# Timing and Sequencing of Transitional Elections: Case studies

Appendix to International IDEA's Policy Paper No. 18

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Introduction

The conduct of elections has been a central pillar in contemporary strategies to build and restore democratic government after armed conflicts, authoritarian rule and deep political crises. There is a growing recognition that hastily held or long-delayed elections can have undemocratic outcomes, deepen divisions and undermine peace. Increasing attention is therefore paid to decision-making processes, with a view of understanding circumstances that lead to appropriate timing and sequencing of transitional elections.

International IDEA's project on the 'Timing and Sequencing of Transitional Elections' is designed to assist key national and international stakeholders—who have an interest and often specific mandates to engage in these processes—to design constructive processes that favour well-informed and context-sensitive choices, and hence improve the chances of democratic development and consolidation. The key project output includes a thematic policy paper that derives from high-level discussions, involving international organizations and prominent national stakeholders, as well as the 15 case studies.

The case studies provide insight on how stakeholders and decision-makers in a given transitional context have taken decisions regarding the timing and sequencing of elections, what factors influenced their decision and what are the effects of different choices. Given the unique perspectives, wealth of practical details, and comparative perspectives that these case studies bring, International IDEA has decided to edit and publish them in the form of a separate publication. The policy paper categorizes the case studies according to three transitional contexts, in order to compare and contrast key considerations that inform decision-making on electoral timing and sequencing. The three typical transitional contexts are: (a) countries where elections are organized to elect a democratic government following a period of authoritarian or semi-authoritarian rule; (b) countries where an election is used as an instrument for resolving deep political crises; and (c) countries where an election is part of a peace settlement to end violent conflict.

1. Transitional elections in Bosnia and Herzegovina, 1996–2002
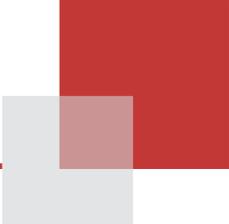
Dr Irena Hadžiabdić

1.1. Introduction

Before renewing its independence in 1992, Bosnia and Herzegovina (BiH) was one of six republics of the Socialist Federal Republic of Yugoslavia (SFRY). Following the death of the Yugoslav President Josip Broz Tito in 1980, economic reforms had been initiated but did not result in the expected outcome. The one-party system through which the Communist Party had monopolized power for more than 40 years could not respond to ever-louder popular demands for democratic change. Significant constitutional reforms were undertaken in the then Socialist Republic of Bosnia and Herzegovina in July 1990. The adoption of 31 amendments to the Constitution opened the door to the formation of a multiparty system, the first multiparty elections on 18 November 1990, and the overall democratization of society.

The 1990 elections resulted in a power-sharing arrangement between three ethnic political parties whose vote share largely reflected the ethnic composition of the population. Disagreements on key issues prevented these parties from reaching agreement on a common BiH position regarding the unfolding fragmentation of SFRY and the ensuing crisis. In response to this crisis the European Community adopted the Declaration on Yugoslavia (European Community 1991), inviting all Yugoslav republics to declare their intention to pursue independence and establishing the main criteria for their recognition. Among the criteria for the independence of BiH, the Conference on Yugoslavia (held in Paris in January 1992) suggested 'a referendum of all citizens without distinction carried out under international supervision'.

The referendum was held on 29 February and 1 March 1992, with a total of 99.44 per cent of those who voted approving the establishment of a sovereign and independent BiH, which granted equal status to members of the various groups (Muslims, Serbs and Croats) living in the Republic (*Official Gazette of BiH* 1992). On 6 April 1992 the European Community recognized BiH as a sovereign and independent state within its existing borders. As an international subject, BiH became a member of the United Nations on 22 May 1992. However, Serbs had

largely boycotted the referendum and did not recognize the independence of BiH, which ultimately resulted in war, lasting from 1992 to 1995.

The international community played a central role in the negotiation process leading to the termination of this conflict in 1995, as well as in the consequent peace- and state-building processes. International engagement in the organization and conduct of elections was an essential component of this.

1.2. Context analysis

The General Framework Agreement for Peace in BiH (Dayton Peace Agreement, DPA) that ended the war in Bosnia and Herzegovina was initiated in Dayton on 21 November 1995 and signed in Paris on 14 December 1995. It was primarily the result of the politico-military engagement of the international community. The DPA contains 11 annexes, including Annex 3 in which the signatories committed to the conduct of democratic elections, and Annex 4 which constitutes the Constitution of Bosnia and Herzegovina.

Annex 3 defined the role of the Organization for Security and Cooperation in Europe (OSCE) in the implementation and financing of elections on behalf of the international community. It also stressed the necessity of ensuring a politically neutral environment for the conduct of elections, and affirmed voters' right to ballot secrecy and freedom from fear and intimidation alongside other civil and political rights (the freedoms of expression, press, association, including association through political parties, and movement (UN 1995: Annex 3, article 1)). Political parties committed themselves to fully respect paragraphs 7 and 8 of the Copenhagen Document (attached to Annex 3 of the DPA) drawn up by the OSCE and the Commission on Security and Cooperation in Europe, which guaranteed universal and equal expression, free elections, ballot secrecy, and the right to participate in elections.

The organization of BiH's first post-war general elections in 1996 faced various challenges. First, nearly half of the 4.37 million inhabitants had been displaced from their home towns and were living either abroad as refugees or in different parts of the country as internally displaced persons. Second, the elections were to be organized in conditions of heightened security and justice concerns. Large areas were covered by landmines; many civic and electoral records were destroyed; freedom of movement was limited; the reforms of the security sector were not fully implemented; and human rights were grossly violated in a large part of the territory. Third, these conditions were not conducive to effective freedom of the press, and hindered the free functioning of political parties and their campaigns. Nevertheless, according to the assessment of the OSCE's Office for Democratic Institutions and Human Rights (ODIHR), the elections were a key milestone towards the democratic functioning of governmental institutions in BiH.

1.3. Timing and sequencing dilemmas

Key decisions relating to the organization of post-war elections were incorporated into the DPA itself. These favoured prompt elections (and the holding of national

elections prior to local elections) and provided the international community with extensive competencies for their implementation, including the constitution of the domestic election commission. This should be seen in the context of the entire peace agreement which included diverse provisions seeking to balance the security situation, the development of civilian institutions, and the promotion of human rights and the rule of law, with the fulfilment of the ambitions and goals of the parties in conflict.

Efficiency versus legitimacy

The decision to conduct elections within six months of the signing of the DPA—with the possibility of extension for another three months, if so decided by OSCE—resulted from the necessity to legitimize the governing structures and create space for moderate, modern and multi-ethnic options in the political life of BiH. However, this decision did not consider all the administrative, technical and logistical obstacles surrounding the organization of the electoral process in post-war BiH.

Local versus international ownership

The DPA granted the OSCE broad competencies regarding the adoption of electoral rules and the constitution of the electoral administration. The OSCE mission took the decision to postpone the 1996 elections for three months as allowed by Annex 3. The OSCE also ensured that the electoral processes would be observed by OSCE supervisors and international observers, with OSCE supervisors overseeing the process and constantly present in the first established registration centres.

Short- versus long-term international involvement

Annex 3 was explicit about implementing general elections, while local elections, and regional elections in the federal cantons, were mentioned only as a possibility, 'if feasible' (UN 1995: Annex 3, article 2.2). The mandate of the OSCE was only foreseen in the first post-war elections. However, the OSCE's leading role in the organization of elections would continue for five years after the war and through six election cycles, two of which were at the local level.

Most convenient versus most adapted electoral system

The electoral system in Bosnia and Herzegovina underwent several changes during the OSCE mandate. From 1996 to 2002 various aspects of the electoral system changed, including the formula for the allocation of mandates, the types of ballots, the introduction of multi-member constituencies, and systems of voter and political party registration. These changes were initiated by the international community in pursuit of a more proportional system that would increase the chances of new political parties' being able to compete for government. These rules and the OSCE's support (including financial support) also favoured parties that promoted trust and coexistence. In that sense, BiH has moved over time from pursuing the most convenient electoral system to one most appropriate in context.

Choice of electoral administration

The Provisional Election Commission (PEC) consisted of the Head of the OSCE Mission, the High Representative of the International Community (OHR) or her/his

appointee, the representatives of the signatory parties, and those proposed by the Head of the OSCE Mission in agreement with the signatories of the DPA (UN 1995: Annex 3, article 2). During the transition period, the local electoral administration was funded and trained by the OSCE Mission in BiH and acted as an extended arm of the PEC. Members of the municipal electoral commissions were representatives of municipal courts, municipal administrations and representatives of political parties. The PEC was constituted on 20 November 2001 and the OSCE and the OHR participated in its work until 2005. It was renamed the Central Electoral Commission of BiH in April 2006.

Accommodative measures: short- versus long-term effects

The PEC stipulated universal suffrage for citizens over 18 whose names appeared on the 1991 census. Very complex rules for voter registration were put in place with the aim of annulling the effects of ethnic cleansing and to accommodate return; Annex 7 to the DPA (Agreement on Refugees and Displaced Persons) stated that 'all Refugees and Displaced Persons have the right to freely return to their homes'. Expelled and displaced persons had the opportunity to register to vote either in their pre-war municipalities, or in the municipalities where they intended to live, but only if they could prove this intention by demonstrating registration there. Voters who had fled to third countries could register for postal votes at the OSCE Vienna Registration Centre.

It should also be noted that persons who were serving sentences imposed by the International Tribunal for the Former Yugoslavia, as well as those who were indicted but failed to appear before this court, could not take any public function filled through election or appointment in the territory of BiH (UN 1995: Annex 4, article 9).

Peacekeeping

The international community has been heavily involved in the security dispositions surrounding electoral processes. The North Atlantic Treaty Organization (NATO)-led Implementation Force (IFOR) of peacekeeping forces as well as the UN International Police Task Force (IPTF) were variously tasked with assisting the transport of sensitive polling material, ensuring the security of voters (especially when they crossed the delimitation lines between the two administrative entities which separated parties in war), maintaining security at critical polling stations, and guaranteeing the security of international observers.

1.4. Implementation challenges

Elections that were held under the aegis of the international community in BiH include the general elections of 1996, 1998 and 2000, the municipal elections of 1997 and 2000, and the 1997 extraordinary elections for the National Assembly of the Republic of Srpska (RS), one of the two administrative entities in Bosnia and Herzegovina.

The voting process in 1996 suffered repeated failures and abuses whereby many voters were denied the right to vote because of problems with voter lists. The 1991

census was used as a voter list, but it was largely obsolete due to war-related destruction and migrations. Moreover, mistakes were made during the scanning of data from the census, causing errors in voter lists. Voter identification was further hampered for those without identification documents: internally displaced persons and refugees. Finally, the 1996 elections were marred by many irregularities perpetrated by political parties.

Due to widespread abuse of the provisions regulating voter registration, municipal elections—which were originally intended to be held together with the general elections in 1996, if feasible—were not held, and the OSCE Permanent Council agreed to extend the mandate of the OSCE Mission to BiH. It called on the OSCE to 'continue providing assistance for the preparation and conduction of municipal elections in 1997 and, when appropriate, to provide assistance for the establishment of a permanent electoral commission with respect to the elections scheduled to close the consolidation period' (OSCE Permanent Council 1996).

To ensure establishment of a credible voter register, the first post-war process of active voter registration was for the municipal elections held on 12–13 September 1997. A large number of voter registration centres were established across the country to facilitate in-person registration. To avoid electoral fraud, the right to register to vote was still based on the 1991 census. Registration of those not listed in the census required additional documentation. Especially designed scannable forms were used to generate the Final Voters List (*Official Gazette of BiH* 1997).

A demanding registration process was established through the postal system for out-of-country voters. To facilitate the voting of registered voters whose names could not be found in the polling station voter lists (e.g. persons who returned to the country or their pre-war municipality after the conclusion of the voter register), 'tendered ballots' were introduced. Under this system, ballots are placed in an envelope with constituency codes. These are then placed in envelopes with voters' personal details. All tender ballots are transported to the main counting centre. Only after verifying that voters are properly registered, and did not vote elsewhere, are envelopes containing the actual ballot placed in respective ballot boxes. Additionally, a robust complaints process was established. The OSCE/ODIHR Observation Mission estimated that the tendered ballot system achieved its purpose but slowed down the counting process. However, only about 25,000 of the 70,000 tendered ballots cast were verified. Therefore, many voters were left in doubt whether their vote was counted or not (OSCE/ODIHR 1997a: 13).

As well as managing the technical aspects of electoral processes, the OSCE sought to promote political pluralism by ensuring equal treatment for all political parties regarding the allocation of campaign funds. Although both the OSCE and the PEC were aware of international standards regarding the modification of electoral rules, many of the amendments were adopted just before elections. PEC representatives would continue this practice in forthcoming cycles, for example during the 2000 election year (see *Official Gazette of BiH* 2000; Arnautović 2009: 596). The OSCE/ODIHR also recommended considering the adoption of the Sainte-Lague method of allocation of mandates, which yields more proportionate results (see Reynolds, Reilly and Ellis 2005: 181). After the political crisis in RS, and the extraordinary elections in 1997, the OSCE/ODIHR recommended that its Mission to BiH participate in the

organization of the 1998 general elections, on grounds that the previous elections could not have been realized without the participation of the OSCE (OSCE/ODIHR 1997b: 20).

The second general elections in BiH were held on 12–13 September 1998 with simultaneous elections for municipal councils in 12 municipalities where no elections were held in 1997 (namely Domaljevac-Šamac, Doboj Istok, Doboj Jug, Teočak, Dobretići, Sapna, Pale (Canton 5), Foca (Canton 5), Ravno, Usora, Kostajnica, and Bosanski Novi/Novi Grad). In accordance with the recommendations of the OSCE/ODIHR, the Sainte-Lague formula for mandate allocation was introduced and, for the first time, provisions were made to ensure a better representation of women on candidate lists (*Official Gazette of BiH* 1998).

For these elections, the PEC forbade the direct financial assistance which political parties had previously received. The only international aid was an in-kind assistance through the newly established Centre for Political Party Assistance, with priority given to political entities that supported multi-ethnic policy platforms and/or multi-ethnic candidate lists. In this way, the parties favouring reconciliation and coexistence were favoured, and the 1998 election results showed a slight drop in the popularity of nationalist parties.

At the end of 1997, activities commenced on the drafting of the Election Law of BiH with the formation of a working group made up of legal experts from the three constituent peoples and from abroad. The Draft Election Law of BiH was completed and referred to parliament in early 1999, but its adoption was delayed.

The main strategic task set by the OSCE in 1999 was preparation for the transfer of electoral responsibilities to domestic bodies. Due to problems in the accuracy of the voter register, which had become apparent during the 1998 elections (when a large number of voters were not assigned correct polling stations), key efforts prior to the 2000 elections were directed to the establishment of a modern voter registration system and the development of a sustainable electoral system in accordance with the principles of the General Framework Agreement for Peace.

The next local elections in BiH were held on 8 April 2000, with general elections following on 11 November of the same year. During the latter, key provisions of the Draft Electoral Law were trialled through the rules and regulations adopted. For the first time, multi-member constituencies, semi-open lists (although in the rules and regulations they are called 'open lists') and compensation mandates were introduced to achieve better proportionality (*Official Gazette of BiH* 2001a).

The Election Law of BiH was finally adopted in 2001 (*Official Gazette of BiH* 2001b). The OSCE remained strongly involved in the organization of the 2002 general elections, after the adoption of the Election Law, while international members of the Election Commission of BiH were present until 2005.

1.5. Findings and lessons

Bosnia and Herzegovina offers many lessons about the timing and sequencing of transitional post-war elections.

First, the implementation of truly democratic elections in a relatively short period of time after the signing of a peace agreement proved impossible in a country that has

experienced important infrastructure degradation and large demographic changes. The strong mandate of the OSCE, the enormous presence and resources of the broader international community, and the fact that BiH is relatively small in terms of population and territory could not overcome all these challenges.

Second, the electoral transition in BiH can be understood as a two-stage process in which the international community played a key role. The first stage aimed at building the credibility of the electoral process and creating space for and capacity of moderate and multi-ethnic parties. This was particularly important during the 1996 and 1997 elections in which nationalist parties frequently manipulated electoral processes. The second stage corresponded to the consolidation of a sustainable legal and institutional framework for the implementation of elections—based on the Electoral Law of BiH and the constitution of a professional and independent Central Electoral Commission. The electoral transition in BiH lasted for 10 years, but it was successful in terms of establishing credible legal and institutional frameworks that can implement technically accurate electoral processes and yield credible results trusted by all stakeholders.

As part of these processes, the international community has consistently invested in the quality of the electoral process in respect of meeting international democratic standards, in particular with regard to freedom of expression, the equal participation of women in candidate lists and voter participation. At the same time, the international community has been criticized for frequent changes in election rules (which were not always in accordance with Annex 3 of the DPA) and for accepting some undemocratic principles such as discrimination against national minorities in the election of the BiH presidency (see the 2009 judgement of the European Court of Human Rights in the case of *Sejdić and Finci v. Bosnia and Herzegovina*), which was imposed by the BiH Constitution.

At the time the prevalent position of the international community was that, in the prevailing political conditions in the country, it was unrealistic to expect that systemic changes could be achieved through the process of revising the Constitution of BiH. Instead, frequent elections served to consolidate peace and governance, as well as to facilitate the transfer of responsibility for the organization of elections to national authorities. However, entrenched ethnic cleavages become apparent during every electoral cycle and continue to pose latent risks to the credibility of BiH's electoral process. Symptomatic of these complexities is the fact that the BiH electoral system has not evolved significantly since 2000.

References

Arnautović, S., *Politicko predstavljanje i izborni sistemi u Bosni i Hercegovini u XX stoljecu* [Political representation and electoral systems in Bosnia and Herzegovina in the 20th century] (Sarajevo: Promocult, 2009)

Bosnia and Herzegovina, Republic of, 'The results of the Republican referendum for determining the status of BiH, held on February 29 and March 1, 1992', *Official Gazette of BiH*, No. 7/92 (1992)

—, 'Rules and Regulations of the Provisional Election Commission, General Elections 1997, Enclosure No. 1, Article 6.1.e', *Official Gazette of BiH*, No. 15/97 (1997)

—, 'Rules and Regulations of the Provisional Election Commission, Article 7.50f', *Official Gazette of BiH*, No. 15/98 (1998)

—, *Official Gazette of BiH*, No. 1/00, 2/00, 7/00, 11/00, 16/00, 18/00, 20/00, 21/00, 15/00 and 26/00 (2000)

—, 'Rules and Regulations of the Provisional Election Commission, Article 1107', *Official Gazette of BiH*, No. 18/01 (2001a)

—, Election Law, *Official Gazette of BiH*, No. 23/01 (2001b)

European Community, 'Declaration on Yugoslavia', Extraordinary EPC Ministerial Meeting, Brussels, 16 December 1991, <https://www.dipublico.org/100637/declaration-on-yugoslavia-extraordinary-epc-ministerial-meeting-brussels-16-december-1991/>, accessed 18 November 2018

—, Conference on Yugoslavia, 'Arbitration Commission Opinion No. 4, On International Recognition of the Socialist Federal Republic of Bosnia-Herzegovina by the European Community and its Member States', Paris, 11 January 1992

Organization for Security and Cooperation in Europe (OSCE), Permanent Council, 'OSCE extends mandate of Mission to Bosnia and Herzegovina', Press Release, 21 November 1996, <http://www.osce.org/pc/52450>, accessed 20 November 2018

—, Office for Democratic Institutions and Human Rights (ODIHR), *Final Report, Bosnia and Herzegovina Municipal Elections 13–14 September 1997*, 15 September 1997a, <https://www.osce.org/odihr/elections/bih/14025>, accessed 18 November 2018

—, Office for Democratic Institutions and Human Rights (ODIHR), *Final Report, Bosnia and Herzegovina, Republika Srpska National Assembly Elections 22–23*

November 1997, 22 December 1997b, <http://www.osce.org/odihr/elections/bih/14048>, accessed 18 November 2018

Reynolds, A., Reilly, B. and Ellis, A., *Electoral System Design: The New International IDEA Handbook* (Stockholm: International IDEA, 2005), <https://www.idea.int/publications/catalogue/electoral-system-design-new-international-idea-handbook>, accessed 23 November 2018

Sejdić and Finci v. Bosnia and Herzegovina, No. 27996/06 and 34836/06 ECHR 2009

United Nations, General Framework for Peace in Bosnia and Herzegovina [Dayton Peace Agreement], A/50/79C, S/1995/999, 30 November 1995, <https://peacemaker.un.org/bosniadaytonagreement95>, accessed 19 November 2018

2. Post-conflict transition and special autonomy in Bougainville, 2000–2017
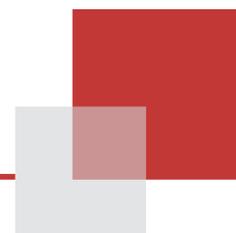
Amanda Cats-Baril

2.1. Introduction

The question of sequencing and timing of elections in Bougainville is inseparable from the broader context in which these decisions occurred, namely secession and decentralization processes in Papua New Guinea (PNG). Negotiations around electing a government for Bougainville were ingrained in larger debates around self-determination, autonomy and territorial integrity that began when PNG itself achieved independence in 1975. From this moment, Bougainville believed it had an equally valid claim to independence and questioned its place within PNG. While PNG tried to address Bougainville's demands for autonomy through increased decentralization, Bougainville secessionist movements escalated and became violent, eventually erupting into civil war. Grievances centred on the overexploitation of natural resources, with grave environmental consequences and without benefit sharing or inclusion of local communities. The 2001 Bougainville Peace Agreement (BPA) set a new tone for negotiations around Bougainville's autonomy, including calling for constitutional reform in PNG and for a separate constitution and autonomous government in Bougainville.

Decisions around elections were deeply influenced by the ongoing imperatives of post-conflict transition, including disarmament and constitution-building. Elections had to be situated in these ongoing processes and their timing paced to other processes to ensure that elections themselves were free, fair and legitimate.

2.2. Context analysis

Bougainville is an island province of the Independent State of Papua New Guinea, which gained its independence from Australia in 1975. Even before 1975, Bougainvillean separatist movements existed and when the island was absorbed into PNG, the Bougainville provincial government voted in favour of secession. The vote

was ignored internationally and PNG Prime Minister Michael Somare responded by suspending the provincial government in Bougainville. This only intensified autonomy demands in Bougainville, eventually giving rise to a violent separatist struggle led by Francis Ona (Nanei 2017).

In 1990, Ona declared a 'republic of Bougainville' and formed a Bougainville Revolutionary Army (BRA). Dissatisfaction with PNG largely centred on mining initiatives that were seen to be destructive and exploitative without benefits for local communities; the Panguna copper mine in particular symbolized perceived PNG domination of Bougainville affairs. Ona led the BRA to close the mine; in response PNG sent in its army and violence escalated into civil war and a blockade against Bougainville—which many believe killed more people than the violent conflict itself. With new leadership in PNG, peace talks were initiated in 1994, establishing a tentative truce and the Bougainville Transitional Government with Theodore Miriung as Premier. In 1996 Miriung was assassinated, bringing a halt to the administrative regime and any semblance of peace in Bougainville. PNG employed private mercenaries to bring peace and order which alienated the PNG army from the cause (O'Callaghan 2002).

In 2000, the Bougainville Interim Provincial Government was established under the Loloata Understanding, and in 2001, the civil war formally ended with the signing of the Bougainville Peace Agreement at Arawa. The Agreement provided a road map for a transitional process built on autonomy, the promised referendum for independence (within 10–15 years) and demobilization/disarmament. As part of the negotiations surrounding the Peace Agreement, it was decided to postpone elections until the passing of the Bougainville constitution, as well as to defer the planned referendum for independence in Bougainville. These decisions were central to building peace in Bougainville and providing a platform for better governance under a full-fledged and unique autonomy arrangement within PNG.

The 2004 Constitution defined the establishment, powers and functions of the Autonomous Bougainville Government elected in 2005. Subsequent elections were held in 2010 and 2015. Preparations are now underway for the independence referendum planned for 2019.

2.3. Timing and sequencing dilemmas

Level of security

Bougainville represents a war-to-peace transition, which by its very nature sets different parameters for decision-making around elections. This is particularly true after violent internal conflict and when militias are present. Democratic prerogatives might have to take secondary consideration after ensuring people basic security, which can include complicated processes of its own such as demobilization. Security in these contexts logically takes priority over the right to vote, insofar as basic security is a precondition for being able to meaningfully exercise this right.

In Bougainville, obtaining and sustaining peace was the primary objective and the Peace Agreement of 2001 provided a road map for this process, based on three pillars: autonomy, a referendum on independence and a weapon disposal plan (Bougainville

Peace Agreement 2001). Decisions around sequencing in Bougainville reflect the priority of needs for building and sustaining peace, namely:

1. Political settlement symbolized by the peace agreement, including a commitment to establishing increased autonomy for Bougainville.

2. Disarmament of the Bougainville Revolutionary Army, the Bougainville Resistance Forces and other groups.

3. Amendments to the PNG Constitution to allow for increased autonomy for Bougainville.

4. Passage of a Bougainville Constitution.

5. Elections under the new constitution and testing of the autonomy arrangement.

6. A referendum on independence for Bougainville within 10–15 years of the agreement.

Elections are therefore envisioned as one piece of a much bigger puzzle, the achievement of sustainable peace in Bougainville and a full exercise of autonomy, which in turn would lay the foundation for a future exercise of self-determination in the form of the independence referendum.

Elections, and particularly referendums, can encourage polarization, politicization and divisions if proper foundations of peace and security are not accounted for. As such, in Bougainville, sequencing of the larger transition demanded that security, peace and constitution-building all take priority in the timeline. Demilitarization procedures were agreed to as part of the peace process and the disarmament agreement was attached to the final BPA. Accommodative measures also featured; for example, providing amnesty and pardons to allow former militia members to run for government.

Constitution-building versus elections first

Perhaps most critically, the BPA created the constitutional 'space' for an autonomous Bougainville, which may be defined as 'the degree to which substate entities can define their own goals and establish their own government institutions and processes' as provided for in the central-state (national) constitution or in transitional political arrangements (Zulueta-Fülscher and Welikala 2017: 6). Within PNG, this space had to be created through the promulgation of a constitution before the autonomous government of Bougainville could be elected. These two processes entailed further timing and sequencing choices within each.

In Bougainville, there was a lack of trust in the fact that PNG would allow the province to exercise meaningful control over its own affairs—including by electing its own government and eventually hosting a referendum—even after the peace agreement was put in place. As decentralization through means other than constitutional change had failed to provide Bougainville the autonomy it was seeking, constitutional change was seen as a deeper guarantee and demonstration of good faith for the promises made in the peace agreement (Ghai and Regan 2002). Only after

these promises were constitutionalized, would reconciliation, and therefore the peace and security required for elections, be possible. In January 2002, PNG's parliament voted unanimously in favour of amending its constitution to include Part XIV–Bougainville Government and Bougainville Referendum which called for the promulgation of a Bougainville Constitution in Section 281, and provided substance and process guidelines for constitution-building in Bougainville. In September 2002, the Bougainville Governor announced the Bougainville Constitutional Commission to draft the Bougainville Constitution (Kroc Institute 2015).

As such, constitution-building was given priority mainly because it represented the basic underpinning of the political settlement between Bougainville and PNG. Constitutional change was a precondition for Bougainvilleans to trust that meaningful change would occur and it also was centrally integrated in the disarmament process: the BPA required constitutional change before completing disarmament, which is an indicator of how important constitutional guarantees were to resolving the conflict. In fact, the entire disarmament plan is tied to constitutional change. For example, Article 8(a) states: 'A decision on the final fate of the weapons should be made within 4 ½ months of the coming into effect of the constitutional amendments.'

After the Bougainville Constitution was promulgated, Bougainville exercised its autonomy and elected its own government to test the autonomy arrangement. The Peace Agreement clearly sees the current arrangements as a test. This is exemplified in Chapter 15 of the Peace Agreement which calls for 'regular reviews of the autonomy arrangements' every five years. Elections, in this context, can be seen as litmus measures of democracy and of the effectiveness of constitutional change in Bougainville that will provide the essential data for the upcoming referendum in 2019. A vote for Bougainville independence in the referendum would suggest that even with its own constitution and greater autonomy, Bougainville still wants nationhood; a vote against, that the autonomy arrangements have met Bougainville's basic minimums for existence within PNG and that people are satisfied with the Bougainville Autonomous Government.

Choice of electoral system and institutions

Part VII of the Bougainville Constitution establishes the offices of the Bougainville Boundary Commissioner and Election Commissioner, and sets the criteria for enfranchisement and for the formation of political parties. Bougainville has hosted three elections for the House of Representatives for the Autonomous Bougainville Government and four elections for President, including one by-election in 2008, in accordance with the 2004 Constitution. The first two national elections, in 2005 and 2010, were hosted by the PNG Election Commission but 2015 elections were hosted by Bougainville's own office of the Electoral Commissioner, with provisions for that Commissioner to seek technical assistance from PNG's Electoral Commission as needed. All elections thus far have had credible results and Bougainville seems to be living under its unique constitutional order (IFES 2015).

As with the sequencing and timing of elections, decision-making about the electoral system and institutions—such as the inclusion of reserved seats for ex-combatants—reflect the overall objective of building peace and incrementally

growing the autonomy of Bougainville in the lead up to the planned referendum on independence.

The Bougainville Constitution envisioned that the electoral process would have to evolve over time—essentially, acknowledging the likelihood of trial-and-error—and provides (in Section 236(5)) that if the constitution leaves any questions open as to how to conduct elections, existing PNG legislation should be relied upon. The Constitution also allowed for the phasing-in of Bougainville's own election management bodies (EMBs), as mentioned. This was a recognition of the capacity of the local institutions in their emerging stage. However, over time, and in partnership with the PNG EMBs, Bougainville's own electoral institutions were empowered to administer the autonomous region's elections.

This phased, mentoring approach to EMBs was intentionally designed to complement the deferral of the referendum on independence; the interim exercise of autonomy under the Bougainville Constitution provided time for capacity-building of institutions so that they will be prepared to manage the referendum.

Local versus international ownership

The international community played a primary role in negotiating the peace agreement in Bougainville. For example, the Catholic Church was engaged in negotiating ceasefires in PNG in the 1990s, as were New Zealand and Solomon Islands, for example in allowing the Bougainville Interim Government to establish an office in Solomon Islands during the constitution-building process. New Zealand played a key role in providing 'complementary political, diplomatic, defence and aid' support to Bougainville—as it was perceived to be a more neutral party than Australia, due to the colonial history of the island and Australia's involvement in mining activities (Eagles 2002: 50). Interestingly, deadlocks in the peace agreements were ultimately overcome on account of a switch in the position of the Australian Government, which had historically stood behind the principle of territorial unity for PNG but in 2000 shifted towards honouring whatever solution to the conflict was negotiated by relevant parties (Regan 2018: 10).

In 1998, in the lead up to the peace agreement, the United Nations established a Political Office in Bougainville, replaced by the Observer Mission to Bougainville (UNOMB) which monitored the peace agreement, including the weapons disposal process (UNDP n.d.). This was complemented by the Australian Defence Force-led Peace Monitoring Group (PMG) to oversee effective implementation of the peace agreement. It has been noted that all international actors played 'discrete but complementary roles [in Bougainville] which allowed local timetables and dynamics to develop and lead' (Regan 2005).

Finally, once the Autonomous Bougainville Government was established under the 2004 Bougainville Constitution, capacity- and institution-building needs provided another avenue for international engagement on the island. The Office of the Bougainville Electoral Commissioner (OBEC) has received technical and financial support from a range of international partners, including Australia, New Zealand and UNDP (Autonomous Government of Bougainville n.d.). The OBEC is currently receiving international support in its preparations for the upcoming referendum for

example, the International Foundation for Electoral Systems is assisting in improving the accuracy of the electoral roll.

2.4. Findings and lessons

The case of Bougainville shows that in transitional contexts, decisions around the sequencing and timing of elections are usually made in consideration of other processes, such as peace-building, disarmament, constitution-building and others. Decisions about elections in these cases are more tied to the realities and demands of the war-to-peace transition than, for example, to technical feasibility of timelines. A war-to-peace transition mandates that building and sustaining peace is the primary objective underlying all other decisions.

