and tally votes, and their confidence in election officials' competence and honesty. This trust can be secured through the institutional and legal framework of the election: most especially around issues of how election managers are appointed, the powers they have and how these powers are used. The key guiding principles of democratic election management include integrity, impartiality, independence, transparency, efficiency, service-mindedness, and professionalism.

The second section of the practice guide focused on the contexts and contents of election disputes. The key point made here is that disputes are inherent to elections. This is largely because the process is organized within an adversarial framework: the gains of a candidate constitute the losses of his opponent. Hence, an electoral process requires that all stakeholders exercise any of the five major kinds of power: expert, referent, legitimate, coercive and reward power. The way each of these types of power is exercised in the three phases of an election matters a lot in the determination of whether an election would be marred by disputes or not. To moderate how power is used, all stakeholders must therefore adhere to both domestic and international legal standards and best practices.

Election disputes are expressed in a myriad of ways. The commonest methods include apathy, writing of petitions, press conferences, unfavourable media reports and editorials, advertorials, peaceful protests, boycott, litigation and violent protests. The generic causes of these disputes include disorderly competition for resources, clashing values, psychological needs of groups and individuals, and poor communication strategies by any of the stakeholders. The specific factors include incumbency factor, absence of cultural and political tolerance, poor design and management of elections. Where not constructively managed, each of these could compromise the credibility of an election.

The third section of the practice guide focuses on how to manage election disputes. Five generic dispute management styles are provided. The first is avoidance/denial meaning that the problems identified by stakeholders in the electoral process are ignored and not attended to. This amounts to sweeping the issues under the carpet. This often leads to dispute escalation as those ignored or denied attention would seek other ways of expressing their grievances and this alternative action could be very devastating to the electoral process. The second handling style is strategic withdrawal which on the surface looks like avoidance (largely because nothing is done immediately). In reality, it is not avoidance. It simply refers to suspending the use of appropriate strategy to enable those responsible for the problem to adjust their attitude or behaviour whether voluntarily or in response to the action of other stakeholders already looking into the problem.

Confrontation is the third handling style. It has to do with having to use legitimate force to terminate the dispute. This approach is relevant largely when the stakeholders in the dispute are threatening to or are already using physical violence. However, this should not be an end in itself but a means to an end. It is more to provide a clement environment for using other appropriate strategies for dealing with the fundamental issues in the dispute. Third party decision making, the fourth dispute handling style, is the best known for managing election disputes. This has to do with having to take the dispute to a higher authority for adjudication. The "higher authority" with decision making power could be the leadership of a political

party, security agencies or a court of law. This approach only works when the so called third party decision maker is forthright and willing to work within the framework of strict adherence to rules of law.

The fifth handling style is known as joint problem-solving. This simply refers to a situation where the disputants agree to work together (negotiation) or are assisted by a neutral third party to work together (mediation) to deal with the dispute. This approach enables the disputants to have control over how the matter is eventually dealt with. Whatever decision that is taken is jointly owned and the implementation of such an agreement is also jointly done.

The five handling styles can be broken into two main components: the adversarial handling style and the non-adversarial styles. The adversarial styles are based on legalism – strict adherence to what the constitution and the electoral laws say. The best example of this is when disputes are handled by the judiciary. Under this kind of situation, the disputants are not directly in control of the process. Claims dealt with by the judiciary include the mathematical count of ballots; claims which inherently raise issues of fraud in the counting process; and claim which inherently raise access issues.

The non-adversarial approaches enable the disputants to deal with their problems in a more relaxing manner using negotiation, mediation and conciliation strategies. Two types of negotiation were identified in the practice guide for dealing with election disputes: the hard and the soft. In hard negotiation, both disputants seek to win and make the other party lose whereas the soft one seeks ways in which both sides could win something. The challenge is how to make the disputants provide the clement environment for ensuring that the disputes are managed in a way that could be of mutual benefit. Three types of mediators were also identify: the social network mediator whose intervention is conditioned by the fact that he is concerned member of the community where the dispute is taking place and feels morally obliged to help the disputants find a common ground. The second, authority mediator, occupies a commanding position in the network to which the disputants belong. For example a party leader could serve as a mediator in a dispute involving other party members. In this case, he is an authority mediator. The third is independent mediator who engages in mediation purely for professional reason and has to be paid for his services to the stakeholders that engage him.

Conciliation is different from either mediation or adjudication. As observed above, the mediator is a third party neutral whereas a judge has a decision making power. A conciliator on the other hand is neither a third party decision maker nor necessarily a third party neutral. Conciliation involves the third party (who may or may not be neutral) helping the disputants to restore positive relationship. His or her main job is to restore healthy communication between the disputants by carrying peace messages between them; dealing with the strong emotions that stop the parties from discussing their problems; helping to clear misperceptions; building trust and affirming the ability of the disputants to work together. To the extent that it focuses exclusively on trying to change negative attitude and behaviour, conciliation could open up opportunities for negotiation and mediation.

The practice guide also came up with two other non-adversarial intervention methods: facilitated dialogue and process promoting workshops. Facilitated dialogue has to do with a third party creating an enabling environment for election disputants to privately discuss their problems. Process promoting workshops have to do with organising workshops that would enable disputants to become conscious of alternative methods

for dealing with their problems. Both facilitated dialogue and process promoting workshop methodologies require creativity and so those seeking to use them must be properly trained otherwise they would create more problems than solved in the final analysis.

The fourth and last section of the practice guide discusses some cross cutting issues that must be taken into deep consideration by those seeking to prevent and manage election disputes at the three phases mentioned above. The cross cutting issues which was based on multi-track diplomacy include the strategic role of the security sector, civil society, business, private citizens, research and training, gender mainstreaming, religious organisation, funding institutions, and the media. The use of modern technology in the conduct and monitoring elections was also articulated. The practice guide was concluded with issues relating to early warning systems, methods for evaluating election and how to build personal, institutional and procedural credibility for the conduct of elections.

### *Using the Practice Guide:*

The practice guide is meant for all stakeholders in an electoral process: the government, election management bodies (EMBs) and all official agencies associated with the conduct of elections, civil society, donors, election monitors and observers and the like. It raises critical issues that should be captured by the strategic plans of these organisations. Specifically, the guide provides general information on contexts and contents of election disputes and how they could be managed early enough as to prevent escalation of problems. Hence, it could be used as a tool for training and retraining all stakeholders in the prevention and management of election disputes. In all, it is necessary that all those involved in the management of election disputes have personal, institutional and procedural credibility. It is hoped that a broad-ranging and generic work of this sort will be supplemented by others with specific focus, say on the roles of women in elections and election management or on the roles of youth in these areas of civic life. Supplementary guides that take on the issue on a stakeholder-by-stakeholder basis are indeed welcome to fill the intellectual and policy gaps on the management of elections and electoral disputes in our sub-region.

# Preface

*I*n order for an election to truly represent the popular wish of the people, it has to meet four basic conditions. First and foremost, it must involve more than one political party or candidate so that the people could make their independent choice on how their representatives should actually rule them. The assumption here is that where the election involves only one candidate, the elected leader would have nobody to debate state policies with or exchange ideas with in order to move the country to greater heights. This might make the ruling government to have no reason to listen to as such a political system would have no "opposition" to challenge it.

The second condition for democracy is that the competing political parties are given the opportunity to canvass for vote by having the freedom to hold meetings and to communicate with voters about their policies. Where this is impossible, new ideas and solutions will be difficult to factor into the political system. Thirdly, the electoral process must be governed by well-known rules to be supervised by the courts to ensure complaints are handled fairly. Last but not the least, the people must know about the choices they have to make during the elections: the candidates, how to vote, and why it is important to vote. It is only when all these four conditions are in place that candidates are most likely to accept the outcomes of the elections. This would also make the other countries to see the government so formed as being legitimate.

The point of departure for this practice guide on election dispute management is that indeed elections provide the opportunity for establishing legitimate governments and that democracy, peace and development are interlinked. However, violent disputes can prevent elections from playing their natural roles in the human and material development of the West African sub-region. Paradoxically, it has even been noted in many quarters that elections often lead to the recrudescence of violence as contending parties resort to all sorts of means, legitimate and illegitimate, both for the purpose of electioneering and for making their grievances known in the aftermath of a concluded election that has not brought them desired political advantages. What we need to emphasize in this preface is that violence is not an inherent attribute of any election; the electoral process is not a mechanism that automatically generates violence every time it is put into operation. Rather, it is how the electoral process is managed and the kind of political culture and attitudes obtaining in the given society that are determinative in this regard. When politicians contend for power in a zero-sum manner they create divisions in the polity or manipulate existing social cleavages, thus exacerbating tensions in the society. At the electioneering stage, what we find oftentimes is that politicians use the campaign media not for selling a political blueprint to the electorate but for casting aspersions on their rivals. What is more, they often exploit the social diversity of their societies for personal gain by politicizing ethnic and religious identities in the election season. This often sets the stage for violent conflicts which are heightened by disorderly contestation of election results. The chronicles of killings and maiming, traumatisation of the psyche, human displacement, erosion of social values, wanton destruction

of material goods, as well as other unsavoury experiences surrounding elections make many people live in fear of the electoral seasons in West Africa.

Yet, the conduct of elections remains indispensable for establishing political legitimacy in the sub-region. Managing the disputes arising from elections requires a great deal of objectivity and impartiality. In fact, this is what lends respect to the entire process in the eyes of the public; moreover, transparency in the management and resolution of electoral disputes assures those voted into power of popular support as they enter into office and proceed on the task of governance. Thus the issue of managing election disputes is critical to the attainment of democratization in West Africa. It is expected that election disputes will be managed in a timely, fair and effective manner. But there is little in terms of formalized and well drawn-out principles and procedures by which those whose duty it is to manage electoral disputes can work. It is on this basis that this practice guide makes its contribution; and the perspective here is largely informed by the dictum that it is high time Africans began to seriously dwell on how to arrive at 'African solutions to African problems' beyond making of that phrase a mere mantra invoked to conceal the fact that there are gaps in our intellectual and policy interventions on issues that are of dire concern to the survival and wellbeing of our societies.

In terms of content and choice of language, the writing of this practice guide took into deep consideration the fact that the conduct of and participation in elections involve a wide range of stakeholders: the international community that insists on elections as a source of political legitimacy, the three arms of a national government (executive, legislature and judiciary), election management bodies (EMB), security agencies, the media, civil society organizations, politicians, and voters. It is hoped that the guide would truly guide the intervention of all these stakeholders in managing the different disputes that arise in the course of an election.

The step-by-step approach adopted in the discussions and questions in the sections of the guide are to ensure that the guide plays an important role in continuing the education of all those involved in the management of election disputes in the West African sub-region and even beyond. The publication will also prove extremely useful for students of election studies who need to move beyond the ivory-tower model of knowledge production and transmission and come to grips with the realities that populate the field of practice and experience.

Organized into four parts and incorporating an apparatus of appendixes, the Practice Guide provides a range of basic things to be taken into consideration by those interested in the prevention and management of election-related disputes. Though principally directed at experienced development workers, the publication is also packaged to be of assistance to interested peace worker wanting to try their hands on making elections in West Africa free, fair and credible. The first part of the publication provides the background to the topic of election management by focusing on the political, institutional and legal framework of elections. In the second section, the manifestation, causes, types of election disputes are discussed. The different strategies for preventing and managing election disputes are the main focus of the third section while the fourth is addressed to some crosscutting issues in the conduct of elections and the management of disputes resulting from the three main phases of elections.

# SECTION 1: General Background

## Introduction

*C*ommencing in the 1990s with what has been termed the "third wave of democratization" whose impact was first felt in eastern Europe before it moved to the so-called Third World[1], multiparty democracy was re-introduced to the West African sub-region in the early years of that decade as a result of which the conduct of elections became a favoured method for constitutionally transferring power from one regime to another. Since then, the conduct of democratic elections has become a regular practice in quite a number of countries in the sub-region, and the ECOWAS Protocol on Democracy and Good Governance provides that "Every accession to power must be through free, fair and transparent elections" and declares "Zero tolerance for power maintained by unconstitutional means". [2]

Shaheen Mozaffar tracks this development as regards much of the African continent in an illuminating manner. He tells us that

> the spread of democracy in sub-Saharan Africa has endowed competitive elections with special significance. They have become the organized method of peaceful democratic transition, a salient indicator of democratic consolidation, and the principal institutionalized means for large numbers of people to participate peacefully in forming and changing democratic governments afterwards. Credible competitive elections have thus become a necessary, albeit insufficient, source of behavioral, if not attitudinal, legitimacy in Africa's emerging democracies.... This significance of competitive elections also underscores the empirical importance and the analytic challenge of electoral governance in contemporary Africa.[3]

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[1]  See Samuel P. Huntington, *The Third Wave: Democratization in the Late Twentieth Century, Oklahoma: University of Oklahoma Press, 1991; Samuel P. Huntington, "Democracy's Third Wave", in Journal of Democracy, Vol. 2, No.2, 1991, pp. 12-34; Samuel Decalo, "The Process, Prospects and Constraints of Democratization in Africa", in African Affairs, Vol. 91, No. 362, 1992, pp. 7-35; Tom Young, "Elections and Electoral Politics in Africa, in Africa: Journal of the International African Institute, Vol. 63, No. 3, 1993, pp. 299-213.*

[2]  *Protocol A/SP1/12/01 on Democracy and Good Governance Supplementary to the Protocol relating to the Mechanism For Conflict Prevention, Management, Resolution, Peacekeeping and Security.*

[3]  *Shaheen Mozaffar, "Patterns of Electoral Governance in Africa's Emerging Democracies", International Political Science Review, Vol. 23, No. 1, 2002, p. 86.*

Indeed, the halls and corridors of policymaking and academic discourse in sub-Saharan Africa are filled with talk of democratization and the electoral process. This demo-optimism[4] is however threatened once in a while by election-related disputes. This is not too surprising given the fact that definition which sees politics as a conflict process. It requires that groups compete for authority and the control of scarce resources and as Formisano[5] argues, "in the conflicts of ordinary social life, 'some persons invariably control or exploit others'". Hence, the process of election is usually associated with disputes which if not well managed could tarnish public perception of democracy and make it look like a violent game.

The conflicts that may emerge in the context of electoral contestation are experienced mostly during electioneering and voting seasons when members of the political elite have to break into different political parties to compete for power. During such a time, politicians fall back on existing fissiparous cleavages in the society as they canvass for the votes of prospective voters and this tends to heighten the tension in the system. It is during such election seasons that people outside the system, most especially members of the international community, get to know how strong or weak the state in question is. The strength of a nation is largely determined by how well it is able to handle such complex political situations.

The factors responsible for these election disputes are diverse and reside in the structures of the affected society as well as the legal and institutional framework environing the conduct of elections. These factors have been identified to include the existing socio-economic divisions in African societies arising primarily from poor governance, non-altruistic regimes, and weak institutions and institutional rules governing the electoral process.[6] As the deeper systemic and structural issues are dealt with through appropriate governance strategies, the fault lines in the conduct of elections have to be identified and dealt with as a strategy for promoting conflict prevention and management. A democracy can only be consolidated when the sole legitimate method of competing for state power is through participation in democratic institutions, and no political actor sees subversion of due process or the recourse to violence as a feasible strategy for gaining power or influencing the political process.

As Fischer remarks, "When conflict or violence occurs, it is not a result of an electoral process; it is the breakdown of an electoral process."[7] Thus elections are expected to meet international standards by being free and fair in addition to having all their aspects resting on institutional rule of law. A proper election is expected to have five core aspects: (i) preparatory activities (ii) campaigning and information dissemination (iii) voting (iv) vote counting and (v) dispute management. This practice guide relates to

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[4]  S.I. Lindberg, "Democratization by elections: A new mode of transition?", Paper presented at Department of Political Science, University of Florida, 27 October 2008.

[5]  Ronald P. Formisano, "The Concept of Political Culture", in Journal of Interdisciplinary History, Vol. 31, No. 3, 2001, p. 419.

[6]  Jeff Fischer, Electoral Conflict and Violence: A Strategy for Study and Prevention, IFES White Paper, 2002; M. Baregu, "Democracy is not enough: The legitimacy crisis and the resurgence of military coups in Africa", Paper presented at EISA's fourth annual symposium, Johannesburg, 17-18 November 2009; G. Khadiagala, "Reflections on the causes and consequences of election violence in Africa", Paper presented at EISA's fourth annual symposium, Johannesburg, 17-18 November 2009.

[7]  Op. cit. 2.

dispute management, an intervention issue that is increasingly calling attention to itself as the climax of the election process. [8]

The purpose of this practice guide is to take a critical look at the election process with a view to identifying those aspects that could generate disputes and thus highlight diverse ways for managing these disputes. However, the guide is not out to provide detailed information on election dispute management but merely seeks to generate a body of parameters for addressing election-related disputes in compliance with the rule of law. The parameters take into consideration the role of election management bodies (EMB), the courts, and civil society organizations in dispute management based on existing domestic and international legal standards. With a view to achieving this objective, the practice guide is broken into four sections: general background, causes of election disputes, management of election disputes, and cross cutting issues.

The information contained in the guide can be used as a framework for monitoring elections generally for efficiency as well as for producing specific dispute management strategies for tackling electoral disaffection in a diversity of situations.

There is a paucity of readily accessible publication on this issue in Africa. In the course of preparing this guide and collecting data from different stakeholders, some critical questions were asked by academic colleagues and friends in civil society on the management of election disputes. They wanted an answer to the questions in the practice guide. Given their relevance for improving knowledge on the management of election disputes, I have decided to include some of these questions in the guide for group discussions by those using the document.

Election disputes exist "where and when one or more electoral actors deny validation of the election process, or put under question election results or their consequences".[9] Election dispute management is defined here as the process of finding solutions to any complaint, challenge, claim or contest relating to any stage of the electoral process.

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[8]  *Violaine Autheman (with Andrian Kocerha and Keith Henderson), The resolution of disputes related to 'election results': A snapshot of court practice in selected countries around the world, Paper prepared for the Indonesian Constitutional Court workshop on "The role of the constitutional court in resolving election result disputes through a transparent adjudication process, Indonesia", IFES Role of Law Conference Paper Series, February 2004 p. 1.*

[9]  *Srdjan Darmanovic, "Electoral disputes – procedural aspects", paper presented at UNIDEM seminar on "Supervising electoral processes", organized by the European Commission through law (Venice Commission) in cooperation with The Centre for Political and Constitutional Studies (CEPC), Strasbourg, 11 August 2009 p. 2.*

# Stakeholders in Elections

Stakeholders are those individuals, groups and even organizations that have diverse interests in the electoral process. In this guide we shall classify stakeholders into primary stakeholders, secondary stakeholders and shadow parties.

## Primary Stakeholders

### *The Election management body:*

Electoral officials include all members of staff, permanent and temporary, who are constitutionally saddled with the responsibility of conducting election within a state. They are key stakeholders in any electoral process. To produce a free and fair election, the interest of staff members of the electoral commission must be taken into consideration because the success or failure of any election process largely depends on them.

To avoid disputes among this body of stakeholders, issues such as due process in the recruitment of staff, remuneration, security and values must have been settled before the conduct of an election. This build-up of agreement will not only serve to avoid dispute within the members of staff of an electoral body but also promote loyalty and professionalism.

### *Political Parties and Candidates:*

Political parties and candidates are key stakeholders in elections. They are the ones competing for public office, carrying out election campaigns, and trying to convince the electorate to vote for them. Parties and candidates are also actors that have the potential to be destructive depending on the kind of electioneering practices and attitudes they have imbibed.

### *Government:*

Whether in a presidential democratic system, with its clear separation of powers/functions, or in a parliamentary democracy that lacks such clear separation of powers, the various arms of government – executive, legislative and the judiciary – as key stakeholders in any electoral process must be carried along to minimize disputes. Dispute could arise between the government and the electoral body if the former is not carried along. Such disputes will certainly affect the success of the electoral process. The need for a smooth relationship between an electoral body and any of the arms of government is necessary because of the enormous reliance of an electoral body on the government. For instance, the budget of any electoral body is most likely going to be prepared by the relevant government ministry; electoral bodies require the full support of security agencies directly under the executive arm; an electoral body also relies on the government for transport and other logistics, and even in procurement. A frosty relationship between an electoral body and the executive may hamper the smooth release of the necessary support, which will in turn affect the success of the election. To this effect, an electoral body should strive to keep all relevant government ministries and agencies informed about its activities and consult them on a regular basis about the services and support it may require from them. The point here is that dispute is likely to arise between an electoral body and the government if the latter feels that it is not being carried along.

Similarly, dispute is likely to arise between an electoral body and the legislature as a result of the latter's oversight function on the former as well as in the process of making electoral laws, which is part of the primary functions of the legislature. Such disputes may take the dimension of the legislature using its powers to cripple the electoral body, especially as members of the legislature have a vested interest in securing re-election. Where the legislature is peopled with men and women who are mindful of the need to promote the wellbeing of their society, the electoral commission will be compelled by them to perform its duties according to due process, thus improving the productivity and effectiveness of the electoral commission. But if legislators are only thinking of how to increase their personal acquirements to the detriment of society, their activities will jeopardize the whole electoral process. Since, as has been said, the legislature makes laws, including electoral laws, and also approves the budget of the electoral body, it is only important that these important stakeholders work towards preventing the escalation of any likely disputes that may arise in the course of the conduct of elections.

The judiciary and other electoral dispute resolution bodies are key stakeholders in any election process and as such disputes should be prevented (as much as possible) between the electoral body and these bodies. Dispute may arise if an electoral body tries to frustrate the efforts of judicial agencies and their officials by not cooperating with them, especially in terms of giving them access to vital electoral materials and information that may enhance their functions and efficiency. Thus during investigations, an electoral body should cooperate with the judiciary in order to avoid a likely conflict between the two. The consequences of a conflict between the two will not be healthy for the system. It is also important that the judiciary maintains a neutral and fair-minded stance in the resolution of electoral disputes. Where judicial officials have their favourites among political disputants, they will work to thwart the process of justice, thus making a shambles of whatever good effort the electoral commission may have put into the conduct of elections.

### *The Electorate:*

Any election is about the mandate of the people who, in a genuine democracy, are the true possessors of power. An electoral body's primary obligation and services are to the people. Therefore, to avoid the emergence of disputes, which could result in the electorate losing their confidence in an electoral body and the whole electoral process, the electoral commission must always keep the electorate informed about its policies, programmes and activities. The opinion of the electorate must count. The mistake is often made that political parties, civil society organizations, the legislature and even other arms of government are institutions that represent the people and even stand for them. This has only led to the sad neglect of the broad mass of the people. It is an assumption that the electoral body must do well to avoid. Carrying the people along is the best way to ensure transparency and accountability. And that kind of approach will serve as an example to politicians and even holders of governmental power. In the emerging global consensus, electoral democracy is the yardstick for measuring the validation of governance, and for there to be such validation at all, an electorate must exist for whose benefit the whole electoral system is set up and managed. [10]

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[10]  See Thomas M. Franck, The Emerging Right to Democratic Governance", in The American Journal of International Law, Vol. 86, No. 1, 1992, pp. 46-91.

An electoral body must do all within its powers to satisfy the electorate. To achieve this goal, an electoral body should create direct channels of communication with the electorate through all available means of communication. The electoral body should make attempts at clarifying all gray areas, comments, questions and other concerns of the electorate. In essence, efforts must be made to maintain credibility and integrity before the electorate.

An electoral body should also use the media to educate the electorate on their civic rights and responsibilities, especially as pertaining to the suffrage, as well as on its programmes and activities and how they can help to achieve a free and fair election. Care must be taken to prevent dispute between the electoral body and the electorate because the consequences on the electioneering process as well as on the entire democratic system will be too costly for society.

### *The Youth:*

The youth are both members of political parties and the electorate. The decision to isolate them in the discussion here is that more often than not the youth are usually exploited by politicians to generate disputes. They are paid to fight political opponents, rig elections and prolong the lifespan of an election disputes through different forms of psychological dispositions that do not make for the cohesion of the society. On the other hand, a youth population can be used to build peace. In many countries in the sub-region the youth are being enculturated in dirty politics whereby they are compelled by force of dire circumstance to ally themselves to politicians who use them as the violent factions (so-called youth wings) of their respective parties. Some degree of alienation may also be setting in a country like Nigeria where the 2011 elections broke down in parts of the north in incidents of violence in which quite a number of members of the National Youth Service Corps, engaged as electoral officials during the vote, were killed or maimed. Considering the fact that West African countries boast youthful populations, it is imperative to get these young people interested and involved in the genuine business of elections and even election dispute management if democratization is to have a viable future in the sub-region.

## Secondary Stakeholders

### *Civil Society Organizations:*

Civil society organizations dealing with a wide range of issues – such as democratic development, women's empowerment, legal reforms, human rights, civic education, governance and rights for people with disabilities – are all stakeholders in the electoral process.[11] Regular consultations with these stakeholders will enable an electoral body to benefit from pieces of advice and information that may be relevant to strengthening the system as well as afford it the opportunity to solicit for the support of these organizations in specific ways that will contribute to the success of the electoral process. It has been noted that the sentiments expressed by the broad category of civil society organizations towards the conduct of election

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[11] *Alan Wall et al., Electoral Management Design: The International IDEA Handbook. Stockholm: Bulls Graffic, AB, 2006, p. 208.*

can serve as a barometer of the kind of electoral democracy that prevails in a given society.[12] This is because civil society organizations are eternal monitors of what is going on in the system, and they do not just confine their activities to observation mounted only when voting actually takes place. But we need to be careful not to valorize civil society beyond what obtains in actuality. A nuanced view is helpful here for it has been noted that civil society can prove to be "the site of power relations, exploitation, and conflicts that are often an impediment to democratisation". [13] It all depends on specific actors in specific civil society architectures.

### The Media:

The media, whether electronic or print, private or public, wield so much influence in any contemporary democratic society. As a stakeholder, the role of the media is central to the success or failure of any electoral process. To that effect the electoral body must make the media its ally if success is to be achieved. There should be regular positive interactions between an electoral body and the media. Accurate and timely information must be released to the media in order to keep them from misinforming the people. Care should be taken to avoid dispute between an electoral body and the media. Relevant activities that will enhance the role of the media in the success of the process should be supported by an electoral body. It is important to stress the fact the media are owned by powerful people in society and that they are often used to pursue the parochial agenda of their owners and sponsors. It is the duty of the electoral body to ensure that high standards of reporting are maintained by media organs in the election season and that media organs do not use the power of rhetoric and images to heighten tensions in the system and to incite violence that would only wreck the electoral process and not augment it in any way. As Reljic observes, "the better journalists are trained and the more technically equipped their media is, the better the prospects that they will be able to strengthen and reinforce key initiatives for politics, the economy and society".[14]



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[12]  See Andreas Schedler, "Civil Society and Political Elections: A Culture of Distrust?", in Annals of the American Academy of Political and Social Science, Vol. 565, 1999, pp. 126-141.

[13]  David M.C. Bartlett, "Civil Society and Democracy: A Zambian Case Study", in Journal of Southern African Studies, Vol. 26, No. 3, 2000, p. 431; see also Augustine Ikelegbe, "The Perverse Manifestation of Civil Society: Evidence from Nigeria", in The Journal of Modern African Studies, Vol. 39, No. 1, 2001, pp. 1-24.

[14]  Dusan Reljic, The News Media and the Transformation of Ethnopolitical Conflicts, Berghof Research Center for Constructive Conflict Management, http://www.berghof-handbook.net p. 9

*The Donor Community and Electoral Assistance Agencies:*

Donor agencies play key role in the development and sustenance of democracy and electoral assistance that make them partners to other stakeholders especially the electoral body. As a result, the electoral body should ensure that all donor requirements, including budgets, project implementation reports and financial reports, and any requests for access to inspect its activities, are met with maximum efficiency and timeliness. Efforts should also be made to prevent disputes between the electoral body and donor/assistance agencies; otherwise the shortage of fund that could arise from such disputes may have negative impact on the electoral process, especially in poor countries where such donations and assistance are germane to electoral success. However, it is important that elections in a country are not conducted merely to fulfil the external interests of donor agencies. This is what has been termed "donor democracy".[15] Where the elective principle is only but a ruse to get financial assistance from the international community, efforts will not be made to entrench the democratic ethos in a society, and the reality on the ground will be far from the appearance that is presented to the external world.

*Election Monitors/Observers:*

While election monitors have the power to intervene and rectify any anomaly during election, election observers are meant to simply observe and report what they see without attempting to intervene in the election process. Both are important stakeholders in any election and therefore play critical roles in the success or otherwise of the whole electoral process.

Efforts should be made to carry election monitors and observers along from the pre-election period to post-election time. The electoral body should endeavour to establish a communication link with monitors and observers so that their reports will reflect reality. Concerned more about the international angle to this issue, Anglin[16] commented on "the apparent ease with which the verdicts of observers can be manipulated by governments to further their partisan interests", and in this connection he commented thus

> International sponsoring agencies have drawn two lessons from their reappraisals of the role of election monitoring in Africa. The first is the need to broaden substantially the scope of their participation in the electoral process, with a view to improving practice in advance of a vote rather than simply cataloguing observed shortcomings after the event. There is more to elections than election day. As a result, external support now often includes advising on election legislation and registration procedures, posting technical experts to electoral commissions, training polling station staff, and promoting voter education among the people.[17]

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[15]  Douglas G. Anglin, "International Election Monitoring: The African Experience", in *African Affairs*, 1998, p. 474.

[16]  Ibid.

[17]  Ibid.

However, this kind of assistance is only possible when the government has empowered the electoral commission to liaise with such monitors and observers. It is often the case that cooperation is not guaranteed to monitors and observers, and it is the responsibility of the electoral body to make the government see how the electoral system and society are being short-changed when proper monitoring is not encouraged. Lack of information and proper briefing of observers may lead to distortions of information which will affect the objectivity of the report of the observers. A negative report from monitors and observers (especially international observers) could have negative effects on the credibility of the whole election process. If the electoral body believes strongly that the monitors/observers' report did not in any way reflect the reality on ground, this may result in dispute. To prevent this kind of scenario, the electoral body must maintain an open door policy with monitors and observers.
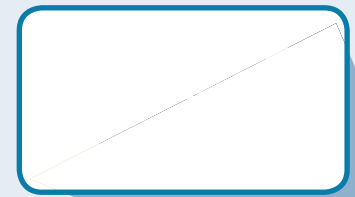
### Suppliers/Contractors:

An electoral body relies on many suppliers (contactors) for products such as vehicles, equipment, technology, ballot materials, and services such as consulting, cleaning, security and transport. To enhance the effectiveness and efficiency of an electoral body, good working relations should be maintained with these suppliers. This will prevent such embarrassments as suppliers not keeping to time and not meeting deadlines or supplying substandard products and services.

To maintain good relations with its suppliers, an electoral body should ensure professionalism, transparency and efficiency in the invitations for expressions of interest to supply goods and services; share information with suppliers and prospective suppliers on the its values, such as strict adherence to integrity, dignity, professionalism and efficiency; pay suppliers within the deadline agreed; and organize suppliers' information forums for discussing suppliers' concerns and formulating agreed solutions.

### Shadow Parties

These are stakeholders who are not readily visible but with strong interests in the electoral process especially the outcome of elections. Shadow parties are usually very powerful but difficult to identify, may show their interests in the electoral process in various ways such as heavy funding of a particular political party or candidate that will protect their interests, or even sponsoring a dispute or conflict in the internal politics of a party or in the camp of a perceived threat to the party or candidate of their interest. In an extreme case, shadow parties may sponsor internal insurrection to destabilize a government they perceive as constituting a stumbling block to their goals.

A shadow party may be an individual, a group of people with similar interests, organizations such as multinationals, leaders of neighbouring countries interested in regime change or perpetuation of a ruling government. They do not operate directly but infiltrate other actors in the electoral process, who in turn, do their biddings. Many electoral disputes are orchestrated and sponsored by shadow parties. The clandestine nature of their identity and activities contributes to making them bold in the pursuit of their interests. They always use either the primary or secondary actors/stakeholders to achieve their aims. When such aims or interests are threatened they resort to sponsoring violence. In a nutshell, many shadow parties have no

qualms in acting like spoilers, and so may constitute the chief opponents of the peaceful transformation of violent energies in the aftermath of disputed electoral outcomes.[18]

But shadow parties may not just represent a negative trend. Some shadow parties are also interested in the peace and stability of an electoral process if their interests are better protected in such an environment. The central argument here is that shadow parties are only out to promote and protect their interests.

Attention must be paid to these actors by electoral dispute managers when attempting to get to the root of electoral violence. Attempts could be made to reach them through other actors in the primary and secondary category, since a shadow party can only act through actors in any of the two aforementioned categories. Reaching out to shadow parties ensures that the root of electoral disputes is unravelled and appropriate dispute resolution applied.

## Election Process and Phases

An election is basically a decision-making process in which the people decide on who leads them. It can occur for a variety of reasons, including regular electoral cycles, resignation of political office holders, death of a political leader, disqualification of a candidate from office, etc. The process involves the following main stakeholders:

» An election management body (EMB);
» Political parties willing to field candidates
» The eligible ordinary citizens willing to vote and be voted for during elections

The election process depends largely on the society in question. Is it just emerging from war or a period of autocratic rule? Does it have an existing experience of electoral democracy? Is the state interested in joining the comity of nations that are committed to the democratic ethos in all aspects of political life? In all, the following processes are salient in societies practicing electoral democracy:

» Establishment of the legal framework for elections
» Establishing the institutional framework for the conduct of election and managing problems resulting from elections
» Party formation or consolidation
» Party primaries for nominating candidates
» Independence of the EMB
» Campaigns
» Balloting and counting
» Declaration of results
» Management of disputes arising from the declared results

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18  See Stephen John Stedman, "Spoiler Problems in Peace Processes", in International Security, Vol. 22, No. 2, 1997, pp. 5-53.

All of these processes can be broken into the three phases of an election in the following way:

*Table 1: Election Phases*

| PHASES | ACTIVITIES |
|---|---|
| PRE-ELECTION | Political framework<br>Institutional framework<br>Legal framework<br>Appointment and tenure of EMB<br>Party formation and consolidation<br>Voters registration<br>Party primaries<br>Campaigns |
| ELECTION | Balloting and counting, monitoring and observation |
| POST ELECTION | Management of election results disputes<br>Audit and evaluations<br>Voters list update<br>Institutional strengthening and professional development<br>Legal reform<br>Records archiving and management<br>Preparation for future elections |

All of these activities and processes carry the potential for the emergence of disputes and these disputes are best dealt with as they occur. Disputes not dealt with or delayed often have adverse effects on the next stage of the election.

What Table 1 (above) suggests is that there are more disputes to manage before the real election-day. If these disputes are not constructively managed, the election-day activities are most likely to go wrong and the post-election environment might be the one in which people begin to see elections as a curse rather than a source of national development. This is the kind of picture that Paul Collier was trying to paint in his latest book.[19]

Electoral democracy depends to a large extent on winners of elections winning freely and fairly and the losers acknowledging that the results of the elections are legitimate. Similarly, citizens' confidence that votes are cast anonymously and without coercion, and that the reported election results accurately reflect the collective will of the voters is essential. Although trustworthy elections are essential to democracy, achieving them requires balancing security, cost, and convenience. Disputes arise in an election when and where voters and politicians alike do not have trust in the process. Of course, voters' trust in elections does not come out of the blue. It emerges from a combination of the mechanisms and procedures used to record and tally votes, and their confidence in election officials' competence and honesty. This trust can be secured through the institutional and legal framework of the election and the extent to which election management organizations choose to operate within the ambit of the rule of law, employing staff members that have integrity and the required skills.

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19  *Paul Collier, Wars, guns and votes: Democracy in dangerous places, London: Vintage Books, 2010.*

As regards the trust of politicians in the electoral system, this is more a matter of the kind of political culture and psychology that is regnant among the political class. Ideology plays a role here too, that is, taking ideology in the sense in which Gabriel Almond defined it, namely as "the systematic and explicit formulation of a general orientation to politics".[20] When the political class has a general orientation to politics that revolves around the winner-takes-all or zero-sum principle, then they would resort to violence and other underhand means of capturing the mandate. But this is also a matter of how the electoral body relates to the political class. If integrity and professionalism are not the hallmark of this relationship, then trust will be obviously compromised. The electoral commission is not just an agency that helps society to organize periodic elections. It is a big player in the field of the formulation of a political culture. Its roles in this regard go beyond Election Day and make up a continuous stream of activities.

