



ELECTORAL ALTERNATIVE DISPUTE RESOLUTION FOR ELECTORAL MANAGEMENT BODIES IN THE SADC REGION

FOCUS: MITIGATING ELECTION RELATED DISPUTES

Presented by

Ahmed Issack Hassan, EBS*

Email: ahmedissack786@yahoo.com

Website: www.ahmedissackhassan.co.ke

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*Advocate of the High Court and Chairperson Independent Electoral and Boundaries
Commission (IEBC), Kenya*

Introduction

Definition of free and fair elections by Chief Justice Odoki in Col. (Rtd) Dr. Kiza Bisigye Vs Museveni and Electoral Commission of Uganda

“To ensure that elections are free and fair, there should be sufficient time given for all stages of the elections, nominations, campaigns, voting and counting of votes. Candidates should not be deprived of their right to stand for elections and citizens to vote for the candidates of their choice through unfair manipulation of the process by electoral officials. There must be a leveling of the playing ground so that the incumbents or Government Ministers and officials do not have unfair advantage. The entire election process should not have an atmosphere of intimidation, bribery, violence or coercion or anything intended to subvert the will of the people. The election procedures should guarantee the secrecy of the ballot and accuracy of counting and the announcement of the results in a timely manner. Election Law and guidelines for those participating in elections should be made and published in good time. Fairness and transparency must be adhered to in all stages of the electoral process. Those who commit election offences should be subjected to severe sanctions. The Electoral Commission must consider and determine election disputes speedily and fairly”

GEO in Botswana came up with the Gaborone declaration 2011. The declaration “noted that an increasing number of countries around the globe conduct elections as a peaceful means of discerning the will of the people but also observe increasing instances of election related violence” and ‘Acknowledge the need to address the root causes of, and reduce the potential for election related violence, which is a form of political violence”

The causes of election related violence are many and complex, so it would be naïve to assume any single approach could eliminate the risk of violence. However, stakeholders in the management of elections can take pre-emptive measures to mitigate electoral violence.

My country Kenya experienced serious post election violence after the 2007 general elections which led to many deaths and destruction and only stopped after a successful International mediation led by Dr. Koffi Annan that resulted in a National Reconciliation Accord. This is well captured in the Global Commissions on elections, Democracy and Security Report. The report does not record the successful reforms that followed the National Accord. The country adopted a new constitution in August 2010 which ushered in a new governance structure, electoral reforms and systems, judicial reforms, security sector reforms and a devolved system of government that guaranteed a fair and equitable share of resources.

The country held its first elections under the new constitution on 4th March 2013, where the people voted for their President, Governors, Senators, Members of Parliament, special seats for women Mps and members of County Assembly Wards. The elections were hailed to be credible, transparent and fair by both the domestic and international observers. Those who lost in the elections and were dissatisfied with the results challenged the same in court and accepted the verdict of the courts. The 4th March 2013 general elections were largely peaceful before, during and after the elections.

The commission, in preparation for the 2013 general election took various steps to identify triggers of electoral related disputes that would have led to electoral violence which had previously characterized elections in the country.

ELECTORAL SECURITY

The Election Security Arrangement Project (ESAP) The Enhanced Security Arrangements Project (ESAP) was a joint project between the Independent Electoral and Boundaries Commission (IEBC) and the Kenya Police with the overall goal of putting in place election security coordination and management framework before, during, and after the March 4, 2013 general elections. In realizing this goal, ESAP sought to strengthen the capacity of the IEBC and Kenya Police Service in handling elections related security events through training and production of reference materials.

Election Risk Management Tools

The ERM Tool is designed to empower those who have immediate responsibility or specific interest in preventing and mitigating election-related violence. These include but are not limited to Electoral Management Bodies (EMBs), Security Sector Agencies, Civil Society Organisations and other state and non-state actors. The Tool aims at building the user's capacity to understand electoral risk factors generate risk analysis, design prevention and mitigation strategies and record results of actions.