There is a strong argument that elections for the strengthening of democracy in Bougainville and PNG have been well timed and sequenced. While it is hard to know what time horizon is appropriate for judging the success of reforms, to date, the constitution of PNG has been amended, Bougainville has promulgated its own constitution under which it has hosted several rounds of elections, and relative peace and security have been maintained.

The transitional road map provided by the Peace Agreement has allowed for continued negotiation and testing of the autonomy arrangement in place, precisely in an effort to strengthen democracy in PNG within an ordered timeline. One prominent strength of the transitional process in Bougainville is that it was clearly delineated in advance and agreed to by all parties. Milestones and guarantees were built into the process to build trust and reconciliation and thereby strengthen democracy.

The decision to wait until after a new constitution was promulgated gave the elections and the governments that emerged from them legitimacy to pursue the aim of increased autonomy for Bougainville. This autonomy can itself be seen as a measure which strengthened democracy in Bougainville. Furthermore, the decision to postpone the referendum in Bougainville for 10–15 years to give time to test the agreed autonomy framework gave Bougainville time to strengthen its independent institutions and to reconcile after conflict.

References

Autonomous Government of Bougainville, Office of the Bougainville Electoral Commissioner [Homepage], <http://www.abg.gov.pg/government/electoral-commissioner>, accessed 7 February 2019

Bougainville Peace Agreement, 30 August 2001, National Gazette No. G 146, 16 November 2001, <http://www.abg.gov.pg/uploads/documents/BOUGAINVILLE_PEACE_AGREEMENT_2001.pdf>, accessed 7 February 2019

Constitution of the Autonomous Region of Bougainville, 12 November 2004, <http://www.abg.gov.pg/uploads/documents/BOUGAINVILLE_CONSTITUTION_2004.pdf>, accessed 7 February 2016

Eagles, J., 'Aid as an instrument for peace: a civil society perspective' in A. Carl and L. Garasu (eds), *Weaving Consensus: The Papua New Guinea–Bougainville Peace Process*, Accord 12, Conciliation Resources (2002), <https://www.c-r.org/downloads/12_PapuaNewGuinea.pdf>, accessed 10 December 2018

Ghai, Y. and Regan, A. J., 'Constitutional accommodation and conflict prevention' in A. Carl and L. Garasu (eds), *Weaving Consensus: The Papua New Guinea–Bougainville Peace Process*, Accord 12, Conciliation Resources (2002), <https://www.c-r.org/downloads/12_PapuaNewGuinea.pdf>, accessed 25 November 2018

International Foundation for Electoral Systems, 'Elections in the Autonomous Region of Bougainville: 2015 General Elections', 14 May 2015, <https://www.ifes.org/news/elections-autonomous-region-bougainville-2015-general-elections>, accessed 7 February 2019

Kroc Institute for International Peace Studies, University of Notre Dame, Peace Accords Matrix, 'Constitutional Reform: Bougainville Peace Agreement', 2015, <https://peaceaccords.nd.edu/provision/constitutional-reform-bougainville-peace-agreement>, accessed 7 February 2019

Kwa, E., 'Devolution in Papua New Guinea', Paper presented at the Melbourne Forum on Constitution-Building in Asia and the Pacific, University of the Philippines Diliman, Manila, 3–4 October 2017, <https://law.unimelb.edu.au/__data/assets/pdf_file/0011/2536544/PNG-Kwa.pdf>, accessed 7 February 2019

Nanei, K., 'Special autonomy and Bougainville' in International IDEA, *Constitution-building in States with Territorially Based Societal Conflict* (Stockholm and Carlton: International IDEA/Constitution Transformation Network, 2017), <https://www.idea.int/publications/catalogue/constitution-building-states-territorially-based-societal-conflict>, accessed 7 February 2019

O'Callaghan, M. L., 'Origins of the conflict' in A. Carl and L. Garasu (eds), *Weaving Consensus: The Papua New Guinea–Bougainville Peace Process*, Accord 12, Conciliation Resources (2002), <https://www.c-r.org/downloads/12_PapuaNewGuinea.pdf>, accessed 25 November 2018

Regan, A., 'Lessons from a Successful Peace Process in Bougainville, Papua New Guinea, 1997–2005', presentation delivered at the United States Institute for Peace, 21 July 2005, <https://www.usip.org/events/lessons-successful-peace-process-bougainville-papua-new-guinea-1997-2005>, accessed 7 February 2019

Regan, A., 'The Bougainville Referendum Arrangements: Origins, Shaping and Implementation, Part One: Origins and Shaping', 2018, Australian National University, Department of Pacific Affairs, Discussion Paper 2018/4, <https://openresearch-repository.anu.edu.au/handle/1885/147139>, accessed 10 December 2018

United Nations Development Programme (UNDP) website, 'Peace Building in Bougainville,' <http://www.pg.undp.org/content/papua_new_guinea/en/home/operations/projects/crisis_prevention_and_recovery/peace-building-in-bougainville.html>, accessed 7 February 2019

Zulueta-Fülscher, K. and Welikala, A., *Substate Constitutions in Fragile and Conflict-affected Settings*, International IDEA Policy Paper No. 15 (Stockholm: International IDEA, 2017), <https://www.idea.int/publications/catalogue/substate-constitutions-fragile-and-conflict-affected-settings>, accessed 7 February 2019

3. Timing and sequencing of transitional elections: the case of Burkina Faso, 2014–2015
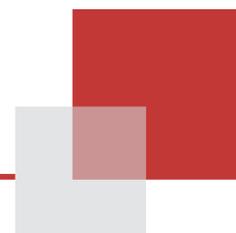
Augustin Loada

3.1. Introduction

After 27 years of undemocratic rule in Burkina Faso, the government of President Blaise Compaoré collapsed in October 2014. Subsequently, democratic elections were held on 29 November 2015, after a year of political transition. These elections were especially challenging since the end of Compaoré's rule was unanticipated, and many stakeholders were unprepared. The short time period allocated to the transition, and a context marked by the continuing presence of loyalist forces, put much pressure on the organization of these elections.

3.2. Context analysis

The post-colonial history of Burkina Faso was marked by instability. At the end of the 1980s, under external and internal pressures, President Compaoré proceeded with the political and economic liberalization of the country. A new Constitution was adopted in June 1991 (see Burkina Faso 2012) and presidential and legislative elections were held in December 1991 and May 1992 respectively. Won by the President and his party, these elections were unfair albeit competitive. A 'hybrid regime', which gradually integrated formal democratic procedures but perpetuated an authoritarian form of governance, was therefore able to hold power for nearly three decades (Scott 2016). In 2014, an attempt to abolish the constitutional provisions preventing President Compaoré from running for a new term led to a deep socio-political crisis. The population of Burkina Faso, mobilized by civil society and political parties, rose up against the regime on 30 and 31 October 2014. A military junta immediately seized power (BBC 2014).

Under the pressure of political parties, civil society and traditional and religious authorities, the junta engaged in consultations. Burkinabe stakeholders organized themselves to formulate proposals and to feed the work of a Transitional

Constitutional Charter Drafting Committee (Lamoussa 2016). A preliminary draft was discussed and adopted by consensus after five days of debate on 9 November 2014. While the draft text clearly stipulates that the transitional President and the president of the parliament shall be civilians, it does not include the same provision for the position of Prime Minister; some participants argued this was unnecessary, the civilian nature of the transition having already been recognized. The Charter (*Charte de la Transition*) was signed on 16 November 2014 by representatives of the stakeholders (Burkina Faso 2014).

The President of the transition was selected by a committee set up by stakeholders. The transitional government was constituted by the newly appointed President, Michel Kafando, and by the former leader of the military junta, Colonel Yacouba Isaac Zida, who had been appointed as Prime Minister. The army, civil society organizations and political parties were represented in the government and in the transitional parliament.

3.3. Timing and sequencing dilemmas

Given the time constraints and the complexity of the difficult choices they faced, the transitional authorities responded by using dialogue.

Efficiency versus legitimacy

After the insurrection, the main stakeholders were divided on the issue of the road map to the transition. For supporters of a 'substantialist' approach—who were mostly found in civil society—the goal of the insurrection was not only to hold elections, but also to conduct structural reforms and so establish a more legitimate governance system. On the other hand, the proponents of a minimalist approach—who were strongly backed by the main political parties and international community—claimed that the priority of transition should be to hold democratic elections, with reform deferred to a later stage. They stressed that attempts to carry out early structural reforms would be too risky: that they could lead to the fragmentation of transitional authorities; invite obstruction from political and military forces whose interests would be negatively impacted; and thereby destabilize the transition process.

To reconcile these two approaches, the Charter (articles 17 and 18) enshrined the organization of the elections as the main aim, but established (through law No. 003-2015/CNT of 23 January 2015) a Commission of National Reconciliation and Reform (CNRR) tasked with the conduct of broader reforms. An emergency socio-economic plan was subsequently adopted by the government to further address structural issues.

Local versus international ownership

The international community influenced various features of the transition process in Burkina Faso: (a) the relative brevity of the transition, which was restricted by the charter to a period of 12 months; (b) the transition's civilian character, since the international community and some domestic political forces strongly objected to the nomination of any military figures to the position of President of the Transition; and

(c) the regulation of the transition by a constitutional charter supplementing the Burkinabe Constitution.

The international community succeeded in influencing the course of the transition by issuing ultimatums and by threatening selective sanctions against the military junta. For example, the UN Secretary-General called for the release of the President of the Transition in September 2015 following coup attempts. The international community has also played an important role in keeping the transitional process on track by providing continuous support to the transition and threats of sanctions against potential spoilers. After the 16 September 2015 coup that overthrew the transitional regime, international mediation helped resolve the political-military crisis (UN News 2015). Nevertheless, the conclusions of this mediation—which included amnesty for the authors of the coup—were rejected by the Burkinabe people. The crisis was eventually resolved by local stakeholders, thanks in particular to the internal balance of power established by the loyalist military forces and supported by internal democratic forces.

Short- versus long-term international involvement

The international community was very supportive of a short transition in Burkina Faso. An International Group of Support and Accompaniment of Transition (GISAT) was set up to monitor the Burkinabe transition (African Union 2015). The GISAT, co-chaired by the UN and the Economic Community of West African States (ECOWAS), integrated the main diplomatic representations accredited to Burkina Faso. Four sessions were held during the transition at which the electoral commission (CENI, *Commission Électorale Nationale Indépendante*) was asked to update participants about the preparations for the elections. After the elections, the newly elected authorities received support from the international community for the organization of a round table of donors. The objective was to mobilize the resources needed to finance the National Economic and Social Development Plan adopted by the post-transition government.

National versus sub-national elections first

After consultations with stakeholders on 30 January 2015, the government decided to hold simultaneous presidential and legislative elections on 11 October 2015, and municipal elections on 31 January 2016. This option entailed a risk of a violation of the Charter in the case of a presidential run-off election, as it stipulated that the transition should end within 12 months. Fortunately, Article 21 of the Charter specified that: 'the institutions of the transitional period should function until the new institutions are actually established' (Burkina Faso 2014). This provision proved useful since the original electoral timetable was disrupted by the 16 September 2015 coup. After the restoration of the transitional government, the electoral calendar was reorganized with a decision—backed by the Constitutional Court—to hold the national elections on 29 November 2015 and the municipal elections on 22 May 2016.

Constitution-building versus elections first

The debate between supporters and opponents of drafting a new constitution was not solved by the Charter. The CNRR established a subcommittee on constitutional, institutional and political reform (see GISAT point 9) which proposed a series of reforms, including a preliminary draft constitution. However, its proposals could not be operationalized due to time constraints and the opposition of many political parties who did not recognize the transitional authority's competency to draft a constitution. Instead, the transitional authorities amended the Constitution of 2 June 1991 in November 2015 (National Council of the Transition 2015). After the election, President Roch Marc Christian Kaboré set up a participatory and inclusive constitutional commission, which drafted a preliminary constitution (Constitutional Commission 2017) to be adopted by referendum by the end of 2017 or the beginning of 2018.

Choice of electoral system and institutions

Similarly, the process of electoral reform initiated during the transition could not be completed before the elections, although minimal reforms were carried out in April 2015. The most controversial new electoral provision was the one which declared ineligible 'all those who have supported an unconstitutional change which undermined the principle of democratic alternation, in particular the principle of limiting the number of presidential terms, which has led to an insurrection or any other form of uprising' (CENI 2015: articles 135, 136 and 242). This declaration has provoked strong objections from supporters of the former regime and from human rights activists. The provision was also condemned on 13 July 2015 by the Court of Justice of ECOWAS, which urged Burkina Faso to 'remove these barriers to participation in elections' (ECOWAS 2015). Disregarding this ruling, the Burkinabe Constitutional Court declared ineligible several candidates who had served in the former regime. These exclusions have served as a pretext for the failed coup against the transitional regime, but thanks to the resistance of the Burkinabe people and the mobilization of the international community, the coup was defeated and the transitional regime restored (Allison 2015).

Under the transitional government some stakeholders, including civil society, expressed their distrust of the existing electoral management body (CENI), which had been created under the former regime, and advocated for the establishment of a transitional electoral commission. However, a majority of stakeholders (among both political parties and civil society) expressed their confidence in the CENI to organize honest and transparent elections for the transition. They argued that, given the time constraints, reforming the existing electoral management body and renewing its management team could jeopardize the organization of elections; CENI remained in place under the Transitional Charter.

Accommodative measures

According to the Charter, inclusion was a key principle to be respected during the transition period. Consequently, power and positions in transitional institutions have been shared between stakeholders, but this power sharing has not been enough to ensure a peaceful transition. Indeed, several attempts at destabilization were carried

out by military factions loyal to the former regime. To mediate these crises, the President of the Transition set up a consultative council of wise individuals.

Moreover, the former regime and the insurrection against it had both created divisions within Burkinabe society. The aforementioned Commission for National Reconciliation and Reform (CNRR) was established in order to deal with the situation. In its General Report of 2015 (CNRR 2015), the Commission identified 145 blood crimes from the 1980s and 1990s, and 34 deaths resulting from the insurrection, as well as more than 100 injured. This report highlighted the need for national reconciliation in Burkina Faso. A High Council for Reconciliation and National Unity was created in 2016 to serve that purpose. A year after its creation, however, its record appeared very weak (Lefaso.net 2017). For a majority of the Burkinabe, reconciliation should come after justice has sanctioned economic and violent crimes. Unfortunately, Burkina Faso is not in a position to do so in the short-term, due to the many dysfunctions and the lack of public trust that characterize the judicial system (Bertelsmann Stiftung 2018).

Peacekeeping versus security sector reform

The transitional government took several initiatives to respond to growing insecurity and the rise of terrorism, including steps to strengthen the capacities of the defence and security forces. Ensuring security during the transition was a major challenge, given that President Compaoré's security regiment (RSP) made active attempts to disrupt the process. This unit of the Burkinabe army was not under the control of the transitional authorities. Taking advantage of the failed September 2015 coup, the transitional government dissolved the RSP by decree, and its disarmament was supervised by ECOWAS (Jeune Afrique 2015; Bagayoko 2016).

In order to ensure security during the transitional elections the CENI, with the support of the government, created a security force with operations geared according to the electoral cycle (EU 2015: 26). During the pre-election phase, it assured the tasks of close protection of presidential candidates, securing the structures in charge of the electoral process, political parties and strategic places of the CENI, as well as venues of meetings, escort of candidates, observers, equipment and electoral personnel. On election day, more than 21,000 security agents were deployed throughout the country. Surveillance of the territory, in particular of the border areas, was also strengthened. These security measures were successful (EU 2015: 27).

3.4. Implementation challenges

Organizing democratic elections in less than a year was extremely challenging. Fortunately, before the insurrection, the CENI had already started organizing elections scheduled for November 2015. With the new political situation, the CENI had to adapt its work schedule to the decisions and new orientations set by the transitional government. To widen participation, the CENI was authorized to register new voters, and to minimize the risks of failure, the government also decided to postpone the participation of out-of-country voters, who were supposed to vote for the first time in 2015 (EU 2015).

Given the tensions around this election and the risks attached to any long wait for results, the CENI set itself the ambitious goal of proclaiming the provisional results not later than the day after the elections. To this end, it acquired the required infrastructure, including a satellite management and transmission system for VSAT data from the 368 municipalities of Burkina Faso, each with a data compilation centre (EU 2015). This ICT capacity, together with the acceptance of the results by the main defeated candidate, contributed to a peaceful transition (BBC 2014; National Democratic Institute 2015).

3.5. Findings and lessons

The socio-political crisis that Burkina Faso went through in 2014–2015 undoubtedly contributed to the strengthening of its democracy. The popular uprising freed the collective voice and revealed the capacity of the Burkinabe people to resist oppression, to appropriate its own sovereignty and to hold its leaders accountable. Without this collective mobilization the transition would probably have been aborted, and authoritarianism restored. Additionally, the international community's support for this transition was decisive. Constitutional and legislative reforms are underway to consolidate the democratic process. Freed from authoritarianism, the Burkinabe people have become more demanding towards their leaders.

However, strategic mistakes were made during the process, including the exclusion of certain candidates from electoral competition. Additionally, while the national elections were held without outbreaks of violence, this was not the case for the 2016 local elections, mostly as a result of factional struggles for the control of rents at local level within the new ruling majority (Jeune Afrique 2016; IFES 2017). The state apparatus that could have prevented such violence was itself paralyzed by the inaction of the new authorities who were reluctant to repress their own supporters. Because of the relative neutrality and autonomy of the transitional government towards political parties, the issue of electoral violence would have been addressed more effectively if local elections were held during the transition period.

In the end, the transition process in Burkina Faso was successful for several reasons. It was based on the minimalist approach centred on the organization of the founding elections in a short time, which was less risky than the substantialist approach based on structural reforms of governance. Success was also possible because of a consensus among stakeholders and a real willingness to strictly respect the road map. The institutional stability, legitimacy and professionalism of the electoral commission were all assets for the success of elections during the transition period.

References

African Union Peace and Security, Inaugural Meeting of International Follow-up and Support Group for the Transition in Burkina Faso (2015), <http://www.peaceau.org/en/article/inaugural-meeting-of-international-follow-up-and-support-group-for-the-transition-in-burkina-faso>, accessed 21 February 2019

Allison, S., 'How the people of Burkina Faso foiled a military coup', *The Guardian*, 25 September 2015, <https://www.theguardian.com/world/2015/sep/25/burkina-faso-foiled-military-coup>, accessed 21 February 2019

Bagayoko, N., '*La dissolution du Régiment de sécurité présidentielle (RSP) au Burkina Faso: l'enjeu de l'avenir des effectifs des gardes présidentielles africaines*' [The dissolution of the Presidential Security Regiment (RSP) in Burkina Faso: the challenge of the future of the African presidential guards], DCAF-ISSAT blog, 29 March 2016, <https://issat.dcaf.ch/fre/Partager/Blogs/Reseau-Africain-des-Secteurs-de-la-Securite/La-dissolution-du-Regiment-de-securite-presidentielle-RSP-au-Burkina-Faso-l-enjeu-de-l-avenir-des-effectifs-des-gardes-presidentielles-africaines>, accessed 21 February 2019

BBC News, 'Burkina Faso crisis: Col Isaac Zida claims presidential powers', 1 November 2014, <https://www.bbc.com/news/world-africa-29861280>, accessed 21 February 2019

Bertelsmann Stiftung, 'BTI 2018 Country Report: Burkina Faso', 2018, <https://www.bti-project.org/en/reports/country-reports/detail/itc/BFA/>, accessed 21 February 2019

Burkina Faso, Constitution of 1991 with Amendments through 2012 (Subsequently amended), <https://www.constituteproject.org/constitution/Burkina_Faso_2012.pdf>, accessed 24 February 2019

Burkina Faso, Transitional Charter (*Charte de la Transition*) 2014, <http://constitutionnet.org/vl/item/transitional-charter-burkina-faso-november-2014>, accessed 20 February 2019

CENI, *Code electoral et textes d'application* [Electoral code and application], 2015, <http://www.ceni.bf/sites/default/files/Code_%C3%A9lectoral_BF-Version_21.05.2015.pdf>, accessed 21 February 2019

CNRR, *Rapport general, Les voies du renouveau* [General report: the paths of renewal], September 2015, <http://www.icla.up.ac.za/images/un/commissionsofinquiries/files/Burkina%20Faso%20commission%20of%20reconciliation%20and%20reforms%20final%20report.pdf>, accessed 21 February 2019

Constitutional Commission of Burkina Faso, *Avant-project de la constitution de la Veme Republique* [Pre-project of the Constitution of the Fifth Republic], 2017,

<https://burkina24.com/wp-content/uploads/2017/01/Avant-projet-Constitution-der-der.pdf>, accessed 21 February 2019

ECOWAS Court of Justice Judgement N°ECW/CCJ/JUG/16/15, CDP vs. State of Burkina Faso [French], 13 July 2015, <http://www.courtecowas.org/site2012/pdf_files/decisions/judgements/2015/Aff_CDP_c_l_Etat_du_Burkina.pdf>, accessed 21 February 2019

EU Electoral Observation Mission to Burkina Faso, Rapport Final, Élections présidentielle et législatives [Final report, presidential and legislative elections], 29 November 2015, <http://eeas.europa.eu/archives/eueom/missions/2015/burkina-faso/pdf/moe-ue-burkina-faso2015-rapportfinal-version-complete_fr.pdf>, accessed 21 Feb 2019

GISAT, '2nd Meeting of the International Follow-up and Support Group for the Transition in Burkina Faso, <http://www.peaceau.org/uploads/auc.gisat-bf.conclusions.30.3.2015.pdf>, accessed 21 February 2019

IFES, 'Elections in Burkina Faso, 2017 Municipal Elections, Frequently Asked Questions', 22 May 2017, International Foundation for Electoral Systems website, <https://www.ifes.org/sites/default/files/2017_ifes_burkina_faso_municipal _elections_faq.pdf>, accessed 21 February 2019

Jeune Afrique, 'Burkina: le RSP dissous lors du conseil des ministres' [Burkina: RSP dissolved at the council of ministers], 26 September 2015, <https://www.jeuneafrique.com/267816/politique/burkina-le-rsp-dissous-lors-du-conseil-des-ministres/>, accessed 21 February 2019

—, 'Burkina: plusieurs centaines de personnes déplacées à cause des violences postélectorales' [Burkina: several hundred people displaced by post-election violence], 30 June 2016, <https://www.jeuneafrique.com/337930/politique/burkina-plusieurs-centaines-de-personnes-deplacees-a-cause-violences-post-electorales>, accessed 21 February 2019

Lamoussa, S., 'Burkina Faso's constitutional reform process to accommodate the spirit of the popular uprising', International IDEA/Constitutionnet.org, Voices from the Field, 30 May 2016, <http://constitutionnet.org/news/burkina-fasos-constitutional-reform-process-accommodate-spirit-popular-uprising>, accessed 20 February 2019

Lefaso.net, 'Que se passe-t-il au Haut Conseil pour la Réconciliation et l'Unité Nationale?' [What is happening at the High Council for Reconciliation and National Unity], 26 May 2017, <http://lefaso.net/spip.php?article77427>, accessed 21 February 2019

National Council of the Transition (*Le Conseil National de la Transition*), Constitutional law N°072-2015/CNT, 5 November 2015, <https://

www.assembleenationale.bf/IMG/pdf/
loi_072_portant_revision_de_la_constitution.pdf>, accessed 21 February 2019

National Democratic Institute, 'High Expectations for Democracy in Burkina Faso
after 2015 Elections', 11 December 2015, <https://www.ndi.org/burkina-faso-
elections-2015>, accessed 21 February 2019

Scott, A., 'Burkina Faso's open elections', Open Data Institute, October 2016,
<https://theodi.org/project/case-study-burkina-fasos-open-elections/>, accessed
20 February 2019

UN News, 'Following coup d'état in Burkina Faso, Ban welcomes reinstatement of
President', 23 September 2015, <https://news.un.org/en/story/
2015/09/509552-following-coup-detat-burkina-faso-ban-welcomes-
reinstatement-president>, 21 February 2019

4. Transitional elections in the Central African Republic, 2013–2016
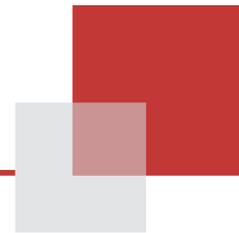
Danièle Darlan

4.1. Introduction

On 24 March 2013, the rebel Séléka grouping (the word *Seleka* means 'coalition' in Sango) took power in the Central African Republic (CAR). This coup resulted in the suspension of the Constitution of 27 December 2004 and subsequently in suspension of the Republic's institutions. It was not the first coup to do so; however, it was certainly the coup that had the worst consequences in terms of destruction, pillaging, expropriation and other abuses committed against the population, and the unprecedented dismantling of the National Army (International Crisis Group 2015: 1).

This destructive context resulted in the establishment of a three-year transitional period. The transition was profoundly different from previous ones in the CAR in at least two main aspects: first, the transition was 'accompanied', if not 'controlled' entirely by the international community (with Chad and France playing prominent roles); and second it was framed by a Constitutional Charter of the Transition (CAR 2013), which defined the transition's authorities, the operating procedures, and the government's road map. The transitional institutions, especially the Head of State and the Government, had to abide by the provisions of the Charter, most of which were set by the Economic Community of Central African States (ECCAS) sub-region. ECCAS played its role partly via its representation on the International Contact Group, another key decision-making body, as mandated by its member states.

This case study focuses on the elections held in the CAR in a situation of armed conflict, during the transition and beyond.

4.2. Context analysis

The Central African Republic became independent on 13 August 1960. From then on, the country had a political and constitutional evolution which slowly led to the chaos of 2013. This drift resulted in a concentration of powers in the hands of one person, in disregard of all democratic principles. Thereafter, each Constitution was tied to one person, the Head of State. Not least through decrees (Orders of the President of the Republic), power in CAR is centralized and personalized. Any change of Head of State would necessarily and inevitably result in a change of Constitution.

The first Constitution, adopted on 6 February 1959, came into force on 13 December 1960. Altogether, between 1960 and 2016, the country had eight Constitutions (besides the Constitutional Charter of the Transition), as well as four coups.

In 1996, growing violence and insecurity was followed by a mutiny within the defence forces the same year, which rapidly evolved into a rebellion calling for the resignation of the incumbent President (and the first to be democratically elected) (International Crisis Group 2015). At that time, the CAR slowly began a downward slide leading to the events of 2013. This period was marked by a few transitional phases, especially the transition of 2003–2004 that followed the taking of power by General François Bozize on 15 March 2003, which resulted in the adoption of the Constitution of 27 December 2004. From 2006 onwards, there was an increase in the number of armed groups, each occupying a part of the country's territory. In 2012 a coalition was formed between these groups—Séléka—mostly comprising Islamic groupings (International Crisis Group 2015: 5–6). Following the destruction alluded to above, a new and opposing group was formed, composed of so-called 'Christian' militias. The militias likewise committed many abuses against the population. This was the immediate backdrop to Séléka's 2013 coup.

Neighbouring countries of the sub-region, already heavily involved in the resolution of CAR's crisis, intervened in an attempt to restore the rule of law by establishing a transition process framed by a Constitutional Charter. ECCAS member states recommended the creation of a National Transition Council (*Conseil national de transition*, CNT) at their Third Extraordinary Summit held on 3 April 2013 in N'Djamena, Chad (Jeune Afrique 2013). The Fourth Extraordinary Summit held just two weeks later (18 April 2013) clarified CNT's mission as being to develop a Constitutional Charter of the Transition and preparing a draft Constitution (Jeune Afrique 2013). On 5 July 2013, the CNT adopted the Constitutional Charter of the Transition (*Charte constitutionnelle de Transition*, CCT); it was promulgated by the Head of State Michel Ndotodia on 18 July 2013. Michel Ndotodia remained the Head of State from 18 August 2013 until January 2014, when he was forced to resign by the chaotic situation in the country, and by the sub-region. He was replaced by Catherine Samba Panza.

The Constitutional Charter of the Transition

As the constitution for the transitional period, the Charter is a compromise. Going beyond the traditional framework of political systems, this *sui generis* instrument

demonstrates a concern to legitimize the different powers while emphasizing reunification and consensus. These methods of designation have resulted in a number of rules regarding the powers of various bodies; compromise and dialogue must prevail. Dialogue and countersignature were enshrined into the Charter for shared responsibilities.

The National Transition Council is a constituent and legislative body, composed of different representative entities of the CAR's society (CAR 2013: article 50). One very specific mandate of the CNT was to elect the Head of State of the Transition period. The aim of this newly established election was to have a Head of State of the Transition designated by the representative entities of the CAR's society. Another specific mandate was its participation in determining the content of the road map that was to be developed by the government. Therefore, within the framework of the priorities set in Libreville and reaffirmed in N'Djamena, the government was to develop a transition road map (for the main elements see CAR 2013: article 55) and to submit it for approval to the Follow-up Committee of Libreville and the International Contact Group. Once adopted by the Council of Ministers, the road map had to be submitted to the CNT. The Charter provided for two important limitations on the powers of the CNT: it was unable to use the motion of censure or vote of confidence against the government, or to request a 'vote on a text as a whole' for adopting specific acts.

In accordance with the ECCAS recommendations, the Charter established a Constitutional Court of the Transition, as a guardian of the Charter. This mandate of protecting the Charter was shared with the regional authorities and the International Mediator. The Charter provided for the intervention of the Mediator and ECCAS with regards to the extension of the transition period. Finally, the Charter provided for safeguards, through prohibiting the revising of certain provisions of the Charter as well as incompatibilities and ineligibilities, which specifically provided that practically all the authorities that had managed the transition could not be candidates to the presidential and legislative elections that would be organized at the end of the transition period. These elections were eventually organized.

The Transition period had to be extended twice. It was supposed to last 18 months, as per the Constitutional Charter of the Transition, and end in December 2014; eventually it lasted 33 months, mainly because of the lack of preparation and security issues. The lack of preparation was a consequence of the delays in availing the necessary funds for the organization of elections, and technical issues related to the procurement and distribution of the electoral materials. The transition period ended on 30 March 2016 with the oath-taking of the democratically elected President of the Republic (International Crisis Group 2017).

4.3. Timing and sequencing dilemmas

A number of issues and situations required decision-making by the transitional authorities, especially the Constitutional Court:

National versus sub-national elections first

When the transition period started in August 2013, the CAR had recently—in 2012 —reviewed its Electoral Code. Given that this code had been designed for a normal period, it was inappropriate to the new conditions. A choice was made to adopt derogations (Gerold and Merino 2014), which mostly consisted in cancelling all local and regional elections and instead holding only the elections provided for in the Charter, namely: referendum (a new Constitution was put to popular referendum in December 2015; for results see *Le Monde*/AFP 2015), and presidential and legislative elections. In the process, the code was amended once again in order to make the vote simpler on the technical level, especially through abandoning the use of biometric technologies.

Efficiency versus legitimacy

The main challenge was to adapt—that is, dramatically reduce—the timelines set by the Electoral Code, in order to meet the timeline of the transition period. This posed a serious problem: was it best to adopt a 'political' timetable that would not take into account any of the set deadlines, especially with regards to the litigation deadlines, or a 'legal' timetable that would abide by the (now shortened) deadlines? The political timetable was expected to put an end to the electoral process on 31 December 2015, whereas the legal timetable was meant to end it in March 2016 (Murray and Mangan 2017). Those who supported the idea of the political timeline (essentially the international community) wanted the elections to be held as soon as possible for budgetary reasons, whereas the Constitutional Court wanted to abide by the revised deadlines, in order to preserve the credibility of the electoral process. The Court believed that organizing elections in such conditions was setting them up to fail and might lead to chaos.

In this regard, the Court presented a timetable with tight deadlines that would enable the electoral process to end in March 2016 (Reseau Arc-en-ciel 2016). Without the adoption of such tight deadlines, and given the delays already recorded, the process would have had to be extended again, which was not acceptable to ECCAS either. Eventually, this solution was adopted following very tense debates and discussions that led the various parties to hold a last meeting chaired by the Head of State of the Transition in order to request the Head of State's arbitration. Thanks to the *in extremis* support of the international community, the Constitutional Court's position was finally adopted.

