African Union

VOTE

THE 5TH ANNUAL
CONTINENTAL FORUM
OF ELECTION
MANAGEMENT BODIES

POLICY BRIEF

2018 YEAR OF
Combatting
Corruption
A Sustainable Path to Africa's Transformation

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Towards Corruption-Free Electoral Processes:
Strengthening Electoral Integrity in Africa

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1 INTRODUCTION

Electoral integrity is central to the credibility of electoral processes and the legitimacy of election outcomes. Elections have been known to either strengthen or undermine democracy, human rights, security and development, depending on their credibility and integrity. While there is no universally agreed definition of electoral integrity, it is generally understood as referring to the conduct of elections on the basis of established democratic principles of universal suffrage and political equality as reflected in international, continental and regional standards and norms; and the professionalism, impartiality, and transparency underpinning the process of electoral preparation and administration across the electoral cycle. The key principles that undergird electoral integrity are consequently ethical behaviour; fairness and impartiality; and transparency and accountability. Noteworthy, electoral integrity also thrives on the professionalism and independence of the Election Management Bodies (EMBs), the rule of law and electoral justice, the establishment of institutions and norms of multiparty competition, the removal of barriers to universal and equal participation, and the regulation of political finance. When these are absent, the very essence of elections - allowing citizens to participate and advance their interests in political processes – is foiled. Therefore, electoral integrity is indispensable for the nurturing and deepening of democratic and participatory governance in Africa.

Given their central role in the promotion and protection of electoral integrity, the perception of the effectiveness, neutrality and impartiality of EMBs throughout the electoral cycle is key to determining the acceptability of electoral outcomes. Which is why the focus on EMBs in the discourse on electoral integrity in Africa is timely, as are policy reflections and the development of action plans on capacitating EMBs to deliver corruption-free elections across the African continent.

Against this backdrop and in line with its mandate to "strengthen political institutions to entrench a culture of democracy and peace," the Department of Political Affairs (DPA) of the African Union Commission (AUC) in collaboration with the Association of African Electoral Authorities (AAEA) convened the 5th Annual Continental Forum of Election Management

Bodies (EMBs) on 7-8 December 2018 in Abidjan, Côte d'Ivoire under the theme: "Towards Corruption-Free Electoral Processes: Strengthening Electoral Integrity in Africa." The Forum was preceded by an extraordinary General Assembly of the AAEA on 6 December 2018. Together with the extraordinary General Assembly of the AAEA, the EMBs Forum explored policy trajectories and actionable measures for safeguarding the management of credible, peaceful and democratic electoral processes on the continent. The focus of the Forum resonated with the AU theme for 2018 - "Winning the Fight Against Corruption: A Sustainable Path to Africa's Transformation"- declared during the 30th Ordinary Session of the Assembly of Heads of State and Government of the African Union. Furthermore, the Forum offered a platform for the EMBs and key electoral stakeholders on the continent to share experiences, and harness lessons on combatting political corruption and enhancing electoral integrity.

The overall goal of the Forum was to promote corruption-free electoral processes through enhancement of electoral integrity in Africa. More specifically, the Forum provided an opportunity to:

► **Exchange ideas on the phenomenon of political violence as threat to electoral integrity;**

► **Understand the magnitude of the problem of electoral absenteeism and its nexus with electoral integrity;**

► **Deepen our understanding of the strategic significance of EMBs as custodians of electoral integrity;**

► **Unearth the dangers posed by party financing for electoral integrity and how these threats could be addressed; and**

► **Examine the state of electoral justice system as the guarantor for enhanced electoral integrity.**

This policy brief is generated as an output of the 5th Annual Continental Forum of EMBs. It captures the emerging trends and challenges to electoral integrity in Africa as reflected during plenary discussions. It highlights key lessons learned and successful strategies for enhancing electoral integrity. It also proffers policy recommendations emerging from the Forum.

[3] See article 12 paragraph 2 of the (African Charter on Democracy Elections and Governance (ACDEG).

