Election

Processes
Management
and
Election-Based Violence
in Eastern and Southern Africa

Editor

Paschal B. Mihyo



Organisation for Social Science Research
in Eastern and Southern Africa (OSSREA)

Cover Photo Caption: Following the Delay in the Announcement of Kenya's December 2007 Election Results, Crowds Demonstrate against What They Saw as the Rigging of the Election
*(SOURCE:*https://www.hrw.org/news/2012/01/23/kenya-icc-judges-ok-election-violence-trials)

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Acronyms

ADC-Ikibiri	Alliance of Democrats for Change in Burundi [Alliance des Démocrates pour le Changement au Burundi]
AIPPA	Access to Information and Protection of Privacy Act
AMNUT	African Muslim National Union of Tanzania
ANC	African National Congress
ARIB	Association of Reflection and Information on Burundi
ASP	Zanzibar's Afro-Shiraz Party
BDP	Botswana Democratic Party
BINUB	the United Nations Integrated Office in Burundi
BLS	Best Loser System
BSA	British South African
BTI	Bertelsmann Stiftung's Transformation Index
BV	Block Vote
CA	Constituent Assembly, Uganda
CAM	Comited'Action Musulmane
CAMA	the Consumer Association of Malawi
CAZ	Conservative Alliance of Zimbabwe
CC	Constitutional Council
CCJPZ	Catholic Commission for Justice, Peace in Zimbabwe and Legal Resources Foundation Zimbabwe
CCM	Chama cha Mapinduzi, Tanzania ruling party
CDR	Coalition pour la Defence de la Republique [Coalition for the Defence of the Republic]
CENI	*Commission Electorale Nationale Indépendente* [National Independent Electoral Commission], Burundi
CNDD-FDD	*Conseil National Pour la Défense de la Démocratie–Forces pour la Défense de la Démocratie* [National Council for the Defence of Democracy–Forces for the Defence of Democracy], Burundi
CNE	National Electoral Commission
CONGOMA	Council for Non-Governmental Organisations
COSOME	*Coalition de la Société Civile pour le Monitoring des Elections* or [Coalition of Civil Society for Elections Monitoring], Burundi
CUF	Civic United Front
DISO	District Internal Security Officers, Uganda
DP	Democratic Party
DPP	Democratic Progressive Party, Malawi
DPP	Directorate of Public Prosecutions, Uganda

DRC	Democratic Republic of Congo
ECZ	Electoral Commission of Zambia
EISA	Election Institute for Southern Africa
EISA	Electoral Institute for Sustainable Democracy in Africa
EMBs	Election Management Bodies
ESAURP	Eastern and Southern African University Research Programme
EU-EOM	European Union Election Observation Mission
EUPF	European Union Peacebuilding Framework
EURAC	Réseau européen pour l'Afrique Centrale [European Network for Central Africa]
	FDD Forces de défense de la démocratie [rebel group in Burundi]
FDC	Forum for Democratic Change
FPTP	First-Past-the-Post
FRODEBU	Front pour la Démocratie au Burundi [Front for Democracy in Burundi]
FRONASA	Front for National Salvation
FSM	Front Solidarite Mauricien (previous leader of the Hizboulah in Mauritius)
GDP	Gross Domestic Product
GISO	Gombolola Internal Security Organisation, Uganda
GPA	General Peace Agreement
GSU	General Service Unit (Kenya)
ICTR	International Criminal Tribunal for Rwanda
ID	Identity Card
IDASA	Democratic Alternative in South Africa
IEC	Independent Electoral Commission (Botswana)
IFB	Independent Forward Bloc
IPAC	Inter-Party Advisory Committee (Ghana)
JEEMA	Justice, Education, Economic Revitalisation, Morality and African Unity
JOMIC	Joint Monitoring and Implementation Committee (Zimbabwe)
JSC	Judicial Service Commission (Botswana)
KADU	Kenya African Democratic Union
KANU	Kenya African National Union (the ruling party)
KAU	Kenya African Union
KUSO	Kenya University Students' Organisation
LCs	Local Councils (Uganda)
LC1	Local Council One
LDUs	Local Defence Units (Uganda)
LG	Local Government
LOMA	Law and Order Maintenance Act
MCP	Malawi Congress Party