What should be the sequencing of elections? For essentially financial concerns, the international community, and especially France, wanted the three elections to be organized on the same day. The government referred the matter to the Constitutional Court, which deemed that organizing the three elections on the same day would be challenging. First, because before electing the President or MPs the voters—and even more so the candidates—should be aware of the responsibilities of those elected, as determined by the Constitution. But voters needed time to develop such an understanding, due to a lack of civic education compounded by illiteracy. Second, linking the new Constitution to the election of the new President would once again strengthen the idea of power and Constitution personalized in the President.

It is worth noting that the successful electoral process was the result of effective contributions from the international community including much practical support. However, it is regrettable that there was sometimes too much interventionism; for instance, the international community came to the Court after the cancellation of the legislative elections (see RFI 2016) to demand an explanation of this decision. The Court was also questioned regarding its decision on the sequencing of elections.

Constitution-building versus elections first

How many transitions had there been? Was the new Constitution meant to launch the electoral process? Referred to by the Head of State, the Constitutional Court had to answer this question through a decision, namely the 'Decision on the Ineligibilities'. If it was decided that the referendum and the adoption of the new Constitution would put an end to the transition period, this would mean that the presidential and legislative elections should have been organized based on the new Constitution. Therefore, this would have meant that the ineligibilities set by the Charter would not apply anymore, and that the relevant candidates could compete in the elections after all.

The Court's decision was that despite the two extensions of the transition period, there was only one transition, not two or three. Therefore, the Charter would still be applicable and applied. The Charter had provided for one referendum and two elections (presidential and legislative). Consequently the transition would end only after all these elections had taken place. The Court clarified that the new Constitution would come into force only after the end of the transition period, and that it would be promulgated on the day of the inauguration of the elected President of the Republic, by the Head of State of the Transition. As mentioned, this was done on 30 March 2016.

Choice of electoral system and institutions

The National Authority for Elections (*Autorité nationale des élections*, ANE) was established by the Electoral Code of 2013 (CAR 2016b). The Charter retained this institution, and the Electoral Code clarified its nature and mission. ANE is a technical, permanent and independent body, neutral vis-à-vis the public administration and political parties. It is endowed with legal personality, and is administratively and financially autonomous. It can exercise prerogatives of public authority. The ANE is responsible for preparing, organizing and supervising elections; it also publishes provisional results. The ANE is composed of seven members, including at least two women; candidates are proposed by the political parties, public authorities and civil society and appointed by the Transitional Head of State (CAR 2016b: articles 7 and 12).

The refugees' right to vote

Security issues lay at the heart of a number of implementation difficulties (see below), as well as the question of out-of-country voting. The Constitutional Court made a decision on the right to vote of refugees in the presidential election (RFI 2015), an issue that has been highly controversial. In applying the principle of the right to vote,

the Court emphasized that refugees from the Central African Republic had left their country to save their lives and that their right to vote could not be denied.

4.4. Implementation challenges

The implementation of the electoral road map has raised many difficulties, essentially related to security issues and weaknesses of the ANE, which had to be supported by a team of international experts during the entire process. The members of the ANE lacked experience and training at the time of their appointment. Procuring and producing electoral materials was a major challenge; all the material had to be purchased abroad, which resulted in delays and numerous mistakes, especially with regards to the voting ballots for the legislative elections. The distribution of electoral materials also suffered in-country delays.

Faced with such deficiencies, the Prime Minister of the Transition established a Strategic Committee, under his chairmanship, comprising the various stakeholders and institutions involved in the electoral process (International Contact Group 2015). This Strategic Committee enabled better coordination between the stakeholders and facilitated decision-making. Though it was criticized by the political parties, it is certainly thanks to this Committee that elections could be held on time on 30 March 2016. The Constitutional Court was also involved in the electoral process and preparation, particularly in designing the electoral calendar. In our view, the involvement of the Court has been instrumental in avoiding mistakes that could have been fatal to the process and the already fragile peace.

The electoral road map did not consist in one transitional election, but a series. On 13 December 2015, a proposed Constitution was submitted to referendum and adopted by a large majority (92.9 per cent) (Election Guide n.d.). Legislative elections were held on 30 December 2015, together with the first round of the presidential election. The organization of these elections was very challenging. Following the publication of the provisional results by the ANE, the Court had to consider six cases, and invalidated the result forms of over 430 presidential election polling stations (Reseau Arc-en-ciel 2016). With regard to the legislative elections, the results were disputed and this materialized through 404 submissions to the Court within days, citing serious irregularities and requesting cancellation of the elections (Pinto 2016). The widespread law breaches and irregularities led the Court to cancel (on 25 January 2016) the entire legislative elections held on 30 December 2015. The irregularities included (CAR 2016a):

- non-compliance of voting ballots with the candidates' identity and number;
- delivery of voters' cards by unauthorized individuals;
- organization of massive fraud with purchased parallel voters' cards;
- ballot box stuffing;
- interference and influence of the local administrative authorities in the choice of the voters;
- widespread corruption and buying of votes;

- unacceptable threats and voter intimidation in the polling stations;

- largely insufficient amounts of ballots or absence of ballots in most voting stations; and

- a large amount of messy and therefore unworkable results forms.

According to the Court, these shortcomings demonstrated:

- the actual infringement of the principle of equal treatment of all candidates;

- the infringement of the voters' freedom of choice;

- the impossibility of monitoring the sincerity of votes; and

- the lack of credibility of the results of the legislative elections.

On 14 February 2016 the second round of the presidential election took place, along with the first round of the re-run legislative elections. The second round of the legislatives was held on 13 March 2016, with partial legislative elections held on 15 May 2016; 13 October 2016; and 4 December 2016 (for results see Reseau Arc-en-ciel 2016).

4.5. Findings and lessons

Adopted on 13 December 2015, the Constitution of the Central African Republic (CAR 2016b) reinforced the democratic nature of the Central African State, in both participatory and electoral aspects. The Constitution also addressed the role of the army in the nation; the position and the role of security forces, by reinforcing their professional, multi-ethnic, republican and nonpartisan status; the condemnation of coups; the strengthening of citizens' fundamental rights; and the secular state.

Elections have not exacerbated the conflict, but they have not addressed the security issues either. The holding of elections allowed a return to the constitutional order and the establishment of legitimate authorities. However, these authorities are facing a security situation that has not much improved; armed groups are still operating in several prefectures, effectively ruling some parts of the territory, and commit numerous abuses against the population. The National Army's reconstruction is ongoing, and is a time-consuming process. The security of the CAR and its population is therefore in the hands of the International Peacekeeping Force, the MINUSCA (International Crisis Group 2017).

The Central African Republic still finds itself in a period of turmoil that could represent a serious danger for peace and security in the region. The major challenges are related to the security situation, which is an impediment to progress on development issues, and therefore must be addressed first. The Central African Republic continues to operate in emergency conditions and faces major humanitarian issues.

References

CAR, Republic of, *Charte constitutionnelle du 18 juillet 2013/Charte de la transition* [Constitutional Charter of the Transition], 18 July 2013, <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/98145/116669/F1264877584/CAF-98145.pdf>, accessed 27 February 2019

—, *Décret portant promulgation de la Constitution de la République Centrafricaine* [Presidential Decree No. 160218, Decree promulgating the Constitution of the Central African Republic], 30 March 2016a, <https://www.ilo.org/dyn/natlex/docs/SERIAL/104713/127839/F1101593134/CAF-104713.pdf>, accessed 27 February 2019

—, *Décret portant convocation du corps Electoral de la République Centrafricaine pour le premier tour des élections partielles des députes a l'Assemble Nationale* [Presidential Decree No. 16.234, Convocation of the Electoral Body], 28 April 2016b, <http://www.anerca.org/images/decrets/DECRET_16_234.PDF>, accessed 5 March 2019

—, *Cour Constitutionnelle de Transition* [Constitutional Court of the Transition], *Décision N° 004/16 relative à la proclamation définitive des résultats des élections législatives du 30 décembre 2015* [Decision No. 004/16/CCT], 25 January 2016c, <https://dokumen.tips/documents/decision-no-00416-du-25-jan-2016-relative-a-la-proclamation-.html>, accessed 12 March 2019

Election Guide, [n.d.] 'Central African Republic: Referendum', <http://www.electionguide.org/elections/id/2885/>, accessed 5 March 2019

Gerold, G. and Merino, M., 'L'effondrement de l'Etat centrafricain au cours de la dernière décennie : origines de la crise et quelques idées pour en sortir', Fondation pour la Recherche Stratégique, April 2014, <https://www.files.ethz.ch/isn/179588/201408.pdf>, accessed 28 February 2019

International Contact Group, 'Conclusions de la 8ème Réunion du Groupe International de Contact sur la République Centrafricaine (GIC-RCA)' [Conclusions of the 8th Meeting of the International Contact Group on the Central African Republic], July 2015, <http://www.peaceau.org/uploads/cua-conclusions-8y-me-gic-rca-27-7-2015.pdf>, accessed 1 March 2019

International Crisis Group, 'Central African Republic: The Roots of Violence', Africa Report No. 230, 21 September 2015, <https://www.crisisgroup.org/africa/central-africa/central-african-republic/central-african-republic-roots-violence>, accessed 5 March 2019

—, 'Avoiding the Worst in Central African Republic', Africa Report No. 253, 28 September 2017, <https://d2071andvip0wj.cloudfront.net/253-avoiding-the-worst-in-central-african-republic.pdf>, accessed 25 February 2019

Jeune Afrique, 'Sommet de N'Djamena : la CEEAC, Idriss Deby Itno et la Centrafrique' ['N'Djamena Summit: ECCAS, Idriss Deby Itno and CAR], 18 April 2013, <https://www.jeuneafrique.com/171243/politique/sommet-de-n-djamena-la-ceeac-idriss-d-by-itno-et-la-centrafrique/>, accessed 27 February 2019

Le Monde/AFP, 'Centrafrique : 90% de « OUI » au référendum constitutionnel' [CAR: 90% vote 'Yes' in constitutional referendum], 17 December 2015, <https://www.lemonde.fr/afrique/article/2015/12/17/centrafrique-90-de-oui-au-referendum-constitutionnel_4834306_3212.html>, accessed 26 February 2019

Murray, E. and Mangan, F., 'The 2015–2016 CA Elections, A Look Back', United States Institute of Peace, May 2017, <https://www.usip.org/sites/default/files/2017-05/sr403-2015-2016-car-elections-a-look-back-peaceful-process-belies-serious-risks.pdf>, accessed 26 February 2019

Pinto, P., 'RCA : les raisons de l'annulation des élections législatives' [CAR: the reasons for the annulment of the parliamentary elections], 26 January 2016, <http://www.rfi.fr/afrique/20160126-rca-raisons-annulation-elections-legislatives>, accessed 28 February 2019

RFI, 'RCA: la Cour constitutionnelle autorise le vote des réfugiés' [CAR : Constitutional Court allows refugees to vote], 27 July 2015, <http://www.rfi.fr/afrique/20150724-vote-refugies-centrafricains-problemes-fraude-decision-cour-constituionnelle>, accessed 26 February 2019

—, 'RCA: les autorités planchent sur un nouveau calendrier électoral' [CAR: authorities work on a new electoral calendar], 27 January 2016, <http://www.rfi.fr/afrique/20160127-rca-autorites-planchent-nouveau-calendrier-electoral>, accessed 27 February 2019

Reseau Arc-en-ciel, 'Rapport final d'observation du processus électoral de 2015-2016 en République Centrafricaine' [Final report, observation of the electoral process in CAR, 2015–2016], September 2016, <http://aceproject.org/ero-en/regions/africa/CF/republique-centrafricaine-rapport-final>, accessed 26 February 2019

5. The 2016 post-conflict plebiscite in Colombia
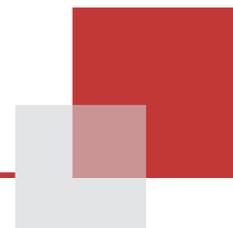
Juan Fernando Londoño O.

5.1. Introduction

In 2016, after almost five years of peace negotiations, the Colombian Government and the Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia, FARC-EP) guerrilla group reached a peace agreement, the Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace, which brought an end to an armed conflict that had lasted more than 50 years. After the negotiations, the Colombian Government decided to hold a plebiscite for the purpose of approving the contents of the Peace Agreement. The Colombian people went to the polls on 2 October 2016, and in the plebiscite on the Peace Agreement submitted to their consideration the deal was rejected, with 50.2 per cent voting against and 49.8 per cent voting for the agreement, a difference of around 54,000 votes. This case study discusses the Colombian Government's decision to go to the polls as the mechanism for endorsement of the agreement.

5.2. Context analysis

According to the National Centre for Historical Memory (Centro de Memoria Histórica, CNMH), the armed conflict in Colombia, during which other guerrillas and paramilitary organizations featured, resulted in approximately 7.9 million displaced persons, 15,800 victims of some 2,700 massacres, 280,000 further murder victims, 60,000 people disappeared, 34,800 victims of hostage-taking, and 13,946 victims of sexual violence, most of them women (for an overview see CNMH 2016).

One of the distinctive features of the peace process in Colombia is that unlike many others, the Colombian political system has been democratic throughout, with competitive and recurrent elections held on a regular basis since 1958. This does not mean that Colombia had a stable democracy, much less that the electoral process has always been transparent and free. On the contrary, the presence of the armed conflict seriously affected the conditions for the exercise of democracy in Colombia and political violence seriously affected political rights (Londoño 2016). To give just one

example, according to the CNMH, 175 mayors, 543 members of local councils, 28 members of department assemblies, 16 congressmen and 3 regional governors were killed in the course of the armed conflict (see CNMH 2016).

For their part, anti-government guerillas have argued that one of the main causes of the conflict was the closing of political spaces for leftist forces. For this reason, the Peace Agreement incorporated an entire chapter focused on political participation which aimed to facilitate new democratic opportunities and mechanisms to overcome the limitations of the current political system. Among the most important items of the Peace Agreement with implications for electoral politics is the recognition of the FARC-EP as a political party and the granting to it of five seats in the Senate and House of Representatives, respectively, for two electoral periods, and in addition to those seats FARC-EP already held. Others include the creation of 16 new Special Transitory Electoral Districts for Peace (Circunscripciones Transitorias Especiales de Paz) for the House of Representatives elections, to facilitate the inclusion of victims from those areas highly disturbed by political violence; the approval of a Statute of Guarantees for the exercise of the political opposition; and the creation of a Special Electoral Mission (Misión Electoral Especial, MEE) whose mandate was to make recommendations to the government on political and electoral system reforms.

Unlike previous negotiation processes (with guerrillas in the late 1980s and 1990s, and with paramilitaries from 2003 to 2007) which focused on mechanisms of disarmament, demobilization and reintegration (DDR), the negotiation that took place with the FARC-EP included issues related to the structuring conditions of the conflict (such as political violence, the land problem, democratic governance, and the fight against illicit crops), as well as clear mechanisms of transitional justice. This agenda implied great transformations in the dominant power structure in Colombia and for this reason, the Agreement implied both: (a) the end of the conflict; and (b) building a stable and lasting peace. While the first could be achieved in the short-term, the second implied a long-term political commitment.

To introduce reforms in the deep structures of power in Colombia, as the Peace Agreement intended, the government needed to broaden the political support for it. The quest for political capital for the implementation of the reform agenda led the Colombian Government to bet on ratification through a mechanism of popular endorsement. This was provided for in the Agreement text on the government's insistence and in the face of criticism and scepticism from the FARC-EP. In fact, since 2013—that is, before ending the negotiation process—the government had already presented a bill that would allow a referendum to coincide with the 2015 local elections. This made clear that a direct democracy mechanism was the preference of President Juan Manuel Santos' administration, as opposed to FARC-EP's proposal to convene a National Constituent Assembly.

The government designed new legislation to lower the minimum turnout required for a valid plebiscite result, from 25 per cent to only 12.5 per cent—equivalent to little over 4.5 million votes. In this way it sought to overcome the main problem with mechanisms of direct democracy in Colombia, which has been very low electoral participation. Between 1978 and 2014 the average abstention rate was over 54 per cent for presidential elections and around 58 per cent for legislative elections (Registraduría Nacional del Estado Civil 2013).

In August 2016 the negotiation of the peace agreement was completed, and in September it was officially signed. The plebiscite was called for 2 October 2016 (President of the Republic 2016). By the end of that day, the Peace Agreement had been rejected, with 6.431 million votes (50.21 per cent) against and 6.377 million (49.78 per cent) in favour of the agreement (Registraduría Nacional del Estado Civil 2016; BBC News 2016). The outcome produced a great political shock since opinion polls had reflected strong support both for peace and for a positive vote. However, voting intentions had shifted during the course of the electoral campaign.

5.3. Timing and sequencing dilemmas

Why did the Colombian Government push for the adoption of the Peace Agreement by means of a plebiscite? No previous negotiation held in Colombia had been submitted to popular consideration. Negotiations with the guerrillas of the M-19 (1989), the EPL and the Quintin Lame Armed Movement (1991) were not put to consideration or endorsement of any kind, since it was understood that the Constitution gave powers to the President to advance peace negotiations. Colombian legislation does not require any specific procedure for conducting peace talks much less to ratify them; negotiations between President Álvaro Uribe with paramilitary groups in 2005 were not subject to any formal ratification. It is also a rare international practice that negotiations are endorsed; some 98 per cent of peace agreements are not submitted to popular consultation (Fisas 2017). It is clear then that neither the Colombian framework nor standard international practice led to this decision.

The main objective was to shield the content of the Agreement from criticism and grant popular support to the transformations it represented. The national government was well aware that going beyond discussion of DDR to embed elements of land reform, transitional justice based on international criminal law, and much else in the way of political and socio-economic change, was unprecedented. To introduce such changes in Colombian society, the Peace Accord requires political support beyond the negotiators. It has even been suggested that implementing a peacebuilding strategy would be 'useless . . . if you do not have a political consensus behind it' (Jaramillo 2014). That is, faced with a dilemma between efficiency and legitimacy, the Colombian Government prioritized the legitimacy that would give it popular support to lead the changes produced by the peace talks.

In this the Colombian Government showed an overconfidence in the level of popular support for peace. The opinion polls showed wide support; for example, the question asked annually by the Americas Barometer regarding support for a negotiated settlement had registered support of not less than 56 per cent in the previous 11 years (see Latin America Public Opinion Project). However, countervailing warnings were ignored by the government. First, President Santos' re-election in 2014, fought primarily on a platform of defending the peace negotiation, was achieved with great difficulty. The opposition candidate had won in the first round while pledging to review the negotiation process. This clearly showed electoral cleavages around the way to achieve peace. At elite level this was reflected in differences between those who considered it necessary to make trade-offs with FARC-

EP demands (led by President Santos) and those who would limit the scope to DDR issues (as in previous negotiations). Therefore, although support for peace predominated, there was less consensus on what kinds of concessions it entailed. Opposition leaders focused during their campaign on highlighting these differences, and were able to convince constituents to press for a new political agreement.

After the plebiscite result, the Santos administration met with opposition leaders and integrated many of their positions when renegotiating with the FARC-EP. Finally, a new agreement was announced on 12 November 2016 and was signed on 24 November 2016 in Bogotá DC, Colombia. The new peace agreement was not submitted to a new plebiscite, but was instead approved by Congress, where the government had great partisan majorities in favour of peace. The only party to oppose the new peace agreement was the Democratic Centre Party (Partido Centro Democrático). Although its leader, Álvaro Uribe—a former President of Colombia— enjoyed high personal popularity ratings, this party controlled only 20 per cent of Congress seats.

5.4. Findings and lessons

The first lesson from Colombia's experience is that the starting point matters and where a peace agreement is submitted to popular approval, this means prior levels of electoral participation and levels of enthusiasm to participate should there be new opportunities to do so. In the Colombian case, there was a long tradition of previous elections, but at the same time, high electoral abstention (Registraduría Nacional del Estado Civil 2013). The average electoral vote in Colombia is only 54 per cent for all elections (Registraduría Nacional del Estado Civil n.d.). Moreover, apathetic participation rates have also dogged attempts to introduce practices of direct democracy. Neither plebiscites nor the recall of local mayors have reached the necessary thresholds; hence the government's reduction in the threshold, as mentioned. The decisive plebiscite regarding the future of peace in Colombia only garnered a turnout of 37 per cent nationally; in the Caribbean Coast it was even lower, at 27 per cent (González 2016: 26). This should prompt deep reflection about the quality of citizenship in Colombia. But above all, it is a factor for consideration in the risk management of elections held in any country, and should be researched with care.

Second, electoral processes tend to breed greater polarization in society. When conflicts are long lasting, they generate important divisions among citizens. As is often pointed out, war unites, but peace divides: among the cleavages that elections bring to the fore are differing preferences about ending a conflict, and the tactics for doing so (military or negotiated, and if negotiated then the extent of concessions). Unfortunately, an election may occasion dissensus and mistrust while a peace process requires the very opposite.

Third, peace negotiations include extremely complex issues; many of the topics in Colombia's Final Agreement are the result of long discussions in search of alternatives. Transferring these discussions to an electoral scenario is very difficult because the logic of electoral marketing strategies consists in reaching voters through

messages that simplify the issues. Successful campaign messages may directly conflict with doing justice to the complexity of the post-conflict realities under discussion.

Fourth, election timing is of great importance. In Guatemala, three years elapsed between concluding the peace and holding an election; in Colombia, the gap between the signing of the Agreement (September 2016) and submitting it to the vote (October 2016) was very short. Given that most of the peace negotiation had been conducted in secret, there was scarce chance to develop public understanding about it. Even worse, the FARC's intentions to comply with the Agreement could not be demonstrated in so short a time, resulting in widespread distrust (in particular, public opinion was very sceptical of the prospects of demobilization and the surrender of weapons).

Fifth, the plebiscite's effect on the peace-building process has been noticeable. Even though in the short-term the political parties that had supported the negotiating strategy of President Santos remained united on the issue, in the medium term the political appetite for developing an ambitious reform agenda was in decline. The government was right to believe that a popular vote was going to allow greater support for these reforms, but not having the popular support they sought, their reformist ambition had to be limited to a more practical and realistic agenda. However, after two years of the Peace Agreement the main opposition party (Democratic Centre Party lead by Alvaro Uribe) won the Presidency with Ivan Duque and the future of the implementation of the Peace Accord remains uncertain.

In essence, Colombia's experience recommends greater care when convening a popular election as a mechanism for bringing a peace negotiation to its conclusion and approval, especially where a strong opposition leadership is in place. As comparative experience shows, the achievement of peace in itself is a social value that is important and fragile at the same time. In the dilemma between the effectiveness of agreements, which implies saving lives and protecting human rights, or endowing them with greater legitimacy, this case shows that the first variable must have a greater weight, and that legitimacy is achieved to the extent that the outcomes of the peace process become more visible to all members of society.

References

BBC News, 'Colombia referendum: Voters reject Farc peace deal', 3 October 2016, <https://www.bbc.com/news/world-latin-america-37537252>, accessed 19 December 2018

Centro de Memoria Histórica [National Centre for Historical Memory, CNMH], *BASTA YA! Colombia: Memories of War and Dignity* (Bogotá: CNMH, 2016), <http://www.centrodememoriahistorica.gov.co/descargas/informes2016/basta-ya-ingles/BASTA-YA-ingles.pdf>, accessed 19 December 2018

Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace, signed 24 November 2016, Bogotá, Colombia, <http://especiales.presidencia.gov.co/Documents/20170620-dejacion-armas/acuerdos/acuerdo-final-ingles.pdf>, accessed 19 December 2018

Fisas, V., *Negociar la paz con las FARC: Una experiencia innovadora* [Negotiating peace with the FARC: an innovative experience] (Bogotá: Icaria Editorial, 2017)

González, C., 'El resultado del plebiscito en cifras y mapas' [The result of the plebiscite in figures and maps], Instituto de Estudios para el Desarrollo y la Paz, 14 October 2016, <http://www.indepaz.org.co/el-resultado-del-plebiscito-en-cifras-y-mapas/>, accessed 19 December 2018

Jaramillo, S., 'The Transition in Colombia and the Process to Build a Territorial Peace', Speech delivered at the Harvard Carr Center for Human Rights Policy, 13 March 2014, <https://www.youtube.com/watch?v=8fvjib1xT5o>, accessed 19 December 2018

Latin America Public Opinion Project, Vanderbilt University, <https://www.vanderbilt.edu/lapop/colombia.php>, accessed 4 February 2019

Londoño, J., *Oposición Política en Colombia. Completar la democracia y garantizar la paz* (Bogota: Centro de Estudios en Democracia y Asuntos Electorales y Centro de Análisis y Asuntos Públicos, 2016)

Presidencia de la República [President of the Republic, Colombia], 'Por el cual se convoca a un plebiscito y se dictan otras disposiciones' [Decree by which a plebiscite is called and other provisions are dictated], Decree No. 1391, 30 August 2016, <http://es.presidencia.gov.co/normativa/normativa/DECRETO%201391%20DEL%2030%20DE%20AGOSTO%20DE%202016.pdf>, accessed 19 December 2018

Registraduría Nacional del Estado Civil [National Civil Registry], *Abstencionismo electoral en Colombia: Una aproximación a sus causas* [Electoral abstention in Colombia: An approximation of its causes] (Bogotá: Centro de Estudios en Democracia y Asuntos Electorales, 2013), <https://www.registraduria.gov.co/IMG/pdf/CEDAE_-_Abstencionismo_electoral_en_Colombia.pdf>, accessed 19 December 2018

—, 'Plebiscito 2 octubre 2016' [Plebiscite, 2 October 2016: Results], 2016, <https://elecciones.registraduria.gov.co/pre_plebis_2016/99PL/DPLZZZZZZZZZZZZZZZZ_L1.htm>, accessed 19 December 2018

—, 'Histórico de Resultados Electorales' [History of electoral results, Colombia], [n.d.], <https://www.registraduria.gov.co/-Historico-de-Resultados-.html>, accessed 19 December 2018

6. Elections in the Former Yugoslav Republic of Macedonia, 2014–2016
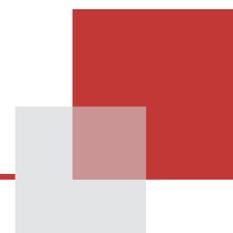
Peter Vanhoutte

6.1. Introduction

On 24 December 2012, a political crisis erupted in the Former Yugoslav Republic of Macedonia (FYROM) during the final vote on the budget, when police removed members of parliament (MPs) of the Social Democratic Party of Macedonia (SDSM), and journalists, from the plenary. After this, the budget was approved by the majority in absence of the opposition. These events resulted in a parliamentary boycott by the SDSM. In early 2013, a mediation effort was organized by the European Union, resulting in an agreement between the four main parties in parliament, including a substantive reform of parliamentary procedure. A parliamentary working group for the implementation of the agreement was established in September 2013 but collapsed one month later.

The increased political instability resulted in early parliamentary elections on 27 April 2014. This led to a government formed by the Internal Macedonian Revolutionary Organization–Democratic Party for Macedonian National Unity (VMRO–DPMNE) with 61 out of a total of 123 seats, and the Democratic Union for Integration (DUI) with 19 seats (Council of Europe Parliamentary Assembly 2017: 2). The opposition included SDSM with 34 seats and the Democratic Party of Albanians (DPA) with seven seats. The National Democratic Revival (NDR) and Citizens Option for Macedonia (GROM) had one seat each.

SDSM claimed that the elections were rigged and renewed their boycott of parliament. EU mediation to resolve the crisis continued until early February 2015, when the SDSM published a series of incriminating wiretapped recordings originating from the Administration for Security and Counterintelligence (*The Guardian* 2015). The tapes unveiled a massive illegal wiretapping operation in which conversations of opposition members, journalists, activists, diplomats and even ministers were recorded, allegedly implicating government and public officials in corruption, money laundering, election fraud and abuse of power. This led to

widespread protests. Renewed EU mediation efforts, supported by the United States, resulted in the Przino Agreement reached on 2 June 2015 (Przino Agreement 2015). On 15 July 2015, as part of an additional protocol (EU Commission 2015), new early elections were called for 24 April 2016.

The elections scheduled for 24 April 2016 were postponed to 5 June 2016, because key conditions included in the Przino Agreement, such as the cleaning of the voter register, media reforms and safeguards for a proper separation of party and state had not been met. On 7 April 2016, parliament was dissolved. In the weeks following the dissolution, political tensions increased considerably, resulting in an opposition boycott of the upcoming elections. According to a report from the Organization for Security and Cooperation in Europe, Office for Democratic Institutions and Human Rights (OSCE/ODIHR), '[On] 25 May 2016, the Constitutional Court declared the dissolution of parliament unconstitutional and the 5 June elections were cancelled' (OSCE/ODIHR 2017: 4). On 20 July, the four main political parties, mediated by the EU and the United States, signed a new agreement scheduling elections by the end of the year (EU Commission 2016). On 17 October 2016, parliament was dissolved and elections were called for 11 December that year.

6.2. Context analysis

The Przino Agreement

The starting point of the June 2015 Przino Agreement was that all further steps resulting from it would be taken by consensus among the signatory political parties. The agreement, however, did not include specific provisions on the composition and competencies of the transitional government, but left this discussion for later. It also remained unclear what would happen in case deadlines were not respected.

The Przino Agreement engaged only the four main political parties, leaving aside civil society organizations and all other political parties and minorities. Due to the narrow basis of inclusion, there would be insufficient pressure at critical stages of the process to keep all parties actively engaged.

From the start of discussions on implementation of the agreement, it became clear that VMRO–DPMNE focused on delaying tactics in the belief that after the next early elections, it would be possible to repeal the whole agreement.

The 15 July Protocol

The 15 July Protocol (EU Commission 2015) sought to correct some of the flaws in the initial agreement. It included details about the inclusion of SDSM members in the government, and provided both ministers and deputy ministers with the right to review and veto any decision. Additionally, 100 days before the elections, the Prime Minister would be replaced. The Protocol, however, missed the opportunity to include sanctions in case deadlines were not respected and underestimated the strength of the coalition in power. Failure at the outset to replace the whole government with a transitional team expressly focused on elections and key reform priorities, would soon result in a policy of obstruction by VMRO–DPMNE. Meanwhile its coalition partner the DUI would increasingly oppose the approach followed by VMRO–DPMNE, but did not quit the government.

In the Protocol, the four signatories agreed on the date for early elections without any further conditionality, except a rather symbolic reference to the fact that the parties would comply with the agreement in full and in good faith.

VMRO–DPMNE and the President

Gjorge Ivanov was proposed by VMRO–DPMNE as its candidate and was elected President in April 2014. His candidacy was heavily contested by the Albanian community, which insisted on a consensus candidate within the ruling coalition (Daskalovski 2014). With Ivanov, VMRO–DPMNE continued a de facto monopoly on all top positions whereby the President, the Speaker and the Prime Minister all belonged to the same party. In addition, the party managed to effectively control the judiciary at the level of public prosecutions and the courts, as well as the Constitutional Court where they controlled five out of the nine members (Vanhoutte 2015). The Przino Agreement did not interfere in the existing power monopoly, with the exception of creating an independent Special Prosecutor to investigate the wiretapping scandal.

On several occasions, the President did not manage to maintain a position above the political turmoil. He issued a blanket pardon on 12 April 2016 to all individuals either charged, under investigation or suspected of involvement in the wiretapping scandal, and without any prior consultation with the political parties or the Special Prosecutor (OSCE/ODIHR 2017). This resulted in a serious deterioration of the political climate. After the December 2016 elections, he would refuse for several months to mandate a new parliamentary majority—consisting of the SDSM, DUI, Alliance for Albanians Coalition and BESA Movement—for the formation of a new government (Radio Free Europe/Radio Liberty 2017).

Political parties, internal democracy and accountability

Systems of transparency and accountability are weakly developed. Political parties, and more specifically the way they are organized, are key to a functioning democratic system. Internal democracy of political parties is indispensable to garnering citizen support for programmatic issues, as well as for the selection of competent parliamentary candidates. In FYROM, the current closed list system does not empower candidates in this regard, but rather forces them to obey party orders without liaising much with their constituents.