## The Political Framework of Election

The political environment of a country matters a lot in determining whether the elections would be free, fair or violence-free. In this respect, there are four broad categories of political environments in which an election can be conducted:

   i.   society experiencing democratic opening,
  ii.   a society under transition,
 iii.   a society in which democracy is being consolidated.
  iv.   a society where the democratic space is dwindling but only conducting elections to please the international community.

In a society experiencing democratic opening, there is an ongoing dialogue or efforts towards embracing electoral democracy. Two major kinds of societies exist in this respect. There are those societies in which elections have never been conducted but that are now venturing into the conduct of election. Libya might be a good example of this in years to come. That depends much on the outcome of the ongoing "Jasmin revolution" in the country. In such a society, the people may be very anxious to cast their votes but the agents of the old order might constitute themselves into a community of "spoilers". The legal framework for the election might be problematic. Those responsible for the conduct of the election might also not have sufficient experience on how to ensure a smooth and decisive process. When sufficient training and education are not provided to staff of the electoral commission, far-reaching disputes could arise. The truth of the matter is that inept electoral officials may be the cause of electoral crisis when there ought to be none. First elections in such a society are thus a test not just for the political class but also for the electorate and the electoral commission alike. It is often in this context that people make the argument that "current imperfections are transitional".[21] But we need to be on our guard here before such "imperfections" become entrenched as the norm of electoral culture.

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[20]  Quoted in Ronald P. Formisano, op. cit., p. 396.

[21]  Tom Young, op. cit., p. 306.

We also have societies returning to peace from war.[22] Such societies are usually characterized by different forms of militant elements of every stripe, and these elements have to be re-oriented for life in an electoral democracy. For example, it took quite a great deal of time for the child soldiers in Liberia and Sierra Leone to be demobilized and made to be interested in electoral democracy. The arms kept by some of the former combatants could play a negative role in the season of elections, especially where the electoral authorities are perceived to be weak or biased.

Societies transiting from military to civilian rule also have their own problems. It might take some time for the military elite to adjust to the imperative of civilian control of the military. The retired military elite in such a society might also want to exert too much influence on the civilian political parties that accommodate or tolerate them as members. In other words, the former military personnel can generate problems in a young electoral democracy. All of these problems are easier prevented when the concerned state has strong legal and institutional frameworks for electoral democracy. In the absence of such institutions, the tendency is for the former soldiers, who run and hold the electoral system to ransom, to pretend to be adhering to the democratic ethos, whereas the true system is some form of pseudo-democracy.[23]

The second category of societies, namely those transiting to a democratic dispensation, would of necessity be pursuing an agenda in which the goal is to entrench the regular conduct of elections. While this agenda can prevent conflict by offering potential combatants the opportunity to compete for power or express grievances peacefully, the process also carries the risk that the high stakes of an election cycle might prompt political actors to turn to violence in defence of their interests. A society remains under this phase in the growth of its democracy until several interrupted elections have been conducted; most especially when elected civilian regimes has successfully transferred power to the "opposition", namely a regime different from that of the political party that started the transition programme. This is often a tough battle; only few ruling regimes allow themselves to be so "overthrown". Ghana got accolades from the rest of the world for making this possible during the democratic election she conducted in 2010 as a result of which power was smoothly transferred to the opposition.

Democratic consolidation starts at the point when a people have totally become accustomed to the tradition of conducting regular elections and when the people begin to see elections as the only methods of changing power constitutionally. Ghana would enter this stage in the next election if the achievements of the 2010 elections could be repeated. One important issue here is the source of the impetus for transition. When it is driven more by external forces, e.g. donor nations and their agencies, lip-service to the electoral principle becomes the means by which a regime gains international approval while things remain much the same

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[22]  *See Terrence Lyons, "Peace and elections in Liberia", in Krishna Kumar (ed.), Post conflict elections, democratization, and international assistance, Boulder, Co: Lynne Rienner, 1998; Roland Paris, At war's end: Building peace after civil conflict, Cambridge: Cambridge University Press, 2004; Terrence Lyons, "Implementing peace: The role of post-settlement elections", in Stephen John Stedman, Elizabeth Cousens and Donald Rothchild (eds.), Ending civil wars: The implementation of peace agreements, Boulder, Co: Lynne Rienner, 2002 pp. 215-235; Edward D. Mansfield and Jack Snyder, "Democratization and the danger of war", International Security, 20, 1, 1995 pp. 5-38.*

[23]  *This has become a real issue in scholarship and policy circles. See Linda Kirschke, "Informal Repression, Zero-Sum Politics and Late Third Wave Transitions", in The Journal of Modern African Studies, Vol. 38, No. 3, 2000, pp.383-405.*

or even worse in the internal political realm. In transiting societies, we need to pay close attention to how "relations between the regime and the opposition subsequently have defined the potential level of risk which a democratic system represents for the government". [24]

The growth of democracy in many developing nations of the world does not take the smooth stages identified above. Cases of "democratic backsliding" are noticeable in a number of situations. The scenario usually plays out thus: A society encounters an opportunity of democratic opening as Nigeria did in 1999. The military returned power to civilians in 1999 and the transition agenda has continued since then. But all the elections since 1999 in the country have been associated with violence suggesting that the country is yet to enter into the stage of democratic consolidation but rather is stagnating in the quagmire of transition. However, this may seem like a simplistic reading of the events. It is true that the 2003 and 2007 elections were a disgrace to the elective principle. But the aftermath of those mangled elections did not come anywhere near the violence witnessed in the aftermath of the 2011 election which was ironically much better organized in terms of the voting process.

The last category, namely the society where the democratic space is dwindling but only conduct elections to please the international community, are often countries in which democracy is considered to have been firmly rooted but which in point of fact and reality do not have a true democracy. A good example of such countries in Africa is those in which the leadership has been in power for several decades. One of the latest strategies for promoting such pseudo-democracies in Africa is to have the constitution of the country changed so as to enable the ruling government to remain in office for as long as it wants.

## The Institutional Framework of Election

Election is both a political and human right activity. It is necessary at this point to clearly establish its institutional and legal framework as a way of establishing the context within which disputes could arise in the process. Shaheen Mozaffar has averred that 'To democratize is to craft institutions, the set of rules that structure strategic interactions and shape political outcomes'.[25] Every sovereign state entrusts the management of its election to a formal institution duly furnished with some powers and responsibilities under the law. Such a body is called different names in different societies: "Election Commission", "Department of Elections", "Election council", Election Unit" or "Election Board". For convenience the agency that is so empowered to oversee the conduct of elections is generically referred to in this Practice Guide as "Election Management Body" (EMB), although now and then some of the other synonyms are used to avoid the tedium of repetition. The sole purpose of an EMB is to manage elections with particular focus on the following elements:

» determining who is eligible to vote;
» receiving and validating the nominations of electoral participants (for elections, political parties and/ or candidates);
» conducting polling;

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[24] Ibid., p. 384.

[25] Op. cit. p. 87.

» counting the votes; and
» totalling the votes,
» making national or regional electoral policies;
» planninelectoraservices;
» traininelectorastaff;
» conductinvoteinformation/educatioancivieducation;
» thdelimitatiooelectoradistricboundaries;
» thplanninanimplementatiooelectoralogistics;
» thidentificatioanregistratioovoters;
» thdevelopmenanmaintenanconationaelectoraregister;
» thregistratioopoliticaparties;
» thregulatioofinancinopoliticaparties;
» politicapartpre-selectionoprimaries;
» regulatinthconducopoliticapartieancandidates;
» regulatinthconducothmedidurinelections;
» regulatinopiniopolls;
» traininpoliticapartiesancandidatespolwatchers;
» thaccreditatioanregulatioothconducoelectioobservers;
» thannouncemenancertificatiooelectioresults;
» thadjudicatiooelectoradisputes;
» threvieanevaluatioothadequacothelectoraframeworanthEMB'owperformance;
» advisinthgovernmenanlegislaturoelectorareforissuesand
» participatiniiinternationaelectoraassistancservices [26]

An EMB can be a stand-alone institution or various bodies allocated with different aspects of the duty of conducting an election. The system of government in a country could also affect the number of EMBs in the society. For example, Nigeria has two types of EMBs: the Independent Electoral Commission (INEC) at the national level and State Independent Electoral Commissions (SIECs) at the state level. The former conducts both presidential and gubernatorial elections while the latter conducts elections at the local government level. In Lithuania, one EMB conducts presidential elections and another conducts parliamentary elections.

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[26]  *Alan Wall et al., Electoral Management Design: The International IDEA Handbook. Stockholm: Bulls Graffic, AB, 2006, pp. 63-64.*

## Election Management Models

There are three broad electoral management models: (i) independent model (ii) government model and (iii) mixed model.[27]

*The independent model:*

This is the commonest (at least in name) in democratizing societies in the world. This model requires that the EMB be institutionally autonomous of the executive branch of government. It must have and manage its own budget and not be accountable to a government department beyond the usual parliamentary and judicial control of some of its activities. Some developing countries formally announce their commitment to this model by adding the word "independent" to the name of their EMBs. Countries practicing this model in West Africa include Burkina Faso, Liberia, Ghana and Nigeria.

*Government Model:*

This model involves the election being organized by the executive arm of government through a Ministry (most especially the Ministry of the Interior) and/or through local government authorities. Such a body, most especially at the national level, is answerable to a Minister.

*The Mixed Model:*

This involves a combination of the two models. There are usually two componential EMBs and dual structures: (i) an independent EMB that formulates policies, monitors and supervises elections and (ii) an implementation EMB that is domiciled within a State department or local government. The latter organizes an election while the independent EMB provide oversight functions that help to democratize the system. Countries using this model in West Africa include Mali, Senegal and Togo. The role of the Constitutional Council can be explained within this framework. The Council has the power to tabulate and declare results and can be presented as a component of the independent EMB within the mixed model.[28] In Chad, the Constitutional Council has powers over referendums only and not elections. In Mali, elections are organized by the Ministry of Territorial Administration but both the Independent National Electoral Commission and the Constitutional Court tabulate election results. In this case, three systems exist: one is governmental and two are independent.[29]

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27  For detailed information on models of election management bodies in West Africa see Hounkpe, Mathias, and Ismaila Madior Fall, Electoral Commissions in West Africa: A comparative study, Abuja: Friedrich-Ebert-Stiftung Regional Office In collaboration with ECOWAS Electoral Assistance Unit ECOWAS, 2011; Fall, I.M., Hounkpe, M., Jinadu, A.L., and Kambale, P. (2011), Election management bodies in West Africa: A comparative study of contribution of electoral commissions to the strengthening of democracy, Dakar, Senegal: Open Society Initiative for West Africa.

28  Alan Wall et al., Op. cit., p. 8.

29  Ibid.

## Appointment of Election Managers in West Africa

Whether or not the results of an election would be seen to be legitimate depends largely on how much the electoral commission is perceived to have been neutral. Hounkpe and Fall presents two contending methods for dealing with this issue when constituting an electoral commission:

> Either a deliberate consideration of the political dimension, with the risk of partiality which is expected to be averted precisely through a balanced representation of political forces;
>
> Or an exclusion, in principle, of any political consideration, which is manifested not only in the exclusion of political parties in the selection of members of the Commission, but also in the demand for non-partisan affiliation of the members to be appointed into the Commission.[30]

The membership of electoral commissions across the West African sub-region tries to respond to these two options in different ways as shown in the table below:

*Table 2: Membership of Electoral Commissions in West Africa*

| Country | Membership of Electoral Commissions |
| --- | --- |
| Burkina Faso | The INEC is made up of 5 members proposed by the party in the majority, 5 members proposed by the opposition parties, 5 members by civil society organizations (CSO) among which 3 are proposed by religious organizations, 1 by traditional rulers and 1 by associations for the defence of Human Rights and freedoms. |
| Niger | No fixed number of members due to the fact that this number depends on the number of the political parties legally recognized and fielding candidates for each type of election. The Commission is led by a Magistrate of at least grade II elected by his peers. Where there is no Grade II Magistrate, the president of the country may appoint by Decree any person known for his impartiality, competence and integrity after consultation with political parties. The ordinary members are appointed from a wide spectrum of government establishments and civil society. |
| Benin | Members of the Autonomous National Electoral Commission (ANEC) are officially appointed by the president upon the proposal of government, parliament (quotas allotted proportionally according to the size of the political parties in the National Assembly), and civil society covering all socio professional bodies or associations. |
| Cote d'Ivoire | The Independent Electoral Commission (IEC) comprises members appointed also by presidential decree, upon proposals by Parliament, Institutions and various Ministries, movements that took part in the 2002 rebellion (on exceptional basis until the next general elections) as well as by political parties. |
| Mali | Political stakeholders are also involved in the appointment of members of the Independent National Electoral Commission (INEC), since the majority party and the opposition are both allowed to make proposals in this regard. Civil societies also have their representatives on the Commission. |

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[30]  *Mathias Hounkpe and Ismaila Madior Fall, Electoral Commissions in West Africa: A comparative study, Abuja: Friedrich-Ebert-Stiftung Regional Office In collaboration with ECOWAS Electoral Assistance Unit ECOWAS, 2011 p.11*

| Country | Membership of Electoral Commissions |
| --- | --- |
| Guinea Conakry | Has tripartite composition of the INEC with 10 representatives from the majority party, 10 representatives from opposition parties, 3 representatives of civil society and 2 representatives from Government. |
| Guinea Bissau | The National Electoral Commission of Guinea Bissau (NEC) has a composition that is almost similar to that of Guinea Conakry including representatives of political parties and civil society organizations. It has an executive secretariat established by Parliament (comprising one Chairman, one Vice chairman, one Executive Secretary and two Deputy Executive secretaries), a representative of the president of the country, two representatives of government, a representative of each of the political parties or coalition of political parties with an appointment based on the political configuration of parliament, a representative of the national communication council and a representative of each of the candidates at the presidential election. |
| Togo | Members of the Togo INEC are appointed by Parliament. Following the Comprehensive Political Agreement, the number of members from the opposition was two times higher than that of the ruling government, however , the opposition and parliamentary majority now have (05) members each . Contrary to what obtains in most countries in the sub region political parties outside parliament have three (03) representatives elected by Parliament and the government appoints one member. |
| Cape Verde | The Cape Verde Electoral Commission, called National Election Commission (NEC) is made up of five (05) members. Its members are elected by members of parliament through secret ballot with two third (2/3) majority. No reference is made here to the political configuration of the Parliamentary Institution or to the general national political scene. This is for the simple reason that in Cape Verde, members of the NEC do not represent political parties but are expected to enjoy the confidence of a large political force represented at the National Assembly. It must be added that up until now, although no reference has been clearly made to the need to take into consideration the political configuration of the parliament in the choice of members of the NEC, the opposition has always been taken into consideration (even when the majority has only 2/3 of the votes) and it does happen that the Chairman of the NEC is one of the members appointed by the opposition. |
| Senegal | Members of the INEC are independent minded persons but must be of Senegalese nationality, and above all, known for their political neutrality. The obligation on the President of the country is to choose members of the INEC after consultations of Institutions, associations or organizations such as those of lawyers, university lecturers and human rights advocates. Senegal is, by every empirical standpoint, seen as opting for a "non-politicized INEC". |
| Liberia | The NEC (National Electoral Commission), which is an independent public body, is made of five (5) members: one Chairman, one Vice chairman and 3 members called Commissioners. The president of the country appoints, with the consent of the Senate, members of the NEC to their respective posts for a period of 7 years. To become member of the NEC of Liberia, one needs to be at least 35 years of age and, going by what obtains in the composition of the Electoral Commissions of other countries, meets the criteria of good morality and probity. It is also necessary to add that members of the Commission must not belong to or be affiliates of a political party, and that two members should not come from the same county. The prohibition of affiliation extends to all employees of the Electoral Commission. |

| Country | Membership of Electoral Commissions |
|---------|-------------------------------------|
| Sierra Leone | The President appoints the members and the National Assembly ratifies. All persons who, during the last two years preceding the presentation of their candidatures to the Commission, were candidates at the legislative elections, occupied a post in an organization which supported candidates at the legislative elections, supported candidates in the local elections, or occupy a post of responsibility in the public service, are not eligible. |
| The Gambia | Like in the case of Sierra Leone, politically stained individuals are prevented from participating in the electoral body. |
| Nigeria | The membership of INEC is appointed by the President and sent to the National Assembly for approval. Members must be men and women of impeccable character. |
| Ghana | Members of the Ghana Electoral Commission are appointed by the President of the country ''in consultation with the council of state''. |

*Source:* Compiled from Mathias Hounkpe and Ismaila Madior Fall, Electoral Commissions in West Africa: A comparative study, Abuja: Friedrich-Ebert-Stiftung Regional Office In collaboration with ECOWAS Electoral Assistance Unit ECOWAS, 2011 pp. 11-28 (available online: see http://www.agora-parl.org/sites/default/files/FES_Electoral_Commissions_in_West_Africa_A_Comparative_Study.pdf

None of the above methods is infallible but the most important thing to note is the integrity and credibility of the electoral managers and the process of such appointment. Given that the process of appointment and credibility of electoral managers are sources of disputes in the electoral system, care must be taken when considering the appointment of election managers. Some of the factors that should be taken into consideration may include the following:

1. credibility and integrity of appointees;
2. impartiality and neutrality of appointees;
3. transparency of the process;
4. the need for checks and balances;
5. gender mainstreaming;
6. promotion of electoral participation by opposing political parties;
7. professional networking capacities and political experience, etc.

One key issue that came out of the foregoing is that though the political leaders and parliaments have the power to appoint members of the Commissions, there exist some procedural checks in all cases towards limiting arbitrariness in the appointments. These are good conflict prevention strategies. It goes without saying that when due consideration is exercised in appointing election managers, and when transparency is brought to bear on how this is done, the risk of dispute will be reduced in no small measure. But it is one thing for the electoral commission to be properly constituted and for the commission to act in a manner that could compromise the integrity of the election.

## Process of election administration

The legal provisions should guarantee an objective, independent, unbiased and effective administrative structure for the conduct of elections. This involves paying careful attention to the following issues: appointment, remuneration, duties, powers, qualifications and command structure of electoral staff. Efforts must be made to shield the staff of the EMB at all levels from bias, victimization and political pressure. Whatever type of electoral administration selected by any state, whether a hierarchy headed by a Chief Electoral Officer or an Electoral Commission with fair partisan representation, efforts should be made to retain neutrality and objectivity. Regardless of the structure, the legal provisions should insulate electoral administration from favouritism or corruption. Requisite training should be given to all election officials. All electoral processes should be conducted and seen to have been conducted in a very transparent manner. The provision of logistic support is very crucial in the connection. An EMB needs to have the right kind and quantity of logistics for it to meet deadlines and implement the electoral timetable effectively.

### *Delimitation of Constituency:*

The international norm of equal suffrage should be respected when identifying electoral districts and boundaries. There should be fair constituency-delimitation procedures that will take into account a range of information, which may include available census data, territorial integrity, geographical distribution, topography, among others. The distribution of polling stations should be done in such a way as to guarantee equal access within each constituency.

### *Voter Registration:*

The registration of voters or electors should be carefully constructed to ensure fairness and effectiveness of provisions concerning voter qualifications, and residence requirement. Election lists and registers must be made available to interested parties and the means provided for challenging those documents. Measures to prevent double voting (for example the use of indelible ink) and voting by unqualified persons must be put in place. Attempts should be made at encouraging enfranchisement by making sure that discriminating factors are limited. Procedures should be established for accommodating broad participation and should be very simple to avoid their becoming barriers against otherwise qualified persons. The task of ensuring that underage voters are not on the voters list is a task not just for the EMB but for society as a whole. In a society where births are not compulsorily registered and where birth certificates can be easily procured through the agency of lawyers and magistrates, or even forged, underage voting can only be curbed when the people of a community become participants in the required policing. The EMB will have to embark on sensitization on this issue, and all other such issues as double voting. The effectiveness of its campaign in this regard will be measured by the level of decrease in such incidents as witnessed over time.

### *Process of Nominations (parties and candidates):*

Legal provisions should guard against unfair advantage being given to government supported candidates, or candidates with incumbency powers. What makes a candidate qualified to run for office and what makes a would-be candidate not qualified must be clear and non-discriminatory on any ground (e.g. sex, race or ethnicity, class). Any disqualification should be subjected to independent review.

Political parties should be allowed to carry out their political activities within the ambit of the law. There should not be restrictions against opposition parties, and whatever applies to one party in terms of regulation by the EMB should apply to all the others. There should be protection under the law for party names and symbols. The law should clearly establish procedures for designation of party agents, nomination time, place requirements, and campaign financing. The electoral schedule should also provide enough time for campaigning and public enlightenment efforts by any of the parties or candidates.

*Polling, Tabulation and Reporting:*

Detailed provisions regarding the form of ballots, the design of ballot booths and voting compartments and the manner of polling should be clearly stated. These provisions will aid in the conduct of free and fair elections as well as protect the process from fraudulent practices and respect the secrecy of the vote.

Ballots should be worded with absolute clarity and be identical in all languages. Ballot format should also take into account various levels of literacy in the country. Proxy and absentee voting provisions can be designed to encourage the broadest possible participation, without compromising electoral security. Voters with special needs including the disabled, the elderly, students, workers, conscripts (including migrant workers out of the country) foreign-service personnel and prisoners who have retained voting rights, should be accommodated.
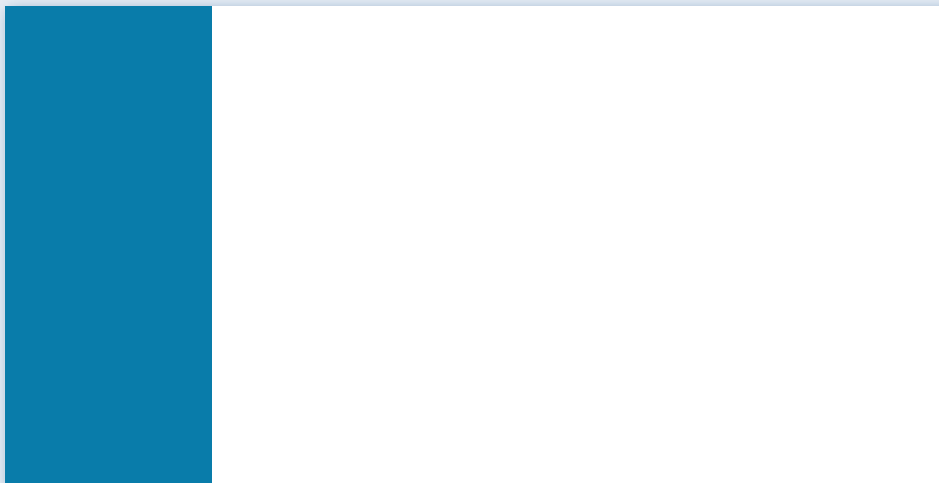


Each polling booth should have sufficient quantities of voting materials. Polling personnel need to provide clear guidance in admitting and identifying qualified voters. Permissible questions to be put to voters at polling stations should be clearly set out by statute and be asked in such a way as to prevent voter intimidation, abuse of discretion, or discriminatory application.

The vote counting process should be open to all voters and party agents at the polling centre. Every ballot paper, whether used or not, must be systematically accounted for. The processes for vote counting, verification, reporting of results and retention of official materials must be secure and fair. Lastly, alternative, independent verification procedure such as parallel vote tabulation can be a valuable measure contributing to public confidence in and acceptance of the outcome of polling.

*Complaints, Petitions and Appeals:*

Every election legal framework should provide for the rights to contest election results and for aggrieved parties to seek redress in a court of law or other bodies that may be established for that purpose. The process should set out the scope of available review, procedures, and the powers of the independent judicial body saddled with such responsibility. Where there are multiple levels of review these should be described as well.

The law should also set out the effect of irregularities on the outcome of election. Anyone alleging a denial of their individual voting or other political rights must have access to independent review and redress.

*Respect for Fundamental Human Rights:*

During elections, basic human rights such as freedom of speech, freedom of opinion and ideas, information, assembly, movement and association must not be interfered with. The atmosphere should be one that respects human rights and one that is devoid of all intimidating factors.

There should be a repeal or suspension of all laws that may hinder free political participation. Similarly, emergency laws or other legislations restricting fundamental rights should either be repealed or suspended. Extraordinary measures must not be imposed unless strictly required by the exigencies of the situation and must not be calculated to corrupt or unnecessarily delay the political process.

There must be utmost respect for a wide range of human rights as enumerated in the United Nations documents such as the Universal Declaration of Human Rights, International Covenants on Civil and Political Rights, Economic, Social and cultural Right, among others.

*Offences, Penalties and Maintenance of Order:*

The electoral legal framework must also protect the political process from all forms of illegality and corrupt practices, some of which include official misfeasance, obstruction of the voting process, undue influence on electoral officials, impersonation, intimidation, bribery, and corruption. Prosecution procedures and penalties must respect international standards on human rights in the administration of justice.

While it is important to maintain peace and order at polling places, efforts should be made to balance the potential intimidating effect of security officials and other agents ensuring the maintenance of peace and order. The task of maintaining order at polling stations should be delegated to police officers trained for the specific purpose. Civil and criminal liability should be imposed for acts of misfeasance, nonfeasance and malfeasance by election officials.

*Media Access and Regulation:*

Another important focus of the electoral law is the guarantee of fair media access to candidates and parties. This is especially evident where the major information media are government-controlled. Media regulations should provide safeguards against political censorship, unfair advantage enjoyed by incumbents and ruling party candidates and unequal access during campaign period.

Fair media access refers not just to equality of media time and space allotted but also attention to the hour of broadcast (i.e. prime-time versus late broadcasting) and the placements of printed advertisements (i.e. front page versus back page). Fair media use refers to responsibility on the part of all persons or parties delivering messages or getting information across through the mass media. They must adhere to agreed standards of truthfulness and professionalism as well as abstain from making false promises or building false expectations in their media profiling of candidates and parties.

A valuable means of guaranteeing fair and responsible broadcasting during election periods is to establish an independent body charged with monitoring political broadcasts. Its purview will have to include the broadcast of civic education programmes and the monitoring of media time allocation to various political parties, as well as receiving and acting upon complaints regarding media access, fairness and responsibility. Depending on the level of democratization already achieved within the polity, this function could be carried out by a representative transitional body, by the electoral administration, or even by a separately constituted media commission.

Agreement on a code of conduct can partly be used in securing responsible electoral broadcasting and publication in the media. Such codes may be preferable as a method of media regulation to legislative or governmental action, which might raise the issue of impermissible censorship and interference with the human rights of the freedom of information and expression.

### *Public Information and Voter Enlightenment Programme:*

Public enlightenment and voter education should be funded and administered by a non-partisan group or body. Such campaigns should be objective and neutral to the extent that that is possible. This is very important for populations with little or no experience with democracy. The public should be well informed as to where, when, and how to vote, as well as on why voting is important. They must be confident in the integrity of the process and in their right to participation in it.

The process will be enhanced if there is available literature published in the national languages to educate the population on civic education. Multimedia methods should be employed to provide effective civic education to people with various levels of literacy. Voter education campaign should extend throughout the territory of the country, including to rural and outlying areas.

### *Observation and Verification:*

Representatives of political parties and candidates should be allowed to make observation and verification of election preparations, voting and counting. This should also be supported by the presence of non-partisan election observers from national and international non-governmental organizations. Public confidence in the electoral process is retained through such strategies of transparency.

If observers are to be invited, their presence must be clearly allowed by the electoral legal framework. The procedures of their observation activities and the role they are to play in the electoral process should also be clearly described and explained in public media. Election observers should be afforded free movement irrespective of where they are drawn from.

A sufficient number of observers should be allowed at each polling station, and their activities should be effectively coordinated. Observers should not join the process midstream but rather should be involved from the outset. In addition they should possess adequate training in election matters as well as some level of knowledge about the local culture and political situation.

### Legal Authority and Structure:

The constitution or any other high law of the state must guarantee the fundamental right of periodic free and fair elections with universal, equal and non-discriminatory suffrage and secret balloting; the right to run for office and be voted for must also be enshrined in the law.

The highest law in the land should also ensure the rights of freedom of association, assembly, and expression of opinion and information. The statutory language should be clear, concise and specific enough in order to avoid any potential abuse of discretion, discriminatory application, and infringement or curtailment of a citizen's right to participate in the electoral process. The language of electoral legislation should be gender-neutral, to encourage the participation of women, and electoral legislation should be translated into the languages of all voting groups.

### Voter Registration and Verification:

Voter registration may be done in at least two ways. In some countries, the electoral framework requires that voter registration be linked to national identification or civil registration system, which is controlled by a state authority. In the other case, voter registration is a purely an administrative action. Disputes about the voter register are usually settled by the electoral body. In some countries a body other than the electoral body is charged by the electoral law with developing and compiling voter registration.

Whatever method is adopted for compiling the voter register, the basic concern is the accuracy of the data in the register because this is an issue that has the potential to generate conflict. A register compiled by an independent electoral body will enjoy public acceptability only when the process is transparent enough. To maintain accurate electoral registers is a costly task. Each electoral body should determine how best to check the system in order to prevents fraud at the polling station. Comparing data on the electoral register with information from other government agencies can assist in checking possible fraud such as registration by underage persons.

For cost-effectiveness, the system adopted for compiling the electoral register must be sustainable. For instance, it may be appropriate to generate data for voter registration from an existing database. The point here is that registration may be continuous, or may be done in the style of a national census exercise before election. It may involve the electoral body contacting voters, or voters having to contact the electoral body. Special ID cards may be provided for members of the electorate to help clear the air in case of inaccuracies that may be found in the electoral register.

The point cannot be overemphasized that care must be taken to prepare an accurate register since this stage is very critical to the success or failure of an election. Attempts should be made to resolve whatever disputes

may crop up to arise at this stage of the electoral process, for the achievement of success at this stage goes a long way in determining whether the whole electoral process will be deemed to be free, fair and credible.

### Election Timetable:

The primary aim of an election schedule is to help the electoral body to keep its planning and preparation on an appreciable level of promptitude and punctuality with the aim of meeting its statutory or administrative deadlines. The timetable will also convey information to the public, the political parties and the media about the dates for the starting and ending of key election activities thereby enhancing transparency and creating a positive public relations image for the electoral body.

Election timetable conveys the sequence of events or activities planned by the electoral body as part and parcel of the political process of staffing government with leaders who represent the people's choice. An electoral body may produce calendars with different levels of details for internal use and for different stakeholders. Internal administration deadlines are very important, and meeting them reflects the degree of seriousness with which the EMB approaches its duties. It is, for instance, important that officials of the EMB have a clear idea when election materials (sensitive or non-sensitive) will be received. Arrangements with suppliers, e.g. printers of ballot papers, must be well organized and honoured.
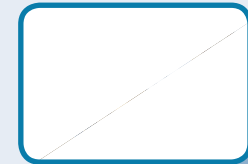
A stakeholder such as a political party, however, may need a timetable that only shows details of key dates for issues such as voter and candidate registration, campaigns, voting, vote counting, and the verification of result.

A simple one page summary time table can enhance media and public understanding of the election schedule, whereas distributing a complex timetable schedule may be confusing. Access to copies of internal timetable may be granted to other stakeholders if that will not lead to any security breaches.

The use of project management software can enable an electoral body to develop a comprehensive election timetable with clear deliverables, timeframes, individual staff responsibilities, and interdependence activities. This may become a sophisticated electoral operations plan. Members of staff should have copies of this kind of timetable as the basis for managing their progress and completion of tasks, and so that they can supply stakeholders with information whenever the need arises.

An election timetable is especially useful in helping timely purchase of materials for voter registration as well as polling supplies. It is also a very useful guide to political parties in some countries such as Nigerian and Kenya, where political party primaries have to be conducted before the nomination of candidates for election, and where such political events do have an effect on the election timetable. There is the need to carry out a thorough review of election timetable after each election in order to identify inappropriate allocation of time to specific tasks. This review will help in identifying where changes may need to be made to enhance effectiveness and efficiency. This will also help to eliminate sources of dispute in the election timetable.

## Guiding Principles for all EMBs

As public servants, electoral officials have certain obligations to the public and these should reflect in their day to day conduct. Apart from electoral officials demonstrating an understanding of strategies for strengthening democratic development, they must be committed to the principles that are the foundation of electoral good practice and be ever willing to provide high quality electoral service to all stakeholders. Their conduct, especially during election season, must be guided by the following principles:

1.  *Integrity:* Electoral officials must conduct themselves in a non-partisan and independent manner by not acting to benefit favoured vested political interests, and by ensuring that the electoral law, rules and codes of conduct are adhered to;

2.  *Impartiality:* the conduct of electoral officials must be fair, equitable, and honest. A level playing field must be thrown open to all stakeholders before, during and after elections.

3.  *Independence:* the electoral officials must carry out their official functions without being subject to influence or control by any eternal force such as government or the ruling party. They also must not pander to sheer opposition sentiments just for sake of appearing to be independent of the ruling party.

4.  *Transparency:* The conduct of electoral officials should be characterized by openness and truthfulness. They need to make themselves available to stakeholders for discussion and advice as well as ensure that all stakeholders have equal access to information and records.

5.  *Efficiency:* Electoral officials should endeavour to make optimal and wise use of all available resources; their activities have to be designed and implemented in a sustainable and cost-effective manner.

6.  *Service-mindedness:* Delivery of high quality services to all stakeholders, and in particular voters, should characterize the conduct of all electoral officials.

7.  *Professionalism:* electoral officials must be meticulous and accurate in the implementation of electoral procedures as a key element of the delivery of credible elections. All members of staff (permanent or ad-hoc) should be well trained and acquainted with the necessary skills and professional standards in the implementation of their technical work.

Electoral management models play significant roles in the crystallization or dissipation of election disputes. Of the three the supposedly least problematic is the independent model under which the election managers act without fear or favour. But more often than not the so-called independent electoral bodies are hardly independent in that the executive branch of government still determines membership of the organization and also exerts far-reaching influence of them through the control of the purse and the exercise of other reward powers.

Only a few countries use the government model because of the legitimacy questions that arise from it, most especially in countries without a well developed political system. It is a system that seems quite open to abuse, but then it can work in a society where commitment to fair contestation at elections has become the norm of electoral culture adhered to by ruling and opposition parties of whatever stripe.

The most problematic probably is the mixed method. As Alan Wall observes, "the relationship between the component EMBs in a Mixed Model is not always clearly defined in legislation or interpreted by stakeholders, and friction can result. In the 1999 elections in Guinea-Conakry (which used the Mixed Model at that time), the majority representatives and the opposition representatives in the component independent EMB had strongly differing approaches to its role to supervise and verify the elections, and its effectiveness

was therefore heavily disputed".[31] This observation gives us a better understanding of the bloody 2010/2011 election crisis in Cote d'Ivoire.

Beyond the matter of the type of election management model adopted, there are several other factors that could inhibit professionalism in EMBs. The political climate of a country is very important in this respect. If the leadership of a country chooses to comply with the democratic ethos, the leadership of an EMB cannot afford to be unprofessional in the way it does its work. But most of the time, it is political incumbents that force the leadership of EMBs to engage in the kind of irregularities that many EMBs in West Africa are often accused of. Shaheen Mozaffar argues in this regard that

> Opposition groups, in particular, place a high premium on effective electoral governance because of their manifest political and organizational disadvantage vis-à-vis authoritarian incumbents. For their part, authoritarian incumbents ideally prefer not to hold competitive elections at all. But when forced to hold them, they prefer rules that help to reduce the uncertainty of electoral competition and ensure their own victory. But even this constrained strategic choice opens up the potential for devising electoral governance rules that provide some semblance of procedural legitimacy in transitional elections (2002: 88).[32]

Where EMBs are temporary bodies in terms of their existence or are just being established, they might not have the experience that can enable them to function perfectly as most of the activities they would be engaging in would be experimental in nature. Staff would not have the benefit of long-term training or knowledge of the dynamic nature of the election environment.

Funding is another major problem. Problems are bound to occur where the EMB does not have sufficient financial resources for doing all that has to be done. In some developing democracies, the EMB gets its financial votes from budgetary allocations but disbursement comes too late to make any serious impact on the management of the elections.

All of the above problems rest on the fact that the legal framework for the elections is not strong enough.

## The Legal Framework of Election

Elections constitute one of the primary means through which the people express their political will and the means by which governments gain legitimacy. The integrity of the process must therefore be guaranteed. The main way for ensuring this is to develop a comprehensive legal framework that guarantees the independence and integrity of the process.