MDC	Movement for Democratic Change, Zimbabwe
MEC	Malawi Electoral Commission
MESN	Malawi Electoral Support Network
MHRC	The Malawi Human Rights Commission
MLP	Mauritius Labour Party
MMD	Movement for Multi-party Democracy
MMM	Movement Militant Mauricien (Mauritian Militant Movement)
MMUST	Masinde Muliro University of Science and Technology (Kenya)
MPs	Members of parliament
MRND	National Republican Movement for Democracy and Development [Révolutionnaire National pour le Développement], Rwanda
MSD	Movement for Solidarity and Democracy [Mouvement pour la Solidarité et la Démocratie], Burundi
MSM	Movement Socialiste Mauricien
MVAC	the Malawi Vulnerability Assessment Committee
NARC	National Rainbow Coalition, Kenya
NIMD	Netherlands Institute for Multiparty Democracy
NPP	National Progressive Party, Zambia
NPRC	National Peace and Reconciliation Commission, Zimbabwe
NRA	National Resistance Army
ODM	Orange Democratic Movement
ONHRI	Organ for National Healing, Reconciliation and Integration, Zimbabwe
OSSREA	Organisation for Social Science Research in Eastern and Southern Africa
PALIPEHUTU-FNL	Parti pour la Libération du Peuple Hutu-Forces Nationales de Liberation [Party for the Liberation of the Hutu People-National Liberation Forces], Burundi
PARENA	Parti pour le Redressement National [Party for National Recovery], Burund)
PF	Patriotic Front, Zambia
PIEBU	Parti pour l'indépendance économique du Burundi [Party for Economic Independence in Burundi]
PISI	Police Internal Security and Intelligence
PMSD	Parti Mauricien Social Democrate
PNU	Party for National Unity
POSA	Public Order and Security Act
PP	Peoples Party, Malawi

PPEA	Presidential and Parliamentary Elections Act (Malawi)
PPU	Presidential Protection Unit
PR	Proportional Representation system
RANAC	Rassemblement National pour le Changement [National Rally for Change]
RCs	Resistance Councils (Uganda)
RF	Rhodesian Front Party
RPF	Rwandese Popular Front
SADC	Southern African Development Community
SAPs	structural adjustment programmes.
SONU	Student Organisation of Nairobi University
TANU	Tanganyika African National Union
TCD	Tanzania Centre for Democracy
TNA	The National Alliance
UDF	United Democratic Front (Malawi)
UNAC	the United African National Council
UNDP	United Nations Development Programme
UNIP	United National Independence Party, Zambia
UP	United Party, Zambia
UPC	Uganda People's Congress
UPD	Union for Peace and Development [Union pour la Paix et le Développement] (Burundi)
UPDF	Uganda People's Defence Forces
UPM	Uganda Patriotic Movement
UPP	United Progressive Party, Zambia
UPRONA	Union for National Progress (Burundi)
ZANC	Zambia African National Congress
ZANU-PF	The Zimbabwe African National Union-Patriotic Front
ZAPU	The Zimbabwe African People's Union
ZCTU	Zambia Congress of Trade Unions, Zambia
ZEC	Zanzibar Electoral Committee
ZIVOVT	Zimbabwe Victims of Organised Violence Trust
ZRP	Zambia Republican Party, Zambia

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INTRODUCTION

The Roots of Election Mismanagement and Election Violence in Eastern and Southern Africa

Paschal B. Mihyo

1. The Scourge of Election Violence

Through the Journal of African Elections, the Election Institute for Southern Africa (EISA) has brought up and kept the issues of election management and election violence in Africa on the research and policy dialogue agenda. Through this book entitled *Election Processes, Management and Election -based Violence in Eastern* and Southern Africa, the Organisation for Social Science Research in Eastern and Southern Africa (OSSREA) would like to join efforts with EISA to continue the research, debate and dialogue on how to strengthen election management, avert election violence and consolidate people's participation in democratic governance in the region. This book covers 11 countries in Eastern and Southern Africa. It has nine country-specific chapters covering Botswana, Burundi, Kenya, Malawi, Rwanda, Tanzania, Uganda, Zambia, and Mauritius; one chapter covering Mozambique and Zimbabwe; and one chapter covering mainly three East African countries— Kenya, Tanzania and Uganda. Each of the 11 covered, except Botswana, has experienced election mismanagement and election violence at one time or another, and for some, there has been a recurrence of violence of differing degrees every time elections are held. The book goes to the press at the time of election-based tensions in Burundi and as Tanzania recently held the fifth general elections. It is also hoped, but not expected, that the 2016 elections in Uganda will end peacefully. Based on the current situation, the book identifies several friction fronts that sustain election violence in the region and in Africa as a whole.