Most political parties in FYROM rely on a weak internal democracy with a rather strong hierarchical structure. However, whereas representatives of the SDSM and the Albanian parties in the negotiations enjoyed a certain individual freedom in the decision-making process, this was not the case for VMRO–DPMNE. Even for minor decisions their representatives, including ministers and senior party members, had to consult the Party President prior to approval.

Although part of the Przino Agreement, a parliamentary inquiry committee, established in November 2015 to investigate the wiretapping scandal, failed because of obstruction by VMRO–DPMNE (Dimitrov, Jordanovska and Taleski 2016). Ministers and former ministers refused to appear as witnesses when requested by the inquiry committee; the then Prime Minister appeared but, in a closed session, refused to answer any questions. The failure of the inquiry did not result in a motion of no

confidence in the respective ministers and Prime Minister, nor any other parliamentary initiative.

Underlying political dynamics

FYROM, like most of the region, was originally an agrarian society with the characteristics of a clientelist system. Clientelism developed together with industrialization in the former Yugoslavia into an even more rigid patron-based system. As noted by Kitschelt et al:

> In *agrarian societies* . . . the patron extracts material resources and loyalty and, in return, offers a variety of hedges against uncertainties caused by the marketplace, nature (crop failures, catastrophes) and predatory politicians. In *societies with greater state and market incorporation and industrialization*, patron-client networks develop greater complexity and reach up into regional and national bureaucracy, while becoming more short-term, specific and interest-based. This sort of clientelism typically revolves around the organization of 'political machines' that lack the quality of personal trust.
> (Kitschelt et al. 1999: 49–50, emphasis in original)

Soon after World War II, Tito created a similar, successful clientelist system within the Communist Party of Yugoslavia. This was based on the nomenclatura, a social network of party cadres occupying all significant functions in society, to consolidate his power (Obradović 2013).

Before and during the negotiations on the implementation of the Przino Agreement, the clientelist system survived the end of Yugoslavia and was deeply embedded in the political system of the new independent state. As soon as VMRO–DPMNE came into power in 2006, with a new and ambitious team, they used the clientelist system to expand their power base in the rural areas. Offering jobs in the civil service, providing subsidies for farmers and increasing pensions in return for votes, all contributed to the success of the party.

An extremely well organized party, VMRO–DPMNE also had a gradual expansion strategy for the more industrialized urban areas. The notion often used for this strategy, derived from the USA in the interbellum, is 'machine politics'. At the time of the negotiations, the objective of VMRO–DPMNE appears to have been to use the clientelist system to control the citizens and crowd out all opposition. As in other parts of the region, however, politicians seemed to forget that clientelism is just one solution—an undesirable one at that—to the problem of interest-based representation (Piattoni 2001).

The Ohrid Framework Agreement (European Union 2001), which concluded an Albanian insurgency in 2001, resulted in a coalition spanning the largest party on the ethnic Macedonian side and the largest party on the ethnic Albanian side. Because of this de facto federalist approach, only one party on each side is effectively able to participate in forming the government; the smaller parties, unable to offer any direct benefits to potential voters, will tend to weaken over time. One way in which smaller parties overcome this problem is by joining the main parties in a coalition before elections. In 2016, the coalition VMRO–DPMNE included 20 parties, SDSM

included seven. The coalition approach, however, results in a weak cohesion and absence of strong programmatic alignment after elections. Devolving policy areas in which citizens have a personal stake (e.g. education, culture and media) from the national to the local level could be an effective way to empower smaller political parties in direct contact with their communities.

The role of the international community

Initially, the international community, including the European Commission, Members of the European Parliament, representatives of individual EU member states and the USA supported the implementation process of the Przino Agreement. By mid-November 2015, four months after the start of the implementation, VMRO–DPMNE started obstructing the negotiation process by using delaying tactics. Key decisions related to the separation of party and state and the functioning of media in the run up to elections were stalled. Instead, VMRO–DPMNE insisted on early elections as the concluding step in the Agreement. They were quite confident they could achieve a landslide victory (META News Agency 2016b).

According to the author's own estimates during the mediation process, it might take up to three years before successful elections would be feasible (i.e. three years for full implementation of the Przino Agreement). However, in January 2016 Johannes Hahn, the EU Commissioner for European Neighbourhood Policy, discussed with the political parties the feasibility of early elections in April 2016. The SDSM opposed this proposal and threatened a boycott, because even basic conditions, such as the revision of media legislation and the review of the voter register, were not feasible before this date. VMRO–DPMNE insisted on elections in April, followed by its coalition partner the DUI. The DPA had no preference. EU Commissioner Hahn supported the proposal from VMRO–DPMNE, and claimed that democratic elections were feasible even if one party were to refuse to participate (META News Agency 2016a). With this decision, the EU left behind the consensus principle, which so far had been respected by all four parties as a key principle for each step in the implementation of the Przino Agreement.

In early February, however, the EU had to recognize that more time was needed for a proper preparation of even early elections. Six months earlier, experts from the International Foundation for Electoral Systems (IFES) supporting the State Election Commission (SEC) did inform the political parties and the international community that up to 11 months would be needed for a proper review of the voter register. The decision by the EU to support early elections in April brought the further implementation of the Przino Agreement to a complete standstill. From then on, until the early elections which would finally take place in December 2016, the focus would be exclusively on elections, neglecting the other priorities included in the Przino Agreement.

6.3. Implementation challenges

Before engaging in elections, it was important to properly implement key issues included in the Przino Agreement such as the separation of party and state, including the restoration of a non-partisan judiciary; balanced and independent media

coverage; a thorough revision of the voter registry; adoption of a new Election Law; and establishment of a functioning State Election Commission (SEC). At the time of the December elections, the revision of the voter register was far from complete due to the absence of a proper nationwide civil registry, problems with street names and house numbers due to chaotic, opaque changes, and the existence of an unknown number of fake identification documents.

The SEC in its new composition included three independent experts, one of them as President of the SEC and one as Deputy President, alongside six political party representatives. Heavy internal disputes and politicized decision-making and obstruction, as well as a lack of transparency (often involving closed, instead of public sessions as legally required), made it impossible to meet deadlines—for the delivery of voter lists to political parties, the closing of the voter list, publication of the candidate lists and distribution of election materials to polling stations, for example (OSCE/ODIHR 2017).

In the pre-election period, the International Institute for Democracy and Electoral Assistance (International IDEA) introduced and deployed at the SEC the Electoral Risk Management (ERM) Tool (International IDEA 2015). Deployed in time, this tool could have resulted in an improved analysis and management of what was an unstable political environment. However, the International IDEA experts faced many challenges during their engagement with the SEC. In their assessment, the late decision on the final election date (of 11 December 2016) affected operational aspects of the election preparations, while the high level of internal politicization of the SEC undermined its key functional competencies; internal collaboration and effective decision-making and management were essential preconditions for successful implementation of the ERM project.

IFES experts supporting the SEC confirmed the problems with the functioning of the SEC and likewise identified politicization as the root cause of the observed problems in the organization (Vanhoutte 2017).

In the aftermath of the December 2016 elections VMRO–DPMNE remained the biggest party, with 51 MPs, but could not consolidate a parliamentary majority. In reaction, they blocked any alternative majority and mobilized protests. On 27 April 2017, these protests turned into a violent attack inside the parliamentary premises on the newly formed majority (i.e. one without VMRO–DPMNE) and the newly elected Speaker.

6.4. Findings and lessons

The international community often considers elections the ultimate solution for political conflicts, as would be the case in stable democracies. In an unstable environment, however, elections cause contradictions to be driven to the forefront, which can lead to a further deterioration of the situation. The holding of transitional elections must, therefore, always be conditional on achieving a certain minimal stability—as was envisaged in the initial Przino Agreement. It is of utmost importance to first define and carefully analyse all necessary conditions—to contribute to a solution of the underlying conflict—before engaging in elections. In a situation as complex as the one in FYROM, there is no such thing as a quick fix.

VMRO–DPMNE believed that early elections could be interpreted as a citizen referendum on accountability. An election victory would allow them to bypass further criminal prosecutions and return to 'business as usual' (Dimitrov, Jordanovska and Taleski 2016). The international community did not send out a warning that this was in contradiction with the purpose of elections in a democratic society and under internationally accepted values.

For successful resolution of deeply entrenched conflict, time is of key importance. The creation of a stable transitional government could have allowed elections to be postponed until all elements of the Przino Agreement were properly implemented—including urgent reforms, prosecution of those responsible for serious crimes and a process of reconciliation. Elections should be considered the final phase of this process.

Dealing with conflicts of a political nature, one should always start with a good understanding of the underlying causes of the conflict. In the case of FYROM, the roots of the conflict lay in a deeply entrenched clientelist system with characteristics of machine politics. Resolving the ongoing crisis is only possible by developing an integrated approach to tackling these underlying issues simultaneously.

The problems observed in the preparation of elections were mainly caused by the effective delaying tactics of one of the main parties involved. This, combined with a high level of politicization within the EMB (the SEC), resulted in serious flaws. The most effective reaction to delaying tactics is usually buying sufficient time to make further delays irrelevant. Where election management is politicized, and to help avoid dysfunction, an increased involvement of professionals (local and international) and civil society should be considered, with political parties restricted to a monitoring role. In addition, institutionalization of risk management in elections at the SEC, based on International IDEA's ERM Tool, could increase the confidence of citizens in the electoral process.

In presidential systems such as FYROM's, sufficient attention should be given to parliament's role in dealing with election outcomes and avoiding extended crisis where a president is reluctant to recognize the new political reality after elections.

Finally, it is worthwhile to consider a further redesign of the political system, paying attention to de facto federal characteristics. In FYROM's case, how can sustainable coalition governments be formed consisting of both ethnic Macedonian and ethnic Albanian parties, and recognizing the particular rights of all communities? There may be further ways these communities can be represented in the overall political system, for example by introducing a second community-related chamber. This could strengthen the role of smaller, community-based political parties and help reduce the number of broad, but rather weak coalition parties participating in elections. In addition, the introduction of an open list system would contribute to an increase of internal party democracy and accountability of MPs to the citizens.

References

Council of Europe, Parliamentary Assembly, 'Observation of the early parliamentary elections in "the former Yugoslav Republic of Macedonia" (11 December 2016)', 23 January 2017, <https://www.ecoi.net/en/file/local/1042696/1226_1485331022_macedonia.pdf>, accessed 11 December 2018

Daskalovski, Z., 'The 2014 Presidential and Parliamentary Elections in Macedonia: More of the Same,' *Contemporary Southeastern Europe*, 1/2 (2014), pp. 88–93, <http://www.contemporarysee.org/sites/default/files/papers/daskalovski_macedonia.pdf>, accessed 20 November 2018

Dimitrov, N., Jordanovska, I. and Taleski, D., *Ending the Crisis in Macedonia: Who Is in the Driver's Seat?* (Belgrade and Graz: Balkans in Europe Policy Advisory Group, 2016), <http://www.balkanfund.org/publib/biepag/Ending-the-Crisis-in-Macedonia-Who-is-in-the-driving-seat-web.pdf>, accessed 29 April 2019

European Commission, 'Agreement in Skopje to overcome political crisis', 15 July 2015, <https://ec.europa.eu/commission/commissioners/2014-2019/hahn/announcements/agreement-skopje-overcome-political-crisis_en>, accessed 20 November 2018

—, 'Agreement between the four political parties', 20 July 2016, <http://eeas.europa.eu/archives/delegations/the_former_yugoslav_republic_of_macedonia/press_corner/all_news/news/2016/2016-07-20_agreement_en.htm>, accessed 20 November 2018

European Union, 'Framework Agreement concluded at Ohrid, Macedonia,' 13 August 2001, <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/the_former_yugoslav_republic_of_macedonia/framework_agreement_ohrid_130801_en.pdf>, accessed 20 November 2018

The Guardian, 'Fears for Macedonia's fragile democracy amid "coup" and wiretap claims', 27 February 2015, <https://www.theguardian.com/world/2015/feb/27/fears-macedonias-fragile-democracy-amid-coup-wiretap-claims>, accessed 20 November 2018

International Institute for Democracy and Electoral Assistance (International IDEA), Electoral Risk Management Tool (ERM Tool), <http://www.idea.int/data-tools/tools/electoral-risk-management-tool>, accessed 20 November 2018

—, 'ERM Tool training in Skopje, Macedonia', 17 November 2015, <https://www.idea.int/news-media/news/erm-tool-training-macedonia>, accessed 20 December 2018

Kitschelt, H. et al., 'The quality of post-communist democracy: patterns of party competition, representation, and inter-party collaboration', in *Post-Communist*

Party Systems: Competition, Representation and Inter-party Cooperation (Cambridge: Cambridge University Press, 1999), pp. 43–94

META News Agency, 'Hahn: It does not matter if everyone participates, the election has to be democratic', 26 January 2016a, <http://meta.mk/en/hahn-it-does-not-matter-if-everyone-participates-the-election-has-to-be-democratic/>, accessed 20 November 2018

—, 'Survey by "Brima": VMRO–DPMNE are leading by double the advantage', 10 February 2016b, <http://meta.mk/en/survey-by-brima-vmro-dpmne-are-leading-by-double-the-advantage/>, accessed 20 November 2018

Obradović, M., 'From Revolutionary to Clientelistic Party: The Communist Party of Yugoslavia, 1945–1952', *East European Politics and Societies*, 27/3 (2013)

Organization for Security and Cooperation in Europe, Office for Democratic Institutions and Human Rights (OSCE/ODIHR), *The Former Yugoslav Republic of Macedonia: Early parliamentary elections, 11 December 2016*, Election Observation Mission Final Report, 28 February 2017, <https://www.osce.org/odihr/elections/fyrom/302136?download=true>, accessed 20 November 2018

Piattoni, S., *Clientelism, Interests, and Democratic Representation* (Cambridge: Cambridge University Press, 2001)

Przino Agreement, 2 June 2015, <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/news_corner/news/news-files/20150619_agreement.pdf>, accessed 20 November 2018

Radio Free Europe/Radio Liberty, 'Macedonia's President refuses to give opposition leader mandate for new government', 1 March 2017, <https://www.rferl.org/a/macedonia-president-refuses-to-give-oppositioon-leader-mandate-government/28341718.html>, accessed 20 November 2018

Vanhoutte, P., Interviews with Constitutional Court judges (confidential), Skopje, 23 October 2015

—, Personal correspondence with IFES experts (confidential), Email, 15 March 2017

7. Elections in Haiti (1987–2017) and prospects for modernizing the electoral system
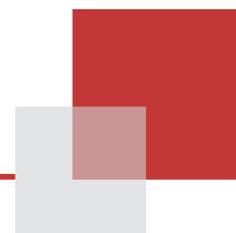
Woldson Bertrand

7.1. Introduction

In Haiti there has been direct universal suffrage, nominally at least, since 1950. The Constitution in force (Haiti's Constitution of 1987 with Amendments through 2012) establishes a 'staircase' for the renewal of elected officials by direct universal suffrage. Firm provisions on timing and sequencing reflect the need to ensure citizens' control of the leadership and the effectiveness of public policies; this following 29 years of authoritarian rule (under François Duvalier 1957–1971; Jean-Claude Duvalier, 1971–1986).

Yet citizen control, as designed by the framers of the Constitution of 1987, has at various points been severely undermined by post-electoral turmoil and non-compliance with the deadlines set in the Constitution for renewing the terms of office of elected officials. Indeed, election deadlines are rarely complied with in Haiti. The unrest resulting from the bitter struggle to access political power often negatively impacts the credibility of the electoral body and acceptance of election results. Handover of power has often been painful, while many view the institution responsible for organizing elections as being subservient to the executive power and greatly influenced by international interests and national economic forces (Huu Dong and Recondo 2004; Kolbe and Muggah 2016).

7.2. Context analysis

Alternation of power through credible elections and within the deadline set out by the Constitution is the most important challenge facing Haiti's political system. Looking back at Haitian elections over the last 30 years it is clear that—except for the first post-dictatorship elections that took place under military regimes—the transitional governments are the only ones to have managed to organize elections and maintain stability. In fact, only three elected presidents handed over power to another

elected president in this period: President Aristide once in 1996; and President René G. Preval twice, in 2001 and 2011 (Taft-Morales 2015: 2–3).

Following the frequent reappointments of electoral management bodies (EMBs) in Haiti (see CEP n.d.a), the executive power that won the 2010 general elections was unable to complete the electoral process nor to facilitate the handover between two elected officials in 2016. Furthermore, the post-electoral crisis triggered by the allegation of fraud that followed the presidential election of October 2015 led to the rejection of the results and the dismissal of the Provisional Electoral Council (*Conseil électoral provisoire*, CEP) (Kolbe and Muggah 2016). In May 2016, Jocelerme Privert (President of Senate) was installed as Interim President and he appointed the new Provisional Electoral Council (CEP). The CEP scheduled the new presidential elections for 9 October 2016. However, due to Hurricane Matthew which struck Haiti on 4 October, the election date was moved to November (Johnson 2016; Charles 2016). The election was won by Jovenel Moïse, who took office in February 2017.

7.3. Timing and sequencing dilemmas

National versus sub-national elections first

Haiti has had three transitional civil governments under which general elections were organized: in 1989–1991, in 2004–2006, and in 2016–2017. In 1990, the CEP had prioritized organizing the presidential, legislative and local elections. In 2006, the presidential and legislative elections were held prior to the local elections. In 2015, the CEP decided to organize the presidential and municipal council elections during the second round of the legislative polling.

The terms of the elected officials vary from one function to the other as follows. The President of the Republic has a five-year term, members of the Senate have a six-year term, and members of the Chamber of Deputies and the local authorities' elected officials have a four-year term. The Senate is renewable per third every two years (1987 Constitution: articles 134–1, 95–3 and 92). Therefore, under the President's five-year term, at least four elections should be organized—two elections for renewing a third of the Senate, one election for the renewal of the Chamber of Deputies, and one election for the renewal of different local authorities.

Choice of electoral administration

At the beginning of what is viewed as the democratic era, the Haitian people decided to break with the governmental EMB and establish an independent one.

The 1987 Constitution sets the procedures for appointment of the Provisional Electoral Council (*Conseil Electoral Provisoire*) mandated to administer transitional elections until a Permanent Electoral Council (*Conseil Electoral Permanent*) is in place. The former institution, consisting of nine members selected by the three powers of the state for a nine-year term, is renewable by a third every three years (Sample n.d.: 5–7; OAS and CARICOM 2010/2011: 13–16). Thirty years after the initial constitutional arrangement, and despite the fact that the 2012 constitutional amendments have simplified the appointment process by suppressing the role of the

departmental assemblies as a designation body (Constitution, Transitional provisions 73–74), the Haitian state had yet to establish a permanent body.

Under the Constitution, the CEP has operational powers to organize elections, and the judicial powers for dealing with any electoral dispute that might arise during the electoral process. However, the framers of the Constitution did not propose a way of achieving an internal separation of powers. Therefore, between 1987 and 2015, the electoral law defined only operational tasks for the nine members of the Electoral Council.

EMB functions have also been dispersed between a number of actors (Delva 2012). Since the 2006 elections, when electoral courts were established with the support of the international community—through the United Nations Stabilization Mission in Haiti (MINUSTAH)—these courts have also been entrusted with judicial powers (UNDP 2018: 27). It is worth noting that the composition of these courts has evolved; while at first electoral staff were predominant, today they are a minority. At local level each departmental or municipal electoral dispute bureau comprises three members: one lawyer, one judge, and one BED (Departmental Electoral Bureau) or BEC (Municipal Electoral Bureau) member. The National Electoral Dispute Bureau (*Bureau de contentieux électoral national*, BCEN) comprises one judge, two lawyers, and two electoral advisors. Electoral judges are drawn by lot in accordance with the provisions set out in the 2015 Electoral Decree (CEP n.d.b; International IDEA n.d.).

Accommodative measures

The Constitution of 1987 had excluded high officials of the Duvalier regime from managing public affairs for a 10-year period, meaning they were not allowed to hold high administrative posts nor to run for office. However, this measure was not accompanied by the establishment of a truth and justice commission. Therefore, while isolated cases of public prosecutions against former torturers possibly discouraged some beneficiaries of the Duvalier regime from returning to the political stage, national reconciliation could not take place. To this day, substantive political debate is still overshadowed by pro- or anti- orientation towards the Duvalier regime, or the practices set up by the left-wing Fanmi Lavalas party (see Immigration and Refugee Board of Canada 2017).

Local versus international ownership

A mere observer during the 1987 and 1990 elections, the international community got actively involved in the electoral process in 1994 when the UN Mission In Haiti mandate was revised by the Security Council decision (United Nations 1994). Its roles therefore gradually evolved from observing elections to establishing a technical and logistical partnership that proved extremely helpful in past elections, as well as during the 2015–2017 cycle:

> The project provided needed technical assistance (TA), services and funding that supported the provisional CEPs to better manage the elections in the midst of a prolonged and contentious electoral process. The engagement and improvements supported increased the credibility of the CEP and the validity of the election results, something that would have been difficult for the CEP to achieve alone in the highly politicized context and climate of pervasive mistrust.
> (Final Evaluation Report of the UNDP 'Support to the Electoral Process in Haiti Project' 2018: 2)

In 2016, the CEP made significant progress in assuming ownership and took advantage of the international community's financial withdrawal to strengthen its political and technical authority. Many technical innovations were put in place to enhance the credibility of the electoral process and publish the results within a shorter timeframe. The online registration of political parties and candidates, the online registration of proxies and electoral observers, the unique role of each actor in the electoral process, and the recruitment of proxies by drawing of lots based on lists of names provided by civil society organizations, are all examples of innovations that strengthened the credibility of the democratic process.

Peacekeeping versus security sector reform

The UN's peacekeeping mission (MINUSTAH) drew to a close in November 2017. Despite the mixed results of the 13-year-long deployment, the last elections demonstrated that Haiti's National Police (*Police nationale d'Haïti*, PNH) has developed the necessary capacities to ensure security at election time (OIOS/IED 2016: 28). The absence of the UN peacekeepers as an armed deterrent will be broadly compensated by the neutrality of the PNH in relation to the conflicting political interests at stake. Any attempt to manipulate police structures, however, risks the obvious failure of security system reforms that have been achieved with UN support. The remobilization of Haiti's Armed Forces (*Forces armées d'Haïti*, FADH) could impact the population's sense of safety and electoral participation. Nevertheless, the experience of the 2016 complementary electoral process has demonstrated that the electoral staff's ethics, independence, and professionalism equally played a role in the security arrangements that encouraged citizens' participation in the elections (CEP 2017).

7.4. Implementation challenges

With respect to recent elections, our analysis at the Haitian Electoral Institute (*Institut électoral haïtien*, InsEH) is that the electoral steps or operations requiring more stringent control were as follows:

Recruitment of polling stations' officers: The recruitment process for the three officers at each polling station, whose names are provided by the political parties after drawing of lots conducted by the Municipal Electoral Bureau (BEC), in practice exacerbates the inequality between the political parties. Not all political parties have the capacity to propose names for all the polling stations' officer functions for which they were drawn. There is anecdotal evidence that the unfilled positions are systematically assigned to political parties that are close to the government.

Accreditation of proxies and observers: The first round of the legislative elections conducted on 9 August 2015 was dubbed 'the proxies' elections', as more than 900,000 accreditation cards were delivered to political parties—this out of 1.6 million valid ballots. Some political parties were accused of giving away their accreditation cards to nationwide parties, especially to those that are close to the ruling power. There were concerns that some election observation bodies bargained their services with political parties, harming the proper conduct of the election in some polling stations through partisan election observation. The 2015 report of the Independent Commission for Electoral Assessment and Audit (*Commission indépendante pour l'évaluation et la vérification électorales*, CIEVE) revealed a plethora of votes reported in the minutes, which also casts a shadow on the actual number of voters, the choice of voters, and the reliability of the results published (CIEVE 2016; OAS 2016: 5–11).

The second round of the legislative elections (during which the first round of the presidential elections was also conducted) unfolded in a more peaceful atmosphere. Nevertheless, at the end of polling day some opposition leaders reported that on counting the minutes had been substituted, with the complicity of polling station officers. The collection of the electoral materials at the end of the day was also cause for concern, as were allegations of substitution during transport. In its report, the CIEVE indicated that, for the first round of the October 2015 presidential election, 448,000 untraceable ballots had been identified, that is, 29 per cent of the valid ballots. Additionally, the report indicated that 180,250 false national identification numbers had been identified out of the 1,112,600 traceable ballots (CIEVE 2016: 6).

Lack of transparency of the Tabulation Centre's procedures: Both the candidates running in the elections and the election observers have continually demanded to be informed about the procedures in force at the Tabulation Centre. However, all CEPs, from 2005 until 2015, deliberately omitted to share this information, therefore perpetuating the mystery around the ballot counting process.

A 'fuzzy' electoral dispute system: Electoral justice in Haiti is rendered through three types of electoral courts or electoral dispute bodies, namely: the Municipal Electoral Dispute Bureau (*Bureau du contentieux électoral communal*, BCEC) in each municipality; the Departmental Electoral Dispute Bureau (*Bureau du contentieux électoral départemental*, BCED) in each department; and three chambers of the National Electoral Dispute Bureau (*Bureau de contentieux électoral national*, BCEN). The lack of implementation procedures and detailed guidelines gave the electoral judges in 2015 a great latitude in interpreting the Electoral Decree. Some judges of these dispute bodies (some of whom were electoral advisors) have been widely condemned for corruption, influence peddling and complacency as a result of their decisions. Some candidates in the election have joined in these denunciations, claiming to have given money to certain electoral judges, either directly or through third parties.

7.5. Findings and lessons

The electoral process initiated in 2015 and completed in 2016–2017 positively impacted the Haitian electoral system, which came out stronger. The strengthened

authority of the CEP, national funding of the elections and the modernization of the electoral process enabled the Haitian people to elect a president with the necessary legitimacy to implement his vision, and therefore to avert further political crisis. The success was welcomed by the international community. The prevailing support of the national public opinion places the CEP in a position of authority to introduce further necessary reforms.

First and foremost, among the improvements outstanding, appointments to the CEP should be based on professional criteria, not political ones. The CEP's sustainability will be guaranteed only if its members are selected through a transparent procedure and in accordance with criteria that emphasize professionalism and integrity. Selecting public figures without any political affiliation, supported by an open process on civil society and regional communities, might be a strategy to prevent an outcry such as that against the CEP in 2012.

Second, the CEP's institutional memory needs to be preserved. One of the first priorities should be the modernization of archives, even prior to making any decision regarding the plethora of electoral staff. The digitization of the decisions made by the electoral dispute bodies, compiling all texts produced by the CEP since 1987, and organizing focus group discussions on best practices are some of the initiatives that could be launched.

Political parties also need to be modernized. Between 2005 and 2015, the number of registered political parties rose from 55 to 192. The 162 parties that actually ran candidates for the 2015 elections are the product of a few like-minded political parties. The 2016 complementary elections were an opportunity to explore pathways for modernizing the electoral process, but no effective measures were ever taken to overcome this duplication and over-proliferation of political parties. The law on political parties and the electoral law should address the issue while complying with the right to freedom of association.

Given that the Haitian context is marked by accelerating mass impoverishment and deteriorating living standards, it is worth reflecting deeply on the costs of elections in the country, and strategies for reducing them. These strategies should consider the CEP's functions, the conduct of elections, and political parties' and candidates' electoral campaign expenses. To ensure compliance with the electoral spending limits set out by law, the CEP should establish effective control mechanisms and set up a dedicated team. International technical assistance should support the CEP in this, by seeking solutions adapted to the Haitian context and informed by comparative analysis.

Finally, respect for the people's vote and the publishing of results within a reasonable time are two issues that should urgently be addressed by the CEP. Despite the progress made in detecting irregularities since the 2006 elections, with the establishment of the Voting Tabulation Centre (*Centre de tabulation des votes*, CTV), the CTV is not yet able to publish the election results within an acceptable period (in view of the tensions that arise while awaiting the outcome). The CEP of 2016 made considerable investments that enabled it to shorten the period for counting minutes processing (by the CTV) and to publish provisional results within 10 days for the rerun of the complementary presidential and legislative elections. Some voices demand the preservation of the CTV and/or its decentralization to the regions; others

demand a total modification of the electoral system with the introduction of the electronic ballot box. The CEP should therefore assess the different options available that ensure both reduction of fraud and shorter timeframes for publishing results.

References

Charles, J., 'Haiti's hurricane-delayed elections now set for Nov. 20', *Miami Herald*, 14 October 2016, <https://www.miamiherald.com/news/nation-world/world/americas/haiti/article108252197.html>, accessed 19 February 2019

Conseil électoral provisoire (CEP) [Provisional Electoral Council], *Elections 2016-2017 : Reformes et Acquis, Perspectives de modernisation du système électoral haïtien* [Elections 2016–2017: Reforms and case law, perspectives on modernization of the Haitian electoral system], December 2017, <https://drive.google.com/file/d/1pdPXRA6936Git4yuUbTPupY9NwRk5RCN/view>, accessed 20 February 2019

—, [n.d. a] *Historique* [History] webpage, <https://www.cephaiti.ht/historique.html>, accessed 18 February 2019

—, [n.d. b] *Décret electoral* [Electoral decree] webpage, <https://www.cephaiti.ht/Decret-electoral.html>, accessed 18 February 2019

Commission indépendante pour l'évaluation et la vérification électorales (CIEVE) [Independent Commission for Electoral Assessment and Audit], 'Elections de 2015' [Report on the Elections of 2015], 29 May 2016, <http://www.ijdh.org/wp-content/uploads/2013/05/Rapport_CIEVE.pd http://www.ijdh.org/wp-content/uploads/2013/05/Rapport_CIEVE.pdf>, accessed 19 February 2019

Delva, G. J., 'Haiti constitutional amendments finally take effect', Reuters, 20 June 2012, <https://www.reuters.com/article/us-haiti-constitution/haiti-constitutional-amendments-finally-take-effect-idUSBRE85J00R20120620>, accessed 18 February 2019

Haiti, Republic of, Constitution of 1987 with Amendments through 2012, <https://www.constituteproject.org/constitution/Haiti_2012.pdf?lang=en%20Articles%20pp%2026,28,38>, accessed 18 February 2019

Huu Dong, N. and Recondo, D., 'L'ONU, artisan du processus electoral' [The UN, craftsman of the electoral process], *Critique international* , 24 (2004), pp. 159–76, <https://doi.org/10.3917/crii.024.0159>

Immigration and Refugee Board of Canada, 'Haiti: The Fanmi Lavalas political party, including its leaders, political platform, geographic reach and activities; its relationship with the government; whether the party has ties to criminal gangs' [Document HTI105745.FE], 10 February 2017, <https://www.refworld.org/docid/58b428214.html>, accessed 19 February 2019

International IDEA, Electoral Management Design Database, Haiti, [n.d.], <https://www.idea.int/data-tools/country-view/125/54>, accessed 19 February 2019

Johnson, J., 'Elections on Hold in Haiti After Hurricane Matthew', Center for Economic and Policy Research (CEPR) blog, 13 October 2016, <http://cepr.net/blogs/haiti-relief-and-reconstruction-watch/elections-on-hold-in-haiti-after-hurricane-matthew>, accessed 19 February 2019

Kolbe, R. A. and Muggah, R., 'Assessing Haiti's Electoral Legitimacy Crisis – Results of a 2016 Survey', Igarape Institute, Strategic Note 21, February 2016, <https://igarape.org.br/wp-content/uploads/2016/03/NE21AssessingHaitisElectoralLegitimacy crisis.pdf>, accessed 18 February 2019

Organization of American States (OAS), Electoral Observation Mission Report, Observation of the Independent Electoral Evaluation and Verification Commission (CIEVE) Republic of Haiti, 1 August 2016, <http://www.oas.org/fpdb/press/haiti-rapport-anglais.pdf>, accessed 19 February 2019

OAS and the Caribbean Community (CARICOM), Report of the Joint Electoral Observation Mission, Presidential and Legislative Elections, Republic of Haiti, 28 November 2010 and 20 March 2011, OEA/Ser.G CP/doc.4792/12 (Washington DC: Organization of American States, 2011), <http://www.oas.org/es/sap/deco/moe_informe/Haiti_Nov2010_Mar20_2011_e.pdf>, accessed 12 March 2019

OIOS/IED, 'Evaluation report, Evaluation of the Results of National Police Capacity-Building in Haiti, Côte d'Ivoire and the Democratic Republic of the Congo by United Nations Police in MINUSTAH, UNOCI and MONUSCO', 29 September 2016, <https://issat.dcaf.ch/download/111766/2028218 / 1475613336_1_IED-16-014.pdf>, accessed 19 February 2019

Sample, K., 'Electoral Challenges in Haiti from a Comparative Perspective', Developed for the Club de Madrid's High-Level Delegation to Haiti, [n.d.], <http://www.clubmadrid.org/wp-content/uploads/2017/10/Electoral_Challenges_Haiti_ENGLISH.pdf>, accessed 18 February 2019

Taft-Morales, M., 'Haiti Under President Martelly: Current Conditions and Congressional Concerns', Congressional Research Service Report R42559, 23 December 2015, <https://fas.org/sgp/crs/row/R42559.pdf>, accessed 18 February 2019

UNDP Haiti, 'Support to the Electoral Process in Haiti' Project, Final Evaluation Report, February 2018, <https://erc.undp.org/evaluation/evaluations/detail/9167>, accessed 18 February 2019

United Nations Security Council Resolution 940 [On authorization to form a multinational force under unified command and control to restore the legitimately elected president and authorities of the government of Haiti and

extension of the mandate of the UN mission in Haiti], 31 July 1994, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N94/312/22/PDF/N9431222.pdf?OpenElement>, accessed 19 February 2019

8. General elections in Lesotho, 1965–2017
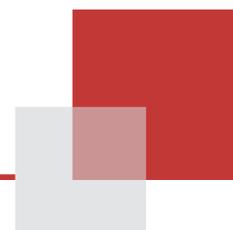
Victor Shale

8.1. Introduction

Lesotho has conducted a total of 10 general elections between 1965 and 2017. According to the legal framework, the elections should generally follow a five-year cycle. However, this cycle has been interrupted several times by political upheavals of varying severity. These include a 16-year period of one-party rule (1970–1986), seven years of military dictatorship (1986–1993), an election-related violent conflict in 1998, and two premature dissolutions of parliament in 2014 and 2017. Since the end of military rule, elections in Lesotho have been held in 1993, 1998, 2002, 2007, 2012, 2015 and 2017. All these elections were either preceded or followed by latent or manifest conflicts which, as Weisfelder (2015: 50) notes, have led to 'episodes of coercive regional diplomacy or military intervention to maintain order or sustain the elected government'. These election-related conflicts were triggered by real or perceived irregularities in the voter registration process, inadequacies of the electoral system, partiality of the electoral management body (EMB), lack of campaign and party funding, political intolerance, abuse of state resources, and politicized state institutions, among others (Shale 2017).

