



Challenges of
democratic succession in Africa

International Conference



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Speech



Electoral Disputes in Africa:

Sources, Effects and Mechanism for Resolution

Presented by
Theophilus Dowetin
West Africa Programme Manager
International IDEA

Preview of Presentation

1. Sources: Concept of free & fair elections/
Institutional & Behavioural contexts
2. Effects: Internal & External
3. Mechanism for Election dispute resolution:
Formal & Informal
4. Some preventive measures



Introduction

Elections as « Conflict-Inducing »

- From Afghanistan to Zimbabwe...
- Political violence in electoral processes: before, during, after election day(s)





Elections as « Conflict-Inducing »

- Should an election must be free and fair if it is to reveal the people's true choices of leaders and give them legitimacy?

Arrow's Impossibility Theorem

- Mathematical economist Kenneth Arrow (from Stanford University) proved (in 1951) that there is no consistent method of making a choice among three or more candidates that always satisfies certain simple criteria of “fairness”.
- He won a Nobel prize for this theorem (in 1972).
- This remarkable result assures us that there is no single election procedure that can always fairly decide the outcome of an election that involves more than two candidates or alternatives.





The Concept of Free and Fair Elections

Preference for descriptions like:

credible

transparent

or *trustworthy* elections that *express the will of the voters* is used.

Yet the concept may provide a congenial platform for the delivery of incontrovertible elections.



Sources of Electoral Dispute

The Sources of Electoral Dispute may best be discussed in two contexts, the *institutional* and *behavioural* contexts.