2 EMERGING TRENDS AND CHALLENGES OF ELECTORAL INTEGRITY IN AFRICA

Electoral integrity has remained a daunting question in Africa since independence, and especially following the advent of multiparty democracy in the early 1990s. Ensuring corruption-free electoral processes requires an understanding of the emerging trends of and specific challenges to the integrity of elections as well as the adverse effects on democratisation processes in Africa. As explored during the 5th Annual Continental Forum of EMBs, deficiencies in electoral integrity in Africa reveal six main interconnecting trends and challenges that should steer policy responses: (1) elections-related violence; (2) low voter turnout and questions on electoral integrity; (3) EMB capacity for election management; (4) opaque and unregulated financing of political parties, (5) weak and ineffective electoral justice system; and (6) the influence of the new media on electoral integrity in Africa.

1 ELECTION-RELATED VIOLENCE

This refers to "all forms of organised acts or threats – be they physical, psychological or structural – aimed at intimidating, harming, blackmailing political stakeholders before, during and after an election with a view to determining, delaying, or otherwise influencing the electoral process." (Albert, 2007). Electoral violence is an unfortunate mainstay in the electoral process across many countries in Africa affecting over 30% of all African elections. For instance, of the 100+ elections held in 44 African countries between 2011 and 2017, almost all witnessed some form of sporadic or prolonged violence at different stages (Isola, 2018). This suggests underlining structural and institutional weaknesses. Several scholars and policy analysts have investigated the pathology of electoral violence in Africa, and established associations with a series of democratic deficiencies that include: poverty, inequality, unemployment, mismanagement of diversity, weak constitutional and legal framework for elections, poor elections administration and management, weak political party institutions, the culture

of political impunity, militarisation of electoral processes, and ethnic balkanisation.

Election-related violence is a much more potent indicator of popular perception of the state of electoral integrity, and indeed, most of the resurgent electoral violence across the African continent have been tied to questionable practices throughout the electoral cycle and lack of faith in the impartiality of judicial arbitration mechanisms to deliver transparent outcomes. On a positive note, while previous episodes of electoral violence quickly took on a more pronounced form of widespread violence that triggered generalised and protracted conflicts in a number of countries, recent trends are pointing to more moderated degree of violence reflecting a scaling-down of conflict intensity and conflict lifespan but not so much a drawdown in the heightened political tensions and contestations that remain rife.

Equally worthy of note is the fact that contemporary electoral processes remain mired in fluctuating degrees of both structured and overt hostilities that emerge at various stages of the electoral cycle-—before, during and after the conduct of elections (Atuobi, 2008). Previously, electoral violence in Africa was mostly confined to the post-electoral periods. Electoral violence in Africa manifests in various forms of physical or verbal assaults and intimidation, arson, snatching of ballot boxes, legal exclusion and restrictions, political party infightings, forceful dispersion of political rallies, politically motivated arbitrary arrests and detentions etc. Central to these contestations are deep-seated socio-economic grievances triggered by the adverse effects of globalisation and underdevelopment as well as superstructural factors, including the real or perceived lack of impartiality of the EMB.

2 DECLINING VOTER TURNOUT

Electoral integrity can also be gauged from the level of political participation especially through voter turnout. Several studies (Birch, 2010; Norris, 2011; Simpster, 2012; Carreras and Irepoglu, 2013) have shown that citizens have less incentives to cast their votes when elections are perceived as flawed. Birch (2010) for instance, argues that citizens are more likely to turn out to vote if they perceive that their vote will be meticulously counted and reflected in the electoral outcome. For citizens, votes only count if they are counted fairly and reported as counted. Similarly, Van Reybrouck (2018) has suggested that "democracy has a serious problem of legitimacy if citizens no longer wish to take part in its most important procedure by going to the polling stations."

Unfortunately, recent trends continue to point to a widening chasm between voter registration and voter turnout, indicating a rising trend of voter apathy. And despite the increasing regularity of elections in Africa (15 major presidential and legislative elections are held on the African continent annually, on average e.g. in 2018 alone, a record 20 elections were organised, and low citizen participation was a glaring feature), a generational decline in voter turnout has been experienced since the 1990s.

Data from International IDEA Voter Turnout Database indicates that voter turnout for parliamentary elections is below 50% in 15 out of 55 AU Member States. While the reasons for voter apathy varies across countries, a huge part of the causal factors for voter apathy and electoral absenteeism pivots on declining public trust in the integrity of democratic institutions, especially political parties and the Electoral Management Bodies (EMBs). According to a

2014/15 Afrobarometer survey covering 36 countries, public trust in EMBs stands at 50%; and 46% and 36% for ruling and the opposition parties respectively.