Hence, Lesotho has been affected by problems regarding the timing and sequencing of elections ever since its attainment of independence in 1966. Its electoral history demonstrates a glaring weakness in the triad of elections, constitutionalism and political stability that is vital for the resolution of the country's political problems and consolidation of democracy (Makoa 2004: 93). This case study does not provide a blow-by-blow account or exhaustive interpretation of this history but provides some details regarding electoral timing and sequencing dilemmas and how they were addressed.

8.2. Context analysis

The first multiparty elections, held in 1965, were won by the Basotho National Party (BNP) which took over power from the United Kingdom at independence on 4

October 1966. The BNP was formed in 1959 as a splinter party from the Basutoland Congress Party (BCP). Relations between the two parties were severely strained from the beginning. Subsequent elections, due to be held on 27 January 1970, were cancelled by the BNP, which denounced alleged irregularities and suspended the constitution (Southall 1994: 110; Weisfelder 2015: 52). This plunged Lesotho into de facto one-party rule. The BCP leadership and many of their members were forced to flee the country. In September 1985, elections that had been organized by the BNP regime were boycotted by opposition parties, which allowed the BNP to claim an unopposed victory. Ironically, the BNP government was overthrown in January 1986 by the army, which had backed the BNP during its 16 years of unconstitutional rule. The military ruled until 27 March 1993 when Lesotho held new multiparty elections after a 23-year hiatus in the democratic process.

Pervasive election-related conflicts in Lesotho are symptomatic of underlying socio-economic and political dynamics. For example, there is a causal link between the pre-independence political tensions between the BNP and the BCP and the abortion of the 1970 electoral process. The animosity between the BNP and BCP has never been adequately addressed since return to multiparty democracy in 1993. This extends to offshoots of the BCP, which has experienced multiple splits since independence and given birth to the United Democratic Party (1967), the Sefate Democratic Union (1994), the Lesotho Congress for Democracy (1997), the Basutoland African Congress (2002) and the Basotho-Batho Democratic Party (2006). Its offshoots have also further split between 2001 and 2016.

Economically, the landlocked position of Lesotho within South Africa makes it entirely dependent on the latter. The shrinkage of opportunities in South African mines has resulted in decreased sources of income in Lesotho; as a result, political activities have become a pre-eminent avenue for income generation and elections have followed 'winner-takes-all' dynamics, often to the detriment of well-thought-out timing and sequencing considerations.

The period between the 1998 and 2002 elections is useful for examining these considerations in a post-political crisis context. It is unique in terms of the pre-election developments, the timing and sequencing dilemmas, the transition process and the key actors. In 1997, the governing BCP suffered a split when its leader Ntsu Mokhehle crossed the floor in parliament with other members of parliament (MPs) and formed the Lesotho Congress for Democracy (LCD). With a majority of 40 MPs in a 65-seat parliament, the LCD took power, relegating the BCP to the opposition benches with 24 seats, with the Sefate Democratic Union holding the remaining seat (Sekatle 1997). Floor crossing is legally provided for within the Lesotho parliamentary system but, as can be expected, it is abhorred by the major parties, which have suffered splits since 1993. Therefore, the 'illegitimacy' of the LCD's floor crossing (and by extension, of the party itself) became a rallying point around which the BCP and other opposition parties mobilized anti-LCD protests and it became a major campaign issue during the 1998 elections.

The LCD nevertheless won 79 out of 80 constituencies during the 24 May 1998 elections. This victory triggered post-election opposition protests, as well as unprecedented violence and destruction of property as opposition parties could not accept the results, claiming they were rigged. The state security agencies such as the

army and the police were sucked into the political divide and participated actively in the conflict instead of maintaining the rule of law. The election-related violence was stopped in September 1998 by a military intervention on the part of the Southern African Development Community (SADC) which brought together the South African National Defence Force (SANDF) and the Botswana Defence Force (BDF). The government's and SADC's justification for this military intervention was rejected by opposition parties, who described it as an illegal invasion. Makoa (2004: 89) notes that the military action was also criticized by the people and media in Botswana and South Africa. This put pressure on SADC to find a quick exit strategy from Lesotho, and Makoa observes that this made a negotiated settlement among the belligerents an urgent priority.

8.3. Timing and sequencing dilemmas

Choice of electoral administration

The Independent Electoral Commission (IEC) was established in 1997, shortly before the ill-fated 1998 elections, and replaced the former Office of Chief Electoral Officer and the Constituency Delimitation Commission. The short time between its foundation and the 2002 election did not allow the IEC to complete its transition into a new EMB. Consequently, even though Lesotho had made a conscious choice to move from a government-type EMB to an independent one, the institutional capacity of the IEC stood in question. The results of the 1998 election (its first), raised serious concerns among opposition parties over the credibility of the IEC and its competence to prepare for the next elections.

Local versus international ownership

As a way of containing further political polarization, a political dialogue took place under the supervision of the South African Safety and Security Minister, Sidney Mufamadi. Through this dialogue, an agreement was reached that there was a need for political and electoral reforms. Pursuant to this agreement, the Parliament of Lesotho passed the Interim Political Authority Act 1998, a vehicle through which the reforms process and planning for the next elections would be pursued. Section 4 of the act established the bipartisan Interim Political Authority (IPA) whose mandate was to facilitate and promote the preparation for the holding of the next general elections within 18 months after its establishment (Government of Lesotho 1998). The IPA comprised two representatives of each of the 12 political parties that had participated in the 1998 elections. The crucial weakness of this composition was that there was an imbalance between the 22 opposition representatives and the two ruling party representatives. This did not make for a suitable arrangement for constructive dialogue (Elklit 2002).

The IPA process was driven and owned by local stakeholders, with long-term international involvement in the form of guarantors from the SADC countries (Botswana, Mozambique, South Africa and Zimbabwe). However, both the IPA and the government tended to rely excessively on the external guarantors instead of engaging with local actors to resolve conflicts (Matlosa 2003). This is not difficult to fathom given the geographical position of Lesotho, which had enabled apartheid

South Africa to exploit Lesotho as a captive economic market and reserve of labour (APRM 2010: 38). South Africa's self-interest in intervening in Lesotho extends beyond the apartheid period. In 1994 Prime Minister Mokhehle sought South Africa's support to be reinstated after his being overthrown by the King. In 1998 Prime Minister Mosisili also solicited South African and Botswana armies' intervention to thwart his ouster from power. Similarly, in 2014 Prime Minister Thabane employed South African security protection from political opponents. South Africa intervened in all cases, but it has never been interested in addressing the causes of the undemocratic episodes that led to its interventions to ensure they never recur.

Most convenient versus most adapted electoral system

Given the zero-sum nature of Lesotho politics, the electoral system design had to ensure a balance between convenience and adaptability of the system. The IPA and government could not agree on this balance. The IPA pushed for a mixed member proportional (MMP) system, which includes 80 first-past-the-post (FPTP) and 50 proportional representation (PR) seats, while the government sponsored the multi-member majoritarian (MMM) system with 80 FPTP and 40 PR seats (Elklit 2002; Matlosa 2003). The government did not have sufficient voice in the IPA but held overwhelming sway in the legislature.

After protracted negotiations including debates on the definition of the word 'consensus' in its state of procedure and decision-making (Mopheme 1999), both sides had to make concessions on a 120-member legislature, with 80 seats allocated to single-member constituencies and 40 seats 'allocated as compensatory seats' (Elklit 2000), giving a seat allocation formula ratio of 80:40. Determination of PR seats would be based on total FPTP votes cast. It was further agreed that the model would be reviewed with a view to adjusting it to a 50:50 ratio for the following 2007 elections. The reason provided for this phased approach was that time was needed to redefine electoral boundaries. As such, convenience (the government's position) was chosen over adaptability (the IPA's position). In the event, the seat allocation formula has not been revisited since 2002. Some of the challenges facing the country at present are attributable to this failure to revisit the electoral model to ensure that it strikes a balance between convenience and adaptability.

8.4. Implementation challenges

Implementing the road map to elections following the May 1998 crisis was not easy for many reasons. First, the IPA restricted its attention to the issue of electoral timing and ignored the sequencing aspects of the problem. The IPA also did not pay adequate attention to the longer-term factors that led to the 1998 political crisis in the first place. For example, it was clear that since independence, the security problems as well as other pending historical and political issues had not been addressed. This is where the IPA ought to have started. As a consequence of a narrow focus on changing the electoral system instead of comprehensive reforms, the same problems that led to the 1998 conflict resurfaced again soon after the 2002 elections and continue to exist to date.

Additionally, the 18-month timeframe for holding elections after the establishment of the IPA in December 1998 was oblivious to the scale and technicality of the task. Parties were impatient to achieve political stability and some wrongly assumed that, since the conflict appeared to turn on election results, holding fresh elections swiftly would solve the problem. For their part, opposition parties which dominated the IPA exerted relentless pressure for early elections in the hope that they would reverse the electoral gains of the governing party through the new electoral system. No one anticipated that the IPA negotiations on the electoral system models and on voter registration alone would take more than 18 months.

There were also some inherent limitations with the IPA's design which impacted on implementation. For instance, the Interim Political Authority Act 1998 had specific binding provisions on government and all parties that were members of the IPA, but placed no such obligations on parliament. Therefore, because the governing party was outnumbered in the IPA as stated above, the only way it could fight the IPA decisions it did not like was to use its large numbers in parliament to either delay or reject them. Therefore, losing decisions in the IPA was not the end for the ruling party as it had another mechanism to assert its preference. Second, progress on decision-making about reform issues such as the electoral system was hampered by sectional interests involved in the IPA process. Some of the political parties had lost elections in 1993 and in 1998 and an argument can be made that they had a slim chance, if at all, to be elected to parliament in the next elections. As Matlosa (2003: 90) aptly notes, these parties and individuals often filibustered in the IPA dialogue because they benefited financially.

The IPA-led electoral reform process nonetheless yielded both short- and long-term results. In the short term, it brought about relative political stability before and after the 2002 elections. During the 2002 elections, 10 parties gained seats in parliament because of the new MMP electoral system. The 2002 elections were widely seen as credible by local and international election observers. The parties did not complain about the IEC because the new electoral system had paid dividends by enabling more parties to enter parliament. Contrary to perceptions prior to and surrounding the 1998 election, then, it became clear that deficits of representation in parliament had been due to a faulty electoral system rather than a lack of independence on the part of the IEC. This also demonstrated a clear link between perpetual election-related conflicts in Lesotho and the electoral system. Once a new system that accommodates popular vote was introduced, elections were for the first time peaceful.

However, long-term results also include unintended negatives. Failure to fully explore a more suitable electoral system beyond the above-mentioned 80:40 MMP formula has led to inconclusive election results. These, in turn, have led to the formation of coalition governments and political instability which has warranted SADC interventions on several occasions. Neither the electoral system nor the legal framework have adequate provisions to deal with coalitions. Consequently, coalition governments that have been formed since 2012 have not lasted more than three years, forcing the country to hold three national elections (in 2012, 2015 and 2017) within five years. This means that the timing and sequencing issues remain a

challenge as the IEC and all electoral stakeholders hardly have time to reflect and plan accordingly.

8.5. Findings and lessons

While in Lesotho periodic elections are guaranteed, their value for deepening the country's democracy remains very much in question. The underlying historical, political and economic challenges that have triggered electoral disputes since 1970 have not been properly tackled. While the establishment of the IPA as a transitional mechanism from the 1998 election-related conflicts to the 2002 elections was undoubtedly a turning point in Lesotho's electoral history, the IPA process was devoid of all the key elements for the timing and sequencing of elections. The following are key lessons:

- While international support to a transition process is key, the processes should be owned and driven by local actors.

- The composition of bodies charged with the transition to stability have to be carefully balanced. The IPA representation was grossly skewed in favour of the opposition parties and this became a disruptive factor in the dialogue process.

- There is a need for a common understanding and agreement on the actual power of bodies such as the IPA. A lot of time was wasted on debating the legal meaning of 'consensus' in decision-making, and there was no proper understanding of the powers of the IPA in relation to parliament.

- The timing of elections should be based on reasonable consideration of the requisite preparatory processes including legal and electoral system reforms.

- The design of electoral systems should be balanced between convenience and adaptability. Lesotho opted for the 80:40 ratio for convenience and failed to move on to adaptability which would mean changing the ratio to 50:50 after the 2002 elections.

- It is equally important that discussions around electoral models should be inclusive. While the electoral reforms agenda was initiated at an inclusive public platform, further debates on the MMP typologies were held among and between politicians in the IPA with no input from broader society.

References

African Peer Review Mechanism (APRM), *Country Review Report No. 12: Kingdom of Lesotho,* June 2010, <http://aprmtoolkit.saiia.org.za/en/component/docman/doc_download/490-country-review-report-of-the-kingdom-of-lesotho-2010>, accessed 21 November 2018

Elklit, J., 'Lesotho: The future electoral system in Lesotho', Electoral Institute for Sustainable Democracy in Africa, African Democracy Encyclopaedia Project, 2000, <https://www.eisa.org.za/wep/les2001elect2.htm>, accessed 23 November 2018

—, 'Lesotho 2002: Africa's first MMP elections', *Journal of African Elections*, 1/2 (2002), pp. 1–10, <https://www.eisa.org.za/pdf/JAE1.2Elklit.pdf>, accessed 28 November 2018

Government of Lesotho, 1998 Interim Political Authority Act No. 16 of 1998

Makoa, F. K., 'Electoral reform and political stability in Lesotho', *African Journal on Conflict Resolution*, 4/2 (2004), pp. 79–97

Matlosa, K., 'The electoral process and democratic governance in Lesotho: Lessons for the Democratic Republic of the Congo', *Journal of African Elections*, 2/1 (2003), pp. 77–98

Mopheme/The Survivor, 'Lesotho: IPA Stuck in a Consensus!', 2 February 1999, <https://allafrica.com/stories/199902020142.html>, accessed 19 November 2018

Sekatle, P., 'The establishment of Lesotho Congress for Democracy: Implications for the 1998 general election', *Lesotho Social Science Review*, 3/2 (1997), pp. 69–92

Shale, V., 'Political parties and instability in Lesotho', in M. Thabane and R. Southall (eds), *Towards an Anatomy of Political Instability in Lesotho 1966–2016* (Maseru: Morija Printing Works, 2017)

Southall, R., 'The 1993 Lesotho election', *Review of African Political Economy*, 21/59 (1994), pp. 110–18

Weisfelder, R., 'Free elections and political instability in Lesotho', *Journal of African Elections*, 14/2 (2015), pp. 50–80

9. Post-conflict elections in Liberia, 1997 and 2005
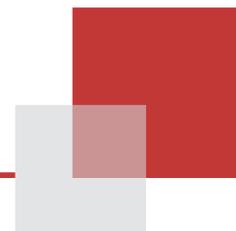
Georges Klay Kieh, Jr

9.1. Introduction

The two Liberian civil wars (1989–1997 and 1999–2003) were by-products of the crises of the Liberian state. That is, the twin processes of state-building and nation-building produced a state construct that failed to shepherd the establishment of democracy, and the promotion of human-centred national development (Sawyer 1992; Kieh 2008, 2012). The state was plagued by various contradictions and a resulting crisis of legitimacy (Kieh 2008, 2012), which became a corrosive civil conflict. By 1989, the state imploded as a result of the armed insurrection that was waged by the National Patriotic Front of Liberia (NPFL) led by Charles Taylor, and the country plunged into its first civil war. The failure of ensuing peacebuilding efforts exacerbated the underlying civil conflict, plunging the country into its second civil war in 1999, when the Liberians United for Reconstruction and Democracy (LURD) began an insurgency against the Taylor regime. Against this background, the purpose of this case study is to examine Liberia's two post-conflict elections in 1997 and 2005, with an emphasis on timing and sequencing issues and their impact on the building of democracy in Liberia.

9.2. Context analysis

The 1997 presidential election

The first Liberian civil war occurred around the same time as Iraq's invasion of Kuwait, and the resulting military and diplomatic responses of the United States and its allies. International attention, including that of the United Nations, was therefore focused on the Gulf and it was left to African states to take the initiative to end the Liberian civil war. The Economic Community of West African States (ECOWAS) took the decision to intervene militarily, amid the escalating carnage.

Three major methods of intervention were used: peacekeeping, peace enforcement and peacemaking (the UN Security Council authorized the military dimension of the intervention after it took place). The overarching purpose of peacekeeping was to

help create an enabling environment for peacemaking and for the provision and distribution of relief assistance to the civilians. As for the first phase of the peace enforcement dimension, it initially became necessary because the NPFL attacked peacekeepers on their arrival in Liberia on 24 August 1990 (Ero 1995). To make matters worse, there was no ceasefire in effect. The peacekeeping force had to create and enforce a ceasefire. This enabled it to separate the warring parties, and create a 'buffer' or 'security zone' that was used as a corridor for the provision of humanitarian assistance to civilians.

The second phase of peace enforcement entailed inducing the various warring factions to comply with cessation of hostilities. However, one of the resulting effects of peace enforcement was that it effectively made the ECOWAS Monitoring Group (ECOMOG) forces a warring party, since it collaborated with factions such as the United Liberation Movement of Liberia for Democracy (ULIMO-J), in order to 'enforce the peace' against Taylor's NPFL. As for peacemaking, ECOWAS led the mediation efforts that culminated in the signature of 16 peace accords by the warring parties. However, each time a peace agreement was signed, the NPFL would renege on it (Kieh 2011a). This was because Taylor saw ECOWAS and its peace enforcement efforts as an obstacle to the achievement of his presidential ambitions. However, the Abuja II Accord in 1996 was finally able to end the war.

With the termination of the war, ECOWAS hastily designed and implemented disarmament, demobilization and reintegration (DDR) processes (although with no rehabilitation of ex-combatants) that lasted for 72 days (Berdal 1996; Tanner 1998; Kieh 2009). The date of the post-conflict presidential election was fixed as 19 July 1997. This was complicated by the fact that some combatants were yet to be disarmed (Tanner 1998; Gberie 2005) and some of the warring factions, especially the Taylor-led NPFL, did not turn in their main caches of weapons (Berdal 1996; Tanner 1998). In other words, the electoral environment was 'militarized' and this, especially Taylor's repeated threat that he would resort to war if he did not win, contributed to his victory (Lyons 1999). The majority of the voters acquiesced, because they were war-wearied.

The 2005 presidential and legislative elections

As mentioned, the outbreak of the second Liberian civil war in 1999 came when the LURD launched a military attack against the Taylor regime. The war was caused by the failure of the Taylor regime to provide the requisite leadership for addressing the country's perennial crises of underdevelopment, including authoritarianism and the horrendous state of human material well-being (Kieh 2009); the lack of reconciliation and security sector reform; and the waging of a campaign of political persecution against former rivals, as well as prominent members of the Krahn and Mandingo ethnic groups. (Taylor developed an antagonistic relationship with these groups, having accused them of being supporters of the Doe regime.) The war reached its crescendo in March 2003, when LURD forces reached the outskirts of the capital, Monrovia. At this point, the USA and ECOWAS undertook efforts to end the war. Ultimately, it was agreed that President Taylor would leave power as a major necessary step.

With Taylor—the main immediate obstacle to peace—removed, ECOWAS brokered a Comprehensive Peace Agreement (CPA) in Ghana. Under the terms of the agreement, ECOWAS agreed to deploy a peacekeeping force to help stabilize the country in the short-term, and the United Nations committed to taking over the peacekeeping function once the transitional government was installed. Both the ECOWAS and UN peacekeeping forces implemented the DDR processes under the CPA. Overall, Liberians were quite appreciative of the efforts made by ECOWAS, for the second time, to help end the country's civil war (see e.g. Human Rights Watch 1993). A transitional government was formed, comprising representatives from the three warring factions (the erstwhile Taylor regime, LURD and the Movement for Democracy in Liberia, an offshoot of LURD that joined the war in 2003), political parties and civil society. The transitional government was given a little over a two-year term (1 October 2003 to 16 January 2006) to help create an enabling environment for the holding of presidential and legislative elections in October 2005, and to transfer power to a new democratically elected government.

9.3. Timing and sequencing dilemmas

The 1997 presidential election

In 1997, decisions regarding the timing and sequencing of elections were shaped more by ECOWAS' intervention fatigue than the realities of the emergent post-war environment. The more than seven-year duration of the intervention—its financial, material, logistical and human costs—had taken a toll on Nigeria, the lead country, as well as Ghana, Guinea and the other contributors to the peacekeeping operations. Hence, ECOWAS hastily arranged the election as an 'exit strategy'.

ECOWAS faced a range of challenges. In terms of *local versus international ownership*, ECOWAS oversaw the peacemaking, peacekeeping and peace enforcement activities. The peacemaking activities were the only ones that had some local ownership, especially in the area of choosing the various transitional governments. The timing and sequencing of the post-conflict activities were determined by ECOWAS with some local participation. There were several major activities, including the above-mentioned 72 days of DDR (which was left substantially incomplete).

In terms of *short- versus long-term involvement*, as has been discussed, ECOWAS made the determination that the duration and costs of the intervention necessitated the organization's exit. Nigeria and the other countries that led the intervention had their own internal economic and social issues that required attention.

In terms of *constitution-building versus election first*, the latter course was chosen. This was because a constitutional review would have prolonged the transition. Consequently, several critical constitutional issues were not addressed, including the demarcation of constituencies; the terms of office for the president, senators and representatives; and the residency clause for the presidency.

Since ECOWAS viewed the election as an exit strategy, the focus was on holding the election only for the president, thereby leaving the conduct of sub-national elections to the new government. There was no election for the legislature, but under the auspices of ECOWAS the political parties reached an agreement that legislative

seats would be allocated to each political party on the basis of the proportion of the votes won in the presidential election—a proportional representation system (Kieh 2011b). Also, the legal requirements for the formation of political parties were relaxed, to allow those who were desirous of organizing political parties to do so.

A central element of ECOWAS' peacemaking efforts was the use of *accommodation measures* in dealing with the various warring factions, especially Taylor's NPFL. ECOWAS tolerated his reneging on no fewer than 15 peace accords. Similarly the disarmament process did not lead to the dismantling of the various warring factions' military machinery and, again, this applied especially to the NPFL. Subsequently, the fact that Taylor's military machinery was intact left the electoral playing field unlevelled.

As has been discussed, ECOWAS employed both classical *peacekeeping* and *peace enforcement*. During times of relative compliance with the ceasefire by the various warring factions, ECOMOG used classical peacekeeping, especially in serving as a buffer between and among the various warring factions. In addition, peace enforcement was used on various occasions to enforce compliance with the peace accords, including the ceasefire.

The 2005 presidential and legislative elections

The timing and sequencing of Liberia's second post-conflict elections in 2005 were shaped by three major factors: (a) the long-term commitment of the UN to assume primary responsibility for the country's security through the deployment of a multidimensional peacekeeping force (UN peacekeeping operations were ultimately to last from 2003 to 2016); (b) the cooperation between the UN and ECOWAS; and (c) the time devoted to the various post-conflict transitional activities such as DDR. Like the 1997 election, the transitional activities, as well as their timing and sequencing, were designed and implemented by ECOWAS and the UN within the framework of the CPA. In addition, there was a modicum of local involvement, because the UN and ECOWAS consulted with the transitional government and the key domestic stakeholders from time to time.

The framework for the election consisted of several key elements. One of them was that the Chairman of the Transitional Government would not be eligible to contest the presidency. Although helpful in that it militated against the possible use of state resources to support a presidential bid by the interim head of state, it did not ensure the levelling of the playing field. This was because Ellen Johnson Sirleaf, the flag bearer of the Unity Party, was the favourite of several key players in the international community and had more financial and logistical resources than the other candidates (see Clarke and Azango 2017). Another element was the suspension of several provisions of the Liberian Constitution as part of the CPA (ECOWAS 2003) including the eligibility requirements for the presidency, especially the 10 years' residency clause; the re-demarcation of constituency boundaries for the House of Representatives; and the holding of municipal elections. In addition, the legal requirements for the formation of political parties were relaxed. All of these steps were taken in order to help advance the peace process.

Like the 1997 cycle, the 2005 one focused on *election first*, and therefore deferred on constitutional reform, which was left to the new government. Also, the decision

was made to hold only national elections for the president, senators and representatives; the holding of sub-national election was likewise left to the new government. However, as of late 2018, municipal elections have still not been held. The major reason is that the Supreme Court of Liberia issued a ruling in 2008 asserting that the President of Liberia has the legal authority to appoint municipal leaders, including the mayors of cities (Boweh 2008).

In terms of *accommodation measures*, three major types were employed. As mentioned, it was decided to suspend some of the eligibility requirements for the presidency and the legislature, and to relax the rules for the formation of political parties. A third approach was seen in allowing the leaders of the various warring factions to run for the presidency and the legislature.

At the level of *security*, transition involved both peacekeeping and security sector reform. The former was performed by ECOWAS in the short term, and by the UN in the long term. Ultimately, both the short- and long-term peacekeeping operations contributed to an enabling environment for the holding of the elections. In terms of security sector reform, the US government funded the rebuilding of the country's national army through a contractual agreement with DynCorp, a private US security firm. In addition, UN peacekeeping personnel undertook the rebuilding of the country's police service.

9.4. Implementation challenges

The 1997 presidential election

The preparatory road map to the 1997 presidential election was primarily shaped by the country's security environment which, being 'militarized', was not a conducive one. Ultimately, the unfavourable security environment created a political situation favourable to Charles Taylor, because his militia's military machinery remained intact (Gberie 2005). Clearly, this gave his National Patriotic Party (NPP) a distinct advantage in terms of campaigning, intimidation and threatening the electorate with the recurrence of war (Lyons 1999).

The conduct of the election was sequenced as follows. First, voter registration took place for about two months. Second, there was campaigning for one month. Finally, voting took place on 19 July 1997, with a voter turnout of 82.8 per cent (Independent Elections Commission 1997a). Taylor won a landslide victory with 75.3 per cent of the votes (Independent Elections Commission 1997b).

Ultimately, then, decisions about timing and sequencing contributed to a failed post-conflict transition. The election was rushed and preparatory work was not fully implemented. A major failure was in allotting insufficient time for the critical processes of DDR. In addition, critical activities such as governance reform were not set into motion. Taylor, upon his assumption of the presidency, was then able to establish an authoritarian government.

The 2005 presidential and legislative elections

By contrast, the 2005 election benefited from an adequate two-year transitional period and better sequencing of events: the political and security environment was

'demilitarized' by the ECOWAS and UN peacekeeping forces, with successful dismantling of the various warring factions' military machines.

The election itself was successfully sequenced as follows. First, there was voter registration, which lasted for about a month. At the conclusion, about 1.4 million people had registered to vote (National Elections Commission 2005a). Second, voter education, which lasted for about two months. Third, there was the vetting of presidential and legislative candidates for both the House of Representatives and the Senate; and this lasted for two weeks. This was followed by campaigning, which lasted for six weeks. Finally, voting took place on 11 October 2005 for the presidency and legislature. George Weah of the Congress for Democratic Change (CDC) won a plurality of the votes by garnering 28.3 per cent, while Ellen Johnson Sirleaf came in second with 19.8 per cent (National Elections Commission 2005b). However, since no candidate won the legally required 50 per cent plus one, the two top candidates squared off in the second round held a month later and won by Ellen Johnson Sirleaf.

This orderly process made it possible for various governance reform projects to be set in motion. In turn, these contributed to the post-conflict democratization process by, among other things, seeking to dismantle the perennial authoritarian system through the opening of the political space so that citizens could exercise their constitutionally guaranteed political rights and civil liberties.

9.5. Findings and lessons

The 1997 election and its aftermath weakened democracy in two major ways. First, the timing and the associated sequencing for holding the election did not 'demilitarize politics'. A democratic political culture and its associated values could not be built under these conditions. On the contrary, once in power, the Taylor regime used the state's instruments of coercion—the partisan military, police and security establishments—to harass, intimidate and visit violence on the regime's political opponents. Significantly, with all legal rights suppressed, some of the regime's opponents then resorted to the use of extra-constitutional means as the vehicle for effecting regime change. The second civil war, which began in 1999, was a by-product of the Taylor regime's closing of the post-conflict political space. Second, the lack of constitutional reform kept intact several provisions that are inimical to democratization, such as the lengthy tenure of office for the president and legislators.

In the case of the 2005 post-conflict election, two years of transitional reform activities provided an appreciable amount of time for the development of a democratic political culture. That is, there was the commencement of the cultivation of the values of pluralism, tolerance, accountability, transparency, and the unfettered exercise of the constitutionally guaranteed civil liberties such as the freedom of speech and the freedom of the press. On the other hand, as in the 1997 cycle, the lack of constitutional review was a missed opportunity to remove various provisions that are anathema to democratization.

A major lesson, then, is that constitutional reform must be factored into the timing and sequencing of post-conflict elections. This is because the constitutional architecture is indispensable to the building of a new democratic society. In Liberia,

this opportunity was missed prior to the holding of both post-conflict elections. Unreformed constitutional provisions have in the long-term become contentious issues. For example, the residency requirement for the presidency was a contentious issue during the 2011 presidential election, and again assumed prominence in the 2017 electoral cycle.