The legal framework of an election refers to all legislations and pertinent legal and quasi-legal materials or documents related to the elections. The legal framework protects the rights of all those involved in the

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[31]  *Ibid.*

[32]  *Op. cit.*

electoral process and gives possible complainants an effective avenue of redress. The legal framework should provide effective mechanisms and remedies for compliance with the law and the enforcement of electoral rights, and it defines penalties for specific electoral offences. Without this kind of framework, an election could become a disorderly competition that could lead to anarchy. The law must be clearly defined to cover all aspects of the election: the right to vote and be voted for, the mandate to conduct the election, the legality of elections, procedures for voting and announcing results, and the conditions for contesting declared results. Despite the importance of having a legal structure in place to deal with election complaints, the character of those responsible for administering legal procedures relating to electoral is determinative of outcomes and resolutions. Institutions are shaped by the personnel that run them. And there is also the problem of how people perceive the functionality of the legal framework. Laws are meant to be obeyed. It is therefore expected that those participating in an election process – whether as candidates, voters or election administrators – must be aware of what the law says and conduct themselves in accordance with the prevailing laws. It is expected that the sanctions of the law will be clear to all and duly applied in any event of non-compliance.

## Components of the Legal Framework

### The Constitution:

The constitution of any country practising electoral democracy defines the rights of the citizenry, specifically in relation to how a government is formed. It contains fundamental electoral rights and the basic principles of the electoral system which of course should include the following:

> » The right to vote and to be voted for;
> » The institutions subject to democratic elections and their terms of office;
> » The composition of any non-elected institutions; and
> » The body or agency to be entrusted with the conduct of elections.

Some constitutions (e.g. Nigeria and Ghana) also have provisions on the details of the electoral process, most especially the type, composition, and responsibilities of EMBs. The implication is that it is difficult for such countries to alter their electoral systems; constitutional amendments on electoral issues would take a long time to be achieved and in fact the process could generate disputes that may disrupt the election calendar. Having clearly stated provision on the electoral process enshrined in the constitution can be a deliberate conflict management strategy that prevents the executive from tampering with the electoral system in a way that could injure the interests of the opposition. Such constitutional provisions pertain to the following:

> » EMB independence;
> » EMB composition:
> » EMB term of office;
> » EMB powers and functions:
> » Suffrage rights or voter registration qualifications;
> » Political party rights;
> » Boundary delimitation authority or parameters;
> » Presidential election systems;
> » National legislative election systems;
> » The right or qualifications to stand for elections;

&raquo; The intervals or maximum intervals at which elections must be held; and

&raquo; Mechanism for settling electoral disputes.[33]

*The Electoral Law:*

Electoral laws, as different from other provisions in the constitution of a country, solely address issues relating to the conduct of election in a country. They define what parties, citizens, groups, and the media are allowed or not allowed to do in the phases of the election season, and they provide strategic incentives and deterrents for the actors to behave in approved ways. It is in fact difficult, if not totally impossible, to make sense of how electoral democracy functions where citizens lack the knowledge of the electoral law in the society.

In order to promote consistency, equity and a common understanding of electoral frameworks the electoral process requires a clear, simple and relatively comprehensive legal definition. To build confidence in the electoral process, it is also important that all parts of the electoral legal framework are freely and publicly available and that changes are discussed and shared with key stakeholders. The legal framework should also be based on international treaties and agreements, detailed in the law and backed by constitutional authority. The following norms must be respected in the legal framework covering the electoral process:

&raquo; the independence, composition, term of office, powers and functions of the EMB;

&raquo; the procedure and nature of the electoral system;

&raquo; suffrage rights and/or qualifications;

&raquo; political party and/or candidacy rights;

&raquo; the intervals or maximum intervals at which elections must be held; and

&raquo; electoral dispute settlement mechanisms.

The law is expected to cover all aspects of the election otherwise loopholes will be created for disputes.

Most countries of the world practising democracy, including those without a written constitution, establish their EMBs entirely by statute law. Yet, some countries have both the constitution and an elaborate supplement of electoral laws. This type of legislation clearly lays down the laws for elections, defines the status and functions of the EMB, and spells out its operational strategies, funding and responsibility. It defines the code of conduct for elections, explicates election malpractices and details how these are to be dealt with. EMBs, election candidates and voters are expected to behave in a manner that ensures consistency with both the constitution and the electoral law.

*Regulations, directives and proclamations of the EMB:*

Some constitutions empower EMBs to regulate the electoral system by making complementary legislations on the conduct of elections. Commenting on the implications of this, Wall et al. observe that EMBs "has legislative powers (making laws which govern elections), judicial powers (reviewing and interpreting laws with binding effect) and implementation powers for the laws and norms it has enacted". [34]

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[33]  *Alan Wall et al., Op. cit., p. 45.*

[34]  *Alan Wall et al., op. cit., p. 50, (italics in original).*

*Code of Conduct:*

Politicians are most likely to respect the code of conduct they develop for themselves than any law. But they can also be much influenced by the reports written by independent observers of how they conduct themselves during the three phases of an election.

*International legal standards:*

Nations of the world are expected by international morality to adhere to the various international legal instruments and regional standards they ratified in respect to human rights, including election-related matters. The most historical and applicable document in this respect is the Universal Declaration of Human Rights. Article 21 of the Declaration states in its clauses (1) and (3) provides respectively that "Everyone has the right to take part in the government of his country, directly or through freely chosen representatives' and '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'.

The other international standards applying to elections include the 1966 International Covenant on Civil and Political Rights (ICCPR), the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the 1966 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the 1981 African Charter of Human and People's Rights (ACHPR) and its Protocol on the Rights of Women. There is also the 2002 African Union Declaration on Principles governing Democratic Elections in Africa and the 2007 African Charter on Democracy, Elections and Governance. The two most important legal instruments in the West Africa sub-region are the Declaration of Political Principles of The Economic Community of West African States, A/DCL.1/7/91 (Fourteenth Session of the Authority of Heads of State and Government, Abuja, 4-6 July 1991) and the Economic Community of West African States, Protocol A/SP1/12/01 on Democracy and Good Governance, Supplementary to the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security, Dakar 2001.

The formal applicability of such standards to a particular country will depend upon its international undertakings in relation to the relevant documents. In any case it is hoped that the overall normative guidance they provide will condition the activities of those conducting or participating in elections.

> *Discussions: In what ways could the political, institutional and legal framework of an election generate disputes?*
> *Instruction: This is an assignment for three separate groups.*

## Guiding principles for legal frameworks

» The legal framework should be so structured as to be unambiguous, understandable and transparent, and should address all components of an electoral process necessary to ensure democratic elections. It is good practice for legislation to provide a clear and sufficiently detailed framework to ensure effectiveness and integrity in all matters relating to electoral administration.

» The legal framework for elections should seek to ensure that the boundaries of electoral units are drawn in such a way as to achieve the objective of according equal weight to each vote to the greatest degree possible to ensure effective representation.

» The legal framework should ensure that all eligible citizens are guaranteed the right to universal and equal suffrage as well as the right to contest elections without any discrimination.

» All parts of the electoral legal framework should be freely and publicly available for stakeholders to see and discuss.

» The legal framework should require that an EMB be established and that it operate in a manner that ensures the independent and impartial administration of elections. It is good practice for such legislation to define the status of the national EMB and any subsidiary EMBs, including their accountability, powers, responsibilities and functions.

» The legal framework should require that voter registers be maintained in a manner that is transparent and accurate, it should protect the right of qualified citizens to register, and prevent the unlawful or fraudulent registration or removal of persons.

» The legal framework should ensure that all political parties and candidates are able to compete in elections on the basis of equitable treatment.

» The legal framework should ensure that each political party and candidate enjoys the right to freedom of expression and freedom of association, and has access to the electorate, and that all stakeholders in the election process have an equal chance of success.

» The legal framework should ensure that all political parties and candidates have access to the media and are treated equitably by media owned or controlled by the state, and that no unreasonable limitations are placed on the right of political parties and candidates to free expression during election campaigns.

» The legal framework should ensure that all political parties and candidates are equitably treated by legal provisions governing campaign finances and expenditures.

» The legal framework should ensure that polling stations are accessible, that there is accurate recording of ballots and that the secrecy of the ballot is guaranteed.

» The legal framework should ensure that all votes are counted and tabulated accurately, equally, fairly and transparently.

» As a necessary safeguard of the integrity and transparency of the election, it is good practice for the legal framework to contain a provision that representatives nominated by parties and candidates contesting the election observe all voting processes. The rights and responsibilities of candidates and party representatives in polling stations should also be defined in the legal framework.

» To ensure transparency and to increase credibility, the legal framework could provide for election observers to observe all stages of the electoral processes[35]

> **Discussions:** *Which particular laws in your country relate to the conduct of elections? What do these laws say about electoral offences before and during elections?*

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[35]  *For information about guidelines and best practices for election laws please see the International Electoral Standards: Guidelines for reviewing the legal framework of elections on and the Legislative Framework for the Indonesian General Elections 2004.*

# SECTION 2: Contexts And Contents Of Election Disputes

## Introduction

*T*he point has to be made from the outset that disputes are inherent to elections. This is largely because the process is organized within an adversarial framework: the gains of a candidate constitute the losses of his opponent. Hence, disputes should be expected in every election even in the developed world where democratic practices are said to have been consolidated. Those who lose unfairly must always challenge the winners. Those who won could also challenge the process to establish the point that they won in the way they wish to win.

### "Power" as the Architecture of Disputes

One thing that comes from all that have been said so far is that elections are nothing but "power politics" and it is within the contexts of exercising power that disputes emerge. It logically follows that power would have a lot to do with election dispute management as well. But what is power? What are its attributes? Power refers to the capacity or potential to cause change in or influence others' behaviour and attitudes. It has to do with the "transformative capacity" to intervene in a given set of events so as in some way to alter them.

Just as leaders have powers, followers equally do. In most cases, leaders take the power of followers for granted and in the particular African context leaders do not think their followers have any power until the season of elections. But even then, what leaders do during the electoral season is to try and manipulate the power of their followers thereby compromising and undermining it. It is unfortunate that many of these followers are not sufficiently aware of the powers they have over those who rule them. Hence, some are pliable subjects of those who want to render them powerless not only during elections but after through bad governance. The whole essence of democracy is to ensure that this does not happen.

It is difficult to appreciate the role of power in elections without first taking a careful look at the type of powers that exist in a society. There are five major types and sources of power. The first is expert power. This kind of power comes from the knowledge that a person brings into what he or she does. If, for example, a man has over the years demonstrated the ability to deal creatively with a particular governance issue (most especially economic management), he is most likely to be recognized as a powerful person that should be voted into public office. All over the world people are looking for this kind of persons to lead them. Referent power, which is the second type, is a logical product of the first. It emanates from the respect that the people have for an individual owing to his past activities. Such a power could also come from the prevailing

tradition in the community. For example, religious leaders are highly respected among a religious people. Similarly, people holding traditional chieftaincy titles are highly respected in many West African societies. A person with this kind of power could be formally or informally invited by the people to lead them.

The third kind of power is known as legitimate power. This is the kind of power that is conferred on a person by the office that he occupies. In an election system, the officials of an EMB have legitimate power which they can exercise freely on the other stakeholders in the election. In the same way, the parliament which makes laws can exercise some powers on the EMB itself. But the most important legitimate power that anybody can exercise in an election is the power of voters to elect the persons they want into office. This power is protected by the law; it constitutes a crime for anybody to try to remove it except as stated by the law.

In contraposition with legitimate power is coercive power. The latter has to do with the ability to control others by inflicting the fear of punishment or the loss of valued outcomes in them. During elections, this kind of power manifests in violence, taking such extreme forms as killings, maiming, or less extreme forms as forcing people to vote against their choice. Those who exercise this kind of power only thrive in a society that gives too little attention to issues of rule of law. This kind of power becomes very threatening to the success of electoral democracy when it is perpetrated by the ruling elite.

In some elections, those who lack expert, legitimate or referent power to make people recognize their leadership abilities could resort to the use of reward power. This has to do with inducing followers with unmerited favours – money, contracts, public offices etc. Those who are so induced eventually lose their legitimate power as they are now controlled by the person exercising reward power on them.

The ultimate expectation of an election is that those who get voted into office will use the legitimate power given to them to develop their society. Where this is not done, political incumbents themselves become the source of future election disputes.

Generally, issues that could be "powerfully" contested in the three phases of an election include voter registration and verification, location of polling stations, campaign financing, freedom of movement, counting of votes, etc. But the main issues include the following:
   » The validity of the result, and therefore the right to challenge the outcome of elections,
   » The administrative action of election officials to correct a problem, which infers the right to seek redress for violations of suffrage rights,
   » Criminal prosecution against those who have corrupted or attempted to corrupt the election process.[36]

In other words, challenging the conduct and outcomes of an election should not be perceived as a weakness of an electoral democracy process. It is in fact a statement that the process is moving in the right direct.

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[36] Denis Petit, Resolving election disputes in the OSCE Area: Towards a standard election dispute monitoring system, Warsaw: Office of Democratic Institutions and Human Rights, 2000, p. 5.

Apart from the pressure from candidates who feel cheated in an election process, states are under obligation to respond to election disputes by the fact that their constitutions require this as a way of establishing the legitimacy of the government so formed. In addition to this is the expectation from the international community in the context of the larger Responsibility to Respond (R2P) doctrine and the expectations of the various international protocols, conventions and other international legal instruments that the states are signatory to. On the whole, however, there is no international legal instrument that specifically addresses the issue of election dispute management. Neither is there any established consensus internationally on what constitutes "fair, effective, impartial and timely" resolution of election disputes. It is however possible to draw from the existing rules and regulations espoused by international law to arrive at the following body of principles:

1. The right of every individual or political party to a remedy for violation of political and electoral rights, including the right to vote and to be registered as a voter, as well as candidature, party and campaign rights;
2. The responsibility of States to ensure that complaints relating to the electoral process are determined promptly within the timeframe of the electoral process and effectively by an independent and impartial authority, such as an electoral commission or the courts.[37]

## Manifestation of Election Disputes

Election disputes can be expressed in various ways. It all depends on the stakeholders and the kind of society in which electoral democracy is being practiced. The channels for expressing the problems include the following:

- » Apathy
- » Writing of Petitions
- » Complaints through press conferences
- » Peaceful protests
- » Boycott
- » Litigation
- » Violent protests

### *Apathy:*

Some people could become apathetic to issues of election owing to their belief that their society lacks the capacity to hold a free, fair and violence-free election or due to their dissatisfaction with how past election disputes were poorly managed.

### *Petitions:*

In this case, the complainants write petitions to appropriate authorities on the problems noticed and either suggest how to solve them or leave the decision to the body receiving the petition to deal with the matter.

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37  *Denis Petit, op. cit., p. 7.*

*Press Conference:*

A press conference could be called by the aggrieved party to express its misgiving about certain aspects of the elections. Threats could be made on the possibility of resorting to self-help strategies if the situation was not redressed. Where a press conference is called, the main objective is to educate the generality of the people on the nature of the problem and by so doing get their support in redressing it.

*Peaceful Protest:*

In this case, the aggrieved parties stage a peaceful protest, most especially at the headquarters of the affected EMB to express grievances. Banners could be carried to showcase the main message of the protest or a formal petition could be submitted to the EMB.

*Boycott:*

Some people boycott elections most especially in situations where their complaints are not attended to by the EMBs. This could affect the legitimacy of the election. If the boycott occurs too late for it to be attended to by the EMB and the election actually holds, the electoral law might recognize the outcome of the election. What happens in this case is that the group that boycotted the election would not accord the "winner" of such an election any official recognition. It is therefore necessary for the boycott to be announced early enough to enable the EMB to decide on what to do about it.

*Litigation:*

This has to do with going to a court of law with the right jurisdiction to seek redress.

*Violent protest:*

This happens when the people do not trust either the EMB or the judicial system in finding solutions to the problem. A violent clash is usually aimed at punishing political opponents or their agents for doing what they did before, during or after the elections. The demonstration could also be towards the goal o ensuring that the election does not hold or if held for the outcomes to lack relevant legitimacy.

## Types of electoral violence

The history of elections in most parts of the world, especially in Africa and other developing regions, is replete with stories of various forms of violence. These cases of electoral violence can be broken into three main categories viz.: physical electoral violence; psychological electoral violence; and structural electoral violence.[38]

### *Physical electoral violence*

Physical electoral violence is characterized by the use of physical force on candidates, electoral officials, election observers, security operatives, candidates or any other persons before, during or after election. Anybody could use physical form of violence against another and anyone could also be the victim of physical electoral violence. Examples of physical forms of violence include rough handling, beating or flogging, inflicting other types of injuries and even election-related assassination. This is the kind of situation that Paul Collier refers to in his latest publication entitled Wars, guns and votes: democracy in dangerous places.[39] Referring to the African manifestation of this problem, an edition of the EISA Policy Brief Series describes elections as a "curse". [40]

### *Psychological electoral violence*

Psychological electoral violence is the creation of fear in the mind of political opponents, the electorate, observers, electoral officials or even security agencies. This could be done through threat of the use of violence, especially threat of attacking polling stations and other voting venues. Acts such as bomb explosions and shootings during election are capable of causing psychological electoral violence.

### *Structural electoral violence*

Structural electoral violence refers to the creation of institutional or legal frameworks targeted at opponents or individuals to either disenfranchise or keep them away from political relevance. Such legal and institutional frameworks work against equal access of citizens to political positions of authority while at the same promoting the interest of some other people. In other words, forms of structural electoral violence are instruments of political exclusion by a few privileged ones.

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[38] *Isaac Olawale Albert, "Re-conceptualizing electoral democracy in Nigeria", in Isaac Olawale Albert, Derrick Marco and Victor Adetula (eds.), Perspectives on the 2003 elections in Nigeria, Abuja: IDASA-Nigeria, 2007 pp. 132-144.*

[39] *Paul Collier, Op. cit.*

[40] *EISA, When elections become a curse: Redressing electoral violence in Africa, EISA Policy Brief Number 1, Johannesburg: Electoral Institute of South Africa (EISA), 2010.*

## Generic Causes of Election Disputes

There are six main causes of election disputes. These are (i) resources (ii) values (iii) psychological needs (iv) communication (v) the design and management of an election, and (vi) the mood of a ruling regime.

*Resources:*

The term "resource' is used here in the context of power politics. Dahl (1996) defines political resources as "almost anything "– including money, reputation, legal status, social capital and knowledge, to name a few — that has value and can be used to achieve political ends". Too much focus on these things, as different from the desire to truly serve a nation, goads politics into generating disputes during elections. It accounts for why people want to violate the rules of the electoral game. In some cases, people work together towards tampering with the electoral process with a view to enabling the formation they represent to be in power by all means.

*Values:*

An election is a value-based social experience. It is based on the understanding that the best way to rule a society is through popular consent. It is therefore required that those participating in politics would recognize and work within the ambit of this value. Disputes arise when politicians or their supporters are opposed to the basic value of an election, most especially the rule of law. In many cases, African politics is threatened by the various forms of undemocratic values that people seek to bring into political participation, including ethnicity, religion, gender bias and ageism. The matter is more compounded when the politicians themselves are not bound together by any sane political ideology though they belong to the same party. In this case, they are simply strange bedfellows who could easily fragment into different feuding groups within a short time.

*Psychological needs:*

Electoral democracy leads to disputes when the psychological needs of individuals and groups are not supportive of an orderly political transition. In this case, an individual seeks to impose his will on his political party, the EMB and other institutions associated with the conduct of an election. The same problem could come from a group, whether a political party, an ethnic or religious group. Unemployed youths, especially "young men who have little opportunity for legitimate employment or socio-economic advancement",[41] have been found, in virtually all parts of the West African sub-region, to be the cannon fodder of electoral violence. They are paid by politicians to kill and maim their opponents and to carry out other activities that demonize democracy. In this connection, it has to be noted that such seemingly non-electoral issues as employment are indeed full of implications for the activities that may be witnessed during elections. The Urban lumpenproletariat usually constitutes the coercive bastions of many political parties in the sub-region, and the ideas in the heads of these young people are usually survivalist and even fatalistic. For a little material inducement they are willing to risk life and limbs. What is more, they offer

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[41] *See Human Rights Watch, Criminal Politics: Violence, "Godfathers" and Corruption in Nigeria, 2007, p. 91.*

their services to all comers, working today against the person under whose hire they were yesterday. We also need to realize the role played here by ethnic sentiments. Indeed there are studies that show a certain correlation, albeit not deterministic or decisive in the final analysis, between ethnic identity and violence. Some people believe that the nation or ethnic group is worth dying for—or indeed, killing for.[42] They are reinforced in this belief by leaders who rally them to shed blood for the group. Elections have provided a stomping ground for the display of group sentiments of this sort, especially in societies like those of West Africa where the populace is composed of people from diverse ethnic extractions.

In elections held in post-war situations, "Powerful individuals", most especially "demobilized ex-combatants" or "retired military men", often want to show how influential they are. Hence, they engage in activities that could threaten the security environment of the elections.

### *Communication:*

What people say or fail to say during elections could affect the legitimacy of an electoral process. In this respect, disputes could arise within any of the following situations:

Where people are not sufficiently informed about their electoral rights and duties;

Where people lack knowledge of the electoral laws or the aspects of their national constitutions dealing with elections;

Where political campaigns are reduced to mudslinging matches;

Where journalists report election-related issues in a manner that could engender more conflicts.

### *Design and Management of Election:*

How an election is designed and managed could create disputes. Issues around the design could pertain to the political, institutional and legal framework of the election while the management of the election would have to do with how the EMBs use or misuse the powers given to them under the law. Where such powers are used positively, the chances of election disputes are reduced and where they are used negatively it is most likely that the election process would be crisis-ridden.

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[42] *See Thomas C. Davis, "Revisiting Group Attachment: Ethnic and National Identity", in Political Psychology, Vol. 20, No. 1, 1999, pp. 25-47; Peter Suedfeld, "Harun al-Rashid and the Terrorists: Identity Concealed, Identity Revealed", in Political Psychology, Vol. 25, No. 3, 2004, pp. 479-492; Stephen Reicher, "The Context of Social Identity: Domination, Resistance, and Change", in Political Psychology, Vol. 25, No. 6, 2004, pp. 921-945.*

*Mood of a ruling regime:*

Where a ruling regime is not truly committed to electoral democracy, it is most likely that the EMB would not take its work too seriously in terms of protecting the integrity of the electoral process. The regime could also be indifferent to the complaints of the opposition. The matter becomes more complicated when such a government is quick at resorting to confrontation to deal with the slightest complaints or protests from the opposition about the electoral process.

## Specific Causes of Election Disputes in Africa

The Electoral Institute of Southern Africa (EISA) convened a symposium from 17-18 November 2009 on the theme "Preventing and managing violent election-related conflicts in Africa: Exploring good practices". In a paper delivered at the symposium Dimpho Motsamai presented the following as the main causes of election disputes in Africa:

» Protection of incumbency: Elections, by their very nature, are uncertain and competitive processes. Violence ensues in situations where there is a strong possibility of changing existing power relations and the incumbents are unwilling to cede power. This has been the case in Africa, as elections are often associated with tension and the eruption of social antagonism over the capture and control of the state. Much can be attributed to the dominance of one party and an intolerant political culture relating to the opposition. In the context of authoritarian regimes the strategic intent and practical consequences of violent acts are designed, in many ways, either to vitiate the elections altogether or to influence voting behaviour through threat or intimidation.

» Absence of a tolerant political culture and the entrenchment of a dominant-party system: The conduct of democratic and peaceful elections requires a tolerant political culture, which seldom exists in former one-party state systems and/or dominant-party systems in Africa. In most illiberal democracies or hybrid regimes political intolerance and repression are rife. In the context of authoritarian regimes, the strategic intent and practical consequences of violent acts are designed in many ways either to vitiate the elections altogether, or to influence voting behaviour through threat or intimidation.

» The design of the electoral system: The structure of an electoral system can either exacerbate or de-escalate electoral conflict as it has a direct impact on identity and ideology. The extent to which a system is regarded as fair and inclusive may determine the possibility of post-electoral conflict. Violence often occurs when elections are 'zero-sum' events and 'losers' are excluded from participation in governance.

» The management and administration of elections: The roles of election management bodies (EMBs) are vital during the electoral cycle as, if the EMB is suspected of a lack of impartiality the credibility of the electoral process is diminished and there are high levels of violence when the results are announced. Further, it is important for EMBs to have conflict prevention and management systems in place to enable them to handle any incidents of violence that may emerge at any stage in the electoral cycle.[43]

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[43]  *Dimpho Motsamai, "When elections become a curse: Redressing electoral violence in Africa", in EISA, When elections become a curse: Redressing electoral violence in Africa, EISA Policy Brief Number 1, Johannesburg: Electoral Institute of South Africa (EISA), 2010 pp. 3-4.*

> ***Discussions:*** *Reflect critically on the nature of election disputes experienced during the last election in your country. Who caused these disputes and under what conditions?*

## Categories of Electoral Failures or Disputes

Election disputes or failures can arise from a number of causes. The primary causes of election disputes or failures can be divided into two categories: fraud and error. Voting fraud of course is a long-standing plague of democratic elections. Fraud involves a deliberate attempt to manipulate the system unfairly, usually by supporters of candidates or even by the candidates themselves or by the election managers. In contrast, error involves an unintentional disturbance or distortion of the election processes, usually by those administering the election.

In addition to these two primary causes of election disputes, there are at least two other possibilities: improper conduct by candidates or their supporters that does not fit the ordinary definition of voting fraud but nevertheless may provide grounds for questioning the integrity of the election (such as campaign spending in excess of agreed limits, mobile kitchens[44], etc.); and "acts of God", such as natural disasters or other events outside the control of candidates or election officials. Such events may significantly disrupt the ability of voters to cast their votes or have them properly counted.

### *Fraud:*

Voting fraud can be committed by some dishonest candidates who clearly nurse the intention to perpetrate it if they have the opportunity to do so. It can also be committed by polling officials who typically have much greater opportunity, provided they have a motive. Fraud can also be perpetrated by isolated individuals or organized groups among the electorate, whose intention and opportunities may both be more attenuated.

Voting fraud that taints the credibility of election outcomes may manifest in a number of ways. One type of fraud is the manipulation of the number of raw votes cast, as in stuffing the ballot box. The modem day equivalent of ballot-box stuffing is tampering with the electronic counts on the voting machine. Special access to the machines or equipment is generally required to perpetrate this type of fraud.

Alternatively, the raw vote can be manipulated by individuals who are not eligible to vote. Perpetrators of this brand of fraud may have fraudulently registered or may vote by impersonating dead or absent people, or may vote multiple times. This type of fraud requires no special access to voting machines.

Another category of voting fraud that can be accomplished without special access to the mechanics of the election process is pre-election deception of voters (or potential voters) in ways that may affect who votes or

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[44] *A phrase used in the 2011 general elections in Nigeria to capture the provision of meals, snacks and pepper soup to voters in polling stations by political parties.*

how they vote. This could take the form of circulating leaflets or text messages that deliberately mismatch candidates with the wrong political parties or announce wrong dates for election in order to deceive voters who are most unlikely to vote for a particular candidate.

Absentee ballot fraud can be accomplished without special access. Fraudulent absentee balloting may frequently be used as one vehicle of accomplishing voting by ineligible individuals, because it is often harder to detect than in-person voting by ineligible individuals. But absentee ballots fraud also encompasses voting by "eligible" voters who allow a third party to cast or influence their vote, a practice equally antithetical to free elections. Accordingly, a number of restrictions on absentee voting processes are designed to guard against these problems. However, these restrictions are difficult to monitor, and often become a primary source of controversy in election contests.

A final category of fraud is after-the-fact distortion of the raw vote, either through outright false reporting of precinct tallies or through the alteration, destruction, damage, or loss of physical ballots or memory cards. Only those with official access to the ballots are likely to be in a position to accomplish this type of fraud.

*Error:*

Errors on the part of election officials can also throw an election into question whenever those mistakes cannot be corrected before election-day or be remedied by provisional voting or a recount process. The problems here include errors in voting instructions, inability to trace polling booths, errors in providing appropriate accommodation for voters with disabilities, and other errors related to polling place operations, and confusing, misleading, or defective ballots or equipment.

## Election Dispute Progression Spectrum

Election disputes progress gradually and where violence is involved it is not usually a spontaneous event as is often claimed. The problems evolve in nine related stages and could be arrested at any of the stages. The stages are:

*Stage 1:*

A problem occurs: At this stage, a noticeable or an unnoticeable problem occurs. It could be a gap in the electoral law or the EMB taking a controversial step. It is most likely that an individual or a group would notice the problem and try to call attention to it. Where nothing is done, the dispute moves to the next stage. It has to be noted that non-electoral issues may transmogrify into electoral disputes, as is the case when ethnic and religious differences become the basis for violent confrontation before, during and after the voting. Also a situation of high unemployment among young people may make it easy for such idle hands to be engaged by politicians as party toughs and thugs to carry out acts of violence in the election season. Indeed, any problem in society can serve as Stage I of this cycle.

*Stage 2:*

Sides are formed: At this level, individuals and groups start to band together against or in support of the noticed problem. Each side would use whatever forum to which it has access to articulate its position on the matter.

*Stage 3:*

Communication breaks down. At this stage, the parties start to engage in name calling most especially in the media. Individuals are insulted and serious allegations are made against them.

*Stage 4:*

Positions harden: In the process of canvassing their positions on the matter, the stance of the parties become hardened. By this is meant that each of the sides become entrapped in their own way of looking at the issue. They try as much as possible to present the other side as consisting of people who cannot reason well. This scales up the problem.

*Stage 5:*

Resources mobilized: At this stage, each side starts to invest whatever resources they have in the problem. This could be financial, ethnic, and religious.

*Stage 6:*

Conflict goes outside the immediate community: In the process of mobilizing resources, disputants in an election soon realize that the resources they have do not have infinite capacity to deal with long-drawn-out dispute. Hence they are forced to start looking outside for support. This involves bringing a third party into the conflict with a view to gaining access that could help to defeat the "enemy". Past experiences show that it is at this stage that political incumbent start to use the security apparatuses in the country to harass political opponents. The "opposition" could also align with cleavages that originally had nothing to do with the elections and the two would work together towards making the political system ungovernable.

*Stage 7:*

Perception becomes distorted: The longer the problem or the more difficult it is to manage, the higher the chances of the perception of the disputants becoming distorted. It is at this stage that they start to think of all forms of illegal things to do in order to overcome their adversaries.

*Stage 8:*

A sense of crisis emerges: Once perceptions are distorted, the parties start to look at the normal dispute as a crisis for which some drastic steps have to be taken.

*Stage 9:*

Outcomes vary: At this stage, the disputants could do anything to each other. While some would want to take their opponents to court, some might resort to such self-help strategies as killing, maiming, ordering the detention of political opponents, attacking officials of the EMB, etc.

Each of the nine stages is susceptible to positive intervention and transformation. Where the problems are not attended to and are allowed to escalate further, the dispute could take a more devastating turn. For example a dispute that is allowed to get to the ninth stage could result in deaths and displacement of people, sometimes across international borders. The role of the EMB is crucial in this connection. It is the EMB that officiates over the electoral system. An effective EMB would have an early warning system as part of the apparatus with which it monitors the electoral system. It would have expertise in the area of electoral conflict management, the idea being to transform negative energies within the electoral system whenever there is a build-up of such. It is important that the EMB serves as a platform where politicians and their supporters can meet to hold discussions and debates, and to iron out their differences in an open and civil manner. In this connection, there is the need to co-opt civil society organizations and the media, and there is the need to mount periodic public enlightenment campaigns. Where the EMB limits its functionality solely to the organizing and counting of votes, it leaves much to be desired in the electoral system.

 We should, however, avoid viewing this progression in a linear manner. It is more of a cycle. It does not follow that the stages will occur in the pattern outlined above. What we have tried to do here is give the ideal type of such cycles in order to make it easier for us to confront the reality when it occurs, a reality which may differ in certain ways from what we have presented. But it is our thinking that we will always have to start with Stages 1 and 2.

# SECTION 3: Management Of Election Disputes

*D*isputes, occurring whether before, during or after the conduct of an election can be dealt with using five possible handling styles:

   i.   avoidance/denial
   ii.  strategic withdrawal
   iii. confrontation
   iv. third party decision making and
   v.  joint problem-solving.

Interveners choose any of these conflict handling styles according to their perceived comparative advantage and after carefully analysing the institutional and legal frameworks of the election.

### *Avoidance/Denial:*

This has to do with doing nothing about the problem with the hope that, with time, it would go away. Institutions and individuals resort to these conflict response mechanisms for three main reasons: (i) fear of direct intervention (ii) deliberate impunity (iii) and bystander syndrome. Fear comes from cost/reward analysis. In this case, the decision maker assesses what it stands to gain or lose from organizing an intervention. If the cost is higher than the benefits, then the dispute is ignored with the hope that the situation would normalize itself with time. In some cases, avoidance/denial is used largely because the decision maker lacks capacity for organizing any credible or result-oriented intervention.

The decision maker might have the capacity and resources to deal with the situation but simply refuse to do anything. He could even deny responsibility for dealing with the situation. This evidence of state failure is usually characterized by cynics as "impunity".

The third approach to the use of avoidance/denial is what is technically known as "by-stander syndrome".[45] In this case, nothing is done about the problem because it does not directly affect or hurt the person who is supposed to organize the intervention. An example is when a member of an opposition party is killed and those who are supposed to deal with the situation refuses to take any action. The flip side of it is that the decision maker might in fact have something to gain from looking the other side as the atrocities are

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[45]  *See R.M. Levine, "Rethinking bystander non-intervention: social categorization and the evidence of witnesses at the James Bulger murder trial", Human Relations, 52, 52, 1999 p.1133-1155.*

committed. The problem here is that of a clash between altruism and egoism. Hence, Staub argues that [t]he by-stander plays a central part in the establishment and maintenance of human rights abuses. By turning away or remaining passive in the face of threats to human life, the conditions for genocide are maximized".[46] One of the posters displayed by those demonstrating against the ruling government in Yemen read "Silence is a war crime". But there are times when silence is golden and so avoidance or denial might have to be used to douse the tension.

*Strategic withdrawal:*

This response mechanism looks like avoidance/denial on the surface; but it is not. It has to do with not taking any immediate action on the problem or taking a mild action but seizing the opportunity to buy quality time and space to plan and take a more decisive action.

*Third party decision making:*

This has to do with having to refer the conflict to a higher body with decision making powers for settlement. In most cases, this approach involves judicial settlement: a legal mode of pacific dispute termination e.g. taking and election dispute to court or referring a related matter to ECOWAS Court or Parliament

*Confrontation:*

This has to do with the use of military force to reverse an objectionable situation.

*Joint Problem-Solving:*

This has to do with the disputants working together to find mutually satisfying solutions to the problem. It also involves a neutral third party (usually a mediator) working with the disputants to deal with the problem. This is where negotiation and mediation find relevance. Conciliation is good but hardly get to the root of the problem or address future grievances. ECOWAS "Authority" (namely Heads of State of Member States) has the powers to act on all matters and can use this method. So also is the Mediation and Security Council (MSC).

The five dispute handling styles discussed above can be further broken into two broad categories: (i) the adversarial and (ii) non-adversarial. The adversarial methods are those that depend absolutely on legalism and the use of force. This includes "confrontation" (use of security agencies, sanctions etc) and "third party decision making" (use of the court of law whether at national or international level) to deal with matters arising from electoral processes.

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[46]  E. Staub, "The origin and prevention of genocide, mass killing, peace and conflict", Journal of Peace Psychology, 5 1999 pp.303-336.

On the other hand, the non-adversarial approaches are those in which the parties still retains the power to control the dispute management processes. The most important dispute handling styles in this respect are negotiation, mediation and conciliation.

The point must be made from the outset that the non-adversarial mechanisms are useful for dealing with election results dispute only before the official announcement of the results. But once the results are announced, the aggrieved party must go before the constitutionally vested authority to find solutions to the problem otherwise the outcome of the resolution method might not enjoy legitimacy.

## Adversarial Dispute Management Systems

The focus of the adversarial dispute management system is to ensure that those who violate election laws are punished and this task could be carried out by several categories of stakeholders: the EMB, security agencies, and the court of law. The rest of this part of the paper focuses on the use of judicial systems. The situation differs from country to country. A few examples are provided below:

### Benin:

In this country, disputes arising from elections are decided by the Constitutional Court for parliamentary and presidential elections and by the Supreme Court in case of district and municipal elections.[47] Unlike what obtains in many other Francophone countries, all kinds of election disputes are managed similarly. For example, disputes relating to election results are managed the same way that of voter registration is dealt with.