2. The Genesis of Liberal Democracy

Apart from Botswana, the remaining 10 countries in this book were ruled and dominated by one party for most of their post-independence history. They enjoyed not more than five years of liberal democracy and became one-party autocratic regimes till the mid-eighties. Most of them reformed their political systems, not out of internal pressures and dynamics, but in response to pressure from donors and in order to get financial support from international financial institutions. Some of them, such as Burundi, Kenya, Malawi, Mozambique, Tanzania, and Zambia, resisted change to the end and succumbed to political liberalisation when internal forces galvanised by international development partners pushed for change. Even within this group, there are countries which organised internal referenda, such as

Tanzania, and those which introduced multiparty systems by legislation, without any form of consultation. In both types, liberal democracy was pushed down upon them from outside; therefore, the ruling elites on both sides have not fully embraced competitive democratic governance. However, those which consulted before introducing the new systems have experienced more acceptance of liberal democracy and have had less incidences of election violence than those which introduced democracy by decree. In Tanzania Mainland, for instance, there has been a semblance of acceptance of competitive politics because the framework under which multiparty politics was introduced was consultative but election violence has been persistent in Zanzibar because the union between Mainland and Zanzibar was not based on consultations, and it has never been accepted across the board. It is our assumption, therefore, that countries, such as Botswana, Rwanda, Tanzania Mainland, and Kenya after 2010, in which new political systems, including multiparty democracy, evolved out of consultative processes have more broad-based acceptance of these systems and less friction and election violence than countries, such as Burundi, Mozambique, Uganda, and Zimbabwe, in which new democratic principles were introduced by decree.

3. Between Legality and Legitimacy

It is clear from the findings, in several chapters in this book, that some countries that established multiparty political systems as a way of responding to pressures from development partners and internal pressure groups, have adopted electoral systems as self-cleansing and white-washing mechanisms. They use elections to give indication that there is a process of transition to democratic governance, while for them the transition is the destination rather than the journey to democracy. This can be seen in the case of Burundi, Uganda and Zimbabwe which are caught in a spiral of exclusionary, deliberate violation of election laws by the State; use of militias, police and the military to supervise and control voting behaviour; use of preventive detention to silence the opposition;, and which have had incidences that involve the intimidation and killing of opponents by state agents. The vicious cycles of election violence indicate that the regimes in these countries accepted multiparty politics only to appease international development partners, but do not subscribe to the values of democratic governance as such.

The regimes that continue to resist new values of democracy hide behind *legality* and the rule of law. The dominant paradigm of good governance is predicated upon the rule law, irrespective of whether the law is legitimate or not. Most of the election rules and procedures create exclusionary electoral systems; they create rigid systems of voter registration; they establish rigid frameworks for counting and declaring votes; they allow candidates who have been declared winners to be sworn in even before disputes about their elections are

resolved; and they do not prescribe penalties for officials who violate election rules and procedures. Such rules that short circuit democracy and create shortcuts for illegitimate election results to be legalised, create intrinsic distrust of election procedures by the electorate, especially those in opposition parties. This is evident in the chapters on Malawi, Tanzania, Uganda, and Zimbabwe. They are legally binding but considered illegitimate.