References

Abuja II Accord ('Supplement to the Abuja Accord'), 17 August 1996, <https://peacemaker.un.org/sites/peacemaker.un.org/files/LR_960817_Supplement%20to%20the%20Abuja%20Accord.pdf>, accessed 11 December 2018

Berdal, M., *Disarmament and Demobilization After Civil War*, Adelphi Paper No. 303 (London: ITSS and Oxford University Press, 1996)

Boweh, B., 'No municipal elections: Supreme Court recognizes President Sirleaf's appointment of city mayors', Star Radio, 11 January 2008

Clarke, P. and Azango, M., 'The tearing down of Ellen Johnson Sirleaf', *Foreign Policy*, 9 October 2017, <https://foreignpolicy.com/2017/10/09/the-tearing-down-of-ellen-johnson-sirleaf-liberia-elections/>, accessed 11 December 2018

Economic Community of West African States, 'Peace Agreement Between the Government of Liberia, the Liberians United for Reconciliation and Democracy, the Movement for Democracy in Liberia, and the Political Parties' [Comprehensive Peace Agreement], Accra, 18 August 2003

Ero, C., 'ECOWAS and the subregional peacekeeping in Liberia', *Journal of Humanitarian Assistance* (September 1995), pp. 1–20

Gberie, L., *A Dirty War in West Africa: The RUF and the Destruction of Sierra Leone* (Bloomington, IN: Indiana University Press, 2005)

Human Rights Watch, 'Waging war to keep the peace: the ECOMOG intervention and human rights', 1 June 1993, <https://www.hrw.org/report/1993/06/01/liberia-waging-war-keep-peace/ecomog-intervention-and-human-rights>, accessed 12 December 2018

Independent Elections Commission (IECOM), Liberia, *Voters' Turnout for the 1997 Presidential Election* (Monrovia: IECOM, 1997a)

—, *Results of the 1997 Liberian Presidential Election* (Monrovia: IECOM, 1997b)

Kieh, G. K., *The First Liberian Civil War: The Crises of Underdevelopment* (New York: Peter Lang, 2008)

—, 'The roots of the Second Liberian Civil War,' *International Journal on World Peace*, 26/1 (2009), pp. 7–30

—, 'Peace agreements and the termination of civil wars: Lessons from Liberia', *African Journal on Conflict Resolution*, 11/3 (2011a), pp. 53–85

—, 'Warlords, politicians, and first post-civil war election in Liberia', *African and Asian Studies*, 10 (2011b), pp. 83–99

—, 'Liberia's second post-conflict presidential election', *Journal of International Studies and Development*, 3/1 (2013), pp. 123–41

—, *Liberia's State Failure, Collapse and Reconstitution* (Cherry Hill, NJ: Africana Homestead Legacy Publishers, 2012)

Lyons, T., *Voting for Peace: Post-Conflict Elections in Liberia* (Washington, DC: The Brookings Institution Press, 1999)

National Elections Commission (NEC), Liberia, *The Results of the Voters' Registration* (Monrovia: NEC, 2005a)

—, *2005 Presidential Elections Results* (Monrovia: NEC, 2005b)

Sawyer, A., *The Emergence of Autocracy in Liberia: Tragedy and Challenge* (San Francisco, CA: Institute for Cultural Studies Press, 1992)

Tanner, V., 'Liberia: railroading peace', *Review of African Political Economy*, 25/75 (1998), pp. 133–47

10. The 2013 elections in Madagascar

Solofo Randrianja

10.1. Introduction

Since its independence in 1960, Madagascar has been through four constitutional regimes: the neocolonial First Republic (1960–1972), headed by Philibert Tsiranana; the Second Republic (1975–1991), headed by socialist Didier Ratsiraka; the Third Republic (1992–2010) successively headed by Albert Zafy, Didier Ratsiraka and Marc Ravalomanana; and the Fourth Republic (2010–present) successively headed by Andry Rajoelina, Hery Rajaonarimampianina and, since his election in 2018, Andry Rajoelina once again. The Third Republic Constitution, promulgated in 1992 and revised in 1995, 1998 and 2007, led Madagascar to a market economy. The rapid succession of one regime after another, often following a chaotic transfer of power, is an obvious symptom of structural state fragility. In March 2009 a mutiny by a significant part of the armed forces led to the overthrow of the elected president, Marc Ravalomanana, and his replacement by Andry Rajoelina, who claimed to be organizing elections through a newly created High Authority of the Transition (Haute Autorité de Transition, HAT; see Randrianja 2012). Despite various mediation attempts and stringent economic sanctions imposed on Madagascar by the international community, Andry Rajoelina succeeded in maintaining himself in office for almost five years without being elected. This case study focuses on the transition process that led to the 2013 elections and the election of Hery Rajaonarimampianina as President of Madagascar.

10.2. Context analysis

The transition in Madagascar took place in an environment that was challenging for the organization of democratic elections in multiple ways.

Constitutionally, Madagascar's political system has always been dominated by the executive branch of government, and most particularly by the presidency. The parliament has had no real power to act as a check on the authority of the president and has been consistently dominated by the latter. Andry Rajoelina's administration

was no exception. He appointed almost 600 deputies and senators to the transitional parliamentary body, none of them having been elected. Moreover, the government allocated high salaries and other advantages to parliamentarians. As a result, the parliament was the main obstacle to the organization of elections.

Since the semi-democratization that took place in the 1990s, the state has remained heavily centralized, and civil society organizations have little ability to make their collective voices heard or their presence felt in the political sphere. The overwhelming majority are based in the capital, Antananarivo, or the surrounding region; many of them are financially dependent on external financing that is controlled by their leading officials, themselves members of the political elite. The politicization of so many institutions of civil society places them closer to the state than to the people they ostensibly serve or represent. With the onset of the crisis in early 2009, a number of politically oriented organizations—namely the Alliance of CSOs, the CSO Coalition and the National Election Observation Committee—formed a partnership body known as the National Coordination of Civil Society Organizations (Coordination Nationale des Organisations de la Société Civile, CNOSC) (UNDP 2012: 38; CdSM n.d.), which had the explicit goal of helping to resolve the country's political crisis. Its limited grassroots support, particularly outside Antananarivo, prevented the CNOSC from having much influence on the transition process.

The military coup that brought Andry Rajoelina to power in March 2009 also placed the ostensibly neutral military in the position of power broker (see Ploch and Cook 2012: 11–12). With 30,000 members of the armed forces and the gendarmerie, including a large number of generals and other officers, the annual budget of the defence ministry is the fifth largest of any government department. The army, however, was also strongly divided. Young subaltern and low-ranking officers in command of rank and file troops organized the putsch and backed Andry Rajoelina, while the army's upper echelons were more loyal to elected government and the rule of law.

All of the above weaknesses in democratic governance are compounded by poor access to information. Citizens are ill-equipped to demand accountability from those who govern them, whether individually or collectively. Often, the only remaining course of action is public demonstrations, especially in the capital (World Bank 2011: 13).

10.3. Timing and sequencing dilemmas

Efficiency versus legitimacy

The decision-making process on the timing of elections has been particularly conflictual in Madagascar. Two parallel attempts to establish a road map to democratic elections were undertaken but failed for lack of consensus. The first was the road map for transition (known as the Maputo Agreement; for an account of the process see African Union 2010) that was drafted by the Southern African Development Community (SADC) and signed on 9 August 2009 by the interim administration and some 10 political parties. Former presidents Didier Ratsiraka and Albert Zafy took part in this first process to mediate between Andry Rajoelina and

the exiled former President, Marc Ravalomanana. The second process was headed by the government and the HAT. On 3 April 2009, the government organized two days of 'assises nationales' (closed consultations) which promised a new agenda to end the crisis, including presidential elections in October 2010. As part of this process, a constitutional referendum was organized on 17 November 2010 by the interim government (Ploch and Cook 2012). The new Constitution, which created the Fourth Republic, was apparently approved by a majority of voters. However, the constitutional referendum was widely considered a unilateral and therefore illegitimate move; it also had low turnout at only 53 per cent (Lunn 2012; RFI 2010).

The stalemate, in particular the apparent impossibility of setting a date for elections, was due to the irreconcilable postures adopted by Rajoelina and former President Ravalomanana. While Rajoelina was in power, and backed by the armed forces, Ravalomanana and his supporters still enjoyed strong popular support and were able to exert pressure through mass demonstration and daily meetings with the representatives of foreign countries and international organizations (Ravalomanana returned to Madagascar from exile in South Africa in October 2014: BBC News 2014). This opposition grouping was in favour of implementing the Maputo road map; its main goal was Ravalomanana's return to power as soon as possible and the organization of elections in the medium term. Meanwhile it succeeded in preventing Rajoelina from legitimating and enforcing his rule.

In September 2011, a new Maputo road map was signed by several stakeholders, which led to the appointment of a new Prime Minister and changes in government (Ploch and Cook 2012); this overruled the Constitution of 17 November under which Rajoelina would have been able to stand. A consensus on several amendments and addenda (including secret clauses) to the initial Maputo Agreement had finally emerged from the stalemate situation. The so-called 'ni ni' ('neither nor') solution, which stated that neither Ravalomanana nor Rajoelina would be allowed to compete in any coming elections, was at the heart of this consensus. This was also made possible by France's new diplomatic stance, which shifted from support of Rajoelina to the demand for elections organized by a neutral body. The new Maputo road map, and the appointment of Jean Omer Beriziky as the new Prime Minister, marked the beginning of an effective transition process. The newly appointed government was explicitly in charge of the organization of the 2013 presidential and legislative elections and the 2015 local elections. Omer Beriziky did not represent a neutral player but his track record of shifting, bipartisan loyalties made him acceptable to the majority of stakeholders. His government had to act in a very short time period and recruited many figures from different parties. In this case, efficiency prevailed over legitimacy.

Local versus international ownership

Initially, the international community was divided. Discreet support is said to have been provided by France to Rajoelina, at least this was claimed by former President Didier Ratsiraka (Jeune Afrique 2013. See also press commentaries: de Benito 2010; Courrier International 2009a), with other key powers apparently favouring Ravalomanana. During the rather chaotic first part of the transition, the diplomatic

missions in Madagascar tried to interpret the Maputo road map to their advantage (i.e. in favour of their respective protégés). Nonetheless, the general goal was to avoid any incident which could provoke an escalation of tensions. Moreover, international actors provided multiple mediation attempts and imposed sanctions to foster the transition toward democracy. As noted above, France's diplomatic shift towards support for holding elections was a key factor leading to the adoption of the second Maputo Agreement.

National versus sub-national elections first

The sequencing of the election at the various levels of government was the subject of debate among stakeholders. Several local parties demanded that sub-national and legislative elections, and the elections for a constituent assembly, be organized prior to presidential elections. These options could have been an alternative to the 'ni ni' position and could have significantly weakened the presidential regime. However, most of those parties did not have the strength to succeed in this demand. The electoral body was not in agreement; the results would have prolonged the domination of the legislative branch over the executive and hence the ongoing chaos.

The final decision was, therefore, that the first-round presidential elections would be held first on 25 October 2013, and that the run-off elections (if necessary) would be coupled with the legislative ones and held on 20 December 2013. The rationale was that this order would eliminate some 100 small parties and strengthen the successor government, because the run-off election would pit the two main political blocs against each other. The consequence of this sequence was to rebuild the presidential system, which has been at the origin of the multiple and recurrent crises. Moreover, this process merely postponed a clash between Ravalomanana and Rajoelina until the 2018 elections.

Constitution-building versus elections first

As mentioned above, a constitutional referendum was held in 2010, well before the elections in 2013. However, the process did little to end the crisis. Madagascar's Constitution has typically served as a political instrument at the disposition of the president rather than as a fundamental set of rules that regulates the balance of powers within the state. Every president of Madagascar, since independence, has changed the Constitution according to the needs of the moment. Following this logic, the purpose of the 2010 constitutional referendum was to reinforce Andry Rajoelina's grip on power, not to organize a solution to the crisis that was amenable to the majority of stakeholders. The purpose of the subsequent general elections was to assuage political tensions. It is more than probable, however, that at least several adjustments will be necessary in the future, with further attendant disputes.

Choice of electoral system and institutions

The 'ni ni' option froze any discussion on the question of the electoral system. The main stakeholders were more interested in rapidly ending the crisis, than in initiating debates on structural reforms within an unpredictable situation. The single ballot was the main change introduced for the 2013 presidential elections. Previously, each

candidate had to print his own ballot paper, a system that gave an advantage to wealthy candidates.

The Maputo road map attributed a central position in the administration of the presidential election to the Commission Électorale Nationale Indépendante pour la transition (CENI-T) (National and Independent Electoral Commission for the Transition). As its name suggests, this body was independent and transitional. More than half of its EUR 11.9 million budget (the 'Basket Fund') came from external funding sources, including the Chinese Government and the European Union (Madagascar Tribune 2013). Andry Rajoelina's government refused to send its part of the budget until the very last moment, which was suggestive of an attempt to influence CENI-T and a risk to independent electoral administration in the longer term. Another means of politicization was the government's approving the appointment of CENI-T's Chairperson.

Level of security

The armed forces have been present in the political life of Madagascar since 1972, and the start of a reform process in 1991 was an acknowledgement of this. The military nevertheless continued to play a prominent role in politics and between 2009 and 2013, with several coups attempted almost every year. Since 2013 there have been none, largely because the old command structure was disrupted by the low-ranking officers who supported the 2009 coup. The task at issue in the 2009–2013 transitional period was to restore the military hierarchy in order to establish an acceptable level of security in which to organize the 2013 elections. The army succeeded in organizing a military dialogue conference in Ivato as early as 27–28 May 2009 to address its role in the transition (Courrier International 2009b). In reality, however, the armed forces were too divided to constitute an obstacle to the peace-building process. Reform of the armed forces, after multiple false starts, remains a priority for the long-term stability of the country.

The Rajoelina administration (2009–2013) was deeply damaging to many domains of public life, but so too was the protracted process of seeking consensus on a timetable for elections. Organized crime networks were able to profit from the vacuum of power and authority created by state failures in this period, further deepening the political chaos. Several organized crime chiefs backed political leaders and candidates, which affected the nature of elections in 2013. There remains a threat of this pattern repeating, which could bring further criminalization of state structures in future.

10.4. Implementation challenges

The organization of the 2013 elections (for results see HCC 2013) suffered from partisan actions from within Rajoelina's government and the wider state. While observers did not notice any major shortcomings, there were a number of weaknesses and it is possible that fraud took place in many areas. Jean Louis Robinson, who competed under the banner of Ravalomanana's political party, alleged massive fraud (see Reuters 2014; European Parliament 2017) but at the end of the day accepted defeat and attended Rajaonarimampianina's swearing-in ceremony in January 2014.

Despite CENI-T's budget and mandate, many persons were excluded from the electoral list. Moreover, because the majority of international stakeholders seemed to be anxious to hold the elections as soon as possible after several delays, the elections were held during the rainy season. This is not customary in Madagascar and led to difficulty in obtaining results in remote areas, therefore contributing to suspicions over the fairness and legitimacy of results.

Exhausted by the endless delays to the electoral process, everybody accepted the results, hoping for reforms to ensure better elections in the future. Hery Rajaonarimampianina had been Andry Rajoelina's champion and was expected to win the elections thanks to administration support, but he distanced himself from his mentor soon after his election and tried, unsuccessfully, to act on his own for the full length of his term. Ravalomanana's supporters, meanwhile, also mistrusted Rajaonarimampianina because they considered him as Andry Rajoelina's ally. As a result of these three factors, his legitimacy suffered, and he was unable to establish a political base in the country. The only concrete result was that Andry Rajoelina had been temporarily side-lined from the presidency—but at what cost?

10.5. Findings and lessons

In Madagascar, each transition period determined through local mechanisms who was going to win the elections. Elections simply reflected those decisions after the fact. In the short term, the 2013 elections contributed to a kind of stabilization in assuaging the tensions in the country. This even contributed to a period of relative stability, with growth expanding from 2.3 per cent in 2013 to an estimated 4.2 per cent in 2017, according to the World Bank.

One of the main causes of the political turmoil in Madagascar has been the lack of legitimacy of the 'modern' Weberian state. Even though it has existed since the early 19th century, and with violence since the colonial period, the Madagascar state still suffers from a lack of legitimacy. It does not take into account some of the main characteristics of local political culture, which are excluded in the informal sphere and considered as obstacles to what is expected from a harmonious social organization.

Predictably, the 2018 electoral process saw similar turmoil to that experienced during previous elections. The adoption of the electoral law on 3 April 2018 provoked a crisis that led to violent protests resulting in at least two deaths (Reuters 2018a). The opposition candidate Mark Ravalomanana had claimed that the new law was aimed at preventing his participation in the election. The impasse was resolved following mediation by the international community and a ruling from the High Constitutional Court in May (Reuters 2018b). During the first-round election on 7 November 2018, the two candidates excluded from the 2013 elections, Andry Rajoelina and Mark Ravalomanana, won substantially more votes than the 34 other candidates, including the incumbent president, to face off in a run-off election on 19 December 2018 (CENI n.d.).

In January 2019, the High Constitutional Court declared that Andry Rajoelina had won the run-off election with 55.66 per cent of the vote (HCC n.d.), which showed that just 48 per cent of eligible voters participated. The preliminary result

had been contested, with the losing candidate Mark Ravalomanana filing over 200 petitions alleging massive fraud on election day and during the vote counting (Al Jazeera 2019). In declaring Rajoelina the winner, the High Constitutional Court dismissed all the petitions contesting the outcome. The results prompted street protests and though the elections won the backing of the international community, they have cast a shadow on the new president's legitimacy.

References

African Union, 'Report of the Chairperson of the Commission on the situation in Madagascar', Document PSC/PR/2(CCXVI), 19 February 2010, <http://www.peaceau.org/uploads/report-madagascar-eng-final.pdf>, accessed 18 December 2018

Al Jazeera, 'Madagascar court declares Rajoelina as election winner', 8 January 2019, <https://www.aljazeera.com/news/2019/01/madagascar-court-declares-rajoelina-election-winner-190108142057513.html>, accessed 26 January 2019

BBC News, 'Madagascar ex-president Ravalomanana arrested on return', 13 October 2014, <https://www.bbc.co.uk/news/world-africa-29594895>, accessed 18 December 2018

Consortium de Solidarité avec Madagascar (CdSM) [Madagascar Consortium], [n.d.], <http://www.madagasconsortium.org/spip.php?page=sommaire-actu>, accessed 6 March 2019

Commission Électorale Nationale Indépendante (CENI) [National and Independent Electoral Commission], [n.d.], First-round presidential election results, national results, <https://www.ceni-madagascar.mg/wp-content/uploads/2019/02/1recapnationale.pdf>, accessed 6 March 2019

Courrier International, 'Avec Andry Rajoelina, Paris joue, prend et gagne à Madagascar' [With Andry Rajoelina, Paris plays, takes and wins in Madagascar], 3 December 2009a, <https://www.courrierinternational.com/article/2009/12/03/avec-andry-rajoelina-paris-joue-prend-et-gagne-a-madagascar>, accessed 6 March 2019

—, 'Madagascar: armed forces make peace', 29 May 2009b, <https://www.courrierinternational.com/article/2009/05/29/les-forces-armees-font-la-paix>, accessed 6 March 2019

de Benito, R. , 'La Françafrique dans l'ombre d'Andry Rajoelina' [Françafrique in the shadow of Andry Rajoelina], Survie, 1 January 2010, <https://survie.org/billets-d-afrique/2010/187-janvier-2010/article/la-francafrique-dans-l-ombre-d>, accessed 6 March 2019

European Parliament, resolution on Madagascar (2017/2963(RSP)), <http://www.europarl.europa.eu/doceo/document/B-8-2017-0641_EN.html>, accessed 6 March 2019

High Constitutional Court (HCC), Presidential Election second-round results (20 December 2013), 2013, <http://www.hcc.gov.mg/elections/president2013-2/mada>, accessed 6 March 2019

—, Presidential Election second-round results (19 December 2018), [n.d.], <http://www.hcc.gov.mg/wp-content/Recap/National.pdf>, accessed 6 March 2019

Jeune Afrique , 'Didier Ratsiraka: "La France m'a demandé d'aider Rajoelina à évincer Ravalomanana" de Madagascar' [Didier Ratsiraka: 'France asked me to help Rajoelina ro oust Ravalomanana' from Madagascar], 13 September 2013, <https://www.jeuneafrique.com/168516/politique/didier-ratsiraka-la-france-m-a-demand-d-aider-rajoelina-vincer-ravalomanana-de-madagascar/>, accessed 6 March 2019

Lunn, J., 'Madagascar's political crisis', UK House of Commons Library Note SN05962, 1 May 2012, <http://researchbriefings.files.parliament.uk/documents/SN05962/SN05962.pdf>, accessed 18 December 2018

Madagascar Tribune, 'La Cenit fait le point sur le financement' [CENI-T takes stock of financing], 3 September 2013, <http://www.madagascar-tribune.com/La-Cenit-fait-le-point-dans-le,19085.html>, accessed 27 November 2018

Ploch, L. and Cook, N., *Madagascar's Political Crisis* , CRS Report for the United States Congress, 18 June 2012, <https://fas.org/sgp/crs/row/R40448.pdf>, accessed 18 December 2018

S. Randrianja, (ed.), *Madagascar, le coup d'État de mars 2009* [Madagascar, the coup d'État of March 2009] (Paris: Karthala, 2012)

Reuters, 'Court confirms Madagascar election result; loser rejects it', 17 January 2014, < https://www.reuters.com/article/us-madagascar-election/court-confirms-madagascar-election-result-loser-rejects-it-idUSBREA0G16B20140117?feedType=RSS>, accessed 6 March 2019

—, 'Thousands march in Madagascar to protest at election laws', 23 April 2018a, <https://af.reuters.com/article/africaTech/idAFKBN1HU1AC-OZATP>, accessed 24 January 2018

—, 'Madagascar president lifts restriction on opposition candidates', 12 May 2018b, <https://www.reuters.com/article/us-madagascar-politics/madagascar-president-lifts-restrictions-on-opposition-candidates-idUSKCN1ID0E7>, accessed 24 January 2018

RFI, 'Les électeurs malagaches disent oui au référendum constitutionnel' [Malagasy voters say yes to constitutional referendum], 23 November 2010, <http://www.rfi.fr/afrique/20101123-electeurs-malgaches-disent-oui-referendum-constitutionnel>, accessed 6 March 2019

UNDP Sustainable Development Goals Knowledge Platform, 'Rapport national – Madagascar' [National Report, Madagascar], 22 August 2012, <https://sustainabledevelopment.un.org/content/documents/Rapport%20national%20final%20MDG%20Rio20.pdf>, accessed 18 December 2018

World Bank, *L'urbanisation ou le nouveau défi malgache* [Urbanization, or the new Malagasy challenge], Development Policy Review No. 70850, 3 January 2011, <http://documents.worldbank.org/curated/en/357091468091192596/Lurbanisation-ou-le-nouveau-defi-Malgache>, accessed 27 November 2018

11. Transitional elections in Myanmar, 1990–2017
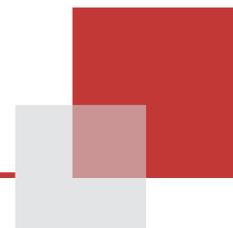
Aung Naing Oo

11.1. Context analysis

Since 1990, Myanmar (formerly Burma), a Southeast Asian nation of some 55 million people, has held only five elections: three general elections and two by-elections. Only four were relatively free and fair. The 1990 election was held in response to a popular uprising against 26 years of Socialist rule—largely buttressed by Myanmar's military—to appease the call for democracy and civilian rule. In the waning days of Burma Socialist Programme Party (BSPP) rule the outgoing head of state, former General Ne Win, promised multiparty elections. After the military cracked down violently on a series of uprisings in August and September 1988, it established the State Law and Order Restoration Council (SLORC) junta. The latter first promulgated the Pyithu Hluttaw (parliament) election law on 31 May 1989 as part of preparing for the May 1990 election.

Despite the fact that then-opposition leader Aung San Suu Kyi, the daughter of Myanmar's independence hero General Aung San, was under detention, her pro-democracy National League for Democracy (NLD) party won an overwhelming victory in the election. However, the military regime repudiated the vote despite the promise of Ne Win's successor, General Saw Maung, to respect the election results (Nai Thaung Shein 2003). Instead, Myanmar's new rulers contended that there was no constitution under which a transfer of power could happen, since the Socialist Constitution was nullified in the military takeover in 1988 and replaced with martial law. The SLORC declared in July 1990 that the results of the 1990 election were 'only to form a constituent assembly to draft a new constitution' (Human Rights Watch 2008: 14). In 1989 Aung San Suu Kyi had actually concurred that without drafting and adopting a new constitution, any transfer of power could be fraught with difficulties (Tonkin 2004).

In January 1993 (by decree 14/92 of November 1992), the SLORC organized the National Convention (NC) to draft a new constitution, but the country remained firmly under military rule (see ABSDF 1997: 34). The NLD initially participated in the NC while calling for face-to-face dialogue with the regime to discuss the transfer

of power, but made no progress. The NLD subsequently walked out of the convention in 1995 citing an array of problems including restrictions, contravening of the NC regulations by the junta, and revocation of NLD delegates' accreditation to the Convention (ABSDF 1997). The departure of the NLD effectively stalled the NC process from 1996, though it reconvened seven years later.

The junta went without any obvious political strategy for about a decade. On 30 August 2003, Prime Minister General Khin Nyunt announced a seven-step road map to resume and finish the National Convention process with a plan to hold a referendum on its outcome. The steps on the road map were as follows:

1. Reconvening of the National Convention that had been adjourned since 1996.

2. After the successful holding of the National Convention, step by step implementation of the process necessary for the emergence of a genuine and disciplined democratic system.

3. Drafting of a new constitution in accordance with basic principles and detailed basic principles laid down by the National Convention.

4. Adoption of the constitution through national referendum.

5. Holding of free and fair elections for Pyithu Hluttaws (legislative bodies) according to the new constitution.

6. Convening of Hluttaws attended by Hluttaw members in accordance with the new constitution.

7. Building a modern, developed and democratic nation by the state leaders elected by the Hluttaw, and the government and other central organs formed by the Hluttaw.

The eventual constitution was intended to ensure a 'leading role' for the military in national affairs; the military had decades earlier fashioned its own Indonesian-style *dwifungsi*—a self-appointed duty to govern and protect the country. In this regard, the military was not prepared to switch to the narrower role of external defence and sought a system by which its political influence and economic interests could be safeguarded.

The NC was resurrected in accordance with the road map in 2004. It progressed sluggishly, with no obvious timeline or conclusion in sight. However, in October 2007 Myanmar's revered Buddhist monks took to the streets demanding an end to the people's suffering under military rule. The 'Saffron Revolution', as it was known, was crushed by the junta. However, it may have hastened the constitution writing process, as the news of the monks' cruel treatment spread around the world; less than a year later on 10 May 2008, a national referendum on the new constitution was organized. Not only the referendum but also the provisions of the 2008 constitution were bitterly opposed by activists and opposition at home and abroad. In addition, the State Peace and Development Council (SPDC, for all practical purposes, the SLORC renamed) was roundly criticized for going ahead with the referendum a week after cyclone Nargis ravaged Myanmar and killed more than 120,000 people.

Nonetheless, the junta announced 92.48 per cent support on a turnout of 98.12 per cent (for what these figures are worth) and the 2008 Constitution was therefore ratified (*The Economist* 2014).

In the lead up to implementing the new constitution, the SPDC promulgated the 2010 Union Election Law (Law No.1/2010; see Union of Myanmar 2010) and subsequently formed an 18-member Union Election Commission. On 7 November 2010, the SPDC organized the first multiparty general elections since 1990. Various media reports indicated that the voter turnout was low. The opposition NLD boycotted the elections out of a concern not to invalidate its 1990 victory. Moreover, most of the NLD leaders including Aung San Suu Kyi could not contest the elections, being barred due to their 'criminal'/imprisoned status (Fuller 2010).

Opposition leader Aung San Suu Kyi remained under house arrest during the 2010 election. A sizable number of political parties, including ethnically concentrated parties; NDF (National Democratic Forces), which broke away from the NLD; and the former BSPP, renamed the National Unity Party, contested the elections. The USDP, the party founded and backed by the SPDC, won a landslide victory in both houses of the national parliament: the Pyithu Hluttaw (People's Assembly) and the Amyotha Hluttaw (Nationalities Assembly). It also won the majority of seats in State and Region Hluttaws (State and Region Assemblies) and appointments to Minister for Ethnic Affairs positions.

A week after the November 2010 elections, Aung San Suu Kyi was released from her detention. In March 2011, the USDP government took power and the SPDC was dissolved, ending 23 years of military rule without a constitution.

Although the political reforms came soon after President Thein Sein assumed office (see below; Thein Sein had been a top general in the SPDC and the Prime Minister of the military junta), the breakthrough on clean elections came in April 2012 when the USDP government organized a by-election to fill vacant seats in the national parliament (under the 2008 Constitution elected MPs must give up their seats once they take executive positions within the government). This time the opposition NLD decided to participate in the election and was welcomed to do so by the President Thein Sein's reformist government. The NLD won 43 out of 44 seats contested but unlike the results of the 1990 election the victory was institutionalized with newly elected MPs of the NLD able to take up their parliamentary seats.

In November 2015, the USDP government organized the elections in accordance with the 2008 constitution (which requires general elections for national and sub-national parliamentary seats every five years). Repeating the history of their 1990 election win, the NLD secured 390 of the 664 elected seats in the parliament. It also won the majority of seats in all but one of the state and region contests. In March 2016, the SPDC government handed power over to the NLD.

At the time of writing Myanmar's latest election was held on 1 April 2017, for seats vacated by MPs elected in 2015. These elections were contested by a total of 94 candidates from 24 political parties. The ruling NLD won nine out of 19 seats available (Global New Light of Myanmar 2017).

11.2. Timing and sequencing dilemmas

The narrative of elections from 1990 to 2017 suggests the following findings about electoral politics, decision-making and sequencing in Myanmar.

Constitution-building versus elections first

Having a constitution—no matter how imperfectly democratic—appears to have been essential to political and electoral reform in Myanmar. The 1990 election, held without a constitution in place, was a response to the 1988 upheaval. The timing or the sequencing was unlikely to have been well thought through, and the military regime might have underestimated public sentiment and animosity towards them. In hindsight, the military regime was not ready to return power to the civilians and refused to do so. The fact that there was no constitution that spelt out the terms of power transfer meant that military leaders had no defined protections either at a personal level or for their policy priorities. For the military, transferring power under the circumstance was unthinkable.

By way of contrast, the turning point for reforms came after the 2010 election—the first election in 20 years. Held in accordance with the 2008 Constitution, it was widely believed that the election was rigged. Various opposition groups and practically all foreign human rights organizations called it a sham. They accused the USDP of using 'intimidation, threats, coercion and bribery to force the public to cast votes for the regime-backed party' (Burma Partnership 2010). US President Obama and British Foreign Secretary William Hague described the election as 'flawed and neither free nor fair' (Aung Hla Tun 2010). According to Wilson (2010), '[t]he Election Commission had claimed that election observers were not necessary, rejecting ASEAN's offer to send observers'. Besides the barring of key opposition candidates, the military-backed USDP party benefited from an election commission with ties to the junta, questionable 'advance votes', and the presence of large numbers of security forces on the streets on polling day. This all gave the impression that the election was merely designed to install and legitimate the USDP party.

In some ways, the election was the first test of the theory seen in the 2003 road map that the military could transfer some governing roles to non-military (or at least non-serving military) politicians, retain control over security affairs, and maintain impunity for past misconduct during the armed and civil conflicts. Despite mounting internal and international pressure, the outgoing junta firmly remained in charge of the change process leading up to the election. They had suppressed all dissent violently or through draconian laws. They 'had less fear of sudden regime change' (Show and Easley 2016: 530).

Local versus international ownership; accommodative measures

To reiterate, the SPDC trusted its constitution to provide continued military dominance in politics. The means of doing so included retaining the right to appoint 25 per cent of the parliament along with three ministries, namely defence, border and home affairs. The 2008 Constitution of Myanmar (article 445) also explicitly prohibited retrospective penalization for actions taken under the aegis of SLORC and SPDC.

Accordingly, many inside and outside Myanmar did not believe the reforms were genuine or would endure. However, the 2012 election, with observers from ASEAN and its trade partners, the UN, USA, European Union and Australia (Moe Zaw Aung 2012) was an indication that reforms were here to stay. The NLD's landslide victory in the by-election, and the government's subsequent welcome of elected NLD MPs into the Parliament, indicated that an eventual transfer of power to civilians could be on the horizon.