It is also worth noting that voter apathy is relatively higher among the youths and is borne out of perception that politicians lack integrity, that the playing field is skewed, and incumbents often win. However, low voter turnout among young people does not indicate de-politicization. It is more symptomatic of poor perception of electoral credibility. Hence, there is a growing belief among the youth that political outcomes can be better leveraged by marshalling crowd agency and direct lobbying than through the ballot box. In a continent with high youth demography, the risks of youth voter apathy in Africa are enormous and portend reversal of gains registered on the advancement of democracy broadly and electoral integrity specifically.

3   EMB CAPACITY FOR MANAGEMENT OF ELECTIONS

EMBs are responsible for managing some or all of the elements that are essential for the conduct of elections and instruments of direct democracy, such as referenda. As such, they are central for entrenching a corruption-free culture in African electoral processes. EMBs capacity to deliver democratic, credible, corruption-free and peaceful elections can be appraised by their independence, impartiality and resourcefulness (financial and technical). The absence of these raises serious questions about their ability to deliver on their mandates.

Election management has come a long way from the late 1990s when elections were mostly managed by government organs, some of which were ad hoc. There are generally three types of EMBs namely (a) the governmental model, (b) the independent model and (c) the mixed model. Across the continent, there has been a commendable shift towards the independent model of election management structures. However, in many cases, this progress remains largely mitigated by questions around the independence, impartiality and professionalism of the EMBs. This impacts their perceived integrity and effectiveness in the execution of their mandate to deliver credible elections.

In particular, a high executive overreach in the appointment process of EMB members, control over funding and deployment of resources, weak mandates/ scope of authority, constraining legislative prescripts, weak level of training and professionalism of EMB staff/competences issues, age and gender representations, procurement and use of ITCs, high cost of elections,   personal   security   risks   on   the   lives   of   EMB   members   and overall political, poor coordination with other election-related institutions, security and governance context within which elections are organised limits EMBs potentials. Thus, while EMBs are generally hailed as custodians of electoral integrity, their capacity to deliver transparent and credible elections remains largely constrained.

4 OPAQUE AND UNREGULATED FINANCING OF POLITICAL PARTIES

The lack of transparency surrounding political party financing (Falguera, Jones and Ohman, 2014) is a major bone of contention around money in politics. This is yet another symptom of the deficit in electoral integrity. Overall, despite growing awareness of the perils of unrestrained flow of money in African politics, political party financing regulations, especially

campaign financing are either sparse or incomprehensive, or void of robust institutional oversight (IDEA Electoral integrity database, 2019). For example, while it is important to include both political parties and candidates within the scope of political finance directives, regulations on later are uncommon. Similarly, regulations on political finance disclosure averages only 43%, compared to 93% in Europe, 60% in Asia and 56% in the Americas. Furthermore, although anonymous donations to political parties and candidates is prohibited in 25 and 10 countries respectively, enforcing the ban is weakened by the dearth of attendant rules and mechanisms of disclosure of funding sources. As such, political party finances reporting, and disclosure has remained grossly opaque.

In the same vein, the use of state resources in favour or against a political party or candidate is expressly prohibited in 33 countries (64.7%); free in 6 (11.8%) and undetermined in 10 (19.6%) countries. In Kenya for instance, the Election Campaign Financing Act 2013 clearly states that "a candidate, a political party or a referendum committee shall not receive any contribution or donation, in cash or in kind from the State, a State institution or agency or any other public resource." Similarly, Article 14(1)b, Electoral Code of Conduct for Political Parties, Proclamation n° 662/2009 of 28 August 2009 in Ethiopia, stipulates that: "Any political shall not (...) use Federal, Regional, Municipal or other public resources for campaign purposes in any manner other than those allowed by election laws." In Tunisia, Decree N°35 dated May 10, 2011 on the Election of the National Constituent Assembly provides as follows: Article 39:'' Public authorities shall not distribute the programs of candidates, the leaflets or ballot papers relevant thereto. Public tools and resources shall not be used in the campaign promotion of one or more candidate or lists.'' Article 40:'' The public electoral gatherings shall be free. However, the Subsidiary Commission shall be notified thereof in writing 24 hours earlier. The statement shall contain the names of the board members.''