There are internal and external risk factors that affect electoral processes.

- **Internal risks:** these include defective electoral laws, inadequate training of election officials, and inadequate budgeting for elections, poor management of election results e.t.c. This tool is aimed at prevention of election related violence.
- **External factors:** these are factors outside the control of an Electoral Management Body but which affect elections e.g the presence of organized criminal gangs, terrorism, hate speech, social political exclusion among others.

Electoral Code of Conduct

Through the Political Parties Liaison Committee (PPLC) established by the Political Parties Act, 2011, the Commission engages candidates and their agents in ensuring compliance with the law with respect to their campaign activities to avert violence. The

Elections Act provides for an Electoral Code of Conduct to be signed by every election officer, candidate and agents before the conduct of an election.

The object of this Code of Conduct is to promote conditions conducive to conduct free and fair elections and a climate of tolerance in which political activity may take place without fear, coercion, intimidation or reprisals. It also commits Political Parties and Candidates to condemn, avoid, and take steps to prevent violence and intimidation.

Media engagement

Media is a key stakeholder in elections. The commission engaged them on a continuous basis sharing with them the electoral calendar of activities. In managing responsible reporting on elections the Commission engaged the media council and guidelines were developed to be adhered to by all journalists. During the voting and tallying period, the media played a crucial role by explaining the process as it unfolded to the public. The media embraced conflict sensitive reporting and responsible journalism. This helped to ease tension amongst the public.

UNDERSTANDING ELECTORAL VIOLENCE AND SECURITY TRIGGERS

- Electoral violence in Kenya, and Africa as a whole, has been attributed to the lack of a democratic culture. Election violence is regarded as a sub-category of political violence that is primarily distinguished by its timing and motive. It is a coercive and deliberate strategy used by political actors – incumbents as well as opposition parties – to advance their interests or achieve specific political goals in relation to an electoral contest.
- It may occur during either phase of the electoral cycle- pre, during and post. Violence against the voter (suppress turnout or punish), against candidates especially women and political

parties- outsourcing of violence to goons and criminal gangs, against election officials aimed at disrupting the vote – Kenya, Nigeria, Mali , Afghanistan. Large scale mobilization of people to protest against election outcomes as happened in Kenya in 2007, often also leads to violence.

Causes of Electoral Violence

- a) Electoral violence causes are multifaceted and can be divided into two broad categories. First, structural factors related to the underlying power structures prevalent in new and emerging democracies, such as informal patronage systems, poor governance, exclusionary politics, and the socio-economic uncertainties of losing political power in states where almost all power is concentrated at the center.¹ Secondly, factors related to the electoral process and the electoral contest itself, such as failed or flawed elections, election fraud and weak or manipulated institutions and institutions meant to guarantee free and fair elections are too weak, corrupt, compromised, partisan or intimidated.
- b) Election winning is seen as a matter of survival for the competing parties, as well as for entire communities within the state. The risk of electoral violence may therefore be higher in situations where there is real political competition between various parties and genuine possibilities to change existing power relations. All elections involve elements of uncertainty, but if the winner takes all, the uncertainties of democracy come at a high price. As a consequence, many politicians resort to illicit electoral strategies and make use of militant youth wings, militias or the state security forces to either win the election or strengthen their post-election bargaining position.
- c) Income inequalities, poverty and unemployment provide a potent mix that can be easily manipulated by irresponsible and power hungry politicians.

¹ Kristine Hoglund, "Electoral Violence in Conflict- Ridden Societies; Concepts, Causes and Consequences" department of Peace and Conflict Research , Uppsala University , Sweden Vol. 21, Iss. 3, 2009.