That transfer of power to a government made up of civilians, most of whom had no experience in or connections to the military, materialized after the November 2015 election. The US-based Carter Center, Asian Network for Free Elections (ANFREL) and the European Union were invited as international observers (Pile 2015). While not entirely 'free and fair' in a small number of locations, the process was deemed credible by all observers; the results were judged to reflect the will of the people (BBC News 2015).

Under the Ministry of Home Affairs (which reports to the commander-in-chief as well as the government), the General Administration Department (GAD) is the most powerful sub-national agency in the country—effectively, the grassroots-level bureaucracy. Although the Constitution removed the military from day-to-day governance of many issue areas—such as education, commerce, infrastructure, finance, health and investment—the Defence Services retain a broad mandate to define and autonomously control affairs that are considered matters of 'national security'. As such, if control over the GAD does pass to civilian structures (in practice as well as in theory), this will be an important indicator of the governance system overall.

Choice of electoral system

Myanmar's long history of relying on FPTP (first-past-the-post), a legacy of British colonial rule, has contributed to strong showings by big parties (USDP in 2010, NLD in 1990, 2012, 2015 and 2017). As it now stands, FPTP benefits the dominant national party (NLD) and weaker parties that nevertheless have a strong local footprint, such as ethnic parties. It is also relatively easy to operate for election planners and organizers. The USDP would be the main, and possibly the only, beneficiary of a proportional system. Attempts were made to introduce proportional representation under the USDP government, but it never materialized.

Level of security

Election security remains a challenge, despite the increased legitimacy of the government and the stabilization seemingly provided under the 2008 Constitution. In 1990, there was a threat of top-down violence as the military sought to suppress any political activities or campaigning. In all five elections since 1990, elections could not be held in several of the remote ethnic areas with active armed conflict. In the 2015 election, violence prevented MPs from being elected in seven Lower House constituencies. In the 2017 by-elections, two of these were filled.

11.3. Implementation challenges

The lead up to the 1990 election appeared not to have been thought out strategically by the junta in power. In the waning days of the collapsing BSPP regime, outgoing head of state U Ne Win—almost in exasperation—called for multiparty elections and his successor, Sr Gen. Saw Maung, simply followed his order. The transformation in name only of the BSPP to the National Unity Party fooled no one. The latter was trounced by the NLD, and Sr Gen. Saw Maung invoked the absence of a constitution to stall a transfer of power.

The road map to the 2010 election was conceived in 2004 by the military regime. Although it did not contain a time frame, as we have seen step five was to hold free and fair elections for the formation of the required national legislative bodies.

The by-election of 2012 was solidified in the national election in 2015. Both were better planned and executed than previously. Security, campaigning and party registration and voter registration were better managed. In February 2011 the Union Parliament replaced the civilian Chairman of the Election Commission with a high-ranking army officer from the SPDC. International observers were invited to monitor the elections.

11.4. Finding and lessons

Elections cannot singlehandedly strengthen democracy. The Myanmar case since 1990 suggests that elections without constitutions in place are unlikely to advance the cause of democracy. A constitution does not necessarily prevent vote-rigging, but it does increase the likelihood of significant reform. Perhaps the most interesting features then, from a comparative perspective, are the following. First, the one rigged election (2010) led to the most dramatic progressive reforms in politics, the economy and peacemaking in Myanmar history, including the introduction of a credible election process two years later. Second, the four elections held under what is widely viewed to be a deeply flawed constitution (in 2010, 2012, 2015 and 2017) nonetheless strengthened momentum toward those major structural political reforms, and one (in 2015) produced the first civilian government since 1960.

All elections held after a constitution was in place—no matter how anti-democratic some of its provisions—have produced greater political freedoms and public participation, and improved governance. Constitutions containing undemocratic elements do not damn elections to irrelevance or to being used as instruments in authoritarian projects.

References

All Burma Students Democratic Front (ABSDF), *Letters to a Dictator: Correspondence from NLD Chairman Aung Shwe to the SLORC's Senior General Than Shwe* (Bangkok: ABSDF, July 1997)

Aung Hla Tun, 'Apathy, fraud charges mar rare Myanmar election', Reuters, 7 November 2010, <https://in.reuters.com/article/idINIndia-52721420101107>, accessed 4 December 2018

BBC News, 'Myanmar's landmark 2015 election explained', 3 December 2015, <https://www.bbc.co.uk/news/world-asia-33547036>, accessed 4 December 2018

Burma Partnership, 'Abuse of government authority during elections highlight un-rule of law in Burma', 2 December 2010, <http://www.burmapartnership.org/2010/12/abuses-of-government-authority-during-elections-highlight-un-rule-of-law-in-burma/>, accessed 4 December 2018

The Economist, 'What is wrong with Myanmar's constitution?', 4 March 2014, <https://www.economist.com/the-economist-explains/2014/03/04/what-is-wrong-with-myanmars-constitution>, accessed 13 March 2019

Fuller, T., 'Main opposition to boycott Myanmar election', *New York Times*, 29 March 2010, <http://www.nytimes.com/2010/03/30/world/asia/30myanmar.html>, accessed 4 December 2018

Global New Light of Myanmar, 'Results of 2017 by-elections', 3 April 2017, <http://www.globalnewlightofmyanmar.com/results-of-2017-by-elections/>, accessed 4 December 2018

Human Rights Watch, 'The Vote to Nowhere: The May 2008 Referendum in Burma', 30 April 2008, <https://www.hrw.org/report/2008/04/30/vote-nowhere/may-2008-constitutional-referendum-burma>, accessed 4 December 2018

Moe Zaw Aung, 'An accelerated move: An analysis of the 2012 By-election', Friedrich-Naumann-Foundation for Freedom, 18 April 2012, <https://fnfeurope.files.wordpress.com/2012/04/92045102-an-accelerated-move-an-analysis-of-the-2012-myanmar-by-election.pdf>, accessed 4 December 2018

Myanmar, Union of, 'Myanmar Laws (2010)', <http://www.burmalibrary.org/docs23/SPDC_laws_2010-tpo.pdf>, accessed 4 December 2018 [unofficial translation]

Nai Thaung Shein, 'An appeal from the exiled MP to EU governments', *Burma Today News*, 2003 <http://burmatoday.net/burmatoday2003/2003/10 /031003_mps_bt.htm>, accessed 4 December 2018

Pile, M., 'EU, US observers prepare for Burma's elections, Democratic Voice of Burma, 21 August 2015, <http://english.dvb.no/elections/eu-us-observers-prepare-for-burmas-elections-burma-myanmar/56505>, accessed 4 December 2018

Show, J. T., and Easley, L., 'Persuading pariahs: Myanmar's strategic decision to pursue reform and opening', *Pacific Affairs*, 89/3 (2016), <https://doi.org/10.5509/2016893521>

Tonkin, D., 'The 1990 election in Myanmar (Burma): Broken Promises or a Failure of Communications?', 23 March 2004, <http://www.ibiblio.org/obl/docs/DT-Elections.html>, accessed 4 December 2018

Wilson, T., 'The significance of Myanmar's 2010 election', *New Mandala*, 15 December 2010, <https://www.newmandala.org/the-significance-of-myanmar%E2%80%99s-2010-election/>, accessed 4 December 2018

12. Nepal's 2008 Constituent Assembly elections
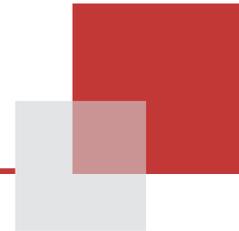
Bhojraj Pokharel and Shrishti Rana

12.1. Introduction

This case study focuses on the timing and sequencing of Nepal's Constituent Assembly (CA) elections conducted on 10 April 2008.

After the consolidation of the present-day territories of Nepal into a single kingdom, the state structure facilitated a continued dominance of the ruling elite. The struggle for democracy started in the 1950s, with short-lived success followed by restoration of the monarchy. In 1990, multiparty democracy was reinstated through a massive People's Movement organized by the political parties. This democratic development also represented a step forward for the women's movement (International IDEA/Women's Caucus, CA Secretariat/Nepal Law Society 2012: 40). It did not, however, resolve systemic ethnic and gender inequalities in the country. Issues of socio-economic exclusion became one of the major sources of the protracted armed insurrection launched by the Maoist party in 1996 (Dhungel 2017).

In early 2000, the monarchy took advantage of the ongoing Maoist insurgency to displace a nascent democratic system in the name of peace. The democratic system was fully suspended in 2005 by the King, who took over all the executive powers; in response a coalition of major parliamentary parties known as the Seven Party Alliance (SPA) and the Maoist party came together to sign a peace agreement known as the 12-Point Understanding in November 2005. The Maoist party agreed to end its insurrection in exchange for parliamentary parties agreeing to hold the CA elections.

As part of implementing the 12-Point Understanding, the SPA and the Maoist party organized a country-wide demonstration which was successful in toppling the monarchy. Parliament, dissolved in 2002, was reinstated on 24 April 2006 as demanded by the SPA. Girija Prasad Koirala became the new Prime Minister. At the first meeting of the reinstated parliament, Prime Minister Koirala registered a proposal to hold the CA elections, which was unanimously passed (Pokharel and Rana 2013: 55–59). The CA elections became the number one priority of the government and a new Chief Election Commissioner (CEC) was appointed in

October 2006 to start the election process, soon to be joined by four other Commissioners.

These elections were a crucial milestone in the Nepalese peace process, but faced immense challenges. They took place in a post-conflict environment marked by mistrust between political actors, a poor security situation, unaddressed political issues, and a lack of previous experience regarding the CA elections on the part of the Election Commission of Nepal (ECN).

12.2. Context analysis

In November 2006, a Comprehensive Peace Accord (CPA) was signed, formally ending the war. Premised on the CPA, an interim Constitution was finally promulgated in January 2007 scheduling the CA elections for June 2007. However, the elections had to be postponed due to the absence of a necessary legislative framework. Differences among the political parties sharpened but after a series of negotiations an agreement was reached to hold CA elections at the end of November 2007. It has to be mentioned that in Nepal, due to the weather, altitude and other conditions, elections can only be held in certain periods: either April–June or October–November (Pokharel and Rana 2013: 112).

In the period leading up to the November 2007 elections, a violent clash between Maoists and supporters of a new Madhesi party created fresh tensions. The Maoist party, which had lost around 27 cadres in that violent clash, became agitated against the government (Pokharel and Rana 2013: 121–22). In September 2007, the Maoists came up with a list of 22 demands that had to be met before they would participate in the upcoming elections. The most important of these demands were (a) the immediate declaration of a republic of Nepal; and (b) the adoption of a proportional election system to replace the previously agreed mixed system. The Maoist leaders also suggested that elections should be postponed until mid-April 2008 (Pokharel and Rana 2013: 123).

As no political understanding was reached even by the day before the nomination date in early October (i.e. the deadline for the submission of the list of candidates in the proportional election system), on the request of the government the ECN extended the nomination date for five days. Despite this extension, political leaders could not reach any agreement. Finally, on the nomination day the government announced the postponement of elections even though the ECN had fully completed the technical preparations. Following this second postponement of the CA elections there was renewed concern about the peace process, particularly among the international community. Fortunately, after several political negotiations, a 23-Point Peace Agreement was signed in December 2007. This secured the participation of all major political forces in the elections and scheduled elections for 10 April 2008 (Nepal Monitor 2007).

As soon as the new date was fixed, the ECN moved ahead with the necessary preparations. However, new agitation, particularly from the ethnic-Madhesi groups, forced the Commission to postpone the nomination date twice and to relax the provision of the quota rules as per the agreement between the government and the agitating Madhesi parties. In particular, the number of elected seats was amended

many times, which impacted the timing of the elections. Finally, the CA elections were held successfully on 10 April 2008 (Election Commission of Nepal 2009; International IDEA 2015: 9).

12.3. Timing and sequencing dilemmas

Key stakeholders

The major stakeholders during the Constituent Assembly process were the government, led by the Seven Party Alliance, the Maoist party, and the Election Commission. Various socio-political groups such as women, Madhesis, indigenous people, Dalit groups and civil society organizations including the media were also active in the process impacting the timing of the elections.

The international community, including states, intergovernmental organizations and NGOs, were also critical stakeholders. By providing funding and technical assistance, fielding observation missions and playing important diplomatic roles, international actors assisted in creating an enabling political, legal and security environment for peaceful and successful elections. The Royal Palace, including other pro-royalist forces, had a deterring role and thereby impacted the timing of the elections and the climate in which they were held. Political leaders, particularly the Maoists, feared that the army might favour the Palace and try to disrupt the elections. However, during meetings with the Chief Commissioner, the army always showed support to the CA process.

Among all these actors, the pre-eminent decision-makers during the CA elections were the leader of the SPA, Girija Prasad Koirala, and the Maoist party leader, Pushpa Kamal Dahal, who were in turn influenced by various other stakeholders.

Efficiency versus legitimacy

The question of timing has been crucial in Nepal's elections process. Both the key decision-makers from the SPA and the Maoist party were keen to hold the elections as scheduled in June 2007 because they saw a threat to the elections from the royalist forces. Moreover, the octogenarian SPA leader Koirala's health was continually deteriorating and the CA was a legacy issue for him. As for the Maoists, Dahal was doubtful of the SPA's intention to hold elections so he wanted to bring them forward. There was also a historical precedent from the 1950s, when the CA elections, after being delayed, were not held at all.

The ECN, on the other hand, assessed that the timing of the June 2007 elections was unrealistic given that an enabling legal, political and security environment was lacking. The international community, particularly the United Nations Mission in Nepal (UNMIN), shared similar concerns. The Government of India, by contrast, wanted early elections because it suspected that delays could cause further political complications, and also because it did not wish UNMIN's presence in Nepal to become long-term (Pokharel and Rana 2013: 101).

The ECN adopted a flexible attitude by postponing the election further to April 2008 despite having completed its technical preparations (Pokharel and Rana 2013: 106). The political leaders also showed flexibility in accommodating demands placed upon them by ethnic groups, giving the latter greater ownership of the process and

broadening electoral participation. There was little disagreement in Nepalese society about who constituted the historically excluded social groups (Hachhethu, Kumar, and Subedi 2008: 93); however, the political parties varied in how far they complied with the quota provisions devised in response—concerning gender, caste and regional representation (Bylesjö, Kandawasvika-Nhundu and Larserud 2010: 3; International IDEA/Women's Caucus, CA Secretariat/Nepal Law Society 2012: 88).

Local versus international ownership

While Nepal's peace process was led by the local actors, there were a number of international actors in support (for their respective roles, see International IDEA 2015: 29–38). India in particular played an important facilitating role in bringing the Maoists and the SPA together to sign the 12-Point Agreement. On Nepal's request, the United Nations Mission in Nepal (UNMIN) was established to facilitate the electoral as well as the overall peace process, specifically in relation to monitoring human rights through the Office of the UN High Commissioner for Human Rights (OHCHR); the Code of Conduct during the ceasefire; arms and armed personnel of both the Nepal Army (NA) and the Maoist party; and technical assistance and monitoring of the CA elections themselves (United Nations 2007). Other multilateral and bilateral donors which invested hugely in the elections had an influence. Therefore, it was challenging to strike a balance between the local sensitivities and external support.

Constitution-building versus 'elections first'

In Nepal, the road map for the elections and the new Constitution was carved out in the peace agreements, based on a political negotiation between the SPA and the Maoist party. Following the success of the People's Movement in 2006, all the major parties had opted for an election to the Constituent Assembly as their top priority. This was difficult to implement within the framework of the 1990 Constitution, which represented a compromise between the King and political parties. Hence, the SPA and the Maoist party decided to promulgate an interim constitution that would lay down a legislative framework for an election to the CA.

Following the CA elections held on the basis of the Interim Constitution, the new constitution drafting process began. However, the elected CA was unable to deliver the Constitution because it could not agree on major issues such as forms of governance, the type of electoral system or the basis of federalism. Federalism would only be inserted into the Interim Constitution after a Madhesh uprising in 2007 (Dhungel 2017), and later became part of the new Constitution, but its conceptual basis was unfamiliar and disputed (see International IDEA 2014; International IDEA 2015: 17–18). A second CA had to be subsequently elected to reach a compromise on a constitution. The case of Nepal thereby shows advantages and disadvantages of holding elections before settling the key disputed political issues (see below, especially Level of security).

Choice of electoral system

Nepal had practised a majoritarian first-past-the-past (FPTP) system in its past parliamentary elections. Political parties that benefited from the FPTP system

insisted that it be retained, whereas the Maoist party and other marginalized and indigenous communities demanded a proportional system. These differing positions are what motivated delays to the CA election legislation. As a compromise, a mixed election system combining both FPTP and proportional representation (PR) systems, with an equal number of seats, was adopted in the Interim Constitution. Later on, given the insistence mainly from the Maoist party and ethnic groups, this was modified whereby 58 per cent of seats were allocated through PR and 42 per cent through FPTP (Interim Constitution 2007: 26–27). Only 30 women were elected to the CA in 2008 through the FPTP route, whereas 161 women were elected through the proportional system (International IDEA/Women's Caucus, CA Secretariat/ Nepal Law Society 2012: 85).

Specifically, the election law obliged the political parties to submit their lists of candidates for the proportional representation race according to the prescribed quotas (Election to the Members of the Constituent Assembly Act, 2064 (2007): 41). However, the agitating regional ethnic-based parties demanded that this quota rule be relaxed arguing that it would be difficult for them to find candidates as per the quotas in the PR list. As a result, the ECN relaxed the quota rule according to which a party nominating fewer than 100 candidates in the PR list did not have to comply with the prescribed quotas as mentioned above. These changes necessitated several political negotiations and entailed amendments in both the Interim Constitution and the election laws.

Choice of electoral administration

The choice of an electoral administration also played a crucial role in the CA elections. The ECN's approach of full transparency (full media access to the election process and sharing of all information openly); independence and neutrality (equal treatment for all); and regular and broad consultation with all the stakeholders on all crucial issues played a positive role in managing the fragile transitional period. Moreover, the conclusions of these consultations were reflected in policies and legislations, which enhanced the ECN's credibility.

Accommodative measures

A few accommodative measures were put in place to facilitate the election process. The Interim Constitution stipulated an interim parliament which provided an avenue for the Maoist party to join the legislature even before they contested the elections. A few months later, the Maoist party also joined the government. The Maoist party, as part of the parliament and the government, shared ownership of the process, which was crucial for the legitimacy of the electoral process and its acceptance.

Level of security

Finally, the most crucial factor impacting the electoral process was the level of security. When the elections were held the management of Maoist forces and their arms—albeit under UNMIN supervision—had yet to be fully resolved; that is, political actors had decided to settle disarmament and demobilization after the elections (in light of the Maoists' anxieties about elections going ahead, with

implications for confidence in the peace process). However, as the ECN acknowledged, this hindered the creation of a level playing field for the political parties, and left parties and public alike feeling a level of threat to their safety (Pokharel and Rana 2013: 150). At the practical level, under the Agreement on Monitoring of the Management of Arms and Armies, unarmed Maoists soldiers in plain civilian clothes were granted leave for medical or family reasons as long as it did not exceed 12 per cent of the total retained force at a given cantonment under the UNMIN's supervision (United Nations 2006), whereas other parties were without armed forces.

Indeed, due to the fragility of the security situation and direct threats from new insurgent groups—around 70 such groups were operating—all electoral stakeholders felt extremely insecure. UNMIN's supervision could not completely calm the fear among the voters. Moreover, the Nepalese police in charge of the security situation was demoralized and weakened after the armed insurgency.

12.4. Implementation challenges

Preparations for the June 2007 elections were plagued by weak state institutions, the poor security situation, and the absence of necessary legal frameworks including a Constituent Assembly Election Act. The ECN nevertheless started electoral preparations. When the election-related bills were not passed by March 2007, the Chief Commissioner tried to put pressure on the political parties to either provide necessary legislation or reconsider the date. When his request was unheeded, in the third week of April 2007 the ECN announced that the election would not be held in June, and that the Commission needed at least 110 days to make preparations for a future election in order to guarantee its quality (Pokharel and Rana 2013: 101–07).

The postponement of the June 2007 elections resulted in increasing distrust among political parties; the Maoist party, in particular, doubted the intention of the parliamentary parties to hold the CA elections. However, even though the Maoist party—with an eye to the public—loudly protested the postponement, they did not walk out of the process or resort to violent demonstrations. This was mainly possible due to the credibility and the perceived neutrality of the election management body and the continued diplomatic efforts by the international community as well as key national actors to keep the Maoists engaged in the process.

Holding elections in November 2007 would have provided enough time for technical preparations. However, and unexpectedly, the broader political situation deteriorated in the run up to elections, putting the Maoist party's participation in question. Hence, the timing of the November elections became a very sensitive issue.

The rescheduling of elections to 10 April 2008 was appropriate despite the multiple challenges this posed. The success of these elections was mostly due to the breadth of political support for them. The ECN was also more prepared on the technical aspects even though the politicians made persistent changes until the last moment, on crucial aspects such as the number of seats in the Parliament and the election laws.

In terms of the technical aspects, preparing the voters' list was challenging. The Maoists were not ready to accept the existing voter register because many Maoists

had not been registered during the armed struggle. The new Voters' Registration Act also set up new criteria that required the preparation a new voter list before the CA elections (Nepal Law Commission 2006: 2).

To mitigate risks of electoral violence the ECN adopted various strategies, among them the encouragement of domestic and international observers to deploy. During the elections around 63,000 domestic election observers and around 1,000 international election observers played a role in deterring violence. In addition to the accredited international observers, ECN had requested the local diplomatic missions and other international organizations based in Nepal to mobilize expatriates on the election day so that the internationals would have a deterrent effect (Election Commission of Nepal 2009). There were instances in which polling officials were unwilling to attend polling stations due to perceived threats to their lives. In such situations, additional security measures and inducements (both monetary and non-monetary) were offered.

A great number of voters needed to be educated on a number of new issues, including the new electoral system, within a short time. The Commission also had to address rumours in circulation, such as that the Maoists could observe polling booths by means of special technology. The ECN immediately implemented a media campaign emphasizing the secrecy of ballots. Other effective confidence-building measures included fielding two voter educators (one male and one female) with education materials in every community. To reach the maximum of voters in a very limited time, 17 different languages were used in voter education.

In the event, the CA elections were *relatively* peaceful: election observers did report intimidation of voters, abductions of candidates, and election-related violence (Carter Center 2008). Ultimately, however, the country was spared disputes over the election results.

12.5. Findings and lessons

The political, legal and security environment, the attitude of the political leadership, the public trust in the elite, the government's attitude, the role of civil society, the availability of resources, the quality of the election preparations, and the credibility of the electoral commission and its leadership are crucial factors to determine the success of a transitional electoral cycle. The management of arms and armed personnel before transitional elections is crucial to create a level playing field for all the actors. In the case of Nepal's CA elections, postponing these processes resulted in a competition between unequal players (Pokharel and Rana 2013: 151).

A decade on, it can be concluded that the first CA elections of 2008 nonetheless contributed to strengthening democracy in Nepal. The elections sealed the fate of the monarchy and Nepal transformed itself from a Hindu kingdom into a secular republic. In so doing, it allowed for the peaceful integration of the group who had challenged the mainstream democratic system of Nepal for a number of years. The elections have therefore contributed to resolving one of Nepal's most pressing political problems, the protracted armed insurgency of the Maoists. Institutionalization of multiparty democracy and the peace began soon after the elections with the process of constitution-making in the elected Assembly. This led to

the final disarmament and demobilization of the Maoists in November 2011 (Pokharel and Rana 2013: 196–97). Although the first Constituent Assembly failed to agree and draft a constitution it defined the key principles of the new Constitution that followed. The second Constituent Assembly was elected on 19 November 2013 and the new Constitution of Nepal was promulgated on 20 September 2015 (for ethnic and federal dynamics of the constitution-making, see Dhungel 2017; Bisarya 2016; International IDEA 2015).

The proper timing and sequencing of transitional elections is contingent on a country's political context. Enough consideration should be given in determining the timing, which directly affects the *purpose* of the elections. Nepal's experience of postponing the November 2007 elections highlights the importance of maintaining sensitivity to instances in which the political atmosphere is not conducive: a difficult decision to protect democratic processes and momentum while avoiding potential conflicts. The experience confirms that merely technical preparations are not sufficient to hold elections, as political will and understanding are also imperative. At sensitive times it is better to postpone than to rush to elections that risk becoming a trigger for political violence. If the ECN had pushed for the planned November elections then there was a likelihood that the Maoist party would have boycotted them, thereby jeopardizing the peace process. During and after the 2013 CA electoral cycle, the ECN (with International IDEA) would continue to institutionalize electoral risk management, broadening from an initial focus on security to also consider legal, political, administrative and technical risks (Asplund and Matatu 2016).

The experience of Nepal also shows that it is unwise to rush to announce the election dates before finalizing the key electoral principles and laws, all of which takes time and political negotiation. Postponement of elections can potentially lead to loss of credibility for political leaders, and scepticism among the ordinary people about whether elections will happen at all. It further creates pressure for election managers and inconvenience for international partners. This suggests that it is better to set a realistic date than to have to postpone it later on.

In Nepal, the political will to hold CA elections remained firm because all political parties wanted to secure democracy by restricting the powers of the monarchy, which was possible only by institutionalizing the reforms made through CA elections. Moreover, the elections were necessary to institutionalize multiparty democracy, establish a more inclusive state, and also to move towards federalism.

The second factor was that the Maoists wanted a safe landing from their ongoing insurgency. The CA provided them with that platform. The ordinary people of Nepal also wanted the end of the ongoing armed struggle, which resulted in massive popular support for the CA elections (Hachhethu, Kumar and Subedi 2008: 93). The Interim Constitution provided the legislative framework for the elections and gave an avenue for the Maoists to join the interim Parliament; it kept all the political forces engaged on the right course despite uncertainty and, at times, sharp disagreements.

The credibility of the Nepalese election management body and its leadership also played a key role in this success. When political differences emerged, the ECN could play a facilitating role because of the trust it enjoyed. The ECN also exercised a

reasonable flexibility which was necessary to maintain progress, striking a careful balance between the needs of the peace process and the required technical standards.

References

Asplund, E. and Matatu, N., 'Electoral risk management in Kenya, Nepal and Nigeria' in S. Alihodžić (ed.), *Risk Management in Elections* (Stockholm: International IDEA, 2016), <https://www.idea.int/publications/catalogue/risk-management-elections>, accessed 12 December 2018

Bisarya, S., 'Forces and mechanisms in plurinational constitution-building in South Asia', in *Annual Review of Constitution-Building Processes: 2015* (Stockholm: International IDEA, 2016), <https://www.idea.int/publications/catalogue/annual-review-constitution-building-processes-2015>, accessed 12 December 2018

Bylesjö, C., Kandawasvika-Nhundu, R. A. and Larserud, S., *Electoral System and Quotas in Nepal*, Discussion Paper 4 (Stockholm: International IDEA, 2010), <https://www.idea.int/publications/catalogue/electoral-system-and-quotas-nepal>, accessed 12 December 2018

Carter Center, 'Observing the 2008 Nepal Constituent Assembly Election', April 2008, <https://www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/FinalReportNepal2008.pdf>, accessed on 14 January 2019

Comprehensive Peace Accord signed between Nepal Government and the Communist Party of Nepal (Maoist), 22 November 2006, <http://peacemaker.un.org/nepal-comprehensiveagreement2006>, accessed 21 November 2018

Dhungel, S., 'Federalism and devolution in Nepal' in International IDEA, *Constitution-building in States with Territorially Based Societal Conflict: Melbourne Forum on Constitution-Building in Asia and the Pacific 18–19 August 2016* (Stockholm: International IDEA, 2017), <https://www.idea.int/publications/catalogue/constitution-building-states-territorially-based-societal-conflict>, accessed 20 March 2019

Election Commission of Nepal, Election to the Members of the Constituent Assembly Act, 2064 (2007)

Election Commission of Nepal, The Election Commission's Report of the Constituent Assembly Election 2009

Hachhethu, K., Kumar, S. and Subedi, J., *Nepal in Transition: a Study on the State of Democracy* (Stockholm: International IDEA, 2008), <https://www.idea.int/publications/catalogue/nepal-transition-study-state-democracy>, accessed 20 March 2019

International IDEA, *Federal Terminology Through Citizen Dialogues* (Stockholm: International IDEA, 2014), <https://www.idea.int/publications/catalogue/federal-terminology-through-citizen-dialogues>, accessed 20 March 2019

International IDEA, *Nepal's Constitution-Building Process, 2006–2015* (Stockholm: International IDEA, 2015), <https://www.idea.int/publications/catalogue/nepals-constitution-building-process-2006-2015>, accessed 20 March 2019

International IDEA/Women's Caucus, CA Secretariat/Nepal Law Society, *Women Members of the Constituent Assembly: A Study on Contribution of Women in Constitution-making in Nepal,*, 1 January 2012, <https://www.idea.int/publications/catalogue/women-members-constituent-assembly-study-contribution-women-constitution>, accessed 12 December 2018

Nepal, Federal Democratic Republic of, The Interim Constitution of Nepal (2007, as amended by the first two amendment acts 2063 and 2064), <http://constitutionnet.org/sites/default/files/interim_constitution_of_nepal_2007_as_amended_by_first_second_and_third_amendments.pdf>, accessed 29 January 2019

Nepal Law Commission, Electoral Rolls Act 2006

Nepal Monitor, '23-Point Agreement by the Seven-Party Alliance', 26 December 2007, <http://www.nepalmonitor.com/2007/12/23-point_agreement_by_the_seven-party_alliance.html>, accessed 21 November 2018

Pokharel, B. and Rana, S., *Nepal: Votes for Peace* (New Delhi: Cambridge University Press, 2013)

United Nations, UNMIN Factsheet 2 – Monitoring the Management of Arms and Armed Personnel (2006), <http://un.info.np/Net/NeoDocs/View/571>, accessed 14 January 2019

United Nations, Security Council Resolution 1740 [establishment of the UN Political Mission in Nepal (UNMIN)], 23 January 2007, <https://www.un.org/press/en/2007/sc8942.doc.htm>, accessed 14 January 2019

13. Post-conflict elections in Northern Ireland, 1994–2003
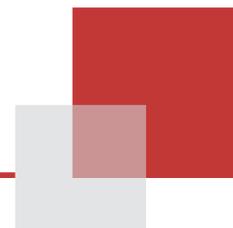
Christine Bell and Oliver Joseph

13.1. Introduction

The conflict in Northern Ireland during the latter half of the 20th Century, had its origins in the partition of the island of Ireland in May 1921. The UK Government, through the Government of Ireland Act (1920), established a framework to devolve power to Ireland, known as 'home rule', entailing the creation of two self-governing jurisdictions, each with their own parliament. Historically, Ireland comprised four provinces. Ulster in the north-east had nine counties, six of which now form modern-day Northern Ireland, with a majority Protestant/unionist community holding political and cultural allegiance to the UK. The remaining three counties and the three provinces to the south, Connacht, Leinster and Munster, formed the Irish Free State—the Republic of Ireland from 1937 after gaining full independence from the UK—with a majority Catholic/nationalist community. The framework establishing two parliaments in Ireland was ultimately never enacted owing to the onset of civil war in 1922, resulting in *dominion* status—semi-independence—of the three Catholic/nationalist provinces forming the Irish Free State, and most of Ulster forming Northern Ireland as a constituent nation of the UK with devolved power.

Violent conflict perpetrated by paramilitary groups between the late 1960s and 1998 resulted in approximately 3,500 deaths and many more people injured, from a population of approximately two million people. The violence occurred overwhelmingly within the territory of Northern Ireland; however, throughout this period attacks were also carried out on the UK mainland by the Provisional Irish Republic Army (PIRA) paramilitary group. The Northern Ireland Parliament was suspended in 1972 resulting in Northern Ireland being governed directly by the British Government in Westminster, known as 'direct rule'. A peace agreement was reached in 1973—the Sunningdale Agreement—between unionists, nationalists, and the British and Irish governments, making provision for devolution, power sharing and a North–South Council. The Sunningdale Agreement failed to hold, and it was not until after the ceasefires in 1994, further peace negotiations and ultimately the implementation of the Belfast Agreement in 1998 (also known as the Good Friday

Agreement), that a new democratically elected Northern Ireland Assembly was created and agreed upon.