In practice however, for most countries, the lines between state and party/candidate resources remain blurred especially with regards to incumbent parties and their candidates.

The achievement of sustainable democracy in Africa demands that keen attention be paid on the issues of political party financing. This is crucial for accountable political governance and the mitigation of political manipulation by individuals, foreign interests or criminal groups. The Department of Political Affairs of the AUC has recently initiated a new continental political parties programme to provide technical assistance to Member States that grapple with a variety of challenges including party financing and combating political corruption.

5   WEAK AND INEFFECTIVE ELECTORAL JUSTICE SYSTEM

"An Electoral Justice System (EJS) is a key instrument of the rule of law and the ultimate guarantee of compliance with democratic principles of holding democratic, credible, corruption-free and peaceful elections. The aims of an EJS are to prevent and identify irregularities in elections and to provide the means and mechanisms to correct those irregularities and punish perpetrators." (IDEA Electoral Justice Handbook). According to Linz & Stepan (1996; 6) a democratic regime is constitutionally consolidated when governmental and nongovernmental stakeholders, become equally inclined, subjected and adapted to resolving disputes within the laws, procedures and institutions sanctioned by democracy.

Recent developments in Africa reveal a significant regression in the use of extra judicial or violent means to resolve electoral disputes and a growing penchant towards judicial alternatives. Elections have become more litigious. Key actors are progressively resorting to elector-

al justice mechanisms for the resolution of electoral disputes. Examples abound in Uganda 2006, Cote d'Ivoire 2010, Kenya 2013 and 2017, Ghana 2012, Central African Republic 2015-2016, Democratic Republic of Congo 2006, Gabon 2009 and 2016, Zimbabwe 2008 and 2018, Malawi 2014, Zambia 2016, Liberia 2017, Sierra Leone 2012 and 2018, Cameroon 2018, Cote d'Ivoire 2016 on the Independence of the EMB; and Tanzania 2018 on the Candidacy of independents. Some scholars, writing on Kenya, for instance, term this trend 'the judicialisation of politics' (Kanyinga and Odote, 2019). Consequently, there is a growing jurisprudence on elections disputes, some of which are ground-breaking as seen in Kenya, where a supreme court ruling cancelled the August 2017 presidential election results and ordered the conduct of new elections; in Liberia, where the holding of presidential run-off in 2017 were delayed following a court ruling which obliged the National Electoral Commission to adopt corrective measures within a limited time to ensure the elections complied with existing legal framework; and in Tanzania, where the African Court for Human and Peoples' Rights ruled for constitutional modification in favour of independent candidates.

Unlike before, electoral contestations span the electoral cycle and mainly revolve around: the integrity of the electoral process, election results, political party/candidate nomination or registration, campaign financing, and criminal offenses.

Electoral justice mechanisms in Africa vary from country to country (formal and informal) and even by election type. For instance, in 22 (40%) African countries, the first instance for presidential elections disputes is the Constitutional Council/Court, followed by the court of general jurisdiction, including the supreme court (9 countries - 18%), EMBs (5/ 10.2%) and in some instances the administrative court (4.1%). The right to seek justice is granted to candidates/party representatives (65.3), political parties (36.3%) and registered voters (16.3%). Various forms of elections related offences -fraud, incentive driven voter coercion, obstructing the electoral process, offences related to voter registration and unlawful conduct of campaign financing- are criminalised in as many as 46 (93.9%) countries.

However, the above normative progress is inconsistent with implementation on the ground. Enforcement remains abortive and marred by procedural discrepancies, undue prolongations, legal fissures and restrictions. These jeopardise credibility and accentuate risks of escalation from legal to violent disputes. Effective and timely electoral justice then becomes a key constituent for electoral credibility and peaceful electoral processes in Africa.