A third important element about the significance of legitimacy can be seen from the case of Botswana. The Election Commission of Botswana is no more independent than election management bodies of the other countries covered by this book. In actual fact, it is more directly associated to the executive than is openly acknowledged in the other countries. However, there is a generalised acceptance of the structure and quasi-independence of the Commission in Botswana because the electoral reforms that produced the current structure were subjected to a referendum. As the authors of the Botswana chapter point out, even the opposition parties are aware of the limited autonomy the Commission has; but they are not eager to change the system at the moment. This leads us to assume that where legislation is developed through popular participation and/or broad-based consultations, it gives the systems established the credibility and acceptability required to make it operational, even if it may have some weaknesses or deficiencies. The chapter on Tanzania also shows clearly that efforts by the dominant party to maintain unity between Zanzibar and the Mainland, at all costs, and the suppression of debate about the Union, has created a situation under which the Union is considered to be illegitimate by some sections of the society in Zanzibar, which has led to election violence every time elections are held in Zanzibar, since 2001.

4. Majoritarian Exclusionary Democracy and the Tyranny of Numbers

The First-Past-the-Post (FPTP) system has been found to be handy by those who believe in legality rather than legitimacy. Recently, there has been a rush all over the continent for political parties to form alliances during elections and coalitions after elections. While this is a welcome development, the worrisome part of it is that, in most cases, the rush to alliances has been the rush for numbers and not convergence of ideologies, principles or programmes. These numbers are aimed at success within the FPTP system and the easiest way to attain them has been to form ethnic alliances. In the chapter on Zambia and the one on Eastern Africa by Mihyo, it is clear that the rush for numbers has further entrenched ethnic cleavages and alliances, and further marginalised communities with small populations in these countries. Therefore, adherence to the FPTP system has already diluted the quality of democracy, especially in countries such as Kenya and Zambia where ethnicity is a big factor in political mobilisation.

This system encourages majoritarian dictatorship. In the case of Kenya and Tanzania, it is becoming obvious that, based on numbers, ruling parties can pass decisions without consulting, or in any way, involving the opposition parties. On July 3, 2015, the Tanzanian government brought two very controversial bills on oil and gas to parliament under a certificate of urgency. The opposition cried foul and demanded time to read and consult. The opposition members of Parliament (MPs) who objected were thrown out of parliament and the whole opposition group left the Parliament (*Daily News* July 3, 2015). This gave the ruling party an opportunity to pass the two bills without debate. In Kenya, the tyranny of numbers is becoming evident in parliamentary debates. Recent research has shown that since the new parliament was sworn in 2013, there have been very few questions in parliament. Members only ask for statements. A survey of the Hansard Reports of Kenya for the years 2013 to 2014, gives a clear indication of the tyranny of numbers at work. It is also clear from the cases of Malawi, Mozambique, Uganda, and Zimbabwe that majoritarian tyranny is a product of the tyranny of numbers and it is institutionalised by putting more weight on the rule of law and playing down the need for legitimate laws and respect for legitimacy.

5. Elections as a Project

During the early days of political reforms in Africa, many scholars made jobs out of the reform process. If you asked someone what they were doing for a living, some would simply say, "multiparty". Now that the reforms are over, the election process has become a big marketplace for politicians, administrators and the public at large. The reluctance of many governments to regulate political party funding has allowed founders and funders of political parties to turn them into their personal investment outfits. Using their power, they fix the nomination fees so high that only a few in their clique can afford to pick forms and pay nomination fees. Already, this leaves out a big number of eligible and able potential candidates, especially among the youth and women. During political campaigns, a lot of money and gifts change hands in almost all countries covered by this book, except Rwanda and Botswana. Such gifts have been accepted as lawful and African culture has been used as an argument for their institutionalisation. Commercialisation of elections has been documented in detail in the chapter on Uganda; while in the chapter by Mihyo, it has come out of evidence adduced in court in election petitions against vote buying and bribery during elections. In the chapter on Kenya by Mukuna and Mutsotso, such practices are shown to have even percolated into universities where political parties "invest" in student elections by supporting some candidates in order to create a political base among the youth.

Food insecurity also plays a big role in inducing the electorates in several countries to accept election time handouts. In the chapter by

Chinsinga on Malawi, it is clear that the "food security card" has always been played effectively during elections across the country, over the years. In Tanzania, as will be seen in the chapter by Mihyo, candidates and their campaigners have been cited as promising to provide food if their party is voted into power. The issue of elections as an investment makes the whole idea of capturing state power very expensive because candidates have to mobilise funds for such investments and after the elections they expect to get those funds back at very high rates of return. Thus, when some candidates lose or sense they may lose, they resort to voter intimidation or violence, stuffing and stealing of ballot boxes and other irregularities in order to ensure they are declared winners. In addition, the need to invest in political power makes the governments the principal sources of political patronage.