### Cape Verde:

Under Article 219 of the 1999 Constitution of Cape Verde, the Constitutional Court is responsible for hearing cases relating to presidential, legislative and local government elections. It is interesting to note that there is usually not much litigation in the country "due to the consensus on electoral rules and transparent nature of the electoral process, even though it often results a difference of only a few votes between competitors".[48]

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[47]  *See Gilles Badet, Benin: Democracy and political participation: An evaluation of 20 years of "democratic renewal", AfriMap and OSIWA, 2010 pp.116-119; Mathias Hounkpe, "Benin", in Fall, I.M., Hounkpe, M., Jinadu, A.L., and Kambale, P. (2011), Election management bodies in West Africa: A comparative study of contribution of electoral commissions to the strengthening of democracy, Dakar, Senegal: Open Society Initiative for West Africa p. 34*

[48]  *Ismaila Madior Fall, "Cape Verde", in Fall, I.M., Hounkpe, M., Jinadu, A.L., and Kambale, P. (2011), Election management bodies in West Africa: A comparative study of contribution of electoral commissions to the strengthening of democracy, Dakar, Senegal: Open Society Initiative for West Africa p. 67*

*Ghana:*

Under the 1992 Representation of the People Law of Ghana, the results of a parliamentary election can be challenged at the High Court by those "(a) who lawfully voted or had a right to vote at the election to which the petition relates; (b) claiming to have had a right to be elected at the election; (c) claiming to have been a candidate at the election; and (d) claiming to have had a right to be nominated as a candidate at the election". On the other hand, the challenge of the result of a presidential election has to be made before the Supreme Court of Ghana. The petition can be filed by any citizen of the country.[49]
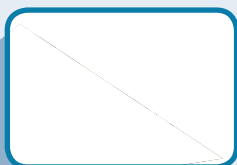
*Nigeria:*

Nigeria has a slightly complex election dispute management system arising from its practice of three-tier federalism. The 1979 Constitution provides for three types of election tribunals. Petitions relating to presidential elections are handled by the Presidential Election Tribunal whose Chairman and members must be appointed by the Chief Justice of the Federation. Petitions relating to gubernatorial and legislative house elections are sent to the Gubernatorial and Legislative Houses Election Tribunal whose Chairman and members are appointed by the President of the Court of Appeal. Issues arising from local government elections are dealt with by the Local Government Election Tribunals headed by a Chairman and members appointed by the Chief Justice of the relevant state. Those not satisfied with the judgement delivered at any of these courts could appeal to the Supreme Court in the case of presidential election; the Court of Appeal in the case of gubernatorial and legislative elections, and to the State High Court in the case of local government elections.[50]

*Senegal:*

Election litigation is uncommon in Senegal. This is because the people are not too familiar with the relevant laws and so lack confidence in recourse to the formal judicial system. This notwithstanding, the country has the legal framework for managing election disputes. For example, Departmental courts hear disputes relating to the integrity of election register. The president of regional courts heads the regional counting commission. The President of the Court of Appeal, who appoints the Magistrates who sit on the ballot also appoints the delegates of the Court of Appeal for ensuring proper conduct on the day of election. It is the responsibility of those wishing to run for President of the Republic to submit their applications to the Constitutional Council. The Council also establishes the list of candidates, "rules on challenges relating to elections of the President of the Republic or the deputies in the National Assembly, and proclaims the results".[51]

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[49]  Mathias Hounkpe, "Ghana", in Fall, I.M., Hounkpe, M., Jinadu, A.L., and Kambale, P. (2011), Election management bodies in West Africa: A comparative study of contribution of electoral commissions to the strengthening of democracy, Dakar, Senegal: Open Society Initiative for West Africa p. 95-96

[50]  Adele Jinadu, "Nigeria", in Fall, I.M., Hounkpe, M., Jinadu, A.L., and Kambale, P. (2011), Election management bodies in West Africa: A comparative study of contribution of electoral commissions to the strengthening of democracy, Dakar, Senegal: Open Society Initiative for West Africa p.135; Jibrin Ibrahim and Dauda Garuba, A study of independent national electoral commission in Nigeria, Governance and Institution-Building in Africa, Number 1 Dakar: CODESRIA pp. 25-26.

[51]  Ismaila Madior Fall, "Senegal", in Fall, I.M., Hounkpe, M., Jinadu, A.L., and Kambale, P. (2011), Election management bodies in West Africa: A comparative study of contribution of electoral commissions to the strengthening of democracy, Dakar, Senegal: Open Society Initiative for West Africa pp. 192-194

*Sierra Leone:*

The legal framework for managing disputes relating to presidential elections in Sierra Leone is Section 45 of the 1991 Constitution and Section 78 for issues relating to parliamentary elections. These laws were later amplified by the Electoral Act, 2002 and the Electoral Laws Amendment Act, 2007. The law allows any citizen to challenge the validity of the President's election by petition to the Supreme Court within seven days of the declaration of the result (Electoral Laws Act 2002, Section 40:1). The validity of the election of a Member of Parliament has to be sent to the High Court and any appeal arising from this has to go to the Court of Appeal.[52]

What has been established above is that the judiciary plays a key role in managing election disputes. However, the body adds to the problems if it does not act impartially and transparently. Such panel of judges might simply end up protecting the frauds committed and by so doing lose trust and legitimacy. This is not good for the growth and development of electoral democracy as it might encourage people to resort to self-help in addressing their election-related grievances. This is a major reason for electoral violence around the African continent today. This kind of situation subsists where and when the judiciary lacks relevant independence and is easily manipulated by state officials. Under this kind of situation, it is difficult for ordinary citizens to get justice. Again, we stress the need for institutions but we also realize that institutions are run by people, and that the integrity of officials revolves around the processes of institutions.

The most volatile of election disputes relate to the results declared by EMBs. This type of dispute, according to Autheman, broadly covers "all claims brought to court following an election provided that these claims call into question the validity of the outcome of the election".[53] This often involves three categories of claims relating to ballot counting:

  i.  Claims exclusively targeting the mathematical count of ballots
  ii.  Claims which inherently raise issues of fraud in the counting process; and
  iii.  Claims which inherently raise access issues.

The three can be reduced to the two critical issues involved: fraud and access during the elections.

| Table 5: Challenges to election results | |
|---|---|
| Challenges relating to fraud | Challenges relating to access |
| * Fraud affecting the report of the results<br>* Fraud directly linked to voting<br>* Bribery | * Obstacles relating to polling stations<br>* Obstacles relating to voting materials<br>* Party representation during vote and count<br>* Announcement of the results |

Source: Adapted from Violaine Autheman (with Andrian Kocerha and Keith Henderson), The resolution of disputes related to 'election results': A snapshot of court practice in selected countries around the world, Paper prepared for the Indonesian Constitutional Court workshop on "The role of the constitutional court in

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52 *Adele Jinadu, "Sierra Leone", in Fall, I.M., Hounkpe, M., Jinadu, A.L., and Kambale, P. (2011), Election management bodies in West Africa: A comparative study of contribution of electoral commissions to the strengthening of democracy, Dakar, Senegal: Open Society Initiative for West Africa pp. 229-230*

53 *Ibid., p. 3.*

resolving election result disputes through a transparent adjudication process, Indonesia", IFES Role of Law Conference Paper Series, February 2004, p. 4.

> **Discussions:** *With the little that you have witnessed or seen so far in the conduct of election, what challenges relating to fraud and access exist in West African countries and in what ways do these compromise the integrity of elections in the sub-region?*

### Best Practice in Adversarial Mechanism

The US conducted a presidential election in 2000 in which Bush and Al Gore were the two leading candidates. On November 8, 2000 Bush was declared the winner of the election and this was challenged by Al Gore. How this dispute was managed can be cited as a best practice in rapid response mechanism. It took the US just one month to deal with the matter:

| Table 6: US 2000 Presidential Elections: Overview of Challenges to the "Election Results in Florida | |
|---|---|
| Nov. 7, 2000 | Vote |
| Nov. 8, 2000 | Bush declared winner by the Florida Board of Elections by a margin of 1,784 votes, which triggers an automatic machine recount. The machine recount confirms Bush's victory but reduces the margin. |
| Nov. 9, 2000 | Gore seeks manual recount in four counties: Palm Beach, Broward, Miami-Dade and Volusia. |
| Nov. 12, 2000 | Palm Beach county manual recount begins. |
| Nov. 23, 2000 | Miami-Dade county manual recount begins. |
| Nov. 24, 2000 | US supreme court agrees to hear Bush's appeal against Florida Supreme Court decision authorizing the recounts and extending the deadline for vote clarification. |
| Nov. 26, 2000 | Election results certified with 537-vote victory of Bush over Gore |
| Nov. 27, 2000 | Gore challenges vote count in Palm Beach, Miami-Dade and Nassau counties. |
| Dec. 4, 2000 | US supreme court rules on the appeal against Florida supreme court decision of Nov 21, vacating the order and remanding for clarification the decision on recount deadlines. |
| Dec. 8, 2000 | Florida supreme court rules on the appeal of the trial of court decision rejecting Gore's Nov. 27 challenge, ordering a state-wide manual recount of "under-voters". Bush appeals to the US Supreme Court. |
| Dec. 9, 2000 | US supreme court issues a stay to stop the manual recounts. |
| Dec. 11, 2000 | Florida Supreme Court clarifies the recount deadlines. |
| Dec. 12, 2000 | US supreme Court issues 5-4 Bush v. Gore decision, reversing the Florida Supreme Court Decision of Dec. 8 and halting the recounts for lack of remedy. |

Source: Violaine Autheman (with Andrian Kocerha and Keith Henderson), The resolution of disputes related to 'election results': A snapshot of court practice in selected countries around the world, Paper prepared for the Indonesian Constitutional Court workshop on "The role of the constitutional court in resolving election result disputes through a transparent adjudication process, Indonesia, IFES Role of Law Conference Paper Series, February 2004, p. 8.

> **Assignment:** *Take a critical look at how the 2000 US dispute was managed. What are the best practices in the stages?*
>
> *In what ways can the management of election dispute in West Africa benefit from this?*

It has to be pointed out, in all of this, that Al Gore's acceptance of the Supreme Court decision is a practice to be recommended to contending parties in West Africa. The rule of law must be respected; and once judicial decisions are made at the highest level of the process, the thing to do is abide by them even when they disfavour one's electoral fortunes. There will be another day. Even when one abides by an unfavourable judicial decision as regards one's electoral fortunes, it does not stop one from mobilizing by means of legitimate methods to change the future process by which such disputes are resolved. Election disputes should initiate a constant scrutiny of the methods of their resolution. In the context of the 2000 election dispute in the US, Charles R. Wise noted that

> Seldom has the relationship between courts and administration been the subject of such intense national focus, as it was with the judicial-administrative interplay during the 2000 election for the president of the United States. The unprecedented stakes riding on the outcome of the judicial-administrative decisions involved in election administration in Florida highlighted features of the judicial-administration interface and subjected it to public scrutiny as perhaps no other area of public policy since the early desegregation decisions. Understandably, both the processes they observed and the outcome that resulted troubled many people. Charges of bias were directed toward judges, administrators, and legislators at state and federal levels. Charges of judicial overreaching were plentiful on both sides: Gore partisans alleged judicial overreaching by the Supreme Court, while Bush partisans alleged overreaching by the Florida Supreme Court.[54]

Perhaps Gore had no other option but to accept the decision of the US Supreme Court. This again demonstrates what is meant by entrenched political culture whereby all candidates know the rules and obey them. But even at that, Wise's point in this paper is something different. He makes his main argument quite explicit when he states that

> Time and again at the point of crisis, the courts have had to fashion solutions with little preparation and inadequate legislative guidance…. The courts are less like an advancing army charging to dominate a territory and more like a fire brigade that has been summoned when half the building is already engulfed in flames.[55]

The imagery here is quite vivid and reminds one of what usually obtains in Nigeria and in several other countries in West Africa. But the fact that poor election dispute management seems to be a universal problem does not mean that we are to throw our hands in the air and reconcile ourselves to the occurrence of violence and other underhand measures in the aftermath of contested electoral outcomes. Even in a place like America where such disputes do not end up in open violence, the realization has dawned that

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[54]  Charles R. Wise, "Election Administration in Crisis: An Early Look at Lessons from Bush versus Gore", *Public Administration Review*, Vol. 61, No. 2, 2001, p. 131.

[55]  Wise, 131-132.

these things can be handled by mechanisms that draw from a commitment to transforming negative, adversarial energies. As Tom Melling puts it in his paper on the problems of dispute resolution in legislative institutions, we need to understand that 'In litigation, the absence of a cooperative resolution commonly imposes substantial costs on all parties. Consequently, dispute resolution theory has helped to promote the use of alternative dispute resolution (ADR)....'[56] These ADR methods are not new to African societies unless we wish to forget the dispute resolution practices enshrined in the traditions of many African cultures. What is being suggested at this point is the age-old African system of the palaver, the kgotla, or village council where conflict parties are brought together for joint problem-solving. In light of this recognition, this practice guide dwells extensively on the methods of negotiation and mediation, and it makes recommendations on the kinds of negotiation strategies that will help in the establishment of flexible electoral dispute management systems in the sub-region.

## Non-Adversarial Methods

The point was made above that there is less litigation in Senegal largely because the people do not understand or trust the adversarial systems of managing election disputes. The situation in many other West African states is not different. In Nigeria, politicians hate going to court largely because of the amount of money that has to be spent and the amount of time that has to be wasted in getting the cases sorted out. It is within this framework that many would prefer to have their cases sorted out using non-adversarial methods. However this approach is most suitable for dealing with problems associated with the pre-election disputes and not the ones associated with election results. In the discussions that follow, some of these non-adversarial methods are examined.

## Negotiation as a Non-Adversarial Method

Negotiation and mediation are the two most important dispute management mechanisms in the alternative dispute resolution spectrum in the sense that they allow the disputants to determine the outcome of the peace process. The two of them are organically linked in the sense of mediation being a "facilitated negotiation". To this end, those who seek to understand how mediation works must start by closely studying negotiation. The latter refers to a form of decision making in which two or more parties talk with one another in an effort to resolve their opposing interests…a process by which a joint decision is made by two or more parties.

There are two types of negotiation styles when dealing with an election dispute: the soft and hard. The soft negotiator is always willing to define the dispute in such terms as "our problem" rather than "your problem" and hence is easily disposed to making concessions so as to reach quick agreement with his or her adversary. However, his or her desperation to reach an amicable settlement of the problem could result in him or her being exploited by the other party. The hard negotiator on the other hand sees every conflict as an opportunity to test his or her strength. He or she presses a hard position in a conflict in the desperate bid to get all he or she wants from the other party.

56 Tom Melling, "Dispute Resolution within Legislative Institutions", in Stanford Review of Law, Vol. 46, No. 6, 1994, p. 1678.

The hard negotiator "wants to win, yet he often ends up producing equally hard responses which exhausts him and his resources, and harms his relationship with the other side".[57] This kind of negotiation involves each party working towards controlling the negotiation process. This is where process tactics are essential. Process tactics are aimed at changing the direction or climate of the negotiation towards one's interests and needs. It is aimed at giving one some leverage over the other party. Techniques to be used could include, adjusting the agenda, not being too clear on one's position over an issue, avoiding issues, throwing up red herrings, asking for time to think over an issue, asking for time to consult one's constituents before responding to an issue, keeping an issue open rather than allowing oneself to be boxed to a corner over it.

Pressure is often needed for making a negotiation process produce desired results. This happens most especially in situations of distributive bargaining. The latter is like a wrestling bout in which each side has to exert as much energy as possible to defeat the other. As a negotiator applies pressure on the other, he or she tries at same time to moderate or even frustrate the pressures from the latter. It is within this framework that some negotiators "cave in" to agree on what does not meet their true interests and needs. The pressure mounted by the conflict party could be in the form of threats to terminate the negotiation. The party could resort to the use of abusive language or sanctions. He or she could pretend to be fed up with the negotiation process. He or she could impose ultimatums/deadlines or stage a walkout. He or she could use some sort of expert power to browbeat the other party. The failure on the part of the party that caves in could be as a result of poor negotiation skills, poor communication ability, desperation to find solutions to the problem or the socio-economic environment of the negotiation.

If the negotiation process is going in an undesirable direction, it might be necessary to stall it. Obstructive tactics are needed at this stage. Anstey[58] described "obstructive tactics" as "those which are used to deliberately stall the process by rendering it unworkable, attacking individuals on the other side, or eroding unity of the other's team". The techniques include making extreme demands or exaggerated offers, deliberately overloading the agenda, not bargaining on issues on the table (signalling hidden agenda), making non-negotiable demands, refusing to justify or explain proposals or demands, using threats or actual sanctions too early in the process, being too emotional over issues, deliberately summarizing what others said incorrectly, using irritators that could make the other side to become uncompromising, refusing to recognize the finality of an agreement, staging a walkout, etc.

Political disputes are easier to deal with when the disputants are willing to embrace soft negotiation. Where they are not, they should be encouraged by third parties for the sake of ensuring the success of the democratic system. Soft negotiation is done in a manner that enables the conflict parties to work together towards generating a lasting solution to the problem. The negotiation process is not competitive but collaborative and should take the following steps:

» Joint acknowledgement of the problem;
» Joint development of the dispute management environment;

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[57] *R. Fisher, and W. Ury, Getting to yes: Negotiating agreement without giving in. Boston, Mass.: Houghton Mifflin, 1981, p. xviii.*

[58] *Mark Anstey, Practical peacemaking: A mediator's handbook, Kenwyn, SA: Juta and Co. Limited, 1993, p. 159.*

» Joint definition of the problem;
» Joint consideration of alternative solutions to the problem;
» Joint assessment of suggested solutions to the problem;
» Joint implementation of the agreement.

The first step in this process is for the two parties to jointly acknowledge the existence of the problem and realize that it is in their mutual interest to have it resolved. At the second stage of the exercise, the parties must develop appropriate conditions for the negotiation. The questions to be dealt with at this stage include: why, where, how do we meet? Attitudinal and behavioural inhibitions to possible discussion of the problem must be removed at this stage. At the third stage, the question "what do we discuss" is attended to. It is at this stage that the problem is defined and clarified. The following should be noted:

» The problem must be defined in a manner that is acceptable to the two sides;
» The problem statement must be clear and simple;
» The problem must be stated as a goal and the obstacles to the achievement of such goals must be identified;
» The problem must be depersonalized; and
» Problem definition must be separated from the search for solutions.

The search for solutions begins at the fourth stage once the problem has been clearly defined at the third stage. This is usually done in a participatory way: everybody (in the group) that has anything to say is allowed to make statements. Several techniques can be used here. The first and most popular is what is referred to as brainstorming or brainwriting technique. The issue to be discussed is placed on table and everybody is invited to make a contribution. No suggestion is right or wrong. All submissions are recorded. At the end of the exercise, the suggestions are jointly debated and the most popularly accepted points are taken as the group decision. The second is what is known as the nominal group technique. Each negotiator or negotiating team, or subgroup, is asked to list on a sheet of paper solutions to the problem at hand. A wide range of suggestions are made, compared and sifted for agreements. The third option is to use the survey method. A questionnaire is circulated to those not directly involved in the conflict. The questionnaire defines the problem and asks for solutions to be suggested. The submissions are collated, analysed and used in decision making on how to solve the problem.

Solutions to the problem are generated, evaluated and selected at the fifth and sixth stages based on the processes put in place at the fourth stage. The agreement is implemented at the seventh and last stage.

The proposals you make or that the other party makes lead to a resolution of the conflict. This must be carefully handled. You must think through a proposal very carefully before making it. A number of questions must be asked: how is this proposal related to my interests and needs? Is the proposal realistic? Can it lead to a sustainable solution?

It is necessary to completely listen to the other party's proposal before making comments on it. Do not interrupt. Avoid making immediate counterproposals. Show appreciation for what is offered before making comments or counterproposals. Give a label to each proposal and recommendation so that it does not get lost in the interactive process. Ask as many questions as possible to clarify your understanding of proposals and recommendations. Ask as many questions as possible to ensure that the other party understands your proposals and recommendations. Set some time aside to point out the merits of your own proposals and

negative consequences of other people's proposals. Encourage the other party to amend his or her proposals and use this as a basis for modifying yours. Summarize whatever was done in the negotiation process with a view to ensuring acceptable mutual understanding of proposals and recommendations.

### *Teamwork in Negotiation:*

In a negotiation process involving an organization, each side has to be represented by a team consisting of members considered to have similar or related experiences, interests, sentiments, dislike and dislikes. Members of the negotiation team are supposed to be an embodiment of what the group they represent stands for. The main role of members of such team is to serve as the mouth-piece of their organization in the peace process. Factors taken into consideration in putting the negotiation team together could include involvement in the particular conflict, role and influence in the organization, technical knowledge of issues in the conflict and how they could be creatively dealt with etc. A negotiation team is supposed to be an assembly of a cohesive social force that is resolute in its commitment to a stated goal. This is not always the case. Negotiation teams sometimes consist of individuals with varying and sometimes conflicting interests. The commitment of all members of the team to group's ideal and interest cannot be the same. Some are more committed than the other. The commitment of each member and his likely behaviour in a negotiation process depends largely on how he or she feels the group's interest can be attained. There are those who consider the group to which they represent to be infallible and those who consider it necessary to give consideration to "outsider" positions and interests in a conflict situation. Against this background, Colosi and Berkeley[59] have identified three types of team members: (1) stabilizers, (2) nonstabilizers, (3) quasi-mediators.

"Stabilizers" are those members of a team committed to attaining a negotiated settlement of their problems by all means. They are willing to throw much of what they have into the peace process. They stand in contradistinction with the "nonstabilizers" who may be disruptive and unwilling to support a negotiation process no matter what the other party offers as incentives for peace. The quasi-mediator is not only interested in the peaceful settlement of the conflict, he/she is willing to support a mediator to identify workable solutions to the problem that would meet the interests of the two sides to the conflict. The latter has the potentials for softening the conflict grounds for the mediator. It is necessary for an organization to carefully understand the kind of people it is going to send out for a negotiation process. Bad choice leads to bad solutions.

The organization must make its team of negotiators think alike before stepping out to engage in a negotiation process. The group could otherwise end up being seen at the negotiation table as a body of men and women who do not have clear idea of what they really want. The process of making the group to come to a consensus on what to negotiate on and how to organize the negotiation has been referred to by Lincoln as horizontal negotiation or internal team bargaining.[60] We can also call it internal consensus building.

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[59]  Thomas R. Colosi & Arthur Eliot Berkeley, "Multilateral bargaining", in Colosi, Thomas R. & Berkeley, Arthur Eliot (eds.), *Collective bargaining: how it works and why*, New York: American Arbitration Association, 1986, pp. 72-79.

[60]  W.P. Lincoln, *In Pursuit of Promises: The Practitioner's Course in Collaborative Negotiations and Co-operative Problem-solving*, Tacoma, Washington: Conflict Resolution, Research and Resource Centre, 1995, p. 114.

In a situation of horizontal negotiation, representatives of a team meet to collate the interests, perspectives, motives, opinions and priorities of the individual members on what constitutes the conflict and how it should be handled. Arguments are listened to from everybody that has something to say. Opinions are also sought from even those who are not forthcoming with their own positions on the matter. In the course of this kind of negotiation exercise, some important points and issues are clarified and built into the negotiation process. At the end of the summations, decisions are taken on what the team should do. This is usually done in line with the core values, interests and needs of the team. To this end, horizontal negotiation leads to process equity, process ownership and team unity. After this kind of exercise, it is often not too difficult for a group to speak with a voice. This does not mean they would still not have some areas of misunderstanding on how to handle the conflict. What is basically attained is that all members of the team are well informed as to how the consensus was arrived at.

There are two types of team negotiations: (1) bilateral bargaining (2) unilateral bargaining. There is said to be bilateral bargaining when the negotiation is done between the leaders or spokespersons of the two organizations. Each brings to the negotiation table the consensus of his group. Unilateral bargaining is when an individual steps out to negotiate with others on behalf of his group.

We can identify two types of unilateral bargaining.[61] The first is what is called unilateral conciliatory bargaining and the second unilateral vested interest bargaining otherwise known as "under-the-table bargaining". A quasi-mediator or a member of a group who has useful links with members of the other group usually initiates unilateral conciliatory bargaining. This is usually a product of the individual's desperate bid to get the conflict resolved. Other forces than personal gain drive the person involved in conciliatory bargaining. He or she is driven by a commitment to seeing the broken communication and relationship with the other group restored. The bargaining could be done publicly or in private with or without the explicit consent of the negotiating teams. The difference between unilateral conciliatory bargaining and unilateral vested interest bargaining is that in the latter, the bargainer is interested in the peace process only for some personal gains. His interest in the peace process could in fact contradict that of the team he claims to represent. This kind of bargaining is usually done in secrecy. It is easily dismissible as a "sell out" or an "unauthorized intrusion". The role of a good mediator is to promote the flourishing of both bilateral bargaining and unilateral conciliatory bargaining while at the same time focusing on discouraging the success of any unilateral vested-interest bargaining.

The people representing a team in a negotiation might not have the final say on the peace process. They sometimes have to take the outcome of the negotiation process back to their constituency (or "principal") for approval. The constituency reserves the right to accept or reject such a peace process. How easily the peace terms are ratified or rejected is much a function of the type of constituency we are referring to. We have two of such constituencies: (1) bureaucratic constituency and (2) horizontal constituency. In a bureaucratic constituency the ratification of the peace terms must follow a laid-down procedure. We have this kind of situation in a conflict in which a governmental agency or a well-organized company is a party.

61  M. Anstey, Negotiating Conflict: Insights and Skills for Negotiators and Peacemakers, Kenwyn, South Africa: Juta and Co. Ltd., 1991; C. Moore, The mediation process, 2nd ed. San Francisco, Calif.: Jossey-Bass, 1996 pp. 342-343.

After the negotiating team has reached an agreement with the other party, the peace terms are taken back to the organization for further discussion, ratification or rejection. There are laid-down legal procedures for dealing with a governmental agency for example. After having endorsed the terms of peace, the government might want to get the approval of the legislative houses before commencing its implementation. Other steps might be spelt out as conditions contingent on the implementation of such an agreement. It is necessary for the bargainers representing this kind of constituency to take the peculiar legal environment in which they operate into consideration before reaching an agreement with the other party.

In a horizontal constituency, there is less bureaucracy, as the people are loosely organized into social networks: of relatives, co-tenants and workers, public interest movements, etc. It is in the best interest for the people to be bound up into a cohesive group most especially in a situation of competition or conflict with some other groups. The negotiation team representing such a group must gain the approval of the members as that step is directly related to the implementation of the settlement terms. The ratification process could take place as a result of voting or referendum. In some situations, the ratification is done through consensus reached at the meeting of the organization. The lack of a definite procedure for carrying out the ratification exercise could lead to conflict within the group on whether or not to ratify the outcome of the negotiation as well as on how to do it.

Ingredients of Good Negotiation: Some conditions are necessary for making a success of a negotiation process. The most important are as follows:

» *Adequate provision of information:* It is impossible to negotiate well when the conflict parties do not provide themselves with adequate information on the conflict issues, personality of the other party, his/her position, interests and needs;
» *Effective communication ability* is an essential tool for a successful negotiation. The parties must have good listening abilities and be able to clearly articulate their positions and interests. They must be adequate debaters.
» *Ability to control one's emotion at different stages of the negotiation.* Blowing hot and cold is needed for ensuring the success of a negotiation process. The negotiator must know when to do what.
» *Good negotiation skills.* The negotiator must be able to think very fast and evaluate options. He/she must be able to bargain well and only trade away "worthless" tradeables. He/she must be able to evaluate the kind of power that is being mobilized by the other party in the negotiation process and the implications of such moves and countermoves. He/she must not lose too much in the bargaining process and must gain strategically.
» *Timing of moves and counter moves.* The negotiator must know when, why and how to make moves and countermoves.

### *Problems, Pitfalls and Barriers:*

Negotiation is the cheapest and most available strategy for dealing with conflicts of all sorts, but the least used. Why? The process has a number of problems, barriers and pitfalls. Human emotions - anger, arrogance, perception of conflicts in zero-sum terms, etc. - and the degree of polarization in the conflict situation often make it difficult for some conflicts to be resolved through negotiation, especially electoral conflicts arising from fraud. We need to shed more light on this.

A negotiation process is said to have been successful when it leads to the identification of mutually acceptable solutions. But that is not all. The parties to the conflict must be willing to implement the terms of

the agreement. Where the parties or one of them is not willing to keep to the agreement, then something is wrong, suggesting that the negotiation process failed.

Once negotiation fails, the conflict parties must seek the assistance of a third party (conciliator, mediator, arbitrator or judge) to help deal with the conflict situation. The third party is supposed to act as a mirror through which the parties to the conflict could see themselves and have a rethink of the conflict situation. The third party has to help the parties (re)map the conflict situation and design the necessary thinking needed for the conflict settlement or resolution.

## Mediation as an Alternative to Negotiation

Mediation is simply a ***facilitated negotiation.*** As Moore[62] noted, mediation is simply "an extension of the negotiation process in that it involves extending the bargaining into a new format and using a mediator who contributes new variables and dynamics to the interaction of the disputants. Without negotiation, there can be no mediation". One must therefore first seek to become a good negotiator before becoming a mediator.

Flowing from the foregoing, the primary responsibility of a mediator includes the following:
  » helping to address the substantive issues in a conflict;
  » helping to establish or strengthen relationships of trust and respect between the parties; and
  » helping to terminate relationships in a manner that minimizes costs and psychological harm.

Mediation goes beyond a mere problem-solving or "conflict management" exercise. It is an opportunity to ease the emotional state of the disputants, change their ways of interactions, and fix the problems which threatened their core interests. It provides for a change of heart and mindset.

Mediation provides a good opportunity for the hurts resulting from the conflict to be aired and healed. Because the process is not bound by any evidential rules, the parties can talk over anything (in the conflict) that hurt them. They are not restricted to only those issues of official or public interest in the dispute.

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62  C. Moore, The mediation process, 2nd ed. San Francisco, Calif.: Jossey-Bass, 1996 p. 16.

A mediation exercise becomes necessary and effective when:

- » The issues in the conflict are complicated by a strong emotional element;
- » The parties know each other intimately and wish to preserve the relationship;
- » One party feels uncomfortable confronting the other side unless someone else is present;
- » The parties work or live together, or for other reasons cannot avoid the conflict;
- » A decision must be reached soon;
- » The parties are unsure of their ability to work out the problem;
- » Many people are involved or indirectly affected; and
- » One or both parties want to avoid formal proceedings

In other words, mediation is useful only when the parties to the conflict really desire a resolution of the problem, or at least a positive change of the difficult circumstances in which they find themselves. Mediation also becomes possible only when the parties are willing to come to the negotiation table; when each side is able to express the reasons for the problems; when the mediation is able to put in place a process that works; and when parties are willing to live up to their promises.

### *Principles of Mediation*

There are a plethora of books and journal articles on mediation. Each of them prescribes steps that a mediator could follow in helping to promote joint problem-solving between the disputants. There are, however, some common principles running through these publications. The principles include the following:

*The principle of impartiality:* The mediator must not take sides in the dispute. He must be seen to be neutral.

*The principle of confidentiality:* Issues discussed during the mediation exercise must be treated with confidentiality and must not be discussed with "outsiders".

*The principle of self-determination:* The disputants have the freedom to determine which issues in the conflict they want to address. They also have the right to keep certain issues away from the mediation forum.

*The principle of voluntariness:* The disputants must not be forced to choose mediation: it is supposed to be a voluntary exercise. Any of the parties could withdraw from the mediation process if he or she so feels.

*The principle of empowerment and education:* Mediation is supposed to empower disputants to be able to deal more constructively with their problems. Every mediation exercise should promote this objective. In addition to empowering the disputants, mediation is also supposed to be a forum for educating the disputants on how to deal with conflict productively.

Attributes of a Mediator

HARD HEAD
BIG EARS
CLEAR EYES
SMALL MOUTH
BIG HEART
EGO CONTAINER
BIG FEET FIRMLY ON THE GROUND
BIG BLADDER
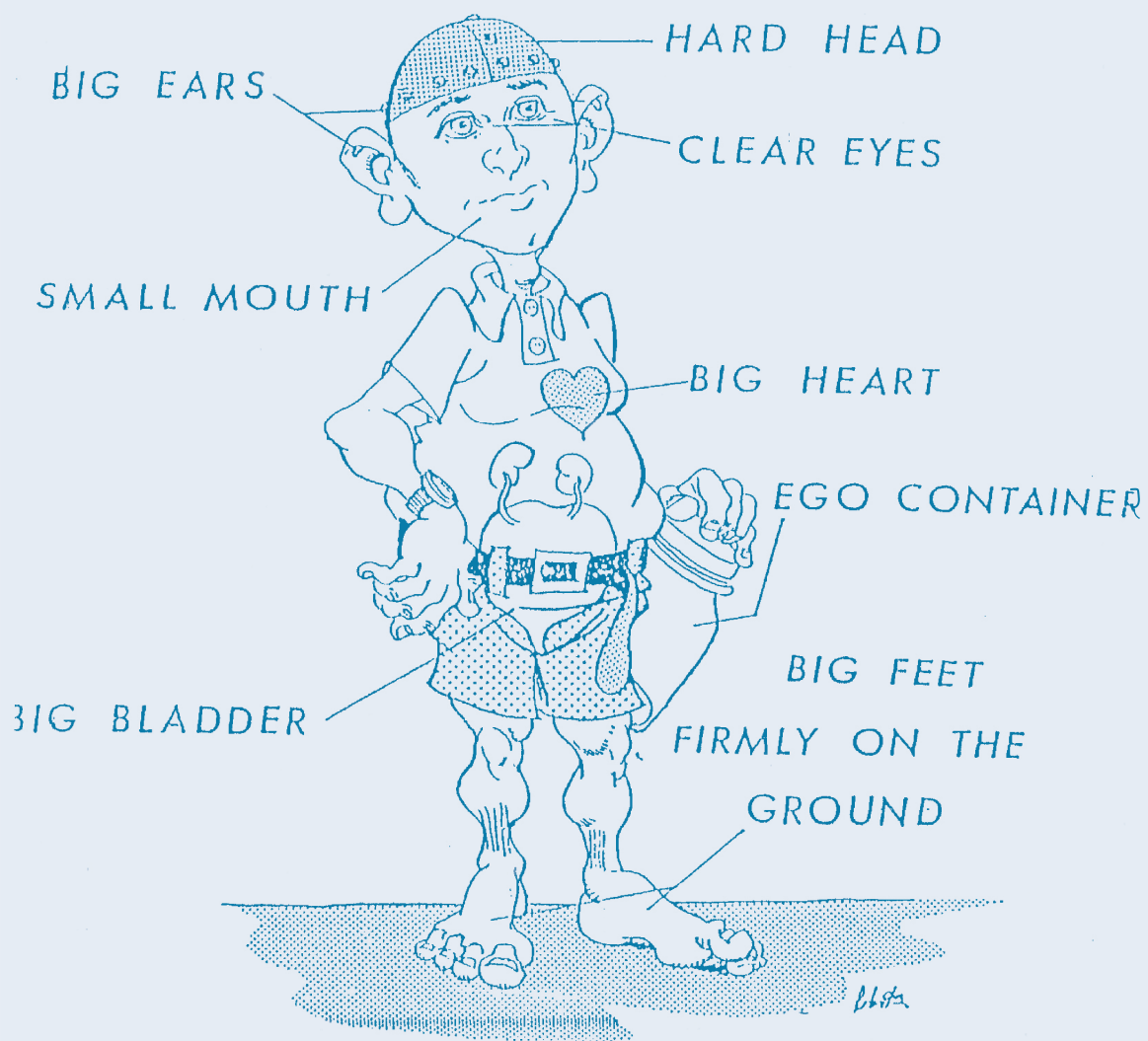
A mediator can come into a conflict situation in four possible ways:

» Through the invitation of one or both parties to the conflict;
» Through referrals by concerned individuals or groups;
» Direct initiative of the mediators;
» Sponsorship by a recognised body.

### Types of Mediators

There are three broad types of mediators. Each is determined by the nature of relationship that the mediator has with the parties to the conflict:

» *Social network mediators:* Social network mediators consist of individuals who are invited or who voluntarily chose to intervene in a conflict basically because they have a close relationship with the disputants, or largely because they are part of the lingering and same social network with the disputants. The mediator could, therefore, be a community member or mutual friend of the disputants. The mediator gets the co-operation of the disputants because he is either considered trustworthy, known or because he is most likely to treat information pertaining to the conflict with the utmost confidentiality.[63]

» *Authoritative mediators:* Authoritative mediators are people in authoritative relationships with the disputants in the sense of occupying a position of authority well known to, recognized and respected by the disputants. A good example in this case is a leader of a political party or a traditional ruler in a community where politicians are violently disagreeing with one another. The "authority" of the mediator in this kind of situation is dependent on his access to resources much valued by the sides to the conflict. His position notwithstanding, an authoritative mediator is not expected to impose his decisions on the disputants. But he could persuade or influence them, indirectly, to reach a quick decision. Authoritative mediators are most found in workplace environments but they can also be useful in a political situation, especially in intra-party settings.