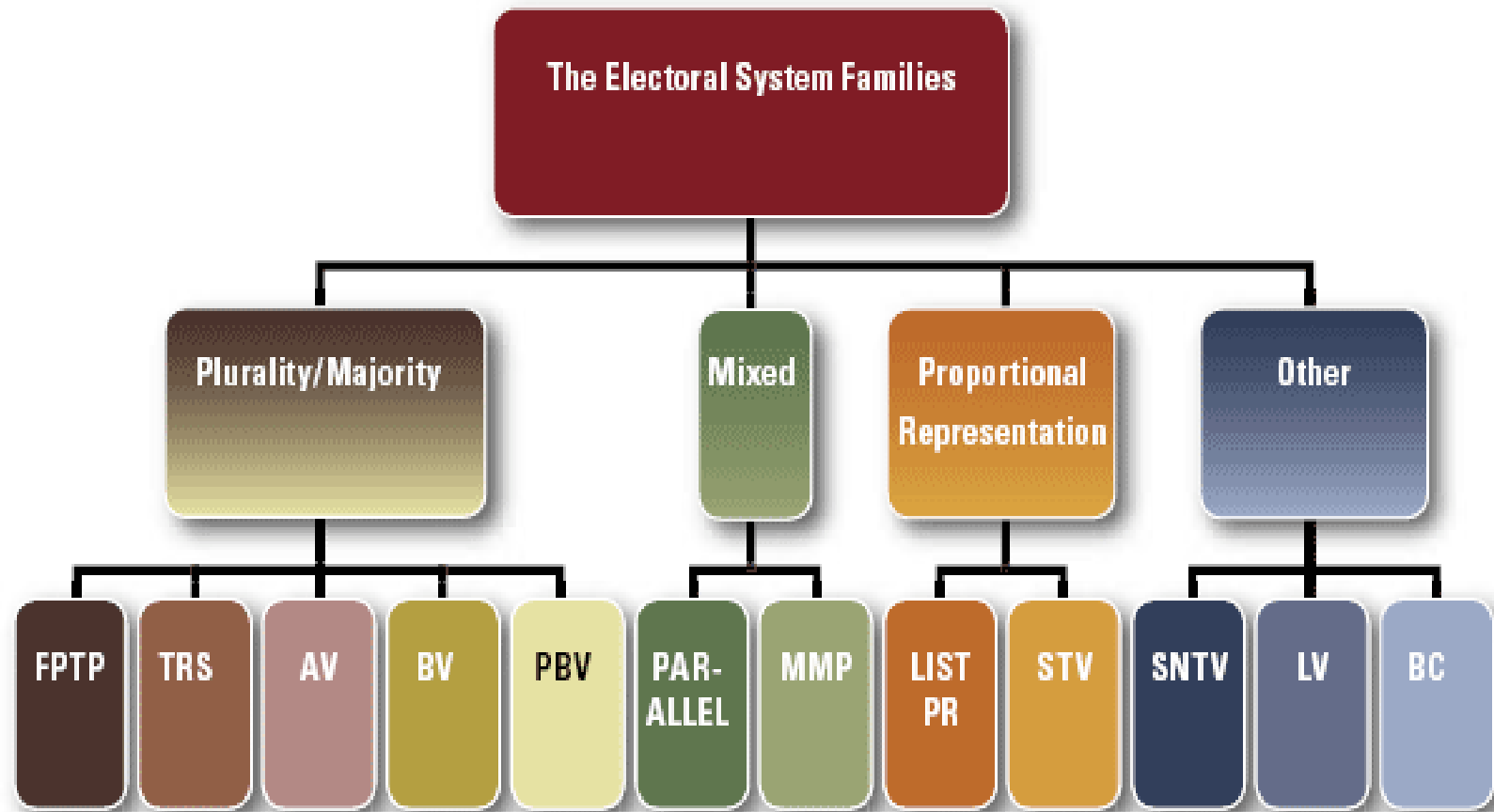


Sources of Electoral Dispute

The institutions and behaviour expectation to have incontrovertible elections includes the following **seven (7)** factors:

1. A system of fair laws, rules and regulations. Eg.
 - **Laws regards EMB appointment procedure in Kenya & Zimbabwe**
 - **Election dates decision in Sierra Leone, Zimbabwe**
 - **The electoral system**

Electoral Systems



2. A non-partisan election management body (EMB) to manage elections without being controlled or interfered with by the government or any other authority.

Eg.

- Refusal of EC of Ghana to be part of government ID scheme
- Decision on election date in Ghana (GH 1992 Constitution)
- Decision on 14 polling stations where turnout was recorded as 100% or higher in Sierra Leone
- Printing 9 million ballots for 5,934,768 registered voters in Zimbabwe (EISA EO report)
- No calculators in ECK kit at tabulation centres (IREC report)

Sources of Electoral Dispute

3. Political parties which are entirely free to promote their ideas and capable of offering alternative sets of leaders and programmes; which enjoy unimpeded access to voters.

Kenya: “political party leaders in Kenya are their own worst enemies, the parties are seen as an end in themselves rather than a means to an end” (IREC).

- Number of parties registered grow from **10** in 1992 to **160** by the end of June 2008. Reasons, including protracted power-struggles within parties, ethnicity, personality differences, personal ambitions and self-preservation.
- Consistent lack respect for laws or regulations and blatantly violation of Electoral Code of Conduct (The ECK confirmed to IREC)
- Up to KSh 907 million spent in bribing voters (National Voter Bribery Survey) (*Daily Nation*, 30 November 2007).

Sources of Electoral Dispute

4. **A non-partisan security establishment (police and army) committed to and capable of maintaining public order, peace and security for legitimate political activity to take place freely. Eg. Zimbabwe: President's late Amendment of Electoral Act (No.2) - allowing police to enter polling stations to assist some voters**
5. **Open and responsible media that accord equitable access and fair treatment to political parties and candidates and all shades of political opinion as a means of assisting the electorate to make informed choices at elections. (All countries) Preference: public media = ruling party; private = opposition
Broadcast of hate speeches**