Apart from elections being used as channels for investment by elite groups contending for political power, they have become sources of temporary earnings and employment. According to the chapter by Mihyo, students and the youth in general, are used as pawns in the power games of the elites in East Africa. In Burundi, Kenya, Malawi, Tanzania, Uganda, and Zimbabwe, they are used to form militias or party brigades to either campaign for and act as security guards for those hiring them, or to harass and intimidate opponents. Hence, they raid polling stations and steal ballot boxes, riot, and track down those assumed to be against their candidates. Through such roles, they get activities to engage them during the elections and because some are permanently unemployed, they only see election periods as periods for short, seasonal but rewarding employment. Similarly, those supplying food, wrappers, caps and t-shirts only concentrate on the short-term earnings that arise out of election activities. The most interesting beneficiaries, however, are the rich people, who, sensing they cannot get into government through competitive mechanisms, find parliament to be the quickest escape window. This is well argued in the chapter on Zambia, and it may be applicable in all countries where MPs are not required to have more than secondary education. In such countries, being in parliament gives hope that one can hold a cabinet post or even become a president irrespective of his/her level of education. It increases the fight to get political positions as a way of getting into jobs which would be difficult to get through normal competitive routes. The urge to invest in political ventures is heightened by such windows of opportunity, increasing the number of political investors who resort to violence when they sense they may lose or when they actually lose.

6. Undemocratic Parties in Democratic Processes

In the chapter by Mihyo, it is argued that political parties in many African countries, including Botswana, lack a culture of democracy. They are dominated by their funders and founders, and in most cases, do not follow their own rules. The chapter gives accounts of

undemocratic nomination processes that have led to election violence at party level. This democratic deficit has led election mismanagement and election violence to begin at the grassroots, in some cases. The lack of the culture of democracy at party level can also be seen in the symbols and emblems of these parties. Most of them have put symbols of vicious animals like bulls, buffaloes and cats, animals that are known to be either bullies or predators. Some use the symbol of the cockerel, a very undemocratic bird when it comes to gender relations. Other symbols, such as the hammer and sickle, may be reflective of working class ideology but for a party which would like to serve everybody, such symbols still smack of exclusionary tendencies. With such a culture, and based on how elections are organised within political parties, there is very little hope that such political parties can promote a democratic agenda at national level.

7. Poor Election Management

All the chapters, except those on Botswana and Rwanda, are full of accounts of poor election management manifested through poor or deliberately mismanaged voter registration; refusal to allow open access to vote registers; manipulation of voter rolls; registration of more voters than the actual populations of eligible voters; voter importation; faulty vote counting procedures; refusal to allow opposition groups to witness vote counting; strict adherence to rules for vote counting; announcement of results even where there are open and genuine grounds for delays; and refusal to allow a recounting of votes when there are reasonable grounds to do so.

Such malpractices are common in many countries. They occur and no remedial action is taken. As a result, they occur again in the subsequent elections. It is noteworthy that some of these practices are within the rules and this brings to the fore again the clash between legality and legitimacy. Rules are used to legitimise illegitimate results, making judicial review incapable of challenging them. It will be seen in the chapter on Malawi that the strict adherence to the rule on the announcement of results was used to block a recounting of contested votes. In Kenya, during the contested elections of 2007, the president was sworn in at night immediately after the announcement of the results, knowing that once the president was sworn in it would be an uphill struggle to get him out of office.

Delays in announcing election results plunged Kenya in 2007 and Zanzibar in 2010, into unprecedented crises. In Burundi, elections for various levels of government do not take place the same day. In most cases, they start at municipal, then presidential, legislative, senatorial, and finally community level. In the chapter on Burundi, it is shown how the sequencing of elections and announcement of election results at one level can cause panic and dissatisfaction with the results and lead to conflagration even before the whole election cycle is

completed. Therefore, the manner in which elections are planned, managed, and sequenced impacts substantially on how the results are received and perceived. Most important, however, is that when results are delayed, every party declares it has won, as happened in the 2010 elections in Burundi and Zanzibar. Once such declarations are made, it becomes a big challenge to reverse the perceptions of those who have lost, except through brute force as happened in Burundi, or through ingenious diplomacy as in the case of Zanzibar.