» *Independent mediators:* He or she is a neutral person entirely and has no vested interests in the conflict. He or she is therefore expected by the contending sides to be impartial in helping them work through their problems. Many independent mediators in the developed parts of the world are professionals. They have mediation firms that are consulted by disputants from time to time, especially the big firms interested in nipping in the bud latent trade disputes with their employees before these become manifest conflicts. Disputants seek the service of independent mediators when they are in desperate need of procedural help in negotiation. The credibility of an independent mediator depends largely on his or her impartiality and neutrality.

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63  *John Paul Lederach, Preparing for peace: Conflict transformation across cultures, Syracuse, NY: Syracuse University Press, 1995, p. 89.*

*The Mediation Process*

The mediation process starts once the disputing parties have submitted and committed themselves to the process. A mediation plan[64] has to be developed by the mediator. By mediation plan is meant the procedural steps the mediator takes with a view to assisting the disputants to work through their problems. It is supposed to be a guide for the intervention process. A typical mediation plan contains details of the nature of the conflict to be worked on, its complexity, the limit of the intervener's knowledge of the conflict, what is left for the intervener to understand on the conflict, the time for doing what is necessary and the nature of mandate given to the intervener (for example, the nature of power given to him or her by the disputants in the mediation process). The mediation plan changes as the mediation process progresses.

The task before a mediator can be broken into four major stages:

*Stage 1: Introduction:* The mediator seizes this opportunity to create the necessary "safe space" for the mediation exercise. The authority of a mediator is in the trust that the disputants have in him or her. He or she therefore has to clearly establish personal, institutional and procedural credibility for the process before starting the mediation. The mediator has to clarify his or her roles and those of the disputants in the mediation process; restate the value of mediation; acknowledge that mediation is hard work, but express positive expectations; state the ground rules and have a confidentiality agreement signed before the proceedings commence.

*Stage 2: Storytelling:* At this stage, the mediator listens to the stories of the disputants. He also puts in place structures for enabling the disputants to pour out their hearts and actively listen to each other.

*Stage 3: Joint Problem-Solving:* At this stage, the mediator summarizes the stories told with a view to identifying the salient issues to be negotiated. He or she helps the disputants to reflect on the information provided and takes them through the joint problem-solving task. At the end, a mutual resolution of all or some of the issues is attained.

*Stage 4: Formalizing and signing of Agreement:* At this stage, the issues on which agreements seem to have been reached at stage three (above) are carefully packaged together, written out into an agreement and signed by the parties. Issues on which agreement could not be reached could be reserved for another mediation exercise.

The failure of mediation can be blamed on two interacting factors: (i) the intransigence of the parties and (ii) the mediator's strategy and tactics which in some cases diminish the prospect of success.[65] The latter is not surprising given the fact that many of those that facilitate these peace processes merely depend on their good offices and personal credibility to deal with the process. They never had any formal training in mediation. Not even lawyers, who are trained in adversarial conflict management traditions, find it easy

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[64]  C. Moore, Op. cit., p. 141.

[65]  Laurie Nathan, "When push comes to shove: The failure of international mediation in African civil wars", Track Two 8 (2), November 1999 pp. 1- 23.

to do mediation. This is largely because mediation is a non-adversarial conflict management style for which sound training is needed. Focusing on this, Goodman and Hammerton observed that "Mediation is not a soft option for the advocate. If you are unprepared, if you do not know what to expect, if you do not know what you are doing, your client will be at considerable disadvantage and you will come back unstuck".[66]

The role of mediation in dealing with future election disputes in West Africa are most likely to be better appreciated where and when decision makers, policy makers, officials of national governments and regional organizations can invest some of their time and resources on training in mediation. One of the things they would learn from that kind of training is that power-based diplomacy is counter-productive when dealing with election-related problems. Mediation works but those who attempt to use it must be properly trained in the field.

In concluding this section of the guide, the point must be made that both adjudication and mediation have their limitations when it comes to election dispute management. The legal framework of electoral democracy expects disputes arising from it to be dealt with through adjudication. To this end, once results of an election are announced, the only channel for dealing with the situation is to go to a court of appropriate jurisdiction to challenge the decision of the EMB. As the issue pertains to the law, settlement cannot be done through the strategies of negotiation and mediation.[67]

If at all mediation has any role to play in the management of election dispute, it is in facilitation a discussion that would enable a supposed "loser" of the election to be given a role in the government of the supposed "winner". This was the kind of agreement that was reached in Kenya and Zimbabwe in 2007 and 2008 respectively. Even then, this kind of situation compromises the benefits of electoral democracy as the power sharing arrangement that emanates from the process have little or nothing to do with the electoral decisions of the voters, most especially if it was clear that it was in fact the supposed "loser" that actually won the election. This kind of situation would discourage people from coming out in the future to vote.

On the other hand, negotiation and mediation are the best for dealing with pre-election and election-day disputes. This is because they lead to a speedy outcome that could enable the electoral process to continue unimpeded. Commenting on this, Goodman and Hammerton observed that "Mediation provides litigants with a wider range of solutions than those that are available in litigation; for example, an apology; an explanation; the continuation of an existing professional or business relationship perhaps on new terms; and an agreement by one party to do something without any existing legal obligation to do so".[68]

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66  *Andrew Goodman and Alastair Hammerton, Mediation advocacy, New Delhi: Universal Law Publishing Co. Pvt. Limited, 2010 p. xv*

67  *Ibid., p. xix.*

68  *Ibid., p. xxii*

## Conciliation

Conciliation is different from either mediation or adjudication. As observed above, the mediator is a third party neutral whereas a judge has a decision making power. A conciliator on the other hand is neither a third party decision maker nor necessarily a third party neutral. Conciliation involves the third party (who may or may not be neutral) helping the disputants to restore positive relationship. His or her main job is to restore healthy communication between the disputants by carrying peace messages between them; dealing with the strong emotions that stop the parties from discussing their problems; helping to clear misperceptions; building trust and affirming the ability of the disputants to work together. To the extent that it focuses exclusively on trying to change negative attitude and behaviour, conciliation could open up opportunities for negotiation and mediation.[69]

## Other Non-Adversarial Methods

Whereas in adversarial dispute management systems, the power of the third party intervener has to be recognised by institutional law, in the non-adversarial method the power of the third party must be recognised by the disputants themselves. Without their consent, the management of the problem is impossible. In fact, Folger observed that "If endorsement of the mandate is withdrawn or questioned by the disputants, the ability of the third party to act is altered or curtailed".[70] Beyond what has been provided above, the following additional non-adversarial approaches should probably be considered by those interested in intervening in election disputes:

» Facilitated dialogue
» Process promoting workshops
» Peace commissions or peace committees[71]

### Facilitated Dialogue:

This has to do with a third party neutral trying to restore communication between warring parties with a view to helping them to narrow down their areas of disagreement.

### Process Promoting Workshops:

This has to do with bringing the disputants together under same roof to be taught, whether directly or indirectly, strategies for dealing with the kind of problems they face. They are thereafter challenged to put the lessons of the workshop into practice. This approach is necessary when it is difficult to get the disputants together for a negotiation process. Those organising the workshop have to give it an attract name that would make the parties to attend. The facilitator, who must be well groomed in handing this type of workshop, has

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[69]  United States Office of Personnel Management, Alternative Dispute Resolution: A Resource Guide, Washington DC: USOPM, 1999, pp. 8-9.

[70]  J.P. Folger, Working through conflict: Strategies for relationships, New York, 1997 p.257.

[71]  See Isaac Olawale Albert, Introduction to third party intervention in community conflicts, Ibadan: John Archers, 2001 pp. 34-38.

to carefully plan and run the workshops in such a careful manner that within a short time of starting it, the participants would start to imagine themselves within the context of the emerging issues. It is at this level that they begin to show interest in adopting problem solving strategies to address their disputes.

*Peace Commissions or Committees:*

This takes two forms. The government either establishes a permanent or semi-permanent commission that could deal with those issues in election disputes that could be resolved outside the court of law. The other option is for an EMB, a political party or concerned citizens to establish a peace committee that helps parties to election disputes to resolve their differences.

## A General Framework for Election Dispute Management

In an interesting article,[72] Bill Sweeney, President and Chief Executive Officer at International Foundation for Electoral Systems (IFES), identified seven standard principles that serve as guidelines for the implementation of an effective election dispute management. He observed that regardless of whether they are solved by a constitutional court, an independent tribunal, or an electoral complaints commission, adherence to these standards helps to ensure that specific post-election remedy systems comply with obligations under relevant international and domestic law.

The first principle is that citizens have access to a transparent right of redress for election irregularities. Of significant importance here is the access of the general public to the judicial process, the filing of a claim, the chronology of the process, and the publication of decisions. Where this takes place in an open and smooth way, confidence is built in the political process, better public participation in the political process is guaranteed and those voted into office enjoy the necessary legitimacy to govern.

The second standard is that appropriate administrative and legislative measures are taken towards ensuring that citizens enjoy the right to periodic, free and fair elections. These rights are better respected by all and sundry when they are enshrined in the law of the land and made accessible. It should provide adequate notice and open the electoral process to individuals, political parties, and civil society groups. The laws capturing these rights should be stable and not subject to manipulative alterations that confuse both the electors and the officials charged with conducting free and fair elections.

The third standard is that those intervening in election disputes be both impartial and informed. This helps to ensure that the dispute management system echoes the fair trial standard demanded by all major human rights conventions. This goal is easier achieved when the provisions for the appointment and removal process, length and security of tenure and fair remuneration of the judges or arbiters are clearly articulated and not tampered with. It is also necessary that these arbiters are sufficiently educated about electoral laws and are equipped with the necessary skills to assess, investigate and settle disputes without fear or favour.

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*72  Bill Sweeney, "Complaint Adjudications Standards: The seven steps to timely and effective dispute resolution", Mundo Electoral, Year 3 No. 7 January 2010, http://www.mundoelectoral.com/html/index.php?id=423.*

On the last point, note that the arbiters will exercise their authority better when they are provided with adequate security of life and property.

The fourth standard is that management of an election dispute should take place "within a reasonable time" and "without undue delay". This requires that the system have well in advance clear and streamlined procedures for dealing with disputes as well as judicial power to enforce an expedited timeline. It is necessary that the speedy adjudicatory procedures do not jeopardize the more general principles of the proper administration of justice, such as the right to an adequate time to prepare a defence. In other words, speedy justice and adequate due process must be balanced.

The fifth is that the society must have sensible standards of evidence for exhausting the burdens of proof. This must also be determined in advance so that it is well known to all and to ensure that that those making allegations of election irregularities are making their claims based on what the law says. This reduces the chances of frivolous complaints. Sweeney advises that "When choosing the adequate burden of proof, the protection of victims, the complexities of the adjudicated claim and the remedies that may follow are key elements to take into account."

The sixth standard is that a dispute management mechanism should provide for effective, timely and enforceable remedies that offer true redress to an injured party. This includes the rights of appeal, quick and effective examination of claims, legal justification for each decision, restoration of the infringed rights, and appropriate sanctions and penalties.

The last but not the least standard is that governments need to set up national civic education programmes to educate the population about election procedures and issues. It is necessary as well for political parties, candidates, human rights groups, other civil society organizations, electoral management bodies and the media to equally understand the powers and limitations of the complaints system in order to help implement these principles.

## Rapid Response to Disputes

There is the need to revisit the time element in election dispute management. This issue is critical given the fact that a delay in the management of disputes could lead to two problems: issue and actor proliferation. By "issue proliferation" is meant that as solutions are not found to the dispute early enough, some new issues are raised by the disputants or even a third party and this tend to further compound the problem. As the issues proliferate, more actors join the dispute and this also contributes to the escalation of the crisis.

Hence, timely management of an election dispute is itself a conflict prevention strategy in the sense that it prevents new issues and actors from joining the problem. It has also been noticed that when the results of an election are challenged and the matter is not dealt with speedily, the political system could ground to a halt and this might goad people into resorting to self-help strategies to deal with the dispute. To reduce the time devoted to handling election disputes brought to the court, the Nigerian Court of Appeal issues a practice directive to all election tribunals "requiring them to collect evidence up-front in the form of affidavits rather than listening to witnesses and cross-examining them..The tribunals were also directed to be less formalistic and less dismissive of evidence that did not follow the exact formats of the evidence law..The

tribunals also started directing incumbents who had lost their appeal to vacate office before the conduct of bye-elections".[73]

Election days (namely when the election is actually conducted) are usually characterised by several problems that would have to be dealt with speedily otherwise the candidates and voters would start filling that there are deliberate attempts to manipulate the process. This could lead to violence. Problems leading to this kind of situation include inability of voters to locate their polling stations or find their names on the voters register. High-handedness by law enforcement agents around the polling booths or campaigns of candidates around the polling booths could ignite the anger of the people. Some individuals can also generate problems around the polling booths with a view to scuttling the electoral process. All of these problems have to be dealt with immediately. The following table demonstrates how a person trying to create problems around the following booths could be managed:

*Integrated Anger Management System*

| Rapid Response techniques during elections - summary | |
| --- | --- |
| **Step 1  Assuring Safety - creating safety valves** | |
| Safe places | Removing the person to a place where provocation is reduced |
| Safe persons | Connect the angry person with a group who are not involved [they are not the object of provocation - persuasive language] |
| Safe activity | Engage the person in something that is completely different from the Provocation[divert the attention] |
| Safe object | Reassuring the person that not all is bad or lost [need very creative alternatives to the problem] |
| **Step 2  Incremental tolerance** | |
| Respect positions | Acknowledge that everyone is entitled to their emotions |
| Recover self control | Communicating appreciation but also reservation about approach especially race [emotional intelligence is utilized] |
| **Step 3  Evaluating goals and methods** | |
| Hear the message | Genuinely listen to what the concerns are |
| Interpret it | Take in aspects of body language, tone of voice, what their significance |
| Evaluate it | Decide what is the actual message being conveyed - raise the questions to clarify the meaning of the message and repeat / communicate what is being heard |
| **Step 4  Relinquish unrealistic expectations** | |
| Paraphrasing | It is important to paraphrase to ensure that the message being communicated is properly understood |
| Build trust | It is important that the individual appreciates that they are trusted and the space is a trusted space |

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[73] *Jibrin Ibrahim and Dauda Garuba, A study of independent national electoral commission in Nigeria, Governance and Institution-Building in Africa, Number 1 Dakar: CODESRIA, 2010 p. 26.*

| Rapid Response techniques during elections - summary | |
|---|---|
| Creating dialogue | Shifting from screaming and one way communication to reasoning in an understandable manner |
| *Step 5 Win - Win Result* | |
| Negotiating Space | Couching steps 1-4 are social negotiation activities. Anger was the bargaining tool to produce an outcome |
| Addressing the issues | Always shift the focus from personalities to issues. Doing this breaks the barriers and create free space for arriving at win-win results |
| *Important Notes:* | |
| Linkages | It is important to link the agitator with the group but ensure that the cell group appreciates the process of engagement and change of attitude otherwise the person can revert to previous expression of anger |
| Credibility | Impartiality is of utmost importance. If you are perceived as being partial you will not be taken seriously. Don't compromise your independence Build procedural credibility by:<br>  * framing the intervention for the public good<br>  * refrain from teaching<br>  * refrain from being judgmental<br>  * refrain from promises<br>  * balance keeping quiet with knowing when to intervene |
| Limitations | Not all forms of anger can be managed.<br>Step/stay out when:<br>  * you realize the intervention is futile<br>  * angry people are wielding dangerous weapons<br>  * when your intervention is regarded as stirring up anger<br>  * when INEC administrators are not engaging |

Source: Isaac Olawale Albert and Derrick Marco

> **Discussions:** *What are the administrative and judicial problems that could lead to the delay in finding a lasting solution to an election results dispute? What are the possible consequences of such a delay in dispute management?*

> **Discussions:** *How can election-related violence be better anticipated and conflict prevention programming put in place to mitigate its occurrence and stem its escalation?*
>
> *What kind of interventions can internal and outside actors initiate to mitigate election-related violence, thereby strengthening the conflict-mitigating properties of electoral processes and their potential for improving the legitimacy and effectiveness of governance?*

# SECTION 4: Crosscutting Issues

*I*n this part of the guide, issues cutting across the three phases of the election cycle are presented in the context of the principle of multi-track diplomacy. In this context, the role of security agencies, civil society organisations, training and the media in elections are examined. The need for evaluating election dispute management systems is also underscored.

## Multi-Track Diplomacy[74]

Dealing with election disputes is not a matter to be left to the government alone as we often see in different parts of Africa. There are several other stakeholders that could participate in the process. The multi-track diplomacy framework developed by John McDonald and Louise Diamond, co-founders of the Institute for Multi-Track Diplomacy (IMTD), can help us to understand this better. The multi-track system was directly developed due to the inefficiency of pure government mediation (Track one diplomacy). For that reason, former diplomat Joseph Montville in the 1990s invented "Track Two Diplomacy" in order to incorporate citizens with experience of diversity and the skills of intervention into the mediation process. Still, Dr. Louise Diamond, recognized that lumping all track-two activities under one label did not capture the complexity or breadth of unofficial diplomacy. Therefore, she coined the phrase "multi-track diplomacy," in order to incorporate all other aspects of third party intervention in conflicts.

Ambassador John McDonald added further "tracks" by expanding Track Two Diplomacy into four separate tracks: conflict resolution professionals, business, private citizens, and the media. In 1991, Dr. Diamond and Ambassador McDonald expanded the number of tracks to nine by adding four new tracks: religion, activism, research, training, and education, and philanthropy.

In all, multi-track diplomacy (where applied to management of election disputes) explains a procedural approach that is based on the assumption that election disputes management and peace building capabilities reside in many quarters, not a few. The multi-track procedure is a nine-level response technique that narrates the values of partnership in dispute resolution and peace building.

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74  *See L. Diamond and J.W. Macdonald, Multi-Track Diplomacy: A Systems Approach to Peace, New York: Kumarian Press, 1996; L. Diamond 1994. Beyond Win-Win: The Heroic Journey of Conflict Transformation, Washington D.C.: The Institute for Multi-Track Diplomacy, 1994.*

Track One:
**Government**

Track Two:
**Professional Conflict Resolution**

Track Eight:
**Funding**

Track Seven:
**Religion**

Track Three:
**Business**

Track Six:
**Peace Activism**

Track Four:
**Private Citizen**

Track Five:
**Research, Training, and Education**

Track Nine (Inner Circle):
**Media and Public Opinion**
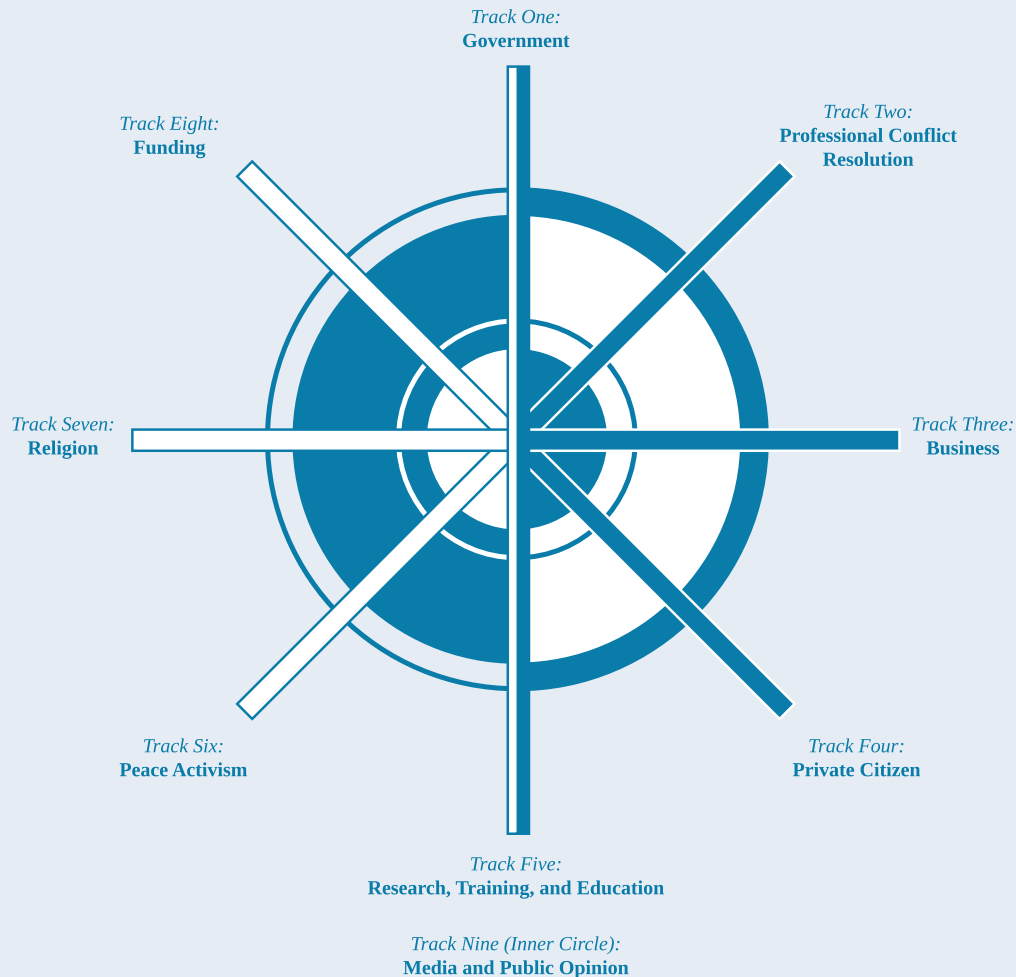
*(a ) Track one diplomacy: Government:*

This entails the use of command functions and deployment of political institutional capabilities to prevent or manage dispute and build peace. This track is the major track in any political system, and it sets the agenda for the remaining tracks. It involves the use of the security apparatus and other administrative instruments in enhancing compatible relationships and suppressing hostile human activities.

*(b)Track two diplomacy: Non-government and professional:*

This approach refers to intervention and management initiatives by nongovernmental or professional individuals and groups. It covers the activities of civil society groups, domestic NGOs, and peace practitioners and specialists serving as the cutting edge for conflict prevention, management and peace building initiatives.

### (c) Track three diplomacy: Business:

This form of conflict and peace intervention approach tries to bridge socio-economic opportunities and responsibilities. It is an effort that promotes enabling business environment in a stable social order. The track is a response mechanism to the growing apprehension of the need to annex investment potentials by developing individual and communal socio-economic capacity of host communities.

### (d) Track four: private citizens:

This approach shows the several interventions and management styles that are adopted by the people themselves to enhance social order. It also refers to notable individual members of the society working voluntarily towards the prevention and management of conflict and peace building.

### (e) Track 5: Research, Training and Education:

This approach is the intellectual hub of conflict and peace intervention. It is an approach that rests on analytical tools, and generates data on conflict and peace dynamics for policy and action. The track enriches understanding of issues, actors, nature, character, and dynamics of peace and conflict, and lays the foundation for a more enduring human interaction in a given system.

### (f) Track six: Activism:

This approach involves the activities of individuals and organizations that position themselves as advocates of the masses and champions the cause of the disenfranchised in the society. The activities of track six diplomats are usually seen as being confrontational and antagonistic of political leaders. It is a track that seeks to protect and defend the inherent, universal, inalienable, and indivisible rights of the marginalized. The model defines conflict and peace intervention and management within the confines of human rights, and seeks to reverse policy decisions that are either retroactive or oppressive. Sometimes, however, the track generates conflicts and proliferates the parties to a dispute.

### (g) Track seven: Religion:

This is the engagement of faith based leaders and groups in conflict prevention, management and peace building. Using value based initiatives, the track considers the supremacy of the creator over humans and focuses on justice, equality and service to humanity. Track seven is very useful in building peace across religious divides and mitigates the capacity of radical religious groups in plural societies. It raises the understanding on divergent and compatible issues around value systems.

### (h) Track eight: Funding:

The activities of bilateral and multilateral donor communities in conflict and peace intervention are the focus of track 8. The impact of this track is most felt in emerging democracies and economies because of high levels of poverty, underdevelopment and bad governance. Donor communities either initiate or buy into peace building activities for a variety of reasons. These range from promotion of natural interest to conscious desire to overcome poverty and secure lasting improvements in quality of lives.

*(i)Track nine: Media:*

The crucial roles of the opinion-moulding organ in peace practice are covered by this track. The media constitute a crosscutting track that affects other tracks and defines the context and dynamics of a conflict. Media intervention plays vital roles in either escalating or de-escalating conflicts. It often determines and influences the attitudes and behaviour of conflict actors and stakeholders, and could be a veritable tool for shaping perceptions towards conflict transformation.

The idea of the multi-track diplomacy is to identify which of the nine tracks is best suited for a specific cluster of conflict management and peace building activities, and to decide how to use such where appropriate. It also implies that all the tracks have a role to play in the management of election disputes and post-election peace building. To this end, there should be conscious effort to involve all the tracks in the electoral process.

## Track I: Security Management

To the extent that it is associated with several legal issues and the fact that some individuals and groups as well as law enforcement agencies might want to tamper with the process, the conduct of an election is a major security issue. This makes security management in an election very important. Election security in this context can be defined as "...the process of protecting electoral stakeholders such as voters, candidates, poll workers, media, and observers; electoral information such as vote results, registration data, and campaign material; electoral facilities such as polling stations and counting centres; and electoral events such as campaign rallies against death, damage, or disruption."[75]

Election officers need to work in a safe environment. Similarly, good security and an electoral climate devoid of fear, can increase the participation of political parties, candidates and the voters. It also enables a more objective coverage of events by the media and easier circulation of voter education messages and materials. Good security also protects the integrity of the process and the accuracy of the results. Systems and procedures designed with integrity, including monitoring mechanisms and tracking systems, are essential components of the apparatus of the electoral system.[76] Arising from the foregoing, the following four main types of security needs can be identified for an election:

» Physical security: the protection of facilities and materials, including the electoral commission headquarters and its offices; registration stations and polling stations; political party offices; election observer offices; and media organisations.[77]

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[75]  See the United States Agency for International Development's (USAID) Electoral Security Framework, Technical Guidance Handbook for Democracy and Governance officers, July 2010, Page 5.

[76]  Sue Nelson, "Election security", Paper presented at the Regional Workshop on Capacity Building in Electoral Administration in Africa, Regional Workshop on Capacity Building in Electoral Administration in Africa CAFRAD and the United Nations Department of Economic and Social Affairs - UNDESA Tangier, Morocco, 24 -28 September, 2001.

[77]  Ibid. Physical security during elections also covers the residences of election officials, candidates and the hotels often used by international visitors, media or observers, from the perspective of the USAID's July 2010 Electoral Security Framework.

» Personal security: the protection of electoral stakeholders, including voters, election officials, public officials, security forces, candidates, party agents, observers and media staff.[78]
» Information security: the protection of computers and communication systems used during voter registration and vote tabulation.[79]
» Electoral events: official election events like voter registration, election day activities as well as associated election events like campaign rallies, debates, political party meetings, coalition meetings, can all be victimized by conflict.[80]

The need for security is all-encompassing as regards elections. Every aspect of the process comes with a plethora of security issues. The following principles apply to security agencies whose work is paramount in securing life and property as part of their contribution to the objective of free, fair, and credible elections.

### *Equitability:*

It is necessary that all parties in an election be treated in an equitable manner by both security forces. Actions taken against any party must be reasonable, proportional, and consistent and must not be influenced by arbitrary factors such as political affiliation or political ideology. Security protocols for the election must consider and acknowledge the fact that an election is a mechanism by which people are able to exercise their political, civil and human rights.

### *National ownership:*

A security agency manages the coercive instruments of a state and to this effect is a major national asset. Except in post-war societies where national security forces may need to be strengthened by international forces, the conduct of an election is best supervised by national security agencies in order to preserve the sovereignty of the country and avoid allegations of international interference. Indigenous security forces are in the best position to deal with sensitive cultural practices and may therefore be best positioned to interpret and respond to emerging threats.

### *Strategic:*

Planning for an election takes 18 to 24 months before the polling day. It is essential that security agencies are brought into the planning picture and preparatory activities very early otherwise they might not be able to fulfil their full roles in ensuring that everything goes smoothly during the elections. This is

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[78] *In the USAID July 2010 Electoral Security Framework, gender, age, ethnicity of human targets were noted as comprising some of the security concerns, "as people can be victims of assassination, torture, sexual assault, strategic displacement, physical injury, blackmail or intimidation in attempts to influence their involvement and choices in an election" p.5.*

[79] *Information security includes the safety also of associated sensitive election materials like voted and un-voted ballots and voter registration lists, whose theft will jeopardize the election as noted in the Electoral Security Framework by USAID, July 2010.*

[80] *Election activities such as voter registration are multi-day events and require sustained security over a period of time, while electoral violence is a sub-type of political violence in which actors employ coercion in an instrumental way to advance their interests or achieve specific political ends (see USAID, July 2010).*

largely because an electoral process is constituted from a complex series of interdependent sub-processes, including boundary delimitation, civic education, voter education, voter registration, party registration, candidate nomination, the campaign period, polling operations, tallying and counting, dispute resolution and the official announcement of results. With the exception of boundary delimitation (which often occurs following a decennial census exercise) these sub-processes occur in some form during each election cycle. Each of these sub-processes can be characterised by different types of threats, influenced by the particular approach adopted, cross-influence between sub-processes and the individual circumstances of the election.[81] This integrated strategic approach requires that the budget for the EMB should not neglect the need for financing the operations of security agencies in relation to the conduct of elections.

### Non-partisan and impartial:

The integrity of an election is dented where security agencies are biased. They must under no circumstance behave in a partisan manner. This does not mean that members of security agencies cannot vote for candidates of their own choices. What it means is that the agencies cannot endorse any party or candidate and mobilize the electorate in their support.

### Flexible and efficient:

As a national institution, security agencies must be able to adjust easily to the needs dictated by the election dynamics.

### Transparent and accountable:

It is necessary that during election agencies provide information to members of the public on the basis of public interest. Recognizing the importance and value of transparency is one way of making the public commit itself to supporting the work of the security agencies and cooperating with them. Political parties, civil society organizations and other relevant organizations must be duly consulted on security issues. In cases where it is necessary to protect information, extra accountability measures may be necessary to ensure post-event justifications.[82]

Just as unprofessional conduct of security agencies could negatively affect an election, the structural and circumstantial aspects of the election process could also generate forms of security threats which security agencies would be required to handle. The structural design of the electoral process such as the choice of electoral system may foster or deter certain threats. This requires that security personnel should try as much as possible to educate themselves about the legal and institutional frameworks of elections with a view to identifying the gaps and challenges that lie ahead of them in the administration of the elections.

81  The Electoral Knowledge Network (ace), "Election Security Threats and Analysis", http://aceproject.org/ace-en/focus/elections-and-security/.

82  Sean Dunne, "Focus on Elections and Security", http://aceproject.org/ace-en/focus/elections-and-security/principles-of-elections-and-security?toc, December 2006

## Tactical Role of Security Agencies

How security agencies are used and deplored during elections depends largely on the political environment in the country, most especially the mood of the ruling elite in the society. However, the following captures the several operation modes that are available around the world:

*Joint Operations Centre (JOC):*

The strategy of establishing a Joint Operations Centre (JOC) is now becoming a common feature of nations truly interested in ensuring that security agencies play effective and neutral roles in the conduct of elections. It enables various security agencies to work with the EMB to manage different aspects of the elections professionally. This approach was adopted during the 2011 elections in Nigeria. JOCs are usually established months before an election and consist of representatives of various agencies that share information with a view to forming common strategies for dealing with eventualities that could threaten the smooth conduct of the electoral process.*Dedicated Training on Security:*

Security agencies functions at their best if provided with dedicated training on matters pertaining to elections, most especially on issues dealing with electoral offences and their constructive management. On the other hand, the training provided to electoral officials should have components on the role of security agencies so that they are sufficiently informed before the actual moments of having to work directly in the field to secure the votes and the voting process.

*Weapon Exclusion Zones:*

In some societies, most especially those just coming out of armed conflict, it is necessary for security agencies to map out "weapon exclusion zones" where the possession of arms and ammunition are completely not allowed. Such zones could include those places where voters' registration, campaigning, polling and counting exercises are being conducted.

*Coordination of Campaign Rallies:*

In some societies, those organizing political campaigns are expected to inform security agencies. This is not necessarily for the purpose of "obtaining a permit" from the police as it is often interpreted but largely in the spirit of public law and order of ensuring that those campaigning are provided with necessary security cover. Security officers will accompany them for the sake of maintaining public law and order and to ensure that the rally is not hijacked by people who are out to only cause chaos in society.

*Campaign 'Cooling-Off' Period:*

A security framework usually written into several electoral laws is what is technically referred to as a "campaign 'cool-off' period". It is determined by making all campaigns towards the election to end some period before the actually Election Day. This helps to reduce the amount of political rhetoric and tension between opposing parties, as their respective supporters go to vote together at polling stations.

*Security Media Component (Proactive and Reactive):*

An election, most especially those conducted in highly divided societies (marked by ethnic and religious tensions), ought to be backed up by a security media component which enables appropriate security agencies to educate the public about their role in the election in addition to disabusing the mind of the public against whatever misinformation that might have been passed across as to what the security agencies are about. In addition to this periodic activity, security agencies should have mechanisms for responding immediately to journalists' enquiries or disinformation.

*Rules of Engagement or Use of Force Policies:*

The present political environment in West Africa suggests that security agencies would face the temptation of occasionally using the force of arms during elections. It is therefore necessary for security forces preparing for an election to have a "Rules of Engagement" (RoE) or "Use of Force Policy" (UoF) to guide the actions of their personnel in certain circumstances. This document helps to thoroughly educate the personnel on the dire circumstances where extreme force can be used.

*Investigation Taskforce:*

To reduce the chances of being accused of impartiality and increase the chances of defusing tensions it is necessary for security officials associated with elections to have the capacity to investigate complaints rapidly and come up with solutions that would prevent dispute escalation during elections.

It is unfortunate to note that in some African states, security agencies themselves constitute a threat to the success of the electoral process through unprofessional activities and behaviours that are no different from what is done by ordinary criminals usually employed by politicians to achieve that kind of objective. It is in this respect that it could be argued that security agencies play two possible roles in an election (i) as problem solvers and (ii) as possible agents of dispute. What would happen to a society in this respect depends largely on the nature of the security bastion in that society: (i) whether the security agencies are truly professional or (ii) are blind agents of the ruling elite. The latter possibility dents the image of a security organization while the former uplifts it most especially in the long term.

## Track II: Civil Society and Election Dispute Management

All over the world, elections are usually a contest between a ruling government and those challenging it. It is human that those who are already occupying public positions would do all at their disposal during elections to retain their positions. The situation is more worrisome where the government's commitment to the rule of law is weak. Under that kind of atmosphere it is possible to see political incumbents take advantage of their influential public positions to manipulate the election laws, the appointment of the leadership of EMBs, and judicial bodies to listen to election petitions. This often put the "opposition" at disadvantage and forms the fulcrum of many of the disputes that arise later.

Even when political incumbents do not take undue advantage of the public offices they occupy, it is most likely that they would be suspected of so doing. This is because in a multiparty system, there are usually many political parties competing for political position. Where one of them accepts the results declared at

the end of the exercise, a few others might challenge the results based on whatever shortcomings they might have noticed about the process. Hence, neutral third parties needed to come in between the political parties and other stakeholders in the electoral process by building confidence and trust in the system. It is in this respect that civil society organizations are very crucial to the successful conduct of democratic elections and election disputes.

Civil society is so respected because they are non-political and not under any serious state influence other than having their registration certificates issued by the government. Many of them are also not funded by the state. Hence, they can boldly speak out on issues without fear or favour and their interventions are usually organized in a way that benefits a large section of the society.