- d) Corrupt, incompetent and biased media and equally compromised and partisan Civil Society Organizations that are anything but civil (euphemistically called “evil societies”) that are actually Political Parties masquerading as defenders of human rights.
- e) It has been argued that the commencement of violent hostilities witnessed after the 2007 elections in Kenya, was a typical reflection of existing social cleavages, a weak institutional and legal framework of the electoral system, ethnic/ tribal divisions and unresolved injustices.
- f) Winner takes All or zero sum game Politics and rule gives little incentives for losers to accept defeat as is common in a First Past the Post (FPTP) electoral system and a pure presidential System of Government.
- g) Other causes could include; Regional insecurity and proliferation of small arms-Somalia, Sudan, Uganda, DRC. Divisive campaign tactics, hate speech, ethnic/ tribal balkanization and demonization of other communities.
- h) Regional and international interests in the outcome of the elections.
- i) Politicians refusing to concede or accept defeat, especially in close contests. The refusal is largely out of pride, ego, foreign influence, the need for political relevance, mortal fear of political oblivion or misleading opinion polls that create an impression that is not replicated on the ground.

MITIGATING RISKS TO THE ELECTORAL PROCESS

- a) Creating independent and professional institutions that inspire confidence in the people i.e the EMB, the police and the Judiciary and other relevant institutions.
- b) Credible Electoral Dispute Resolution Mechanism that is accessible, efficient and expeditious.
- c) Conducting elections with Integrity –credible, transparent and must meet the national, regional and international standards

and results widely accepted. Where the results are challenged in a court of law, the verdict of the court MUST be respected.

- d) Choice of the electoral system to avoid the winner takes all situation and creating an inclusive political environment where the losers have an incentive to participate. One such choice is the Proportional Representation System of Elections and a Parliamentary System of Government.
- e) Devolution of power and resources from the centre to the regions.
- f) Deterring violence before it happens through early warning systems. Mapping hot spots and co-opting the public into sending information to a platform that collects and collates all the information and alerts the relevant state organ to take preemptive action before the violence occurs. In Kenya this form of crowd sourcing was successfully used under the name of ‘*ushahidi*’ in 2008 and later as ‘*Uwiano*’ platform in the 2010 referendum.
- g) Creating a forum for political parties to meet and discuss their complaints and matters of their concern through the Political Party Liaison Committee (PPLC) or IPAC.
- h) Holding individuals personally accountable for their actions if they contributed to any election related violence –both domestically and within the local jurisdiction and internationally at the ICC in Hague. And imposing travel bans and financial sanctions against such individuals behind the violence.
- i) Strong committed regional and/ or international mediation whose mediators command great respect and have the backing of key players to mediate in post election conflicts that could degenerate into violence. In some cases such mediation could lead to a power-sharing arrangement between the warring parties to prevent or stop the violence, as was the case in Kenya, Zimbabwe, Sierra Leone, Ivory Coast, Mali and Afghanistan.
- j) Use International IDEA’s Electoral Risk Management Tool (ERM Tool). This ensures that potential conflict areas are

identified, mapped and relevant intervention mitigation strategies are put in place (Kenya, Bosnia Herzegovina)

- k) The use of Parallel Vote Tabulation (PVT) by civil society and domestic observer groups (Kenya, Zambia, Nigeria, Ghana, etc)

Conclusion

Risk associated with an electoral process can be mitigated by

- i. **Improved Electoral Security:** this points to specific electoral security measures which can be undertaken throughout the electoral cycle to protect the actors, events, facilities and materials from violence.
- ii. **Improved peace architecture:** different strategies that can be used by other state and non-state actors to mobilize civil society (CSOs), traditional and religious leaders, reputable individuals and other organizations and individuals with capacity all contribute to diffusing election related tensions
- iii. **Improved Electoral Management and Justice:** specific electoral planning, implementation and dispute resolution strategies that can be used to avoid controversies and technical flows in order to minimize potential for violent outbreaks.
- iv. **Use International IDEA's Electoral Risk Management Tool (ERM Tool):** This ensures that potential conflict areas are identified, mapped and relevant intervention mitigation strategies are put in place

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