8. Generalised Resistance to Electoral Reforms

The irregularities that happen in the elections at party and national levels attract a lot of protests and debates; but when called upon to undertake or champion electoral reforms, most political parties and actors recoil. It seems rather paradoxical that these malpractices evoke a lot of heat and very little light. In the chapter on Malawi, Chinsinga argues that this is because the winner-takes-all culture is deeply entrenched. One can add that the opposition parties also turn a blind eye because they hope to be in power one day and would like to use the same faulty procedures to retain power once there. They display a similar approach to draconian laws on freedom of speech, preventive detention and other laws that restrict human rights. Most opposition parties want these laws retained so that they too can use them some day. There might be other reasons but without going into conspiracy theories, these come to mind as we try to understand and solve the puzzle.

9. Socialisation Failure and Election Violence on Campuses

Institutions of education generally, and those of higher education in particular, have the privilege of preparing the youth for the future and nurturing them into future citizens. They have all the opportunity to shape the perceptions and behaviour of the youth and equip them with, among others, the soft skills required for democratic inclusive community living. However, what we see as documented by Mukuna and Mutsostso, in the case of Kenya, public universities rarely find the time or the will to devote efforts to this kind of socialisation. Instead, they tend to adopt approaches and strategies of the state in dealing with the space and voice of students in issues of university governance. They become miniature state institutions and neglect the needs of students; they leave them to struggle for shelter, food and other needs on their own; they leave them to brutalise each other without interference as long as they do not touch their power structures, and when they protest, they call in institutions of state security to handle them, not to address their grievances. Political actors based in various political parties see this neglect as an opportunity to use the student movement and student politics as rallying and recruitment entry points. Student politics becomes a miniature of national politics, characterised by vote buying, rigging and violent reactions to election results. According to the study by

Mukuna and Mutsotso, some of the uncompromising and violent national leaders who reject everything coming from the opposite side of the political divide, including election results, picked some of their skills in their earlier days while in university campuses.

10. Gender Dynamics in Elections and Election Violence

While electoral reforms have ensured an increased number of women in parliament in East Africa, with Rwanda leading in the sub-region and Africa as whole, the increased number of females in parliament has not changed the nature and culture of politics. In actual fact, the gaping absence of female leadership at party level testifies to the macho nature of politics at the grassroots. The culture of politics is still masculine in many political parties and at national level. The nomination processes, campaigns and lobbying strategies still require ruthlessness, and calculative strategies of monopoly and elimination as well as cutthroat and arm-twisting tactics in competing, bribing and night activities which most decent women find difficult to indulge in. At times, these masculine activities involve the hot exchange of words, insults and threats, or spying on each other. Most of these behavioural patterns are reflective of a negative masculine political culture that is not attractive to most women. These and other factors explain why most women do not bother to contest for leadership, both in political party electoral colleges and in colleges of higher education, and why their participation is dominated by those who are nominated by their political parties or civil society at national level. Gender issues are touched upon in the chapter by Mihyo and the one on Kenya by Mukuna and Mutsotso.

11. Boycotting Elections

Finally, it is important to note that pre-election violation of voter registration procedures and manipulation of voter registers causes anger and frustration, leading opposition parties to boycott elections in some cases. However, such boycotts help ruling parties to win easily and consolidate their power. In the chapter on Burundi, it is shown that the boycott of elections by the opposition parties in 2010 gave room to the ruling party to be voted in, mainly by its followers. It managed, therefore, to claim a very high percentage of the votes although the turnout was very low. It managed to command absolute majority in parliament and used numbers to pass laws which severely weakened the opposition parties and civil society organisations. Therefore, boycotts can easily allow governments to be formed by minority groups and give room for such governments to operate without any checks and balances. In the chapter on Burundi by Mbonyingingo and Niyonizigeye, the conclusion is that the boycott of the 2010 elections by the opposition gave room for the government to create conditions for election violence in 2015.