The work of civil society organizations in dispute prevention and management can be broken into three broad categories:
  » Helping citizens participate in their democracies;
  » Increasing politicians' accountability; and
  » Strengthening state institutions for efficient performance

These can be achieved through the provision of civic and voter's education, providing training in non-violence, promoting political and electoral reform, transparent and accountable governance, access to justice and promoting human rights most especially of women. Possible intervention strategies in the direction of prevention and management of election disputes include assessment and monitoring of the complaints adjudication process; advocacy directed at reform of the complaints adjudication process, electoral violations, and the system of penalties; legal education and training activities for judges, attorneys, election officials and staff; voter education on voting rights, the complaints adjudication process, and legal remedies; pro bono legal support to aggrieved voters; preparation of case files in support of election management bodies; and media training on complaints adjudication issues and processes.[83] CSOs are also in the best position to run an early warning system for managing election disputes.

Organizations that could benefit from the work of civil society organizations in the course of conducting elections include the legislature most especially when considering or reconsidering laws relating to the conduct of election; the judiciary on issues relating to reforms on election dispute management; EMBs on different aspects of election management; and the media on how to report election disputes.

Following the disturbing post election crisis in Nigeria, Zimbabwe and Kenya in 2007 and 2008, the Electoral Institute of Southern Africa (EISA) convened a conference in Dar-Es-Salaam, Tanzania 21 – 22 July 2008 on the role and challenges of civil society engagement in post-election dispute resolution. The communiqué of the conference dated 22 July 2008 noted with a great displeasure the amount of violence, huge displacements of people, disruption of social livelihoods, loss of lives and wanton destruction of property associated with

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83  *Catherine Barnes, "Approaches to voter education and role of civil society", in Chad Vickery (ed.), Guidelines for understanding, adjudicating and resolving disputes in elections, Washington DC: International Foundation for Electoral Systems, 2011, pp. 212-213.*

elections in Africa. It was displeased with the way and manner in which the Judiciary has managed and dispensed with cases of election-related disputes and the consequential loss of confidence in the Judiciary by the electorate. Above all, the conference expressed disappointment with the dearth of opportunities offered to Civil Society in various frameworks currently underway for the resolution of post election disputes across the continent despite the laudable efforts and inputs of Civil Society in the democratization process on the continent. Mindful of tremendous capacity, capability and experience of African Civil Society resource which is readily available to engage in and contribute to a credible, just, transparent, equitable and amicable resolution of post-election disputes, the conference resolved as follows:

1. The African Union (AU), the Regional Economic Communities (RECs) and their Member States must accord Civil Society the necessary Institutional recognition and space to engage in all efforts, including ongoing processes in Zimbabwe, Nigeria, Kenya and Lesotho, aimed at resolving election related disputes.

2. Civil Society across the continent should proactively engage the respective continental, regional and national structures and authorities respectively and ensure that such engagement should be utilized constructively. Civil Society should offer its services to find or serve as an impartial arbiter or broker in post-election disputes situations.

3. Civil Society across the continent must become better organized and put in place effective and credible mechanisms to engage in established legal and institutional frameworks for the resolution of post-election conflict.

4. Governments across the continent should ensure that legal and institutional frameworks for the conduct of elections are adequate in terms of provisions for electoral dispute resolution.

5. Governments must ensure independence, impartiality and professionalism of the election management bodies (EMBs) and the Judiciary as key actors in the management of election-related conflicts by de-politicizing them.

6. Civil Society should pro-actively develop short-term, medium-term and long-term strategies for the constructive management of conflicts in a sustainable manner.

7. Civil Society must engage the media, both private and public, with a view of offering and sharing relevant information that is critical to the resolution of post-election disputes, necessary for countering any propaganda used to fuel crises and also useful in restoring public confidence in the electoral process.

8. The resolution of election-related conflicts should not undermine the expressed will of the electorate and thereby result in loss of public confidence in the electoral process.

9. Mediation and negotiation processes should be broadly inclusive of key political actors including Civil Society and their outcomes must enjoy popular acceptance and legitimacy.

10. Where a transitional authority is set up as part of the resolution of an election-related conflict, its composition must be all-inclusive, its mandate well-defined and its time-frame clearly defined before a fresh election is held.

11. While political parties and leaders must inculcate a culture of political tolerance and entrench intra-party democracy, Civil Society must continue to preach tolerance and understanding among our people

letting them understand that elections as a political contest is conflict prone but must not be violent and destructive.

12. Political parties and leaders must desist from politicization of social identity (including ethnicity, race, religion, gender etc) and state institutions as this trend severely undermines democratic governance and negates efforts towards national unity and nation building.

13. Civil Society must build its capacity on lobbying, advocacy, negotiation, mediation and conflict resolution skills and develop a regional and continental pool of experts readily available for engagement across the continent as and when necessary. Donors should in this regard, provide necessary support for Civil Society engagement in post-election disputes resolution processes and also support the participation of Civil Society leaders in the specialist trainings available in these fields.[84]

Three key roles can be identified for civil society from the foregoing. The first is that regional, sub-regional and national authorities in Africa should accord civil society recognition in the prevention and management of election disputes. Secondly, civil society should actively engage regional, sub-regional and national authorities on issues relating to the prevention and management of election disputes. Thirdly, civil society must be better organized to be able to play a professional role in the prevention and management of election disputes. The rest of the communiqué (4,5,6,7,8,9,11 and 12) have hints on how civil society organizations can make themselves more relevant in election dispute management and this guide pushes the discussion forward by identifying how some of these recommendations can be engaged by CSO:

| Number | Contents | Our suggested engagement strategies |
|---|---|---|
| 4 | Governments ensure that legal and institutional frameworks for the conduct of elections are adequate in terms of provisions for electoral dispute resolution. | Lobby and train lawmakers<br>Train legal draftsmen<br>Lobby and train EMBs<br>Train judicial officials<br>Advocacy work |
| 5 | Governments ensure independence, impartiality and professionalism of the election management bodies (EMBs) and the Judiciary as key actors in the management of election-related conflicts by de-politicizing them. | Lobby lawmakers<br>Lobby EMB<br>Work with law enforcement agencies<br>Work with the judiciary<br>Advocacy work |
| 6 | Civil Society should pro-actively develop short-term, medium-term and long-term strategies for the constructive management of conflicts in a sustainable manner. | Conflict analysis workshops<br>Developing early warning and early response systems<br>Capacity building training in alternative dispute resolution |
| 7 | Civil Society must engage the media, both private and public, with a view to offering and sharing relevant information that is critical to the resolution of post-election disputes, necessary for countering any propaganda used to fuel crises and also useful in restoring public confidence in the electoral process. | Training in conflict analysis<br>Training in conflict data management<br>Training in conflict reporting and peace journalism |

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[84]  *See EISA, "The role and challenges of civil society engagement in post-election dispute resolution in Dar-Es-Salaam, Tanzania 21 – 22 July 2008: Communiqué", http://www.eisa.org.za/PDF/comm200807.pdf.*

| Number | Contents | Our suggested engagement strategies |
|--------|----------|-------------------------------------|
| 8 | The resolution of election-related conflicts should not undermine the expressed will of the electorate and thereby result in loss of public confidence in the electoral process. | Advocacy work on rule of law in the management of election dispute |
| 9 | Mediation and negotiation processes should be broadly inclusive of key political actors including Civil Society and their outcomes must enjoy popular acceptance and legitimacy. | Advocacy work on interagency collaboration |
| 10 | Where a transitional authority is set up as part of the resolution of an election-related conflict, its composition must be all-inclusive, its mandate well-defined and its time-frame clearly defined before a fresh election is held. | Advocacy on quick and smooth return to electoral democracy |
| 11 | While political parties and leaders must inculcate a culture of political tolerance and entrench intra-party democracy, Civil Society must continue to preach tolerance and understanding among our people letting them understand that elections as a political contest is conflict prone but must not be violent and destructive. | Training programmes on peaceful co-existence<br>Campaigns against electoral violence |
| 12 | Political parties and leaders must desist from politicization of social identity (including ethnicity, race, religion, gender etc) and state institutions as this trend severely undermines democratic governance and negates efforts towards national unity and nationbuilding. | Training programmes on peaceful co-existence<br>Campaigns against electoral violence<br>Gender empowerment training<br>Gender advocacy campaigns |
| 13 | Civil Society must build its capacity on lobbying, advocacy, negotiation, mediation and conflict resolution skills and develop a regional and continental pool of experts readily available for engagement across the continent as and when necessary. Donors should in this regard, provide necessary support for Civil Society engagement in post-election disputes resolution processes and also support the participation of Civil Society leaders in the specialist trainings available in these fields | Specialized Capacity building for CSOs on management of election disputes |

### *Broad Strategies of CSOs*

A major strength of civil society organizations is that they are neutral bodies that are not tied to any particular political interest in an election. To this end, they can exercise great influence on all the stakeholders in an election.

| Stakeholder | Monitoring | Training/ Workshops | Advocacy | Partnership | ADR Processes |
|---|---|---|---|---|---|
| Fellow CSOs | x | X | | X | |
| EMB | x | X | x | X | |
| Media | x | X | x | X | |
| Political parties | x | X | x | | x |
| Candidates | x | X | x | | x |
| Security sector | x | X | x | X | |
| Government (generally) | x | X | x | X | |
| Parliament | x | X | x | X | |
| Judiciary | x | X | x | X | |
| Regional bodies | x | X | x | X | |
| International agencies | x | X | x | X | |

How CSOs use each of these strategies would depend largely on local contexts of the affected country.

## Track III: Business and Elections

Elections and their outcomes affect business environment and climate. Hence, business men and women are not as indifferent to elections as ordinarily assumed. The only difference is that they operate in the background by providing financial support for candidates of their choice. This can only be understood in the context of fears/needs analysis. Business organizations benefiting from a ruling government would prefer to see such a regime continue in power while those not favoured by same regime would want it to be replaced by a more pliable regime. In both cases, it pays business organizations to have a violence-free election given the fact that during election violence, business organizations record losses not only due to low patronage but also because they are prone to attacks by looters and those that perceive their roles in the election or the general structure of the society to be negative. Both was witnessed during the 2011 election crisis in Cote d'Ivoire. Cocoa farmers and international distributors could not export their produce and the losses resulting from this was reported by the international media to run to several millions of Euros.

During the past elections in Nigeria, all the borders to the country were shut down. Importers and exporters recorded a great deal of losses as a result of this but it is only their commitment to electoral democracy that prevented many of these business men and women to make public their losses. What pays these business men and women therefore is the elections to be done as scheduled and the borders reopened immediately. This goal is difficult to achieve when the candidates are locked in disputes.

The foregoing means that business organizations must also get involved in finding solutions to election disputes. This could be done by funding peace projects and provide support for such peace meetings that

could help to reduce the amount of time devoted to prosecuting post elections violence. The best way for achieving this goal is for Chambers of Commerce of West African countries to start setting some funds aside for supporting election-related activities.

## Track IV: Private Citizens

In every country, there is always a set of private individuals that command great respect among the people. The responsibility often falls on such private individuals with strong personal credibility to make peace between disputants during elections. Where such individuals cannot be found locally, they must be searched for abroad so long as the parties to the dispute recognise their referent power. The intervention methods available to such private citizens include good offices (if occupying a public position), mediation and conciliation.

## Track V: Research, Training and Education

The role of capacity cannot be underrated in the prevention and management of election disputes. It is thus necessary for EMBs and those having working relationship with them officially (most especially security agencies) to invest substantial part of their resources on research, training and education. This type of capacity is easier built when these official agencies establish a working relationship with civil society organisations or formal academic institutions running training courses and workshops.

## Track VI: Gender Activism

Democracy involves popular participation. It is therefore not adequate where a section of the society is left out. It requires popular control over decision making and equality of rights in the exercise of that control. Irrespective of the existing international legal and political commitments, constitutional clauses and domestic legislations, women continue to fall behind men in the enjoyment of fundamental electoral rights. Building an enduring democratic society in West Africa requires that this issue be addressed. Hence, gender must be taken into deep consideration in the design, implementation, monitoring and evaluation of any electoral process. The United Nations refers to this as gender mainstreaming:

> Mainstreaming a gender perspective is the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in any area and at all levels. It is a strategy for making women's as well as men's concerns and experiences an integral dimension in the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so

that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality.[85]



*Women staging a peaceful protest*
Source: Conflict Trends. Issue 1, 2011 page 3

Gender discrimination is first and foremost an attitudinal, legislation, and policy problem. It is rooted in the misleading belief that women are not as capable and intelligent as men. This attitude has resulted in the socialization of women and girls into a subordinate status. This is clearly evident in the conduct of elections where women are not expected to vote for candidates other than those approved by a patriarch, whether father, husband or brother to her. Also female candidates are not favoured in political parties as they are seen as trying to go into an area of social participation reserved for men.

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[85]  *For details see Office of the Special Adviser on Gender Issues and Advancement of Women Department of Economic and Social Affairs, Enhancing women's participation in electoral processes in post conflict countries, New York: United Nations, 2004, pp.3-5. Available at http://www.un.org/womenwatch/osagi/meetings/2004/EGMelectoral/ResourceGuide. PDF; Office for Democratic Institutions and Human Rights, Women and democratization: Background Paper No 3, Warsaw. Poland: OSCE/ODIHR, October 1998.*

Dealing with this problem requires that we return to the law. It is interesting to know that all international human rights standards – whether political, legal or moral – are rooted on equality and non-discrimination. For example, Article 1(3) of the Charter of the United Nations, 1945 proclaims that one of the purpose of the UN is:

> To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian nature, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion…

Article 2 of the Universal Declaration of Human Rights provides that:

> Everyone is entitled to all the rights and freedoms set forth in this Declaration without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 2 of the International Covenant on Civil and Political Rights broadly lends support to the Universal Declaration of Human Rights by adding that:

Each state party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 26 of the same Covenant states that "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law…". In the same vein, the International Covenant on Economic, Social and Cultural Rights adopts a different approach, stating in Article 3 that: "The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant."

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), observes that irrespective of the above declarations, conventions, resolutions and recommendations "extensive discrimination against women continues to exist" worldwide and therefore proceeds from there to reiterate the equality of men and women in terms of social and economic advantages. Article 1 of CEDAW defines discrimination against women as:

> Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality with men, of human rights and fundamental freedoms in the political, economic, social, cultural, civic or any other field.

Though CEDAW enjoins states to impose "sanctions where appropriate" to combat discrimination at national level, it has been difficult to arrive at a strong and reliable mechanisms for scrutinizing states' practice.

The Beijing Declaration and Platform for Action - the result of the 1995 Fourth World Conference on Women – also calls on all states to produce and to implement plans covering amongst many other things:

» Violence against women
» Inequality between men and women in the sharing of power and decision-making at all levels
» Insufficient mechanisms at all levels to promote the advancement of women
» Lack of respect for and inadequate promotion and protection of the human rights of women
» Stereotyping of women and inequality in women's access to and participation in all communication systems, especially the media.

Redressing all of these problems, most especially in the context of conducting a democratic election, requires that the issue is given careful attention at local, national, sub-regional, regional and the global level.[86]

### *National and International Laws:*

In considering the issue of gender and election, the first question to ponder is the legal framework for elections in the country. Where the law fails to guarantee the participation of women they are most likely to be excluded from the electoral process and women's issues might not be given due attention. The issues to be taken into consideration here must capture the provisions of international, regional, sub-regional and national legal framework for political participation. To what extent do they capture the interests of women? Hence at the international level the following questions must be given consideration:

» Has the country signed, ratified, acceded to, or adopted international, regional, sub-regional and national instruments on gender equality? If not, ensure that the country signs, ratifies, accedes to, or adopts these instruments as well as adopts a national gender policy instruments.

» Have these instruments been incorporated into domestic laws? If not, ensure that these instruments are domesticated in national laws, popularized and made accessible to the general public, implemented and monitored.

» Is there an institutionalized mechanism for ensuring that international, regional, sub-regional instruments that have been signed by each government are domesticated within national policy framework?

The questions to be asked at national level include:

» Have constitutional provisions that guarantee women's equality before the law and protections for women to vote been incorporated in the national constitution and enforced accordingly? If not, ensure the revision of the national constitution to incorporate equality between women and men in the social, economic and political activities of the country.

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[86] *Office of the Special Adviser on Gender Issues and Advancement of Women Department of Economic and Social Affairs, Enhancing women's participation in electoral processes in post conflict countries, New York: United Nations, 2004 pp.3-5, Available at http://www.un.org/womenwatch/osagi/meetings/2004/EGMelectoral/ResourceGuide.PDF; Office for Democratic Institutions and Human Rights, Women and democratization: Background Paper No 3, Warsaw. Poland: OSCE/ODIHR, October 1998.*

» Does the national constitution have statements on equality between women and men in matters pertaining to elections: the right to vote, the right to stand for public office, the right to have access to information related to elections and the right to participate in all activities pertaining elections? There should also be clearly defined mechanisms to ensure that these rights are protected. If not, ensure the revision of the constitution to incorporate specific sections on equality between women and men in political activities.

» Is there a conflict between customary law and the national constitutional framework? If so, ensure that the constitution provides that statutory law supersedes customary and religious law in situation where two or more are applicable.

» Does the national constitution incorporate a provision mandating affirmative action for women in political and decision-making positions at all levels? If not, ensure such provisions are constitutionally recognized.

» Does the national constitution allow for independent candidates and an independent human rights commission? If not, ensure that the national constitution allows for independent candidates to contest political office as well as mandating the existence of an independent human rights commission.

### Election act/law:

One of the best ways to mainstream gender into electoral participation and election management is to reflect issues relating to women in election laws. Without this, it is most likely that male politicians would not take issues relating to women seriously. Answers to the following questions would tell us about how a country is doing in this process:

» Does the election act that establishes the independent electoral body or structure provide for equality in opportunity between women and men in the selection and appointment of office bearers and decision-makers in regard to all positions within the organization and at all levels? If not, ensure the amendment of the law to incorporate equality of opportunities in appointments and employment, to policy and decision-making positions within the body or structure and to short-term employment opportunities during pre- and post-election processes.

» Does the election act provide the right to every woman and man to participate in all activities of the election process? These include the right to vote, to stand for public office, to choose a political party, to access information on registration, campaigning, election procedure, and to freedom of association.

» Does the electoral act make provisions for political parties to register a gender-positive constitution and manifesto before they are eligible for registration as political parties? If not, this requirement should be added to guidelines for registering political parties.

» Does the election act or law make provisions for the timely release of political party manifestos and candidate lists? If not, ensure that it stipulates that political party manifestos and candidate lists be publicly released before the voter registration period begins.

» Does the election act prohibit sexual harassment and gender violence in all matters related to elections and contain a mechanism for enforcement of such a provision? If not, provisions on the prevention of sexual harassment should be included in the law.

» Does the election act provide for clear and easily accessible means for both male and female candidates to contest an election result when their rights have been violated? Does this provision allow for gender

discrimination to be one of the criteria for contesting an election result? If not, ensure the amendment of the act to adequately protect the rights of men and women candidates to contest an election.

## Political Parties:

Political parties must also contribute to supporting women's participation in the political decision making process. The following questions are important for addressing this issue:

» Have the constitution, manifesto, policies and structures of each political party incorporated gender equality and women's empowerment objectives to ensure equal representation and participation of women and men in decision-making at all levels? If not, ensure all political parties incorporate objectives to achieve gender equality into their constitutions.

» Do the procedures to select candidates for decision-making positions within the party structures, as well as for the nomination to presidential, parliamentary, provincial and local government positions, allow for gender equality between women and men? Are the party leadership and nomination structures democratic, transparent, gender-balanced and gender-sensitive?

» Do the political parties have programmes to ensure an increased number of women in party decision-making structures at all levels and for their nomination to parliamentary, provincial and local councils so that a minimum target of at least 30% of women in such bodies is achieved? If not, ensure such programmes are put in place and that the party actively supports the election of their women candidates during the campaign process.

» Do political parties include commitments to promote gender equality as a priority issue in their manifestos and campaign platforms? If not, the document and agenda should be reviewed to ensure that gender issues are mainstreamed.

» Do political parties have awareness raising, training and capacity building programmes, specifically for women members, aimed at enhancing their capacities and competences? If not, ensure political parties develop such programmes aimed at the political empowerment of women.

» Have the political parties set norms and standards aimed at promoting the position of women and preventing physical, sexual and verbal harassment of women?

### *Electoral Commission*

The electoral commission must also contribute to the process of ensuring that women are made visible in the electoral process. The following questions are important in this direction:

» What are the decision-making structures of the IEC? Do the selection procedures and appointments of decision-makers and other personnel at all levels provide for equal opportunity between women and men? If not, ensure that criteria for selection and appointments contain a clause on equal opportunity between women and men in all appointments and selections.

» Advertisements for the positions should include an equal opportunity phrase and should encourage women to apply.

» Planned activities coordinated, implemented and/or monitored by the independent electoral commission should take into consideration the following:
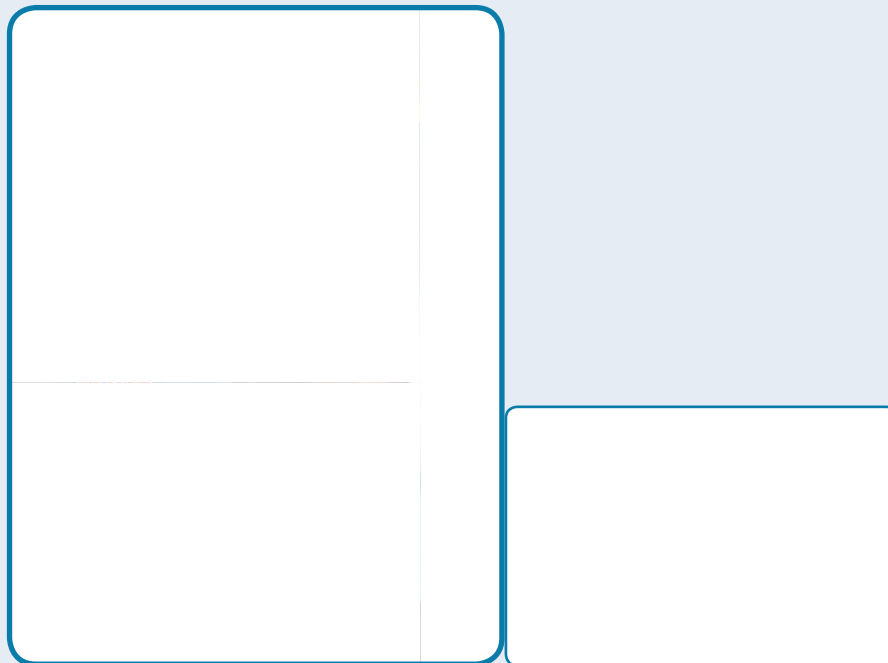
*Registration of voters*

» Ensure that information on registration, dates, timing and registration centres is made public for a minimum of three months and known to all eligible women and men voters in all localities.

» Ensure that eligible women and men voters in the locality of the registration station fill registration forms in the language that is easily readable and understandable.

» Ensure that registration centres will be easily and safely accessible to women and men with physical disabilities, women with children, pregnant women and aged women and men (a maximum of five kilometres distance).

» Ensure that the time and season for registration takes into consideration the busy work schedule of women and that it will be flexible enough to allow for either early or late hours of registration.

» Ensure that the person registering voters is acceptable within the local community.

» Ensure that there are mechanisms to be followed that guarantee the right of illiterate women and men, or those with difficulty in communicating, to register to vote.

» Ensure that the register indicates the sex of the registered voters.

*Voter education programmes*

» Ensure that the different voter education and training programmes conducted by the IEC, nongovernmental organizations (NGOs) and civil society groups, government departments, and political parties are gender-responsive and target women, men and youth at all levels. These programmes should be conducted on a continual basis.

» Ensure that the IEC conducts an intensive gender-responsive campaign to raise awareness of the voters on the registration and voting procedures, beginning at least one year before the election.

» Ensure that there are mechanisms and indicators to monitor implementation of such activities and that women are among the actors.

*Procedure of voting*

» On the voting day, ensure that special provisions are made for women and men with physical disabilities, pregnant women and those with children. Aged women and men should spend the shortest time waiting in line to vote.
» Ensure that voting centres are close to the majority of people to ensure that the categories mentioned above have easy access to those centres.
» Ensure that voting papers are clearly printed and contain clear photographs of the persons to be voted for.
» Ensure that the right to vote in secret is preserved for all citizens regardless of sex.
» Institutionalized monitoring and evaluation mechanisms
» The IEC should ensure that the set targets for gender equality are achieved. Monitoring indicators and mechanisms should be set for each activity pertaining to the election processes as criteria for declaring the elections to be free and fair. Gender and/or women's activists groups, civil society and the national agencies responsible for gender equality and women's empowerment should be involved in this process.
» Ensure that monitoring is a continuous process that is done prior to elections, during and after.
» Ensure that mechanisms are put in place to ensure that internal and external monitoring reports are synthesized into a summary report that is broadly disseminated for public discussion and action. The recommendations, including those based on gender concern, should be highlighted for action by relevant authorities.

It is also necessary that civil society organizations and the media give prominent attention to issues relating to women's participation in politics and decision making processes generally.

Ensuring greater number of women participating in politics is not just enough. Going beyond this "tokenism" or a mere "cosmetic change" requires that women's views and concerns are not ignored by decision makers. This requires that women have access to membership of decision-making bodies across the policy spectrum. Women should be trained to become more assertive, and to be able to network and lobby for their rights. Indeed, there is a great need to improve the capacity of women organizations with diffuse interests and areas of intervention to build an effective lobby machinery that is integrative and holistic. This is one way of developing a true women's movement at both country and sub-regional levels. Women must also be trained for higher political work.[87]

In addition to occupying public offices, women must register to vote and duly exercise their civic rights as they have the numerical strength to influence and affect any elections. What has to be stressed in the final analysis is that legislations will hardly change the logic of cultural practice. These are cultural issues and they require an onslaught on the culture of patriarchy which pervades many societies in the sub-region from the domestic realm to the heights of national politics.

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87  *See Anne N. Costain, "The Struggle for a National Women's Lobby: Organizing a Diffuse Interest", in The Western Political Quarterly, Vol. 33, No. 4, 1980, pp. 476-491.*

## Track VII: Religious Leadership

Religion is good for the human soul; but when allowed to affect an electoral process it causes more division than unity. It is common to find politicians in "divided societies" appealing to religious social issues as a weapon against their opponents. In most cases, this heats up the polity and direct the attention of voters away from real political issues. Religious leaders have the responsibility for redirecting the attention of their followers to the fact that what matters in an election is the capacity of candidates to improve the quality of life of the people rather than the religions they profess. It has been noted concerning a diverse society such as Nigeria that "Many Nigerians take it for granted that living in a place governed by people who are ethnically or religiously different from themselves means exclusion from any kind of government largesse."[88] This kind of thinking further contributes to the zero-sum characterization of electoral contests. By reaching out to people of other or even no faith, and showing a commitment to the supremacy of the secular constitution in the civic realm, religious leaders can help build a society whose citizenry is integrated in a common socio-political project.

In addition to the foregoing, religious leaders need to rise up immediately when they notice any election dispute that could disturb the peace of the society. The parties to such election disputes are most likely to belong to a worship centre. Rather than sit at home to read news about the disputes on the pages of newspapers or use their sermons to abuse parties to the dispute, it is expected that religious leaders close to the disputants rise up immediately to promote negotiation or reconciliation between politicians.

The other critical issue to note in this respect is that of morality in politics. The point was made in the earlier part of this Practice Guide that moral questions lie behind many of the election disputes experienced across the West African sub-region. In most cases, politicians deliberately engage in unethical practices to win elections or put their opponents at disadvantage. Religious leaders can help to deal with this problem by delivering the message of a transparent and violence-free elections to their congregations during their sermons on Fridays (for Muslims) or Sundays (for Christians) most especially during elections. These religious leaders must also be bold enough to question the kleptocratic tendencies of the politicians that worship under them. This will dispel the climate of "do-or-die" politics that now pervades the West African sub-region. Some of the issues raised above can also be dealt with by these religious leaders and organizations through conferences, workshops and seminars bordering on good governance, transparency and accountability.

## Track VIII: Funding

A popular Nigerian (pidgin) adage says "Good soup na money kill am" (Money prepares a good pot of soup). It is difficult to have peaceful elections when those responsible for the exercise lack adequate resources for the many things they have to do. The truth is the personal credibility of those organising the elections cannot compensate for poor funding of their programmes. In this respect, it is expected that the government must always make enough financial resources available to EMBs and all other stakeholders connected with

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88  Human Rights Watch, "They Do Not Own This Place": Government Discrimination Against "Non-Indigenes" in Nigeria, 2006, p. 13.

orderly conduct of elections, including civil society organisations and security agencies. International development agencies must also lend a helping hand but this must be based on the real needs of relevant stakeholders. Financial handouts not really needed by EMBs often corrupt some of them.

## Track IX: The Power of the Media

The media is the most centrally placed to deal with this issue of effective information sharing in an electoral system. Amongst many other things, the media can "shine its own spotlight on the election process and expose corruption or other illegal activities." It has the responsibility for informing the people about all relevant aspects of election including the civic obligation to report violations or problems that may arise from an election. In doing this, the media has the obligation of covering all sides to whatever disputes that might arise in the society.

However, it is a truism that elections pose a great challenge to the media even in the enduring democracies where people have gotten used to the idea of political transition through the conduct of free and fair polls. The challenge is more pronounced in societies where democracy is trying to gain a firm root where state officials can tamper with the freedom of the press or where journalists could misuse freedom provided them by the state. All of these problems are tied to the fact that election seasons make it possible for the people – most especially candidates seeking the vote of the public – to pursue passionate emotions and make inflammatory statements. In the pursuit of these emotional vituperations, journalists end up ignoring just citizens' voices but not making themselves easily available to the two sides of the dispute. This problem becomes more serious where media houses are controlled by political demagogues, journalists make are pliant subjects of those who want to manipulate them or journalists lack the professionalism for accurate, fair balance and responsibility in news reporting.

Where the focus is only on the perspective of one side to the conflict, the media adds to the disputes than help to remove them. In order to avoid this possibility of the media adding to electoral disputes, it is often necessary for EMBs and the government at large to set up rules or codes of conduct that would conform to freedom of the press but at the same time provide access to unbiased and fair information for the public and prevent media outlets from engaging in behavior that could intimidate or coerce voters, or wrongfully interfere with the legitimate electoral process. This requires that media practitioners be trained in different aspects of conflict management under the rule of law.

Preparing the media for effectively performing their roles during elections requires that they be trained in all relevant aspects of election and using the medium be reminded of their social responsibility in the areas of dispute prevention and management. But before these trainings are conduct, it is necessary to be conscious of the environment in which journalists are expected to carry out their duties: media regulations, media industry, and the journalist community. Issues to be considered on media regulation include the following:

» *Constitutional guarantees for a free press:* Do they exist in law? Do the courts protect them effectively against government or other interests' harassment, intimidation, assault?

» *Media regulation bodies (press councils and radio-television regulators):* What powers do they have? Are they independent of government? Are they free of corruption? Do they defend media freedoms? Do they fairly discipline irresponsible media?

» *Content restrictions:* Are there laws which censor what the media can report or offer as opinions? Who imposes these restrictions? Is there an appeal to the courts? Are there laws against hate speech? Is criminal libel used to suppress published criticism of government?

» *The Internet:* Is it widely available? Is it regulated or censored? Is it influential?

» *Ownership restrictions:* Is media ownership determined by government, by law, or by free market competition?

» *Journalist registration/accreditation:* Is there any law defining who can be a journalist? Who administers the law? Is this law used to restrict free expression?

» *Broadcast media:* How is it regulated? Is licensing conducted fairly? Is public or state broadcasting treated differently than private broadcasting?

» Are there Access-to-Information laws? Are they effective? Are they blocked by secrecy laws, political interference or bureaucratic obstruction? [89]

Where state policies do not provide for freedom of the press, it is difficult to expect journalists to act professionally: they either over report on side to the election dispute and suppress what the other party has to say or they fail to provide sufficient information about what is going on in the society. Beyond the official regulation of the media, it is also important to examine the nature of the media industry itself. Is it partisan or non-partisan; is it professional? The following questions are important in this respect:

» The number of government-controlled and privately-owned media outlets,

» both print and broadcasting, and how wide an audience they reach, both urban and rural.

» The effectiveness of regulations. Do media outlets respect media laws and civil laws?

» The independence or partisan control and bias of each major media outlet. Do owners or other interests force their journalists to bias the news?

» The media's influence. Is the media respected and influential because it is considered credible and independent or is it considered the voice of powerful interests? Is the media the most important influence on public opinion? [90]

The third issue to consider pertains to the professional standard of those who practice journalism. Can these people be relied upon to promote "peace journalism" during election? Are there clearly evident professional standards such as accuracy, fair balance and social responsibility in reporting in most journalism in the country? What are the working conditions for journalists, their security, training, equipment, pay and social

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[89] Torben Brandt et al., *Coaching manual for media support during elections*, Copenhagen, Demark: International Media Support, 2006, p.7.

[90] Ibid., p.8; Also see Ross Howard, *Media + elections: An elections reporting handbook*, Vancouver, Canada: Institute of Media, Policy and Civil Society, 2004, p. 5, http://portal.unesco.org/ci/en/files/18541/11304302341media_elections_en.pdf/media_elections_en.pdf.

status, both in society in general and in their specific workplace? Journalists who are badly paid, threatened or not respected will more likely accept bribes, produce unbalanced stories and censor themselves to survive. Are there journalists' associations and unions? Are they independent or strongly associated with political interests? Do these organizations have influence in politics, in civil society and with journalists?[91]

The training of journalists for election dispute prevention and management must take the foregoing into deep consideration. In preparing journalists for election duties, they must be made to get more conscious about the three critical roles they have to play. The first is to inform people about the election through news dissemination, opinions by columnists, commentators and talk-show presenters. The media also has the responsibility to tell citizens who the candidates for the elections are, dissemination from the EMB most especially where and how to vote and the need for and how to cast a vote in secret. The media also publish advertorials relevant to the success of the election. The second critical role of the media in this respect is that they constitute the watchdog over the fairness of the election campaign and the voting. The questions that the media should ask or help find answers to in this context include the following:

» Does every eligible citizen have the right to vote? How will they be added to the voters' list before voting day?
» Do women and minorities feel safe in voting? Will they be protected from threat at the voting booth?
» Are all political parties equally able to hold public meetings without fear? How will they be protected?
» Are all parties being given equitable time in news and public forums on the state media?[92]
» Are government officials maintaining neutrality? The government should not favour any party during the campaign. The police should protect all parties equally.
» Are the voting stations secure? Who will guard the ballots and who will count them fairly?

Thirdly, the media represents the voice of the voters or those who have things to say about the elections but lack the official platforms for doing so.

Journalists should protect the rest of the society by refusing to be the agents through which hate speeches would be disseminated to the rest of the society. On the other hand, they have to protect themselves and the integrity of the work they do by not wearing political colours, party badges or clothing with political slogans. They must also not accept favours from political party workers or candidates. A reporter's best defence against threats is to show that their work is balanced and takes no sides. This requires that the truth is not twisted (defamation), no reliance on secondary source information without verification (derivative), use of power of the pen to deliberately harm anyone (maliciousness), and do not base news reports on financial inducements (corruption). Reporting fairly allows the people to make their own intelligent comparisons and choices in an electoral process.

Electoral laws could help in making the media make the best contributions to an electoral process. First and foremost, it is important for the electoral law to guarantee of fair media access to candidates and parties. This issue is very crucial in countries where most of the media organisations are state-owned or where

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[91]  *Torben Brandt et al., op. cit., p.8.*

[92]  *Ibid., p.16.*

the media houses with the widest audience reach is owned by the state. The electoral law could help the situation by providing safeguard against political censorship, unfair government advantage and unequal access during campaign period.

The best way to achieve the above objective is to establish an independent body charged with the monitoring of political broadcasts, broadcast civic education programmes and allocation of time to various political parties, as well as receiving and acting upon complaints regarding media access, fairness and responsibility. A code of conduct can also be used in securing responsible electoral broadcasting and publication in the media.

*Social media:*

The traditional media is based on the print and television programmes. The situation has now been revolutionized as the youth now use social media to discuss elections, share content, and take polls. This is to the extent that the youth in the developed world now receive most of their political information online and rarely read a printed newspaper or listened to radio for information. It is even now possible in some of these advanced countries to fill registration form on the Electoral Commission websites, as advertised on TV and Facebook. With the growth of online social media (most notably Facebook and Twitter), many news sources have integrated social media into their news reporting to a greater degree. While online news has presented quite a few problems for traditional media, new sources hope that using social media will allow them to gain popularity with a younger demographic. [93]This is the present situation in the developed world; it is gradually becoming the experience in several parts of Africa where elections are conducted.