6   THE INFLUENCE OF THE NEW MEDIA ON ELECTORAL INTEGRITY IN AFRICA

The New media can either be a blessing or a curse to electoral integrity depending on how it is mobilised. Trends show a growing use of the social media especially by the younger generation including for election information. As one of the most wired countries in sub-Saharan Africa, Kenya boasts a growing tech savvy population and a vibrant online information landscape. According to Kenya's EMB, the IEBC, 9.9 million (51%) of registered voters aged between 18-35; and 49% of Kenyans receive news through Social Media. The same medium has been used for the spreading of fake elections-related news with negative implications for the integrity of the process. During elections season, social media is often instrumentalised for online manipulation, propaganda, hate speech and overt disinformation. It also allows for the continuation of political campaigns long after their official closure.

The situation is exacerbated by the difficulties in censoring information diffused via social media, to regulate its use and impose sanctions on violators. Notwithstanding, some note-worthy efforts in taming fake news in electoral processes and promoting responsible use of social media with a view to fostering electoral integrity have been taken in some countries. However, these efforts remain embryonic and need to be deepened and multiplied across the continent.

The above emerging trends indicate an overall slow progress towards corruption-free electoral processes in Africa. Progress remains constrained by a broad range of structural and institutional lapses whose resolution are pivotal for guaranteeing electoral integrity. Notwith-standing, some countries have made significant progress towards promoting electoral integri-ty which be recognised in the ensuing paragraphs. These cases generally offer key lessons for the entrenchment of democratic, credible, corruption-free and peaceful elections in Africa.

7 KEY POLICY RECOMMENDATIONS

In response to the above identified trends and challenges, the following policy recommenda-tions emerged from the Forum.

A Improving EMB Effectiveness:

- The EMBs' independence, impartiality, credibility and professionalism can be bolstered by depoliticizing the appointment of their leadership in favour of independent, merit-based and transparent recruitment processes.

- Decouple EMBs from the executive branch and strengthen their capacities to oper-ate independently and in compliance with norms that foster democratic, credible, corruption-free and peaceful.

- EMBs should be funded through statutory budgetary instruments that are insulated from the incumbent or external intrusion and influence.

- Improve EMB cooperation with the executive, legislative and other government departments that deal with citizen registration.

B Political finance regulations and enforcement mechanisms. Political party finance regu-lations contribute to fair political participation processes and prevent corruption stem-ming from the misuse of money in politics. Designing effective political finance regimes for reporting and auditing also support the African Union's 2018 theme of "Winning the Fight against Corruption: A Sustainable Path to Africa's Transformation". As such:

Introducing digital reporting and disclosure of political finance and gender-targeted polit-ical party funding should be encouraged.

C Strengthening Electoral Justice should be considered as a growing area of focus. Address-ing the inadequacies of electoral justice system would entail:

- Developing its level of expertise as well as resource base;

- Connecting election arbiters (judges and EMBs) for better coordination;

- Strengthening and enforcing electoral justice legal frameworks;

- Vetting, selection and discipline of judges;
- Sufficient and sustained financial support of the judiciary;
- Increase transparency and access to the law;
- Capacity building for judges and electoral justice institutions;
- Strengthening internal capacity for case management and preparation;
- Sharing lessons from national level case law across borders;
- Encouraging the increased use of alternative dispute resolution

D Mitigating elections-related violence:

- Improved guarantee of the integrity and safety of the vote through transparent processes;
- Institutionalization of political parties and political party systems in Africa;
- Promulgation of sound constitutional and legal framework to govern the electoral process in Africa;
- Meaningful inclusion of women and youth in the electoral process as per the ACDEG, the AYC and UN Security Council's Resolution 2250.
- Leverage the AU and UN's good offices to apply costly sanctions on Presidential incumbents who tinker with constitutions to extend term limits or influence electoral outcomes.

E Addressing Low Voter turnout:

- Create regional research, monitoring and evaluation capacities on age and gender aggregated political participation, and capacitate such mechanism to effectively monitor and report progress periodically.
- Civil society youth engagement to be intensified, with targeted financing to civil society organization for capacity building on gender-sensitive youth political participation
- Review of financial requirements of candidacy, and campaigns to favour young people;
- Review of electoral codes and constitutions to align minimum voting age with minimum age for candidacy;
- Develop strategy and roadmap for gender mainstreaming of current efforts to enhance youth political participation and democratic engagement; in particular: encourage youth-friendly provisions in national constitutions, election systems and electoral codes; set quotas for gender-sensitive youth representation in EMBs, Political Parties and elected bodies: parliaments, senate, municipalities etc; and
- Develop purposive linkages between elections and broader governance and development as it has also been noted that voter apathy is, inter alia, caused by discontent arising from limited social and economic dividends accrued from democracy in Africa such as increasing rate of unemployment, poor social services and so forth.