Sources of Electoral Dispute

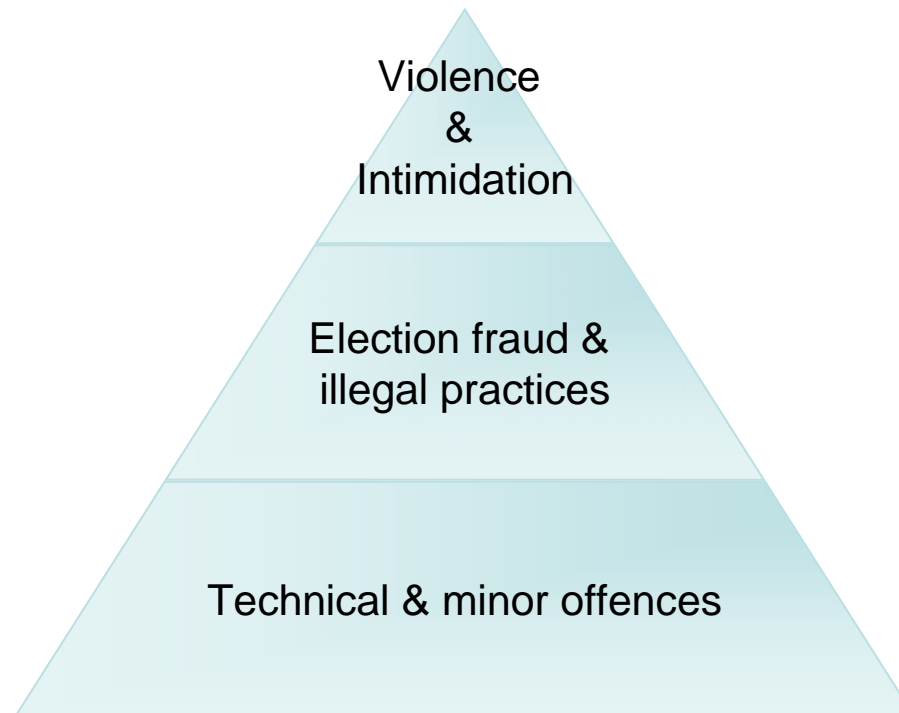
- 6. An independent judiciary to interpret the electoral laws and regulations impartially as the last resort in case of electoral conflict.**
Eg. **Kenya:** on 30 December 2007, ODM publicly rejected the result as fraudulent and declared that it was not possible to receive justice from a partisan judiciary.

Sources of Electoral Dispute

7. Voters

It is a necessary condition for having dispute-free elections is when every citizen has a right to freely participate in any form of legitimate political activity; that every eligible person has a right and the opportunity to be registered as a voter; and, to freely cast a vote in peace and secrecy on Election Day, and to have that vote counted as cast. But all this also demands appropriate democratic behaviour.

Hierarchy of Election Offences





Effects of Electoral Dispute

- Could lead to usurpation of the true will of the people
- May degenerate into conflicts
Elections do not *cause* conflict; but the process of pursuing power exacerbates existing tensions, stimulates or catalyzes, and accelerates escalation of existing, underlying, and often deep-rooted social, economic and political tensions
- May provide impetus for similar disputes other externally when seen as means to power.

Legal Systems

- **Judicial systems (ordinary courts of justice) known as the British System**
- **Constitutional Courts or Councils, known as the Austrian system**
- **Specialised Electoral Courts, known as the Latin American System**
- **Administrative Systems**



Election Monitoring

- Securing a particular conflict-prone province or community to ensure an additional deployment of election observers to potentially volatile areas;
- Approaches such as Parallel Vote Tabulation or other confidence-building measures to limit fraud and improve transparency and accountability of the election administration process are useful to conflict prevention as they inhibit the extent of fraud or deceit; and
- Early warning systems



Electoral Dispute Resolution

Special Election Courts may offer clear and well articulated processes for investigation and adjudication of complaints of fraud, intimidation, or instances of violence; their independence and autonomy are essential, particularly if the allegations are lodged against government officials, election management bodies, or security services.



Conclusion

In both its institutional and behavioural contexts, it can be seen that achieving free and fair elections is, eventually, a collective or shared responsibility among the relevant institutions and electoral actors.

As part of preparing the grounds for the acceptance of genuine electoral outcomes, an EMB should try to promote as wide a discussion as possible of the institutional and behavioural conditions for incontrovertible elections.