For example during the 2011 elections in Nigeria, most of the presidential and gubernatorial candidates first announced their candidature and programmes on the Facebook. Most of the young Nigerians that actively participated in the elections tweeted, blogged and used online chat-rooms to discuss the political issues of the moment.[94] One of the promoters of social media to promote youth participation in the 2011 elections in the Nigeria had this to say about his motivation:

> I'm involved because I'm an angry young Nigerian who is tired of listening to the story of Nigeria's "potential", and one that believes that the best time to stop the nonsense, that Nigeria has been thrown into, is now! I have had the chance to see the world and I consider it a shame that with our human and resource wealth, Nigeria is not taken seriously. Rich, yet poor. With some of the best minds globally, yet unable to think. That's why I'm involved with EiE Nigeria (Enough is Enough Nigeria). Enough is Enough Nigeria (EiE) is a coalition of individuals and youth organizations committed to instituting a culture of

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[93]  Carole Wurzelbacher, "Study shows social media's influence on political elections", http://www.editorsweblog.org/newsrooms_and_journalism/2010/07/study_shows_social_medias_influence_on_p.php, accessed July 12, 2010.

[94]  For example see Oluniyi D. Ajao, "Interview: 'Gbenga Sesan speaks on the role of social media in Nigeria's 2011 general elections & more", http://www.davidajao.com/blog/2011/03/24/nigeria-2011-general-elections/.

good governance and public accountability in Nigeria through advocacy, activism and the mobilization of the youth population as responsible citizens.

Our effort for 2011 revolves around what has now become the RSVP campaign. It's the acronym for Register, Select, Vote and Protect. We asked young people in particular to REGISTER as voters (especially as the new INEC launched an effort to create a new Voters' Register), and we saw some really great response. We used social media to achieve our objectives in this area. From Facebook to Twitter, we engaged youth by providing the required information, motivating them (including asking celebrities to lead registration walks), providing technical solutions to problems (we set up hotlines to address the problems encountered during the exercise) and asking youth to show off their Voters' Cards by posting pictures on Facebook and Twitter. Other aspects – Select, Vote and Protect – continue to enjoy our social media expertise as we make information available to the electorate on the candidates standing for elective offices.

For example, we've used social media to work with other youth groups to plan the first youth-focused presidential debate in Nigeria. It will take place at 7pm on Friday, March 25, 2011 in Abuja; it'll be live on Channels Television and broadcast live online on our project website – www.whataboutusnigeria.org.

For the major Vote and Protect components, we have worked with a team of volunteers to develop a mobile application called ReVoDa, that will allow each citizen to report incidents, police behaviour, INEC performance and results from their respective polling units. ReVoDa provides untrained citizens with a medium through which they can share their election experiences and it potentially turns the 87,297,789 Nigerians with mobile phones, 43,982,200 with internet access and 2,985,680 on Facebook into informal election observers. Call it crowd-sourced election monitoring, and you won't be wrong.

So, social/citizen media is at the core of our RSVP campaign, and the response has been hugely encouraging. For example, RSVP has become so popular that it is even used in daily conversations by Nigerians (not just the young). For a popular acronym known as Rice and Stew Very Plenty to be rebranded for the elections, all starting out with our social media push, we are smiling . We're also glad to note that the electoral commission now enjoys our service in the management of their social media accounts through interns that we recruited for them. basically, we have seen great feedback from young people and election stakeholders. [95]

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[95] Oluniyi D. Ajao, "Interview: 'Gbenga Sesan speaks on the role of social media in Nigeria's 2011 general elections & more", http://www.davidajao.com/blog/2011/03/24/nigeria-2011-general-elections/.

*An EiE Nigeria billboard in Lagos Nigeria. Photo courtesy of Gbenga Sesan.* To the extent that social media enables contributors to a discussion on elections to be anonymous, it makes it possible for youth if they so wish to say what could add to the volume of election disputes in the society. The implication of this for conflict prevention and management is that working with youth for a peaceful election should now include issues relating to the use of social media on their training programmes.

## Elections and the Use of Technology

The conduct of elections is no longer a manual enterprise in many parts of the world. At a very fast rate, different types of technologies are now been used by election administrators, voters and election monitors. The term "technology" is broadly used in this practice guide to capture three critical elements in election administration and monitoring. First and foremost, it broadly refers to the application of science and engineering in elections. To be specific, it also captures issues relating to the use of such "new technologies" as telephones, the internet, software programmes and electronic equipment, such as computers, printers, scanners, bar code readers, optical scanners, digital mapping and direct capture data machines.

The use of technology in elections is not an end in itself, but assists in the various aspects of electoral administration. These include the compilation of voter lists, material inventories, electoral personnel management, election results dissemination and statistics on delimitation of electoral boundaries, training

of officials, printing of ballots, conduct of voter education, monitoring of early warning signs, , counting and recording of votes, and publishing of results. There is also the emerging trend of electronic voting (e-voting). It is always important to highlight that machines will not by themselves make an electoral system work properly. The human factor, especially the political culture, is very crucial in relation to how these machines are put to use for the purpose of ensuring free, fair and credible elections. Sean Dunne has commented on this issue thus:

> There are many claims associated with electronic voting, such as that it increases voter turnout or improves security. However, there are few statistical studies of the impact of these systems on the electoral process and on corresponding political practices. Moreover, there is little evidence at this time to support claims that a particular technology will have the same impact in one country as it does in another. Thus, as with the process of electoral reform in general, the value and benefit of e-voting should be measured against the unique circumstances in which it is being proposed.[96]

The technologies needed for election administration could be broken into three main categories:

» Communications: Telecommunications, Radio, Networks and the Internet.
» Computer Hardware and Software: Word Processing, Spreadsheets, Database Management Systems.
» Other technologies: Specialized Electronic and Mechanical Devices, Non-electronic Innovations and Materials.

These can be used for the following activities:

» Technology for Voter Registration
» Technology for Regulation of Party and Candidates
» Technology for Reaching Voters
» Technology for Voting Operations
» Technology for Corporate Management

The application of these technologies is believed to have the capacity to increase administrative efficiency, reduce long-term costs and enhance political transparency. But disputes arise as to the appropriateness of a particular technology, and on why and how the technology is used. Technology helps in speeding up the time it takes to finish counting the vote, thus making for early declaration of results. Technology may have an impact on the resolution of disputes if the electoral data captured can be retrieved and used as evidence to support the position of any of the contenders in an electoral dispute. However, technology is not foolproof. The custodians of these technologies have to be people of integrity who will not tinker with the machines in order to rig the results. It is also important that the rules of evidence accommodate material drawn from electoral technologies, otherwise it would be a waste of time to mount these machines and not be able to make use of them for the purpose of resolving electoral disputes.

***Systems failure:***

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96  *Sean Dunne, "Elections and Technology", in Case Study Information Technology, n.d.*

Those using technologies in an election must realize that the system could fail anytime and therefore it cannot be totally expected to produce absolutely positive results. Hence the following should be taken into account as dispute prevention measures:

It is necessary for those recommending the use of a particular technology to consult other relevant stakeholders (parliamentarians, political parties, candidates etc.) that are likely to be affected by the operation of the technology. After this, the stakeholders must be properly educated on how the system works. Managers of the technologies must be appropriately trained. Otherwise, this could generate disputes that would eventually compromise the integrity of the elections conducted.

The introduction of a technology must take into consideration local physical environment and infrastructure. A country with an intermittent power supply, for example, may not be an appropriate location for implementing a wide area network of personal computers that require a reliable power source. Environmental conditions may also restrict the choice of appropriate technology.

It is necessary to test run a technology several times under different conditions before applying them to particular election activities. An open failure of the technology (on the d-day) could compromise the integrity of the electoral process and make the electorate lose faith in the capacity of the EMB to operate the electorate system.

It is necessary for adopted technologies to be upgraded from time to time to ensure efficiency and better productivity. This does not mean that the technologies should be changed at too frequent intervals. Too regular changes in the technologies could make stakeholders start to suspect and query the intentions.

Technologies can fail at short notice. It is therefore to set up manual back-up systems that can be kicked into operation at short notice whenever the technology fails.

### Technology Lifecycle Management (TLM):

It is necessary for an election management body to have a comprehensive policy towards the design, procurement, deployment, management and disposal of all elements in the organization's technology infrastructure. TLM can provide a realistic estimate of total cost of ownership, training needs and deployment schedules – and can assist election administrators with the difficult task of coordinating the introduction of technology within the election timeline. Equally important, TLM provides a tool for anticipating budgeting requirements necessary to ensure sustainability of the new technology.

The different stages involved in Technology Lifecycle Management include:

a.  Assessment and identification of organizational mission, objectives and policies for determination of appropriate technology.

b.  Procurement of technology, including feasibility studies, pilot projects, specifications and vendor evaluations.

c.  Deployment of systems and training of end users.

d.  Maintenance, repair and necessary upgrades, including ongoing helpdesk services and technical support.

e.  Plan for proper disposal, including provision of security for all data stored on any media.

This broad planning perspective can help avoid rushing to implement new technologies during critical election periods, and it aids planning ahead for funding requirements as well as anticipates staffing needs. Technology used in the voting process must be adapted to the conditions of life in the society. A technology that demands high computer numeracy will not work in a place where the broad mass of the people are not familiar with computers.]

> **Discussions:** *Describe technologies that are currently being used for electoral processes and provide examples of so-called best practices in this regard.*

### *Use of Technologies by other stakeholders:*

The technologies used by candidates and voters are usually not as elaborate as those of election management bodies (EMBs). What are basically needed here are technologies for exchanging information. For example, candidates for elections can alert their supporters through e-mail and bulk text messaging. Supporters of candidates can also use the same media to reach prospective voters. Mobile phones, social network media, and digital cameras now improve citizen participation and election observation. However, opinions are divided over whether such recorded information can actually be used in a court of law to support the claims of election irregularities. The laws of evidence have to be reconsidered in this regard. It is also important that officials of the electoral dispute mechanism have the means of verifying digital evidence in these days of "photo shop" where it is possible to mount a coherent collage of images from elements taken from disparate and unrelated sources.

It is now possible for reporters to rely on the Internet and the EMB's website to get election results and transmit these to their respective offices for processing as news. However, cconnectivity issues still arise in many parts of rural West Africa. On the whole, however, new forms of connectivity are an important, positive step for democracy in the region.

## Election Dispute Monitoring

Electoral legal framework establishes the status and role of observers in the electoral process. It further stipulates the scope and limit of their functions, qualification and process of accreditation. Thus observers should endeavour to have access to the part of electoral legal framework that concerns them and follow the stipulations religiously. Dispute monitoring has to be an integral part of what they have to do during elections. It is the result of such an exercise that eventually enables them to write actionable reports that could help to improve the conduct of future elections.

It is necessary that the election dispute management component of an election monitoring agency be headed by a legal adviser. The mission should have two major objectives. The first is to be able to engage in "rapid response" activities on the election by helping to manage or cause to manage any disputes that could be easily dealt with on the election with a view to reducing tensions in the electoral process. The second objective is to be able to compile reports that could help the EMB to prevent future conflicts and deal with the ones that could not be attended to under the rapid response system.

A standard election dispute monitoring system should cover (i) pre-election registration (ii) election campaign (iii) election day issues (iv) post-voting issues, and (v) general issues in the political system. It is not enough to document the conflict issues; efforts must be made to follow up the extent to which they are dealt with or not attended to. All of these go a long way in measuring the quality of electoral democracy in the society.

In the publication Resolving Election Disputes in the OSCE Area, Denis Petit sets out the following code of conduct for complaint information gathering which observers monitoring election disputes in the West African sub-region need to take to heart:

### 1. Code of Conduct for Complaint Information Gathering

» When speaking with a complainant, be sure to inform them that the election observation mission has no authority to intervene or to resolve a complaint or dispute. However, monitoring and tracking election-related complaints is part of the observation task and this can increase the awareness of the authorities.

» Confidentiality and the protection of those who file complaints is a top priority.

» Be as objective as possible. Contact and speak with all sides involved (i.e. complainant, defendant and the adjudicative authority).

» Meetings on complaints should be conducted with two observers whenever possible.

» For complaints which have been filed with an institution, a copy of the documentation should be obtained whenever possible.

» If an election commission or court session is holding a hearing on an election dispute, try to attend but ask for permission even if the hearing is public. The person to address with a request to attend is usually the presiding judge or chairperson. Do NOT approach the parties at the hearing and remember that you are a neutral observer.[97]

### 2. Gathering Complete Information

The types of questions to ask and the detailed information to be gathered can be summarized as follows:

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[97]  Denis Petit, op. cit., p. 23.

» *Who:* Obtain all names, affiliations and functions of the persons involved and contact details where possible. Who is complaining? (for example: voters, candidate, party representative). Who is committing or has committed the alleged violation? (for example: another party, local or other authorities, mass media).

» *What happened:* Take detailed notes and track the exact timing of the story. Ask for as many specifics as possible (i.e. names, exact places, dates, witnesses, etc.). Determine and obtain when possible any tangible evidence such as copies of written documents, videotapes, newspaper articles, etc.

» *Where:* Where was the complaint filed? Court or Election Commission? (or is there another source?). Specify the source from which a complaint is heard. When a complaint has been brought to a court or an election commission ask for a case number assigned by the court or commission dealing with the dispute.[98]

It is necessary to process the information obtained before building them into an actionable report. For example, where an infringement of the law has been alleged, it is necessary for the monitor to properly educate himself or herself with the aspects of the law said to have been contravened.

Election observers are meant to only observe and report what they SEE. The emphasis on "see" implies that rumours are not part of what should reflect in the report of an electoral observer. His /her role is critical to the credibility and integrity of the whole electoral process and thus care must be taken to only give an objective and impartial report of what was observed.

## Early Warning Systems

Prevention is said to be better than cure. This makes the monitoring of early warning signs a critical element of election dispute management. An early warning is basically "a process of communicating judgements about threats early enough for decision-makers to take action to deter whatever outcome is threatened; or failing that, to manage events in such a way that the worst consequences are mitigated".[99] To Diller, early warning systems are "mechanisms of sets of procedures designed to detect, process and communicate signals of potential or impending threat to allow early counter-measures to prevent or mitigate negative impact".[100] The process focuses on three key issues: identifying causes of conflict, predicting the outbreak of conflict, and mitigating the conflict.

Scholars have proposed different methodological categories of early warning systems (EWS). Two of these are examined here. The first typology as proposed by Gurr and Harff, consist of the following:

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98  *Ibid.*

99  *Mary O. McCarthy, "Potential humanitarian crises: The warning process and roles for intelligence", in S. Schmeidl and H. Adelman (eds.), Synergy in early warning: Conference proceedings, New York: Centre for International and Security Studies, Forum on Early Warning and Early Response, March, 1997, pp.15-16.*

100  *Janelle M. Diller, Handbook on human rights in situations of conflict, Mineapolis, Minnesota: Advocates for Human Rights, March 1997, p. 7.*

*Field monitoring:* the systematic registration of local precursor events and the gathering of intelligence in the potential conflict region by local experts, native or foreign.

*Indicator monitoring:* establishing trends based on statistical indicators which are deemed to measure (de) escalation. The method assumes that there are no discontinuities.

*Model-based forecasting:* if a set of statistical variables is based on a theory of social change, or conflict evolution, and/or is enriched by qualitative, field-monitoring-based data, the prognosis would be better developed and more sophisticated. A formalized procedure of gathering and weighing data that is based on cause-effect relationships can provide model-based forecasting.[101]

The second typology consists of the following four categories: quantitative warning, qualitative warning, a dual qualitative-quantitative approach, and networks.

*Qualitative early warning:* This refers to the responsibility of an analyst staying in a conflict zone for a fairly long period of time assembling qualitative data from which research reports are produced about impending problems and their possible solutions. This approach is usually adopted by special envoys and human rights groups such as Human Rights Watch, Amnesty International and International Crisis Group (ICG) for writing their occasional reports which are usually sent to decision makers, policymakers and the general public for action. This is often referred to as qualitative early warning largely because the data for writing the reports come from interviews, group discussions and other data sources peculiar to the qualitative research traditions. This kind of approach starts with the collection of some baseline data which is constantly updated. The warning signs are derived from the emerging continuity and changes in the observed society on specific aspects of its lived experience.

Quantitative early warning: This approach, which manifests in terms of systematic collection and coding of empirical data according to a given set of criteria, made its debut during the 1960s and 1970s. It regained its importance in the 1990s following the conflicts and crises that emerged in the aftermath of the demise of the Cold War. Whereas qualitative early warning tries to paint and generate pictures of an emerging scenario, the quantitative approach seeks to understand the "temperature" that could explode the bottle. In practice, it is aimed at constructing theoretical models for isolating and understanding the antecedent contextual structures, events and processes leading to outbreak of conflicts and crises.[102] Gurr has identified five different objects of analysis in this respect:

   i.   structural model
  ii.   accelerator model
 iii.   threshold model
  iv.   conjunctural model and

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[101]  T. R. Gurr and B. Harff, *Early warning of communal conflicts and genocide: Linking empirical research to international responses, Tokyo: The United Nations University, 1996, pp.8-9.*

[102]  B. Conrad and K. Schlichte, *"Qualitative research: Four limits and one alternative", Paper presented at the Uppsala Conflict data conference, 8-9 June 2000, p. 4.*

v.  response model.[103]

Structural model focuses on identifying and understanding the conditions and structural contexts for violent conflict. The question to be answered here is under what conditions would certain problems graduate into a violent conflagration? A base line data must first be generated and other data built on it to verify indicator constellations. The accelerator model, also known as sequential or processual models, identifies particular triggers and processes leading to conflict. The threshold model does not focus on the causes or process of conflict but tries to abstract the information from other conflicts. If certain factors led to escalation of conflict in some other places and same factors are seen elsewhere in same magnitude, this model would simply assume that the same conflict scenario will be reproduced. To support this position, Brecke cited the following report: "When we have seen a situation like this in the past, 88% of the time a conflict has erupted within 12 months".[104]

The conjunctural model is still developing and is yet to reach the maturity stage of practical application. It examines relationships between predetermined indicators (e.g. relationship between food scarcity and human displacement). The response model focuses on the assessment of the impact of interventions most especially their appropriateness for engaging conflict situations.

*Qualitative-quantitative early warning:* Some projects use a combination of qualitative and quantitative monitoring systems to make a prediction about conflict scenarios using four possible information sources: constant monitoring (qualitative analysis), event data analysis (quantitative analysis), expert network (external expertise), and fact finding missions (field investigation).[105] This approach aims for holism in methodology and it works well when there is some way of equalizing the results obtained from the different approaches.

*Network:* "Network" has to do with the sharing of warning signs by different actors engaged in the business of monitoring early warning signs. It is at the level of the network that the different agencies are integrated into a community. It is also at this level that efforts are made to marry early warning with early response.[106]

The methodological categories of early warning discussed above are united in their recognition of the importance of intelligence ("field monitoring") for developing an effective early warning system. Intelligence is very important given the fact that the state (Track 1 in "multi-track diplomacy") is in fact the most critical stakeholder in any security architecture. In other words, the state is expected to know more than others about an impending problem; it is equally expected to maintain the frontline in responding to

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103  T. Gurr, "Victims of the state: Genocides, politicides and group repression from 1945 to 1995", in A. J. Jongman (ed.), Contemporary genocides: Causes, cases, and consequences, Leiden: PIOOM/University of Leiden, 1996.

104  Peter Brecke, "A pattern recognition approach to conflict early warning", in John L. Davies and Tedd Robert Gurr (eds.), Preventive measures: Building risk assessment and crisis early warning systems, Rowman and Littlefield Publishers Inc., 1998, p. 123.

105  Alexander Austin, Early warning and the field: A cargo cult science, Berghof Reseaarch Center for Constructive Conflict Management, http://www.berghof.handbook.net, February 2003, p.9.

106  Ibid.

societal problems. Thus, it is little surprising that modern early warning systems originated around the issues of field monitoring (the military strategic intelligence gathering) and forecasting of problems.

Field monitoring captures the whole essence of the data collected by security agencies. The data in this respect are often beyond what the ordinary person can capture or understand. Such information is also usually apprehended through secret service methodologies deployed locally or internationally. One of the problems usually faced by monitors of early warning signs is how to integrate data obtained from open sources and secret services. Most governments are reluctant to release their intelligence data to those monitoring early warning signs.

## Practical Issues in Developing EWS for Elections

The first question to ask here is "who actually needs an EWS for managing election disputes". Everybody does but EMBs do more than other stakeholders if they are really interested in reducing tensions in the country. Civil society organizations could also set up an early warning system as a first line of action in developing a rapid response system in the polity. The government, most especially security agencies charged with prevention and management of election disputes, could also set up an EWS to support their work.

The easiest approach is to do indicator-based monitoring whereby the basic duties in the election process are outlined (as indicators) and the performance of the election in respect of each of them is monitored on a regular (daily, weekly or monthly) basis. The best way to do this is to draw the indicators to be monitored from the electoral law. What does it say on the performance of the EMBs, political parties, the security sector and other stakeholders? How well is everybody doing in respect of the specification of the electoral law over the period of the three phases in the election cycle. A quantitative framework is needed for this. The scale is usually graded from 1 to 10: the higher score (10) being the most dangerous situation. Hence if the question is asked as to whether the EMB has conducted voters' registration as at the time stipulated in the electoral law and this has not been done for many months after the date set by the law, the score for the month could be 6 meaning that this is a bad warning sign. When 9 is recorded for this indicator, it is to show that that very problem is bound to affect the success of the election no matter the measures later taken. On the other hand, any score below 5 suggests that the situation is still manageable whereas 1 would suggest that the best step had been taken on the particular indicator.

If the monitoring of the indicators is done daily, a weekly report could be produced on the situation. If it is done weekly, a monthly report is produced which is expected to inform the interventions that have to be organized by those interested in solving the problem. The best EWS for an election is the one that comes into operation at least six months before the conduct of the election. This enables those managing the system to provide enough warnings for different stakeholders in the exercise early enough as to be able to make a difference.

## Evaluating an election dispute management system

Election is a continuous process in the life of a democratic nation. As one election ends, preparations for the next starts. The system grows when stakeholders in the process learn from the last exercise. This calls

attention to the role of evaluation in improving how the disputes arising from elections are managed. This is important given the fact that where election dispute management methods are not improved upon, people get discouraged to participate in future elections.

There is a great need to build the credibility of electoral dispute management system. This has to be done through the process of making the system work and be seen to work. Public relations stunts will not help matter if the disputes from elections are not resolved in a justified manner. The principles and frameworks guiding the operations of the electoral dispute management system must be applied without fear or favour, and the different stakeholders must be carried along. When there is liaison between the EMB and all those with a stake in the electoral system, a platform will of necessity emerge whereby political contenders can meet with one another to iron out their differences. It is best that political disputes are thrashed out long before voting day. An electoral dispute management system that goes to sleep after resolving the disputes from concluded elections is being run on the naive assumption that disputes only arise during the voting season and in its immediate aftermath. The problem here is that these mechanisms operate on two formalistic and legalistic planks: redress is sought only at the courts. However, a responsive EMB can put in motion less formalized modes of dispute management which are run on the basis of consultation, negotiation and mediation. There is much scope here for collaboration with civil society. Flexibility and responsiveness are thus key criteria in evaluating an electoral dispute management system. The degree of adversarial intent witnessed in disputes surrounding electoral issues will be lessened if contending parties are really committed to exploring the channels of negotiation and mediation. An EMB can help generate this commitment by reaching out to stakeholders and making sure that such channels really exist.

An efficient and effective electoral dispute management system will ensure integrity of elections. The challenge of maintaining election integrity is one difficult task that should not be compromised in the process of building an electoral system. The requirements for election integrity include

» a legal framework that imposes strong checks and balances on institutional structures within a political system;

» a set of electoral standards based on the widely accepted democratic principles;

» firmly entrenched protection mechanisms, including oversight of the election by independent observers, civil society and free media;

» effective and unerringly applied enforcement measures; and

» fair, transparent and equitable election administration.

Enactment of laws and establishment of institutions will not be enough if these laws and institutions are not made a matter of cultural conditioning. In West African countries, the electoral laws are not as bad as the behaviour of the political class makes them turn out to be. Indeed, better laws and institutions are required in the countries of the sub-region. But these laws and institutions will have to be operated by people; and until the rule of law rises from the status of being a maxim and is elevated to a norm in society, we must remain vigilant monitors of our electoral systems.

## Interagency Collaboration

What has been clearly established above is that all agencies are needed for the prevention and management of election disputes. It logically follows that better results would be achieved where all these agencies in the multi-track diplomacy framework agree to work in a process of interdependent problem-solving. This act of working together for ensuring that an electoral process is free, fair and violence-free can be termed interagency collaboration. Interagency is believed to have taken place when people from different organizations share resources, decision making and ownership of a task. This reduces costs, improves efficiency as the best possible decisions are taken, and the implementation strategies involve a broader spectrum of stakeholders. To attain this goal, the collaborating organizations must development mechanisms that help to bring stakeholders together to identify the desired change, design how such a change could be brought about with what resources and which stakeholders and at what time. A governance system has to be established to oversee the working relationship.

## Building Personal, Institutional and Procedural Credibility

Trust and credibility is an essential issue in management of election disputes. Disputant only deal with people they can trust. In this respect, it is necessary that all those involved in the prevention and management of election disputes should work very hard towards having three types of credibility: personal, institutional and procedural. Personal credibility has to do with whether the person involved in the project can be trusted by the disputants or not. It is necessary that the dispute management is not seen to be partisan either by the associations he belongs to or by the way he positions himself on the conflict issue. Where the dispute management is considered to be partisan, his role in managing the dispute would be given a negative meaning. Building personal credibility could also be a matter of how one is dressed and generally behave.

Institutional credibility has to do with the image of the organisation that is organising the dispute management project. It must be an organisation that all sides to the dispute could vouch for as being non-partisan or political. On the other hand, procedural credibility has to do with the procedures adopted in dealing with the disputants. The approach must be seen to be scientific, fair and credible and must not be seen to be adding to the problems. Those intervening in election dispute must try at the early stage of their project to convince the disputants that they have personal, institutional and procedural credibility. This is not in words but by how they conduct themselves.

## Post Election Peacebuilding

After elections, politicians (and their followers in the society) usually break into two main camps: the ruling party and the opposition. This looks like a conflict scenario but it is legitimate to have political opposition[107] in a democratic system. While some opposition work towards refining the political system by challenging the ruling party to do better through constructive criticisms, some others engage in destructive criticisms and subversive activities that stall the political development of the society. Democratic governance celebrates the former and frowns at the latter.

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107  See Barbara N. McLennan (ed.), Political opposition and dissent, New York: Dunellen Publishing Company, Inc, 1973.

The "opposition" in a political system does not necessarily have to be a political party as it is often assumed. It could be a revolutionary group opposed to a ruling government; it could be institutionalized bodies such as the legislature or courts of law that work towards moderating the excesses of the government or even intellectual critiques of the government. In the course of electioneering campaigns, candidates say negative things against each other or any of these possible opposition groups. This creates ill-feelings or "messes" which have to be cleaned up after elections as part of the drive to create consensus and clement environment for democratic governance. This task is what we refer to as post election reconciliation here.

How does this happen? The work of reconciliation is naturally expected to be that of the party that won an election. The party could stretch hands of fellowship to the party that lost by inviting it to join the government. The best approach for ensuring this is to offer the party some positions in the government. This is hardly the case most especially where the results of the elections are hotly challenged in a court of law. There are also situations where the ruling party might be too confident and arrogant to offer any hands of fellowship to the position. Such a confidence comes when the ruling party has a comfortable number of seats in the parliament. At this level, it would attach little or no value to the opposition party. The winning party could also consider itself to have won so freely and fairly that it does not see the need to reconcile with "anybody". The expectation here is that the party that lost should work hard to win the next time. On the other hand, the "opposition party" namely the party that failed to win the election could take the first step in the reconciliation process by congratulating the winner in the election and pledging to support it. But this hardly happens where the opposition considers itself to have lost the election unfairly. In this case, the opposition would tie any chances of reconciliation to justice being done.

Where any of the foregoing fails to happen, the ruling party and the opposition could be locked in the worst case scenario of "opposition politics" in which the party that lost the election would see nothing good in the ruling government and so do all at disposal to demonize and discredit the government. The society is often the loser in this kind of situation. Hence, it is necessary for a third party to fill the void by working towards reconciling the two sides. This could come in the form of a process promoting workshop during which stakeholders cutting across the nine tracks of multi-track diplomacy would appeal to the politicians to give peace a chance for the sake of the larger society. A private citizen or some religious leaders could also take up the challenge of reconciling the leadership of the feuding political parties. Whatever peace agreements that comes out of this kind of intervention does not necessarily prevent the political parties from playing their respective roles in the government. In other words, it does not stop the opposition party from being itself. The only difference now is that it enables the two sides to interact in an atmosphere of better assured civility.

## Conclusion

Drawing from the model of Multi-Track Diplomacy, this practice guide explicates how different stakeholders can play useful roles in the settling of electorate disputes. Much attention is paid to the institutional and legal principles and frameworks for managing not just election disputes but the entire electoral-cum-political system. Institutional best practices are highlighted and examples of how election disputes are resolved elsewhere in the world are presented for the purpose of showing that the problem is not a West African syndrome, and that different societies have different ways of resolving these disputes.

However, beyond institutional and legal frameworks, this practice guide argues for the inculcation of a political culture whereby West African politicians and their supporters will be converted to the norms of peaceful and amicable resolution of election disputes. The capacity and integrity of the Election Management Boards (EMBs) are of the essence in this regard. For it is the EMB that organizes the electoral system, and it is chiefly responsible for the sensitizing the polity on the principles and practices of electoral democracy. It is on the basis of this reasoning that much space is given to the constraints of EMBs in the West African sub-region, and much space spent on how they can organize their structures and procedures for better service delivery to the political class and the electorate alike.

A holistic point of view is the realistic one for such a topic as election dispute management. All the problems of the electoral system become manifest in the degree of acrimony that is displayed when parties dispute over electoral outcomes. Issues of fairness and equality loom large in the horizon as claims and counterclaims are made. We have tried to show that for the problem to be adequately tackled, the fundamental rules guiding electoral culture in West African societies must .be addressed. If the constitutions and electoral guidelines of these countries are silent on the questions of discrimination – gender, age, religion, ethnic identity, etc. – then that is the place to start from, but we cannot afford to stop there. Laws and institutions are not enough. Entrenchment of the democratic ethos is the critical factor if these systems are to be transformed for the benefit of society.

It might appear that too heavy a burden has been placed on the EMBs having identified them as responsible for the shape and temper of the democracy that comes to exist in West African countries. This practice guide, however, adopts a position that is far more nuanced than that. Evidence for this claim lies in the fact that an actor-issue analytic approach is combined with the model of Multi-Track Diplomacy as well as with the theoretical perspective of conflict lifecycle applied to the different phases of elections. In addition, the practice of early warning is shown to have a lot to contribute as regards how election disputes are handled. With this delineation of the best practices, this guide demonstrates that the network of collaboration that the EMBs can draw upon includes actors in the security agencies, international observers and civil society activists, among others. The burden is thus a shared one.

We have also carefully spelt out how to strengthen the regnant methods of election dispute settlement, which rely on adjudication in the court of law. There is a place for this method, especially when votes have been cast and results declared. But as we know, election disputes occur every time. They only become covert and full-blown in the voting season and in its immediate aftermath. This practice guide argues for a more flexible apparatus of electoral dispute management in West Africa countries. There are many issues of electoral-cum-political dispute that will never be brought before the judges. These are disputes that may not be resolvable through the adjudicatory mechanism. How can these grievances be handled? We make the argument that a peace architecture of discussion, negotiation and mediation is relevant in this connection. It is the age-old African system of the palaver, the kgotla, or village council where conflict parties are brought together for joint problem-solving. In light of this recognition, this practice guide dwells extensively on the methods of negotiation and mediation, and it makes recommendations on the kinds of negotiation strategies that will help in the establishment of flexible electoral dispute management systems in the sub-region.

A broad-ranging work of this nature needs to be supplemented by others with more specific foci. It is hoped that the impetus behind this effort will galvanize stakeholders with diverse interests in the electoral systems

of West Africa to produce work in an area where there is plenty yet to be done. There is a lot happening in the world and in our sub-region. New technologies are changing the ways we do things, even elections. Today the woman on the street, armed with a cell phone, can send information to anywhere on the globe. We have seen the use of such technologies in election monitoring done by ordinary citizens not affiliated with donor agencies, INGOs or local monitoring networks. It is hoped that we all will learn the lesson of collaborating with people from all walks of life in taking our societies forward. The quest for collaboration is the prime impetus driving this practice guide on election dispute management systems in West Africa.

Election dispute is the climax of the election process. The legitimacy of the election process depends in part on the objectivity and impartiality of dispute resolution mechanisms. Thus objectivity and impartiality are important elements in building public confidence in democratic institutions and the election process. It is only when citizens view the election process as legitimate and sound that they will participate in it. One of the on-going challenges for emerging and established democracies is to master the election process and ensure that any dispute that raises a challenge about "election results" is resolved in a timely, fair and effective manner.

We need to understand that West African societies have a history of viable dispute management mechanisms. It is in this light that this practice guide has attempted to showcase the wide array of options that are available for managing electoral disputes. It is true that the modern nation state is a legalistic entity; it must have a clearly stated secular constitution and it is signatory to protocols, treaties and conventions that have near-universal ambit. But then too, we know that the issues that motivate political contenders to raise disputes about elections go beyond matters of law. The motivations are usually more political than legal. It is with this in mind that, in addition to underlining the need for strong electoral laws and institutions, this practice guide has attempted to make a case for alternative channels of dispute management, including negotiation and mediation. It is not as if one is saying that whenever a disputant raises a query about elections, some concessions should be made to them while requiring them to make concessions of their own too. Rather, an electoral dispute management system can use the strategies of mediation and negotiation to implement regular consultation with stakeholders in the electoral system, thus creating an avenue for the ventilation and dissipation of grievance long before the season of elections. In point of fact, such consultations should involve stakeholders from the judiciary and civil society in forums where openness and joint problem-solving are the main rules of the interaction.

This practice guide is not meant as the final document on the issues raised within it. If anything, it is meant to serve as working plan for anybody, agency or organization interested in coming to terms with the problem of election dispute management in the West African sub-region. As has been argued, the problem of election dispute management goes beyond mere contention among political parties, their candidates and supporters. Gender and age discrimination, for instance, are matters of urgent importance in election dispute management. Ethnic intolerance is another grave issue in this regard. Such intolerance is played out to a high crescendo every time a West African country goes to the poll. Indeed, it will be a very insensitive election dispute management system that will hinge its intervention as regards election-centred ethnic intolerance only on laws that abolish ethnic discrimination. The political manipulation of ethnic sentiments is now a cultural thing in many parts of West Africa, and the way to deal with it is to co-opt the instrumentality of cultural experts and cultural figures alongside the enactment of and enforcement of laws that are sensitive to these issues.

Part of the idea of this practice guide is to make politicians and their supporters see that there are alternatives to the current regnant system of electoral dispute management in West Africa. West African EMBs should note that they are central to how the general electoral system takes shape. A situation in which these EMBs are seen by political parties and members of the electorate as not being sufficiently neutral or as being too weak to act without favour to ruling parties and powerful incumbents is a situation that does not augur well for the advance of democracy in the sub-region.