F Marshalling the gains of Technology and social media: The emergence of social media and technology in general has brought its own challenge, i.e. interferences on the process and outcomes of elections. EMBs need to cooperate with social media platforms. Caution should be exercised such that media and freedom of expression is not infringed but rather redirected:

- Combat the weaponization of social media for the proliferation of Fake News and other communication devises meant to foment violence, suppress voter turnouts and influence electoral outcomes.

- Retooling electoral processes to take advantages of ICT: Young people tend to be more technology savvy and should be incorporated in efforts to mainstream technology at the heart of electoral processes

- A verified WhatsApp number, making use of status updates to counter fake news;

- Regional civil society organisations to develop a regional response to establish a unit monitoring fake news;

- Establishment of regional media, such as ECOWAS Radio, creates content to help listeners identify what constitutes fake news

8. CONCLUSION

Integrity is non-negotiable for the advancement of democratic, credible, corruption-free and peaceful elections. In Africa, the integrity of elections is evolving in a context constrained by a number of potentially self-perpetuating challenges such as elections-related violence, low voter turnout; concerns over the independence, transparency and resourcefulness of EMBs to deliver credible elections, opaque and unregulated financing of political parties, weak and ineffective electoral justice systems and the pervasive influence of the new media on electoral integrity in Africa. While these trends and challenges vary in scope, from one context to another, their impacts are profound in derailing democracy-building across Africa.

In addition, the task of working to improve on the overall political and security context of elections in Africa also requires the implementation of targeted measures such as: developing norms and robust enforcement for political party financing and electoral justice systems; promoting responsible use of social media; and reinforcing the mandate, independence and capacity of the EMBs (with the technical and financial support and technical assistance of the AUC and RECs). These are clearly essential remedies in the current struggle to make electoral processes in Africa corruption-free and credible.
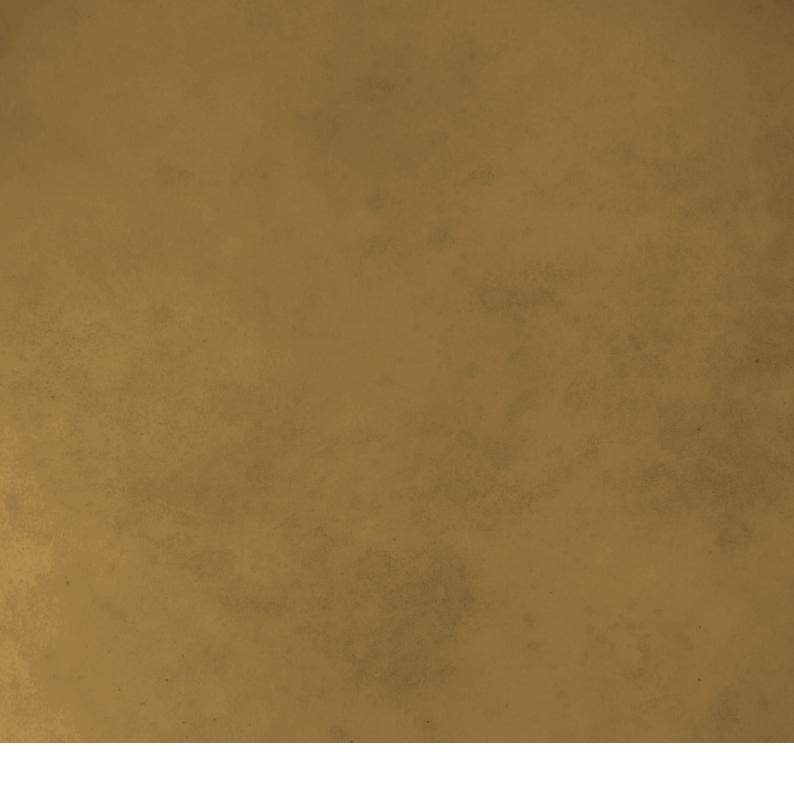
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