It is hoped that specific civil society groups will on the example of this practice guide devote attention to detailed areas of the problem of election dispute management. Women's groups and human rights agencies should be able to work out frameworks for election dispute management that will address the themes of their own advocacy interests in a better way than can be achieved in a general guide as the present one. Agencies and groups concerned about ethnic violence, which is one sad dynamic of this problem, can present well-resourced guides on how to tackle this kind of electoral violence, with emphasis on stakeholder analysis and on rapid as well as long-term intervention strategies. As has been hinted several times above, the capacity for lobbying is central to the effectiveness of our interventions on these issues. The users of this Practice Guide will have to identify the cluster of stakeholders they can lobby in order to ensure that election dispute management is properly handled in the sub-region. It will not do, in this regard, to work only with those with whom we share initial interests and preferences. That is akin to the error of preaching to the converted. Of course, we need to network with people who are concerned about strengthening electoral democracy in our sub-region. But as we coalesce our organized interest, the goal is to be able to lobby individuals and groups who are opposed to the notion of non-violent management of electoral disputes or who are mere fence-sitters.[108] West Africa needs to develop more on its peace lobby; it needs a standing army of peace lobbyists (i.e. a peace movement) properly networked and articulated, as opposed to the reigning trend of ad hoc arrangements and one-ff strategies.[109]

An oblique challenge has been thrown in this guide at some agencies of government and at non-governmental organizations. But we may make the challenge explicit at this point. Specifically, the security agencies need to consider the way they operate to douse tension during elections. As has been said above, early warning is best done by state security agencies, but they are reluctant to share intelligence with others. It is clear that early warning is urgently needed in the area of election dispute management. State security agencies therefore need to liaise closely with the EMB to detect likely causes of election violence and thus douse them before they explode into wildfires. It is a shame when feelers from these agencies reveal that they knew that the situation in such-and-such a place was volatile long before the plague of wanton destruction – but they did nothing about it. The other challenge we would like to make explicit at this juncture is about the role of international election observers. The time frame in which they operate is much too short for them to arrive at meaningful conclusions on the nature of the vote. Elections do not just take place on Election Day – they occur in a continuous stream of electoral events, sometimes years before the day scheduled for the vote. West African civil society organizations have proved that they are the true monitors of West African

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[108]  See Marie Hohnacki and David C. Kimball, "Organized Interests and the Decision of Whom to Lobby in Congress" in *The American Political Science Review, Vol. 92, No. 4, 1998, pp. 775-790.*

[109]  See "Editorial: The Fundamental Freedom to Lobby for Peace", in *Third World Quarterly, Vol. 7, No. 3, 1985, pp. vii-ix.*

elections; and that is what is to be expected. It is only people with astute knowledge of the local scene that can do the true job of election monitoring. One is not saying that international observers do not have a role to play. They are welcome to monitor our elections and to help us in consolidating our democracies. But if all they can do is observe for a mere two weeks or even less, then they will not be helping the system of electoral democracy in our sub-region. Perhaps what is needed is a network model whereby local monitors and international observers work in properly integrated teams.[110] The gauntlet is theirs to pick up. Ours is to remain vigilant.

Our approach here has been from the perspective of peace and conflict studies, and an effort has been made to situate the entire practice guide in the midst of the terms and concepts used in this discipline. What has been argued overall is not that election disputes are bad for democracy. Rather, the position taken is that disputes are necessary checks on the state of health of any given democracy, whether in Europe or in Africa. The burden however is how to ensure that in seeking redress for electoral grievances, real or perceived, contending parties do not have recourse to violence. One way of ensuring this is to have an effective election dispute management system. The goal of this system cannot be only to decide who gets what in the aftermath of a contested vote. Its ultimate goal is to inculcate values in the polity such that disputants over election issues, which are not just about vote tallies but include such things as gender discrimination and ageism, will resolve their differences through non-violent channels.

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[110]  *Kayode Soremekun, "Disguised Tourism and the Electoral Process in Africa: A study of International Observers and the 1998 Local Government Elections in Nigeria", in Issue: A Journal of Opinion, Vol. 27, No.1, 1999, pp. 26-28.*

Election Dispute Management Practice Guide For West Africa

# APPENDICES

## Electoral Dispute Resolution: References And Sources
## The United Nations (UN)

### Treaties

❖ Convention on the Elimination of All Forms of Discrimination against Women (signed 18 December 1979, entered into force 3 September 198*) 1249 UNTS 13 (CEDAW)

❖ Convention on the Political Rights of Women (signed 31 March 1953, entered into force 7 July 1954) 193 UNTS 135 (CPRW).

❖ Convention on the Rights of the Child (adopted and opened for signature, ratification and accession by General Assembly Resolution 44/25 of 20 November 1989. entered into force 2 September 1990) (CRC)

❖ Convention concerning Indigenous and Tribal Peoples in Independent Countries (ILO No. 169), 72 ILO Official Bull. 59, entered into force Sept. 5, 1991.

❖ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR)

❖ International Convention on the Elimination of All Forms of Racial Discrimination (adopted and opened for signature and ratification by General Assembly Res. 2106 A(XX), 21 December 1965; entered into force on 4 January 1969 in accordance with Article 19) (ICERD)

❖ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, signed 18 December 1990, entered into force 1 July 2003, UN Doc. A/RES/45/158 (MWC)

❖ United Nations Convention Against Corruption, Entry into force December 14, 2005

❖ Vienna Convention on the Law of Treaties, 1155 U.N.T.S. 331, 8 I.L.M. 679, entered into force Jan. 27, 1980.

### Other international instruments

❖ Commission on Human Rights Resolution, Promoting and consolidating democracy, UN Doc E/CN.4/RES/2000/47

❖ Commission On Human Rights Resolution, Promotion of the Right to Democracy, UN Doc, E/CN.4/RES/1999/57

❖ Commission on Human Rights Resolution, Interdependence between democracy and human rights, UN Doc E/CN.4/RES/2003/36

❖ Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (adopted by General Assembly Resolution 53/144 of 9 December 1998)

❖ General Assembly Resolution, Promoting and Consolidating Democracy, UN Doc A/RES/55/96

❖ Guiding Principles on Internal Displacement, U.N. Doc. E/CN.4/1998/53/Add.2 (1998), noted in Comm. Hum. Rts. Res 1998/50, para 20(1)

❖ Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217A (III)) (UDHR)

### Economic Community of West African States (ECOWAS)
### Regional instruments

❖ Declaration of Political Principles of The Economic Community of West African States, A/DCL.1/7/91(Fourteenth Session of the Authority of Heads of State and Government, Abuja, 4-6 July 1991).

❖ Economic Community of West African States, Protocol A/SP1/12/01 on Democracy and Good Governance, Supplementary to the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security. Dakar 2001

### Inter-Parliamentary Union

❖ GS Goodwin-Gill, Codes of Conduct for Elections (Inter-Parliamentary Union Geneva 1998)

❖ GS Goodwin-Gill, Free and Fair Elections: International Law and Practice (Inter-Parliamentary Union Geneva 1994); 2nd revised and expanded edn., 2006

❖ Inter-Parliamentary Union Declaration on Criteria for Free and Fair Elections (Adopted by the Inter-Parliamentary Council at its 154th session 26 March 1994 Paris) (Inter-Parliamentary Council Geneva)

❖ Inter-Parliamentary Union Declaration on Democracy (Adopted without a vote by the Inter-Parliamentary Council at its 161st session 16 September 1997 Cairo) (Inter-Parliamentary Council Geneva)

*Protocol A/SP1/12/01 on Democracy and Good Governance Supplementary to the Protocol relating to the Mechanism For Conflict Prevention, Management, Resolution, Peacekeeping and Security*

*Dakar, December 2001*

## PREAMBLE

*WE, THE HEADS OF STATE AND GOVERNMENT OF THE MEMBER STATES OF THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS);*

**MINDFUL OF** the ECOWAS Treaty signed in Cotonou on 24 July 1993, notably its Article 58;

**MINDFUL OF** the Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security signed in Lome on 10 December 1999;

**CONSIDERING** all the issues enumerated or reaffirmed in the preamble to the Protocol of 10 December 1999 referred to above;

**MINDFUL OF** the principles set out in the OAU Solemn Declaration on Security, Stability, Development and Cooperation in Africa adopted in Abuja on 8 and 9 May 2000 and the Decision AHG. DEC 142 (XXV) on the framework for OAU's reaction to unconstitutional change of government, adopted in Algiers in July 1999;

**CONSIDERING** the Harare Declaration adopted by the Commonwealth on 20 October 1991 and the Bamako Declaration adopted by the member countries of the Francophonie on 3 November 2000;

**CONSIDERING** also the Cotonou Declaration adopted on 6 December 2000 at the end of the 4th international conference on new or restored democracies;

**RECALLING** that women's rights have been recognised and guaranteed in all international human rights instruments, notably the Universal Declaration of Human Rights, the African Charter on Human and Peoples Rights and the Convention on the Elimination of all forms of Discrimination Against Women;

MINDFUL of the ratification of the African Charter on Human and Peoples Rights and other international human rights instruments by the majority of the Member States and their solemn commitment to eliminate all forms of discrimination and harmful practices against women;

**CONCERNED** about the increasing wave of international terrorism;

**CONCERNED** also about the increasing incidence of conflicts caused by religious intolerance, political marginalisation and non-transparent elections;

**HAVING OBSERVED** that to become really effective, the Protocol of 10 December 1999 needs to be complemented through the incorporation of provisions concerning issues such as prevention of internal crises, democracy and good governance, the rule of law, and human rights;

**HAVING DECIDED** to enhance the ECOWAS Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security;

## HAVE AGREED AS FOLLOWS:

### DEFINITIONS:

The terms and expressions used in the present Supplementary Protocol have the same meanings as those used in the Protocol of 10th December 1999.

The list of definitions is completed as follows:

**"Treaty"** means the Revised Treaty of the Economic Community of West African States (ECOWAS) signed in Cotonou on 24 July 1993;

**"Protocol"** means the Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security, signed in Lome on 10th December 1999;

**"Supplementary Protocol"** means the Protocol on Democracy and Good Governance Supplementary to the Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security;

**"Community"** means the Economic Community of West African States referred to under Article 2 of the Treaty;

**"Member State"** or **"Member States"** means a Member State or Member States of the Community as defined in paragraph 2 of Article 2 of the Treaty;

**"Community citizen or citizens"** means any national (s) of Member States who satisfy the conditions stipulated in the Protocol defining Community citizenship;

**"Court of Justice"** means the Court of Justice of the Community established under Article 15 of the Treaty;

**"Authority"** means the Authority of Heads of State and Government of the Economic Community of West African States established by Article 7 of the Treaty;

**"Mediation and Security Council"** means the Mediation and Security Council as defined by Article 8 of the Protocol;

**"Defence and Security Commission"** means the Defence and Security Commission as defined in Article 18 of the Protocol;

**"Executive Secretary"** means the ECOWAS Executive Secretary appointed in accordance with Article 18 of the Treaty;

**"Executive Secretariat"** means the Executive Secretariat established under Article 17 of the Treaty;

**"Deputy Executive Secretary"** means the Deputy Executive Secretary in charge of Political Affairs, Defence and Security as referred to in Article 16 of the Protocol;

**"ECOMOG"** means the ECOWAS Cease-fire Monitoring Group, which constitutes the Community's intervention force as defined in Article 21 of the Protocol relating to the Mechanism etc;

**"Armed Forces"** includes the army, Air force, Navy, and Gendarmerie;

**"Security Forces"** the Police, Gendarmerie, National Guards and other Forces assigned with security.

# CHAPTER 1

## PRINCIPLES

The provisions of this chapter complement and clarify the principles set out in Article 2 of the Protocol of 10 December 1999.

### SECTION I: CONSTITUTIONAL CONVERGENCE PRINCIPLES

*Article 1:*

The following shall be declared as constitutional principles shared by all Member States:

a. » Separation of powers - the Executive, Legislative and Judiciary.
   » Empowerment and strengthening of parliaments and guarantee of parliamentary immunity.
   » Independence of the Judiciary: Judges shall be independent in the discharge of their duties.
   » The freedom of the members of the Bar shall be guaranteed; without prejudice to their penal or disciplinary responsibility in the event of contempt of court or breaches of the common law.
b. Every accession to power must be made through free, fair and transparent elections.
c. Zero tolerance for power obtained or maintained by unconstitutional means.
d. Popular participation in decision-making, strict adherence to democratic principles and decentralisation of power at all levels of governance.
e. The armed forces must be apolitical and must be under the command of a legally constituted political authority; no serving member of the armed forces may seek to run for elective political.
f. Secularism and neutrality of the State in all matters relating to religion; freedom for each individual to practise, within the limits of existing laws, the religion of his/her choice everywhere on the national territory. The secularism shall extend to all parts of the State, but shall not deprive the State of the right to regulate, with due respect to human rights, the different religions practised on the national territory or to intervene when law and order break down as a result of any religious activity.
g. The State and all its institutions belong to all the citizens; therefore none of their decisions and actions shall involve any form of discrimination, be it on an ethnic, racial, religion or regional basis.
h. The rights set out in the African Charter on Human and People's Rights and other international instruments shall be guaranteed in each of the ECOWAS Member States; each individual or organisation shall be free to have recourse to the common or civil law courts, a court of special jurisdiction, or any other national institution established within the framework of an international instrument on Human Rights, to ensure the protection of his/her rights. In the absence of a court of special jurisdiction, the present Supplementary Protocol shall be regarded as giving the necessary powers to common or civil law judicial bodies.

i.  Political parties shall be formed and shall have the right to carry out their activities freely, within the limits of the law. Their formation and activities shall not be based on ethnic, religious, regional or racial considerations. They shall participate freely and without hindrance or discrimination in any electoral process. The freedom of the opposition shall be guaranteed. Each Member State may adopt a system for financing political parties, in accordance with criteria set under the law.
j.  The freedom of association and the right to meet and organise peaceful demonstrations shall also be guaranteed.
k.  The freedom of the press shall be guaranteed.
l.  All former Heads of State shall enjoy a special status including freedom of movement. They shall enjoy special benefits compatible to their status as former Heads of State.

## SECTION II: ELECTIONS

*Article2:*

1.  No substantial modification shall be made to the electoral laws in the last six (6) months before the elections, except with the consent of a majority of Political actors.
2.  All the elections shall be organised on the dates or at periods fixed by the Constitution or the electoral laws.
3.  Member States shall take all appropriate measures to ensure that women have equal rights with men to vote and be voted for in elections, to participate in the formulation of government policies and the implementation thereof and to hold public offices and perform public functions at all levels of governance.

*Article 3:*

The bodies responsible for organising the elections shall be independent or neutral and shall have the confidence of all the political actors. Where necessary, appropriate national consultations shall be organised to determine the nature and the structure of the bodies.

*Article 4*

1.  Each ECOWAS Member State shall ensure the establishment of a reliable registry of births and deaths. A central registry shall be established in each Member State.
2.  Member States shall cooperate in this area with a view to exchanging experiences and where necessary providing technical assistance to each other in the production of reliable voters' lists.

*Article 5*

The voters' lists shall be prepared in a transparent and reliable manner, with the collaboration of the political parties and voters who may have access to them whenever the need arises.

*Article 6*

The preparation and conduct of elections and the announcement of results shall be done in a transparent manner.

*Article 7*

Adequate arrangements shall be made to hear and dispose of all petitions relating to the conduct of elections and announcement of results.

*Article 8*

Member States shall use the services of civil society organisations involved in electoral matters to educate and enlighten the public on the need for peaceful elections devoid of all acts of violence.

*Article 9*

The party and/or candidate who loses the elections shall concede defeat to the political party and/or candidate finally declared the winner, following the guidelines and within the deadline stipulated by the law.

*Article 10*

All holders of power at all levels shall refrain from acts of intimidation or harassment against defeated candidates or their supporters.

## SECTION III: ELECTION MONITORING AND ECOWAS ASSISTANCE

*Article 11*

The provisions of Article 42 of the Protocol of 10th December 1999 are hereby complemented by the provisions under this section.

*Article 12*
1. At the request of any Member State, ECOWAS may provide assistance in the conduct of any election.
2. Such assistance may take any form.
3. Also, ECOWAS may dispatch a monitoring team to the country concerned for the purpose of monitoring the elections.
4. The decision in this respect shall be taken by the Executive Secretary.

*Article 13*
1. As elections in a Member State approach, the Executive Secretary shall dispatch a fact-finding Mission to the Member State conducting an election.
2. This mission may be followed by an exploratory Mission aimed at:
    » collecting all texts governing the elections concerned;
    » gathering all information on the conditions under which the elections shall be conducted;
    » collecting all pertinent information relating to the contesting candidates or political parties;
    » meeting all candidates, political party leaders, government authorities and other competent bodies;
    » assessing the status of preparations for the elections;
    » gathering any other useful information that may provide a clear picture of the situation.

*Article 14:*

1. The Executive Secretary shall appoint the leader and the members of the Observer/Supervisory Mission, who shall be independent persons and nationals of Member States other than the Member State conducting the elections.
2. The Members of the Mission shall include women.
3. Staff of the Executive Secretariat shall be designated to assist the Mission.

*Article 15:*

1. The Observer/Supervisory Mission, with the documents collected by the exploratory Mission and the report prepared by the Mission, shall arrive in the Member State concerned at least forty-eight hours prior to the conduct of the elections.
2. The Observer/Supervisory Mission may be preceded by ECOWAS Staff, who shall prepare the meetings to be held between the Mission and the national authorities.
3. The Mission shall be expected to hold consultations with the relevant authorities of the host government for an exchange of views and in order to determine the mode of deployment in the host Member State.
4. It may establish co-operation links with NGO or any other observer teams while maintaining its autonomy.
5. The members of the Mission shall show restraint and refrain from making any individual statement. Any statement shall be made collectively and on behalf of the Mission by the team leader or a spokesperson appointed for this purpose.

*Article 16:*

1. The Mission shall remain in the country throughout the election period and until the election results are announced.
2. The Mission shall also submit a report to the Executive Secretary.
3. The Report shall comprise:
    » the Mission's own observations;
    » statements by witnesses;
    » its assessment of the conduct of the elections from the point of view of the national laws governing the elections and the universal principles in electoral matters;
    » its recommendations for the improvement of the conduct of future elections and monitoring Missions.

*Article 17:*

1. The Observer/Supervisory Mission's report shall be signed by all Members of the Mission and submitted to the Executive Secretary by the Mission's leader within fifteen (15) days with effect from the date of accomplishment of the Mission.
2. Before leaving the host country, the Mission shall convene a consultative meeting for the preparation of the report.
3. Any member of the Mission, who is unable to attend the meeting, shall submit a report in writing to the Mission's leader before leaving the country.
4. ECOWAS Staff shall assist the Mission in the preparation of the report.

*Article 18:*

The report shall be forwarded by the Executive Secretary, together with his own observations, if necessary, to the Mediation and Security Council for recommendations to be made to the country concerned and/or to all Member States, and for measures to be taken, where necessary.

## SECTION IV: THE ROLE OF THE ARMED FORCES, THE POLICE AND THE SECURITY FORCES IN A DEMOCRACY

*Article 19:*

1. The armed forces and police shall be non-partisan and shall remain loyal to the nation. The role of the armed forces shall be to defend the independence and the territorial integrity of the State and its democratic institutions.
2. The police and other security agencies shall be responsible for the maintenance of law and order and the protection of persons and their properties.
3. The armed forces, the police and other security agencies shall participate in ECOMOG missions as provided for in Article 28 of the Protocol.
4. They may also, on the decision of the constitutionally constituted authorities, participate in peacekeeping missions under the auspices of the African Union or the United Nations.
5. Members of the armed forces may be drafted to participate in national development projects.

*Article 20:*

1. The armed forces, the police and other security agencies shall be under the authority of legally constituted civilian authorities.
2. The civilian authorities shall respect the apolitical nature of the armed forces and police. All political or trade union activities and propaganda shall be forbidden in the barracks and within the armed forces.

*Article 21:*

The armed and security forces personnel as citizens, shall be entitled to all the rights set out in the constitution, except as may be stated otherwise in their special regulations.

*Article 22:*

1. The use of arms to disperse non-violent meetings or demonstrations shall be forbidden. Whenever a demonstration becomes violent, only the use of minimal and/or proportionate force shall be authorised.
2. All cruel, inhuman and degrading treatment shall be forbidden.
3. The security forces, while carrying out investigations, shall not disturb or arrest family members or relations of the person presumed guilty or suspected of having committed an offence.

*Article 23:*

1. The armed forces, the police and other security agencies shall during their training receive instructions on the Constitution of their country, ECOWAS principles and regulations, human rights, humanitarian law and democratic principles. In this regard, seminars and meetings bringing together members of the armed forces, Police and other Security Agencies and other sectors of society shall be organised from time to time.
2. Joint training sessions shall also be arranged for members of the armed forces from different ECOWAS countries, the police, other security forces, university dons and members of the civil society.

*Article 24:*

1. The Member States undertake to strengthen their national agencies responsible for preventing and combating terrorism.
2. In accordance with Articles 3 (d) and 16 (1) of the Protocol, the Department of Political Affairs, Defence and Security of the Executive Secretariat shall initiate joint activities for the national agencies of Member States in charge of preventing and combating terrorism.

## SECTION V: POVERTY ALLEVIATION AND PROMOTION OF SOCIAL DIALOGUE

*Article 25:*

Member States agree that poverty alleviation and promotion of social dialogue are important factors for peace.

*Article 26:*

Member States undertake to provide the basic human needs of their populations.

*Article 27:*

Member States undertake to fight poverty effectively in their respective countries and within the Community, especially by:

» creating an environment conducive to private investment and the development of a dynamic and competitive private sector;
» providing the instruments necessary for the enhancement of job creation and for the development of the social sector as a matter of priority;
» ensuring equitable distribution of resources and income in order to consolidate national unity and solidarity;
» enhancing the integration of economic, financial and banking activities through harmonisation of commercial and financial laws and establishment of Community multi-national corporations.

*Article 28:*

1. Employers associations and trade unions shall be organised and/or strengthened in each Member State and at the regional level of ECOWAS.
2. Member States shall promote social dialogue. In this regard, employers associations and workers unions shall meet regularly among themselves and with political and administrative authorities with a view to preventing social conflict.
3. There shall be associations of farmers, artisans and artists in each Member State and at the sub-regional level of ECOWAS.

## SECTION VI: EDUCATION, CULTURE AND RELIGION

*Article 29:*

Education, culture and religion are essential factors for peace, stability and development in each Member State.

*Article 30:*

1. There shall be regular exchanges of students and academics between Member States.
2. Community institutions shall be established to provide training for students from the sub-region.
3. » In accordance with Article 36 of the Protocol, the Executive Secretariat shall, from now on, provide budgetary allocations for immediate funding of the programmes as contained in this Article.
   » Each Member State shall in the shortest possible time also make a contribution for the take-off and implementation of the programmes contained in this Article;
   » A percentage of the Community levy shall be allocated for the establishment of a fund for the implementation of the activities outlined in this Article;
4. A policy to promote women's education at all levels and in all fields of training shall be adopted and implemented in each Member State and at the level of ECOWAS.
5. Member States shall guarantee women equal rights with men in the field of education and in particular, shall ensure the same conditions for career and vocational guidance, access to the same curricula, access to opportunities to benefit from scholarships and other study grants. They shall also ensure the elimination of stereotyped concepts of roles of men and women at all levels and in all forms of education.

*Article 31:*

1. The culture of every group of people in each Member State shall be respected and developed.
2. The Executive Secretary shall take the necessary measures to organise, within the sub-region, periodic inter-state cultural events: festivals of arts and culture, symposia, various cultural events on literature, music, arts, and sports.
3. Member States undertake to take measures to eliminate or prevent religious conflicts and to promote religious tolerance and harmony. To this end, permanent structures for consultations among the different religions on the one hand and between the different religions and the State on the other hand, shall be established at national levels.
4. The Executive Secretary shall take the necessary measures to promote, through periodic meetings, consultations among the religious organizations of Member States.

## SECTION VII: RULE OF LAW, HUMAN RIGHTS AND GOOD GOVERNANCE

*Article 32:*

Member States agree that good governance and press freedom are essential for preserving social Justice, preventing conflict, guaranteeing political stability and peace and for strengthening democracy.

*Article 33:*

1. Member States recognise that the rule of law involves not only the promulgation of good laws that are in conformity with the provisions on human rights, but also a good judicial system, a good system of administration, and good management of the State apparatus.
2. They are also convinced that a system that guarantees the smooth running of the State and its administrative and judicial services, contributes to the consolidation of the rule of law.

*Article 34:*

1. Member States and the Executive Secretariat shall endeavour to adopt at national and regional levels, practical modalities for the enforcement of the rule of law, human rights, justice and good governance.
2. Member States shall ensure accountability, professionalism, transparency and expertise in the public and private sectors.

*Article 35:*

1. Member States shall establish independent national institutions to promote and protect human rights.
2. The Executive Secretariat shall take measures to strengthen their capacities. The institutions shall be organised into a regional network.

Within the framework of this network, each national institution shall systematically submit to the Executive Secretariat, any report on human rights violations observed on its territory. Such reports and reactions of governments shall be widely disseminated through the most appropriate means.

*Article 36:*

Member States shall institutionalise a national mediation system.

*Article 37:*

1. Each Member State shall work towards ensuring pluralism of the information sector and the development of the media.
2. Each Member State may give financial assistance to privately-owned media. The distribution and allocation of such assistance shall be done by an independent national body or by a body freely instituted by the journalists themselves.

*Article 38:*

1. Member States undertake to fight corruption and manage their national resources in a transparent manner, ensuring that they are equitably distributed.
2. In this regard, Member States and the Executive Secretariat undertake to establish appropriate mechanisms to address issues of corruption within the Member States and at the Community level.

*Article 39:*

Protocol A/P.1/7/91 adopted in Abuja on 6 July 1991 relating to the Community Court of Justice, shall be reviewed so as to give the Court the power to hear, inter-alia, cases relating to violations of human rights, after all attempts to resolve the matter at the national level have failed.

## SECTION VIII: WOMEN, CHILDREN AND THE YOUTH

*Article 40:*

Member States agree that the development and promotion of the welfare of women are essential factors for development, progress and peace in the society. Consequently, they undertake to eliminate all forms of discrimination and harmful and degrading practices against women.

*Article 41:*

1. Member States shall guarantee children's rights and give them access to basic education.
2. Special laws shall be enacted in each Member State and at the level of the Community against child trafficking and child prostitution.
3. The Community shall adopt laws and regulations on Child Labour in line with the provisions of the International Labour Organisation (ILO).

*Article 42:*

1. Member States shall agree on rules to be adopted on the training and development of the youth.
2. Uniform laws shall be adopted within the Community to prevent and handle cases of juvenile delinquency.

*Article 43:*

The Executive Secretariat shall put in place all necessary structures within its establishment to ensure the effective implementation of common policies and programmes relating to the education and the promotion of the welfare of women and youth.

# CHAPTER II

## MODALITIES FOR IMPLEMENTATION AND SANCTIONS

*Article 44:*

1. This Article complements the provisions of Chapter V of the Protocol of 10th December 1999.
2. In order to give full force to the provision of Article 28 of this Supplementary Protocol and in accordance with Article 57 of the Treaty, a legal convention incorporating, if need be, Convention A/P.1/7/92 relating to mutual assistance in criminal matters, and the Convention A/P1/8/94 on Extradition shall be elaborated and adopted not later than twelve months after the entry into force of this Supplementary Protocol.

*Article 45:*

1. In the event that democracy is abruptly brought to an end by any means or where there is massive violation of Human Rights in a Member State, ECOWAS may impose sanctions on the State concerned.
2. The sanctions which shall be decided by the Authority may take the following forms, in increasing order of severity:
   » Refusal to support the candidates presented by the Member State concerned for elective posts in international organisations;
   » Refusal to organise ECOWAS meetings in the Member State concerned;
   » Suspension of the Member State concerned from all ECOWAS decision making bodies. During the period of the suspension the Member State concerned shall be obliged to pay its dues for the period.
3. During the period of suspension, ECOWAS shall continue to monitor, encourage and support the efforts being made by the suspended Member State to return to normalcy and constitutional order;
4. On the recommendation of the Mediation and Security Council, a decision may be taken at the appropriate time to proceed as stipulated in Article 45 of the Protocol of 10th December 1999.

# CHAPTER III

## GENERAL AND FINAL PROVISIONS

### Article 46:

This Supplementary Protocol shall form an integral part of the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security, signed in Lome on 10 December 1999.

### Article 47: Amendments

1. Any Member State may submit proposals for the amendment or revision of this Supplementary Protocol.
2. Any such proposals shall be submitted to the Executive Secretary who shall notify other Member States not later than thirty days after the receipt of such proposals. Amendments or revisions shall not be considered by the Authority unless Member States shall have been given at least one month's notice thereof.
3. Amendments or revisions shall be adopted by the Authority.

### Article 48: Withdrawal

1. Any Member State wishing to withdraw from this Supplementary Protocol shall give a one-year written notice to the Executive Secretary who shall inform Member States thereof. At the end of this period of one year, if such notice is not withdrawn, such a State shall cease to be a party to this Supplementary Protocol.
2. During the period of one year referred to in the preceding paragraph, such a Member State shall nevertheless continue to observe the provisions of this Supplementary Protocol and discharge its obligations there under.

### Article 49: Entry into Force

This Supplementary Protocol shall enter into force upon ratification by a least nine (9) signatory States in accordance with the constitutional procedures of each Member State.

### Article 50: Depository Authority

This Supplementary Protocol and all instruments of ratification shall be deposited with the Executive Secretariat which shall transmit certified true copies to all Member States and notify them of the dates of deposit of instruments of ratification by the Member States and shall register it with the Organisation of African Unity (OAU)/African Union (AU), as well as the United Nations (UN) and any other organisation as may be decided by the Council.

IN FAITH WHEREOF WE, THE HEADS OF STATE AND GOVERNMENT OF THE MEMBER STATES OF THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS) HAVE SIGNED THIS SUPPLEMENTARY PROTOCOL

IN SINGLE ORIGINAL IN THE ENGLISH, FRENCH AND PORTUGUESE LANGUAGES, ALL TEXTS BEING EQUALLY AUTHENTIC

DONE AT DAKAR ON THIS 21st DAY OF DECEMBER 2001

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**H. E. Mathieu KEREKOU**
*President of the Republic of BENIN*

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**H. E Blaise COMPAORE**
*President of FASO*
*Chairman of the Council of Ministers*

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**H. E. Jose Maria Pereira NEVES**
*Prime Minister and Head of Government of the Republic of CAPE VERDE*

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**H. E. Abou Drahamane SANGARE**
*Minister of Foreign Affairs, For and on behalf of President of the Republic of CÔTE D'IVOIRE*

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**H. E. Yahya A. J. J. JAMMEH**
*President of the Republic of The GAMBIA*

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**H. E. John Agyekum KUFUOR**
*President of the Republic of GHANA*

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**H. E. Lamine SIDIME**
*Prime Minister of the Republic of GUINEA*

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**H. E. Koumba Yala Kobde NHANCA**
*President of the Republic of GUINEA BISSAU*

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**H. E. Monie R. CAPTAN**
*Minister of Foreign Affairs  For and on behalf of the President Of the Republic of LIBERIA*

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**H. E. Alpha Oumar KONARE**
*President of the Republic of MALI*

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*Minister of Foreign Affairs For and on behalf of the President of the Republic of NIGER*

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**H. E. Olusegun OBASANJO**
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**H. E. Abdoulaye WADE**       **H. E. Alhaji Dr Ahmad Tejan KABBAH**
*President of the Republic of SENEGAL*   *President of the Republic of SIERRA LEONE*

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**H. E. Abdoulaye WADE**
*President of the Republic of SENEGAL*

## DECLARATION ON CRITERIA FOR FREE AND FAIR ELECTIONS

Unanimously adopted by the Inter-Parliamentary Council at its 154th Session (Paris, 26 March 1994). Of the Union's 129 Member Parliaments, 112 were represented at the Conference when this Declaration was adopted.

***The Inter-Parliamentary Council,***

*Reaffirming* the significance of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights which establish that the authority to govern shall be based on the will of the people as expressed in periodic and genuine elections,

*Acknowledging and endorsing* the fundamental principles relating to periodic free and fair elections that have been recognized by States in universal and regional human rights instruments, including the right of everyone to take part in the government of his or her country directly or indirectly through freely chosen representatives, to vote in such elections by secret ballot, to have an equal opportunity to become a candidate for election, and to put forward his or her political views, individually or in association with others,

*Conscious* of the fact that each State has the sovereign right, in accordance with the will of its people, freely to choose and develop its own political, social, economic and cultural systems without interference by other States in strict conformity with the United Nations Charter,

*Wishing* to promote the establishment of democratic, pluralist systems of representative government throughout the world,

*Recognizing* that the establishment and strengthening of democratic processes and institutions is the common responsibility of governments, the electorate and organized political forces, that periodic and genuine elections are a necessary and indispensable element of sustained efforts to protect the rights and interests of the governed and that, as a matter of practical experience, the right of everyone to take part in the government of his or her country is a crucial factor in the effective enjoyment by all of human rights and fundamental freedoms,

*Welcoming* the expanding role of the United Nations, the Inter- Parliamentary Union, regional organizations and parliamentary assemblies, and international and national non-governmental organizations in providing electoral assistance at the request of governments,

*Therefore adopts* the following Declaration on Free and fair Elections, and *urges* Governments and Parliaments throughout the world to be guided by the principles and standards set out therein:

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## 1. Free and Fair Elections

In any State the authority of the government can only derive from the will of the people as expressed in genuine, free and fair elections held at regular intervals on the basis of universal, equal and secret suffrage.

## 2. Voting and Elections Rights

1. Every adult citizen has the right to vote in elections, on a non- discriminatory basis.
2. Every adult citizen has the right to access to an effective, impartial and non-discriminatory procedure for the registration of voters.
3. No eligible citizen shall be denied the right to vote or disqualified from registration as a voter, otherwise than in accordance with objectively verifiable criteria prescribed by law, and provided that such measures are consistent with the State's obligations under international law.
4. Every individual who is denied the right to vote or to be registered as a voter shall be entitled to appeal to a jurisdiction competent to review such decisions and to correct errors promptly and effectively.
5. Every voter has the right to equal and effective access to a polling station in order to exercise his or her right to vote.
6. Every voter is entitled to exercise his or her right equally with others and to have his or her vote accorded equivalent weight to that of others.
7. The right to vote in secret is absolute and shall not be restricted in any manner whatsoever.

## 3. Candidature, Party and Campaign Rights and Responsibilities

1. Everyone has the right to take part in the government of their country and shall have an equal opportunity to become a candidate for election. The criteria for participation in government shall be determined in accordance with national constitutions and laws and shall not be inconsistent with the State's international obligations.
2. Everyone has the right to join, or together with others to establish, a political party or organization for the purpose of competing in an election.
3. Everyone individually and together with others has the right:
   » To express political opinions without interference;
   » To seek, receive and impart information and to make an informed choice;
   » To move freely within the country in order to campaign for election;
   » To campaign on an equal basis with other political parties, including the party forming the existing government possibly regulate the funding of political parties and electoral campaigns, ensure the separation of party and State, and establish the conditions for competition in legislative elections on an equitable basis;
   » Initiate or facilitate national programmes of civic education, to ensure that the population are familiar with election procedures and issues;
4. In addition, States should take the necessary policy and institutional steps to ensure the progressive achievement and consolidation of democratic goals, including through the establishment of a neutral, impartial or balanced mechanism for the management of elections. In so doing, they should, among other matters:
   » Ensure that those responsible for the various aspects of the election are trained and act impartially, and that coherent voting procedures are established and made known to the voting public;

&raquo; Ensure the registration of voters, updating of electoral rolls and balloting procedures, with the assistance of national and international observers as appropriate;

&raquo; Encourage parties, candidates and the media to accept and adopt a Code of Conduct to govern the election campaign and the polling period;

&raquo; Ensure the integrity of the ballot through appropriate measures to prevent multiple voting or voting by those not entitled thereto;

&raquo; Ensure the integrity of the process for counting votes.

5. States shall respect and ensure the human rights of all individuals within their territory and subject to their jurisdiction. In time of elections, the State and its organs should therefore ensure:

&raquo; That freedom of movement, assembly, association and expression are respected, particularly in the context of political rallies and meetings;

&raquo; That parties and candidates are free to communicate their views to the electorate, and that they enjoy equality of access to State and public-service media;

&raquo; That the necessary steps are taken to guarantee non-partisan coverage in State and public-service media.

6. In order that elections shall be fair, States should take the necessary measures to ensure that parties and candidates enjoy reasonable opportunities to present their electoral platform.

7. States should take all necessary and appropriate measures to ensure that the principle of the secret ballot is respected, and that voters are able to cast their ballots freely, without fear or intimidation.

8. Furthermore, State authorities should ensure that the ballot is conducted so as to avoid fraud or other illegality, that the security and the integrity of the process is maintained, and that ballot counting is undertaken by trained personnel, subject to monitoring and/or impartial verification.

9. States should take all necessary and appropriate measures to ensure the transparency of the entire electoral process including, for example, through the presence of party agents and duly accredited observers.

10. States should take the necessary measures to ensure that parties, candidates and supporters enjoy equal security, and that State authorities take the necessary steps to prevent electoral violence.

11. States should ensure that violations of human rights and complaints relating to the electoral process are determined promptly within the timeframe of the electoral process and effectively by an independent and impartial authority, such as an electoral commission or the courts.

*Source: Guy S. Goodwin_Gill, Free and Fair Elections: New Expanded Edition, Geneva:*
*Inter-Parliamentary Union, 2006 pp. vii-xi*

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