A non-violent civil rights campaign to promote political, social and economic equality for the Catholic minority in Northern Ireland largely resolved the election specific discrimination before the onset of the conflict in the late 1960s. However, many of the reforms came into practice after the conflict became entrenched: as some grievances were solved, new ones took their place. These included counter-insurgency practices such as internment without trial during the 1970s, and both civilian and military patrols and searches. The legacy of inequality between the two communities remained and proved to be intractable over the following 30 years of conflict.

13.2. Context analysis

Elections were a significant factor contributing to the conflict in Northern Ireland. The Government of Ireland Act (1920) established proportional representation—single transferable vote (STV)—as the electoral system for local elections to ensure Catholic/nationalist inclusion. However, following Protestant/unionist political party losses in the Northern Ireland general election in 1925, a majoritarian—first-past-the-post—electoral system was introduced in 1929. Since the partition of Ireland in 1921, Northern Ireland was viewed by its Catholic population to be a 'gerrymandered' entity, created by the UK to ensure a Protestant majority would retain political power. The franchise for local elections was restricted to residents who owned or leased property and therefore paid local taxes rather than one-person-one-vote, favouring the predominantly wealthier Protestant community. Residents who owned or rented properties in more than one electoral district were also eligible to vote in each of those districts. The lack of equal political participation between the Protestant/unionist and Catholic/republican communities was central to the conflict in Northern Ireland.

Administratively, Northern Ireland remained a fully functioning entity within the UK throughout the conflict. Elections to four separate legislative bodies took place between 1994 and 2003—elections to the UK Parliament, the European Parliament, local councils and the Northern Ireland legislature, all of which were held under a system provided for in law. These elections were widely regarded as free and fair, albeit against a background of paramilitary activity perpetrated by both Protestant/unionist (loyalist) and Catholic/nationalist (republican) groups, sectarian division and a lack of genuine plural multiparty competition in each constituency. The rise in the electoral strength of Sinn Féin, the political party associated with the PIRA, may be attributed to their strategy of backing the peace process. Within the broader nationalist movement—those favouring secession from the UK and union with the Republic of Ireland—paramilitary violence was increasingly viewed as detrimental to a successful electoral strategy and counter-productive to achieving their ultimate objective. Scheduled elections therefore played a central role in providing an exit from the ongoing conflict. Sinn Féin fields candidates in elections to the UK Parliament, but abstains from taking their seats as they refuse to recognize the UK Parliament's sovereignty over Northern Ireland.

The political parties in Northern Ireland are almost exclusively aligned to a particular ethno-religious community. They are not present on the UK mainland of Great Britain and the main political parties on the UK mainland are not present in Northern Ireland. The principal Protestant/unionist political parties are the Ulster Unionist Party (UUP) and the Democratic Unionist Party (DUP). The principal Catholic/nationalist parties are the Social Democratic and Labour Party (SDLP) and Sinn Féin. The Alliance Party is a cross-community political party. The unionist/loyalist affiliated paramilitary groups were the Ulster Defence Association (UDA) and Ulster Volunteer Force (UVF), who were associated primarily with two smaller parties, the United Kingdom Unionist Party (UKUP) and the Progressive Unionist Party (PUP). The nationalist/republican affiliated paramilitary groups were the PIRA and Irish National Liberation Army, both primarily associated with Sinn Féin.

13.3. Timing and sequencing dilemmas

The timing and sequencing of elections held throughout the conflict were not considered contentious to the peace process in Northern Ireland. The ratification of the Belfast/Good Friday Agreement did not interrupt the normal electoral cycle but did necessitate fresh elections to the new Northern Ireland Assembly which it created. However, extraordinary elections were held to elect delegates to the peace talks, which were based on an innovative and unique electoral system.

Choice of electoral system and institutions

The Northern Ireland Act (1998) set out the legislation for implementing the Belfast/Good Friday Agreement, making provision for new elections to the new Northern Ireland Assembly and providing a timetable for electing the new First Minster and Deputy First Minister. The management and administration of the new elections were not explicitly outlined in the peace agreement and were held on the basis of existing legislation. The management of elections in Northern Ireland was an established and trusted process, which had previously and continuously existed, and moreover was guaranteed by the UK Government through its sovereignty over Northern Ireland.

The first Assembly elections were held in 1998 but prior to these, extraordinary elections were held which included several novel and accommodative features factored into their design. The election of 110 delegates to the peace talks, the Northern Ireland Forum for Political Dialogue, was held on 30 May 1996. The Forum was a body that existed for two years, consisting of members from all political parties, to assess matters that may facilitate dialogue and understanding in Northern Ireland and be represented at peace talks. Several electoral systems for the Forum were considered, including a proportional representation list system with Northern Ireland as a single constituency; an 'indexation' system where seats and votes would have been non-linear; a pairing of constituencies to make nine new electoral districts (out of the existing 18); and the STV system in each parliamentary constituency. The electoral system ultimately chosen included elements of all. The 18 constituencies based on the UK parliamentary constituency boundaries elected five representatives from closed party lists using the D'Hondt method. Each of the 10 parties with the

most votes from across Northern Ireland elected a further two 'top-up' representatives (ARK, Queen's University Belfast and Ulster University). The mechanism for allocating two 'top-up' seats was included to ensure that the UUP and the UDP (the two political parties associated with loyalist paramilitary groups) were represented at the Forum with meaningful voice. The electoral system made the process more inclusive of the full range of political actors. As an unintended consequence, the system enabled the Northern Ireland Women's Coalition (NIWC), a cross-community party, to succeed in winning two 'top-up' seats and reaching the top 10 list, entitling it to a full negotiating team.

Local versus international ownership

The Belfast/Good Friday Agreement had a clause requiring referendums on its ratification to be held in both Northern Ireland and the Republic of Ireland. They were held concurrently on 5 May 1998, one month after it was agreed by the UK and Republic of Ireland governments on 10 April 1998.

The Agreement was based on three provisions—The Three Strands—which sought to build relationships (a) within Northern Ireland; (b) between Northern Ireland and the Republic of Ireland; and (c) between Britain and Ireland. The first strand was intended to restore devolved government to Northern Ireland through the creation of a power-sharing government with an Executive and Assembly, based on consociationalism with a proportionally elected legislature. The First Minister and Deputy First Minister would be co-equal, joint heads of the Executive, with one office representing the unionist community and the other representing the republican community, forming an involuntary coalition government. The second strand established a set of North–South institutions, the North–South Ministerial Council and the North–South Implementation Bodies, to encourage cooperation between Northern Ireland and the Republic of Ireland. The third Strand established the British–Irish Council and the British–Irish Intergovernmental Conference, to develop common understanding on human rights protections ('rights, safeguards and responsibilities'), and their place in resolving deep-rooted sectarian grievances that emanated both prior to and during the conflict. This involved recognition by the UK Government of victims of violence, a process of releasing convicted paramilitary prisoners (from both communities) and weapons decommissioning. The third strand institutions provided a forum for the Governments of the UK and the Republic of Ireland to discuss issues—*Reserved Matters*—that were above the responsibility of the new Northern Ireland Assembly (The Belfast Agreement 1998).

Voters in Northern Ireland were asked to ratify the Agreement, while voters in the Republic were asked to approve an amendment to the Constitution of Ireland ending its territorial claim over Northern Ireland. In Northern Ireland 71.12 per cent (676,966 people) of the electorate voted in favour of ratifying the Agreement and 28.9 per cent (274,879 people) voted against. The turnout was 81.1 per cent, higher than in previous elections. In the Republic, 94.39 per cent (1,442,583 people) voted in favour of amending the constitution and 5.6 per cent (85,784 people) voted against (ARK, Queen's University Belfast and Ulster University). The central component of the Agreement was to devolve power to new political institutions in Northern Ireland, which would require a further election of members to the new

Northern Ireland Assembly. The timing of the new Assembly election was not considered controversial. The DUP, the unionist party which subsequently won the second highest number of seats in the first new Northern Ireland Assembly elections, had previously withdrawn from the peace talks and opposed the Belfast/Good Friday Agreement. A delay in implementing the Agreement could have created an opportunity for dissenting political and paramilitary actors to undermine the Agreement and the entire peace process.

Maintaining political momentum and galvanising public support for the Agreement was considered of utmost importance to its success and effectiveness. The referendum campaign in Northern Ireland was appropriately financed, inclusive and fair. For the referendum result to be legally binding and the UK and Irish governments to ratify the Belfast/Good Friday Agreement, a simple majority was required. Every constituency in Northern Ireland voted to ratify the Agreement, although support was greater in Protestant/unionist constituencies than Catholic/nationalist constituencies.

The United States Government in 1995 appointed a Special Envoy for Northern Ireland and continued to support the implementation of the Belfast/Good Friday Agreement after 1998. The European Union, while not directly involved in the peace process itself, is referred to in the Agreement through the embedding of EU institutional mechanisms and programmes into Northern Ireland legislation.

13.4. Implementation challenges

Ensuring that the political institutions were established by the Belfast/Good Friday Agreement soon after its ratification was highly important. The first elections to the Assembly were held on 25 June 1998, one month after the referendum. The timing of the first elections was therefore not controversial. However, as the implementation of the Agreement progressed, the timing of later elections became increasingly important. All political parties except for the DUP (the second largest unionist party in 1998) had committed to the Agreement, including the parties closely aligned with the nationalist PIRA and the loyalist UDA and UVF paramilitary groups. The DUP objected entirely to the peace process and its outcome and based its subsequent electoral strategies on a platform of rejecting the Agreement. Power-sharing in the Assembly was difficult to sustain. By the time of the second elections to the new Assembly in 2003 the DUP, who were against the Agreement, became the largest Protestant/unionist party ahead of the UUP. Sinn Féin became the largest Catholic/nationalist party ahead of the moderate SDLP, who were against violence as means to achieve their objective throughout the conflict. Moderate unionists were side-lined by the DUP's tougher stance, appealing to a Protestant/unionist community that had been largely ambivalent towards the Agreement. The DUP understood that to sustain support from the Protestant/unionist community they had to commit to participating in the new political institutions established by the Belfast/Good Friday Agreement. As such, they shifted their policy towards one advocating for a 'reformed Agreement' position. Successive electoral outcomes suggested that the two communities punished the more moderate political parties for concessions they made in negotiating the Agreement prior to 1998.

The first elections to the new Northern Ireland Assembly were held on 25 June 1998. The Assembly consisted of 108 seats (see Table 13.1). The UUP won 28 seats making it the strongest unionist party, albeit with a smaller majority than their previous electoral strength would have indicated; the DUP won 20 seats; the SDLP won 24 seats making it the largest nationalist party; Sinn Féin won 18 seats; and the non-sectarian Alliance Party won 6 seats. Smaller unionist parties associated with loyalist paramilitary groups won 7 seats, while the NIWC won 2 seats, with various other unionist parties and independent candidates winning 9 seats (The Electoral Office for Northern Ireland). Ministers in the Executive are elected by Assembly members with a requirement for a majority of support from all political parties across the political/sectarian divide. On 1 July 1998, a UUP First Minister and a SDLP Deputy First Minister were elected by the Assembly. The government initially convened in shadow form to decide upon its working practices before power was fully devolved on 2 December 1999.

Table 13.1. Elections to the new Northern Ireland Assembly, 1998

Political party	Number of seats
Social Democratic and Labour Party (SDLP)	24
Ulster Unionist Party (UUP)	28
Democratic Unionist Party (DUP)	20
Sinn Féin	18
Alliance Party	6
UK Unionist Party (UKUP)	5
Progressive Unionist Party (PUP)	2
Northern Ireland Women's Coalition (NIWC)	2
Independent Unionist Candidates	3

Source: The Electoral Office for Northern Ireland

Disputes between the political parties throughout the peace process over the PIRA's failure to decommission weapons resulted in the Assembly and its associated institutions being suspended from 12 February 2000 until 30 May 2000 following further negotiations. The Assembly was then suspended twice for 24 hours in September 2000, almost triggering elections, and was suspended indefinitely on 14 October 2002. Scheduled elections were held in 2003 but the Assembly remained suspended until 7 May 2007.

Fresh elections were almost called in September 2001, following the failure of the Assembly to elect a First Minister and Deputy First Minster within the six-week time frame by several days, as set out in the Northern Ireland Act (1998). The DUP objected to the result of the election for breaching the legal deadline. The dispute was ultimately decided by the UK Parliament in the House of Lords (prior to 2009, held the function of court of final appeal), which ruled that despite the legislative deadline, the law allowed for flexibility in electing the First Minister and Deputy

First Minister. This legal decision was crucial for sustaining the political institutions in Northern Ireland.

Changing social attitudes towards the previous conflict and subsequent ceasefires, as well as demographic changes in Northern Ireland, resulted in the elections that were held in 2003 shifting the political balance of power at the Assembly (see Table 13.2.). The DUP and Sinn Féin became the largest political parties in the Protestant/unionist and Catholic/nationalist communities, respectively.

Table 13.2. Elections to the new Northern Ireland Assembly, 2003

Political party	Number of seats
Democratic Unionist Party (DUP)	32 (3 subsequently defected to the DUP)
Sinn Féin	24
Ulster Unionist Party (UUP)	24
Social Democratic and Labour Party (SDLP)	18
Alliance Party	6
Independent Unionist Candidates	2 (1 subsequently became an Independent Candidate)
UK Unionist Party (UKUP)	1
Progressive Unionist Party (PUP)	1

Source: The Electoral Office for Northern Ireland

The UK and Republic of Ireland Governments facilitated communication between the DUP and Sinn Féin following the 2003 Assembly elections in an effort to restart the Assembly and its institutions. Subsequently, a supplementary peace agreement—the St Andrews Agreement—was adopted in October 2006 between the British and Irish governments, the DUP and Sinn Féin. A timetable to restore devolution to Northern Ireland was set, with the third elections to the Northern Ireland Assembly scheduled for 7 March 2007. Devolution was restored on 8 May 2007 (a delay to the planned date of 26 March 2007) with the chief negotiators for the DUP (the late Ian Paisley) and Sinn Féin (the late Martin McGuiness) elected as First Minister and Deputy First Minister respectively, with cross-party support. The elections initiated a period of political stability until the collapse of the Assembly again on 26 January 2017, which as of 2019 remains suspended despite new elections held on 2 March 2017.

Since 2003, elections to the Assembly have been held in 2007, 2015 and most recently in March 2017, which were unsuccessful in re-establishing the political institutions and the Assembly. The UK Government attempted to facilitate power-sharing negotiations, which was interrupted by the 'snap' UK Parliament general election in June 2017. The incumbent Conservative Party remained the largest party but lost its majority in the House of Commons, resulting in it forming a minority government (via a 'confidence-and-supply' agreement) with the DUP to maintain its legislative programme. The previous time a UK government had been reliant on unionist MPs was under Prime Minister John Major in the mid-1990s; during the

early stages of the peace negotiations and prior to the ratification of the Belfast/Good Friday Agreement. Furthermore, following the UK's referendum on its EU membership (June 2016), the future management of the border between Northern Ireland and the Republic of Ireland became a principal issue in the negotiations (both domestic and international) on the withdrawal agreement governing the UK's exit from the EU. By extension, this raised questions of whether safeguarding the Belfast/Good Friday Agreement constituted an obstacle to the UK leaving the EU; and whether differential customs agreements (and/or reintroduction of physical border structures) could potentially destabilize the Union between Northern Ireland and mainland Great Britain.

New political and social dynamics regarding elections, power-sharing and the wider political climate in the UK continue to pose a threat to peace, stability and the smooth transfer of political power in Northern Ireland.

Peacekeeping versus security sector reform

The Agreement made provision for the Royal Ulster Constabulary (RUC), the police force in Northern Ireland to be renamed the Police Force of Northern Ireland, after years of allegations by the Catholic/nationalist community that the RUC colluded with loyalist paramilitary groups. The demobilization, disarmament and rehabilitation (DDR) process consisted in the release of both unionist/loyalist and nationalist/republican prisoners convicted prior to 10 April 1998; weapons decommissioning by the PIRA; and the demilitarization of the border between Northern Ireland and the Republic of Ireland (including removal of physical infrastructure and the dismantling of 'peace walls' dividing communities in the city of Belfast). Political support for the Agreement from within the broader unionist community receded as its implementation progressed. The UUP, who had supported the Agreement, were reluctant to enter into a formal power-sharing arrangement with Sinn Féin, and the PIRA were not forthcoming in actively decommissioning their weapons, although the Agreement did not set out a specific timeline for decommissioning to be implemented. Dissident republican paramilitary groups, the 'Continuity Irish Republican Army (IRA)' and the 'Real IRA', sought to undermine the Agreement through violence targeting civilians in Northern Ireland.

13.5. Findings and lessons

The case of transitional elections in Northern Ireland offers several finding and lessons, with three standing out as being particularly pertinent.

First, the correlation between perceived discriminatory electoral systems and conflict i.e. majoritarian systems on the one hand, and perceived non-discriminatory electoral systems and peace on the other i.e. proportional systems. An electoral system that was viewed as discriminatory was among the grievances which led to the civil rights movement on the part of the minority Catholic community in the late 1960s. Political reforms and scheduled free and fair elections being held offered an alternative to political violence as a route to political change, which was ultimately pursued by Sinn Féin in the period under discussion. Further attention may also be given to conflicts—in particular protracted, low intensity and secessionist/territorially

based conflicts—on the conduct of free and fair elections, and how electoral system design, particularly proportional representation, may alleviate 'winner takes all stakes' in deeply divided societies. Such measures would not necessarily end conflict but may facilitate political parties to pursue their objectives and find common ground with their political adversaries through political dialogue and non-violence.

Second, Northern Ireland illustrates how a political will on the part of politicians to be flexible in resolving conflict and disagreement can facilitate wider public legitimacy in a peace process. Military–political elites may be pivotal in initial peace making deals, but later find difficulty in abiding by the terms agreed to. Invariably, different groups will oppose and ultimately leave a peace process, at which point public pressure for a deal, or for sustaining peace agreement institutions—not least through elections—will become crucial to their success. Two moments are worth highlighting for their electoral creativity. The first is the elections to the Northern Ireland Forum for Political Dialogue in 1996, which was novel and innovative: these offered a 'ranking' of candidates rather than a choice. However, the elections did have legitimacy and crucially did serve to ensure that all political parties were represented at the peace talks and negotiations. These elections also had the unintentional consequence of including the NIWC, who were unlikely to have gained representation through any other electoral system. Furthermore, the referendums held in Northern Ireland and the Republic of Ireland to ratify the Belfast/Good Friday Agreement made it difficult for any political or paramilitary group to argue that violence was an acceptable means to achieve their objectives— anywhere across the island of Ireland, or indeed on the UK mainland. Irrespective of the asserted electoral base for any vote on self-determination, including every citizen in the process, both inside and outside the contested territory, provided the outcome with unquestionable legitimacy. The referendums were also an opportunity to build on a previous relaxation of territorial claims, and formal intentions to consult bilaterally, as set out in the Anglo-Irish Agreement (1985).

Third, the Northern Ireland case demonstrates the complexity of electoral decisions in power-sharing arrangements, particularly in contexts where neither of the principal power blocks are monolithic, but rather are characterized by inter-party competition and even division on a peace agreement itself. A myriad of options for electoral system design exists in these contexts, all of which incentivize party formation and cross-party cooperation in different ways. Northern Ireland shows that where political actors present at peace talks are particularly vulnerable to spoilers, this requires consideration when making decisions on electoral system design and election timing. The role of courts of final appeal in making independent decisions on electoral outcomes are also important. In the case of Northern Ireland, the UK House of Lords recognized—in its 2001 decision on the election of the First Minister and Deputy First Minister—that a strict adherence to the 'letter of the law' rather than the 'spirit of the law' could have resulted in the indefinite suspension or even collapse of the Belfast/Good Friday Agreement. The role of courts as political actors is rarely considered by international peace mediators or implementers but should not be overlooked.

Following the ratification of the Belfast/Good Friday Agreement, unionist political parties were increasingly vocal in their insistence on PIRA decommissioning. New

elections could have returned a DUP majority at a time when their position was to reject the Agreement outright. By the time of the next elections in 2003, the DUP had modified their position and a revised Agreement had been negotiated. The DUP were elected as the largest political party in the Assembly and took power with the intention of implementing the revised Agreement with a commitment to making the political institutions function.

Elections, their timing, sequencing, and administration and management are only one part of a broader peace making process. In the case of Northern Ireland, a referendum on the ratification of the peace agreement and the timing of its subsequent implementation was of critical importance. The building of public legitimacy and support for an agreement and the new institutions that it establishes is critical. Political parties that emerge to fight elections will invariably include those that are determined to spoil the process. The case of Northern Ireland demonstrates that provided political parties are committed to non-violent means, they have a legitimate right to articulate their opposition to the Agreement and its institutions, and to fight for votes on that basis. Elections therefore carry risk and can be high risk moments, as can referendums. Different actors' preferences towards peace agreements will be well rehearsed, whereas on other issues they may not. Referendums may be even more unpredictable and subject to factors unrelated to the issues on which they are being held. It may be useful therefore, to consider in broader terms what type of political participation legitimates an agreement in addition to elections.

References and further reading

ARK (Queen's University Belfast and Ulster University), Northern Ireland Elections webpages, <http://www.ark.ac.uk/elections/fref98.htm>, accessed 29 January 2019

—, Northern Ireland Elections webpages, <https://www.ark.ac.uk/elections/ff96.htm>, accessed 29 January 2019

Belfast Agreement [Good Friday Agreement], 10 April 1998, <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/136652/agreement.pdf>, accessed 29 January 2019

Electoral Office for Northern Ireland, 'The New Northern Ireland Assembly Election 25 June 1998', <http://www.eoni.org.uk/getmedia/ec1fa344-4198-40cf-bf58-eadf3c70190d/ni_assembly_election_results_1998>, accessed 29 January 2019

Elliott, S., 'The electoral dynamics of the Belfast Agreement', in B. Barton and P. J. Roche (eds) *The Northern Ireland Question: The Peace Process and the Belfast Agreement* (New York: Palgrave Macmillan, 2009), pp. 105–30, <https://doi.org/10.1057/9780230594807>

Jarman, N., 'From war to peace? Changing patterns of violence in Northern Ireland, 1990–2003', *Terrorism and Political Violence* 16/3 (2004), pp. 420–38, <https://doi.org/10.1080/09546550490509739>

Northern Ireland Assembly, History of the Assembly, <http://www.niassembly.gov.uk/about-the-assembly/general-information/history-of-the-assembly/>, accessed 29 January 2019

Northern Ireland Government, *Disturbances in Northern Ireland: Report of the Commission appointed by the Governor of Northern Ireland*, Cmd 532 (Belfast: Her Majesty's Stationary Office, 1969), <http://cain.ulst.ac.uk/hmso/cameron.htm>, accessed 29 January 2019

Osbourne, R. D., 'The Northern Ireland parliamentary electoral system: The 1929 reapportionment', *Irish Geography* 12 (1979), pp. 42–56, <https://doi.org/10.1080/00750777909555742>

Reilly, B. and Reynolds, A., 'Electoral systems for divided societies' in P. Harris and B. Reilly (eds) *Democracy and Deep-Rooted Conflict: Options for Negotiators* (Stockholm: International IDEA, 1998), pp. 191–204, <https://www.idea.int/publications/catalogue/democracy-and-deep-rooted-conflict-options-negotiators>, accessed 29 January 2019

—, 'Electoral systems and conflict management in divided societies,' in National Research Council, *International Conflict Resolution after the Cold War* (Washington D.C.: National Academy Press, 2000), <https://doi.org/10.17226/9434>

Robinson v Secretary of State for Northern Ireland and Others (Northern Ireland), [2002] UKHL 32, <http://www.niassembly.gov.uk/about-the-assembly/general-information/history-of-the-assembly/>, accessed 29 January 2019

UK Parliament, *Brexit: UK-Irish relations,* Chapter 4: 'The impact on the peace process and on North-South and East-West relations', <https://publications.parliament.uk/pa/ld201617/ldselect/ldeucom/76/7607.htm>, accessed 29 January 2019

14. Transition in Tunisia (2011–2014) and prospects for consolidation
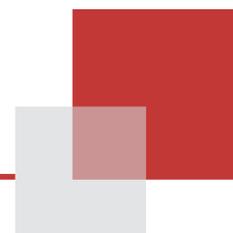
Lamia Zargouni Lassoued

14.1. Introduction

When looking at Tunisia's contemporary history since independence (1956), it is clear that elections have never been a challenge for accessing power in the country, nor have they accurately mapped the relationships between its different political forces. Elections in this era were conducted in only apparent compliance with the Constitution established in 1959. With regard to the frequency and pluralism of Tunisia's legislative and presidential elections, their context has been one of political life held in abeyance, a stranglehold of well-tailored legal and judicial measures. These measures ensured both compliance with the frequency of the legislative and presidential elections, and a façade of pluralism that assisted in perpetuating authoritarian rule.

Yet, since 2011, Tunisia has experienced a revolutionary transition which has brought about dramatic transformations and which might indicate that a democratization process is currently being put in place in Tunisia. The first parliamentary and presidential polls were successfully conducted in 2014 (for results see ISIE 2014a, 2014b), three years after holding the Constituent Assembly (CA) elections. In addition, local elections were conducted in 2018 (ISIE 2018). The practical question that arises within the current transition phase is whether the sequencing of elections can help ensure the establishment of a strong and sustainable democracy in Tunisia.

14.2. Context analysis

While Tunisian authorities have always complied with the frequency of the organization of elections—that is, every five years for each of the presidential, legislative and local elections (without any concomitance)—these apparently pluralist elections have never truly committed the two presidents who have ruled Tunisia since

1959—namely President Bourguiba and ousted President Ben Ali—to genuine democracy. Elections were used in such a way as to have varied significance according to the objectives assigned to them by the dictatorship of the day. Elections were often an opportunity to sanction opponents who infringed the 'Code of good conduct' set by the government, and to grant material rewards to those in the 'opposition' who had remained within the framework set by the regime (Sadiki 2002).

The organization of the 2014 elections with consecutive (one-round) legislative and (two-round) presidential ballots—three years almost to the day after Tunisia's first free elections of the CA since the revolution of 2011 (see Al Jazeera 2011)—confirmed Tunisia as a potential player in the democratic transition in the Arab world. Some of its neighbours have lapsed into violence and war. In this context, Tunisia can be considered one of the key test cases for democracy in the region following a revolutionary transition phase. The country had to deal with several challenges, especially those related to security, for which Tunisian society was ill-prepared.

14.3. Timing and sequencing dilemmas

Constitution-building versus elections first

Once the Constitution had been voted on in 2014, Tunisia adopted a sufficient, if not significantly progressive, legal basis for holding democratic elections consistent with international standards and best practices. The adoption of the Constitution structured the 2014 electoral process and brought about significant improvements in this regard, especially by establishing an independent electoral body, an independent judicial power and a dual jurisdiction for dealing with electoral disputes (Carter Center 2015). The fundamental rights of Tunisian citizens had also been enshrined in this consensual constitution. Its pioneering spirit is reflected in several provisions, such as those on gender equality; equal opportunity to participate in professional, family and especially political life; and equal opportunities in accessing leadership roles (2014 Constitution of Tunisia: articles 7, 8, 15, 21, 34, 40, 46, 74).

Choice of electoral system

Both the Electoral Law of 2011 (for the election of the CA see Tunisia 2011a) and the Electoral Law of 26 May 2014 (see Tunisia 2014) were concerned with establishing equilibrium between political parties. Articles 107, 108, 109 and 110 of the 2014 Electoral Law adopted a system of proportional representation of the different lists in the running, with the largest remainder method. On this system no party could win a large majority, therefore preventing any of them from ruling on their own. In turn, the prevention of any party from becoming a hegemonic power in Tunisia's political life is a safeguard against regression towards dictatorship, which is why the system enjoyed cross-partisan support (Gobe 2016).

On another note, the Electoral Law introduced electoral campaign financing monitoring mechanisms, and ensured a pluralist media coverage of the running lists and candidates. Simultaneously, a series of provisions establishing financial and penal sanctions—up to the loss of the candidate's mandate—were put in place to ensure a total and irrevocable split with the practices of the former authoritarian rule.

Eventually, Article 54 of the Electoral Law No. 16 (Tunisia 2014) prohibited election advertising in all places of worship and in the state's official administrative or educational establishments.

The choice of electoral administration

In Tunisia, elections are conducted by an independent electoral body whose members are elected (see Tunisia 2011b, 2012). The Councils that have managed the Electoral Authorities of 2011 and 2014 have proved highly competent, and in a context generally conducive to the involvement of both Tunisian people and the different political players. Through the successful sequencing of the different elections since 2011, they also demonstrated their lack of political affiliation. Each of the nine members in 2014, with different areas of expertise, were elected by more than two-thirds of the ballots of the people's representatives in the CA, therefore reaching a convincing threshold for independence (Sadiki 2014).

The law establishing the 2014 Electoral Authority provided the Independent High Authority for Elections (Instance supérieure indépendante pour les élections, ISIE) with significant financial and management autonomy, and very large powers in organizing national and regional elections, including the elections of the High Council of the Judiciary. To fulfil its mission and implement the Electoral Law provisions, the ISIE adopted an arsenal of regulatory decisions pertaining to, among others, the electoral calendar, the keeping of the electoral register, and electoral campaigns (ISIE n.d.). On timing specifically, the ISIE set the dates for the first elections (at local, regional and cantonal levels) but subsequent elections (legislative and presidential, upcoming in 2019) were to be based on the Constitution and the electoral law.

Level of security

Electoral security was considered against a background of prior assassinations of party leaders and leading public figures, as well as several terrorist attacks targeting the state's security apparatus (see below, Implementation challenges), that had placed the holding of elections in doubt. Although the state of emergency had been lifted in March 2014, ISIE maintained security coordination with the Ministry of Defence and the Ministry of the Interior throughout the three elections that extended over a period of two months (October–December 2014). This coordination aimed at (a) ensuring safety of polling stations and the electoral materials during the transportation before and after the different polls; and (b) ensuring physical safety for ISIE permanent officials, polling stations' officers and heads, the different national and international observation missions, and especially the voters. It is worth noting that despite the persistence of security threats and increasingly hostile political rhetoric between the two rounds, the campaign environment remained 'relatively calm' (Carter Center 2015: 9). In this regard, the coordination with the Ministries of the Interior and Defence enabled ISIE to take the lead in terms of making security decisions and taking appropriate action on its own. For example, contrary to the Ministry of Defence's suggestion to close down voting centres in terrorist risk areas, the ISIE decided instead to alter these polling stations' hours of operation.

Local versus international ownership

The key decisions related to the constitutional and electoral processes were led by national actors. The international community provided technical assistance to key transitional bodies. An important development in the transitional process was the emergence of the Quartet, comprising four major Tunisian organizations, namely the Tunisian General Labour Union (Union Générale Tunisienne du Travail, UGTT), the Union of Industry, Trade and Handicrafts (Union Tunisienne de l'industrie, du commerce et de l'artisanat, UTICA), the Tunisian Human Rights League, and the National Bar Association. The Quartet-led negotiations—in a climate of major crisis and institutional paralysis—marked an important step in the acceptance by the different political actors that constitutional and electoral processes needed to unfreeze and progress towards a final consensual decision. The decision was to organize all elections and renew the country's institutions by the end of the year 2014, therefore complying with imperatives set by the Constitution. This put an end to misunderstandings that could have seriously threatened the democratic process, left the country in deadlock, and possibly paralysed the functioning of the state. It is worth noting that the ISIE demanded the holding of these elections in 2014 as required by the Constitution, under pain of submitting a collective resignation of all the ISIE's Council members. This exceptional contribution of Tunisian civil society was recognized by the award of the Nobel Peace Prize to the Tunisian National Dialogue Quartet in 2015.

14.4. Implementation challenges

The sequencing of three elections in four years—CA elections in 2011 and the legislative and presidential elections in 2014—was a determining factor, according to both national and international observers, in establishing and strengthening this young democracy. While other countries in the region struggled to begin one electoral process, Tunisia successfully conducted three elections that complied with international standards in terms of pluralism, transparency and exclusivity.

The mandate for the CA in 2011 mainly consisted in building a new constitution that would meet the needs of the Tunisian people, who have long been silenced by a culture of fear. Also intended to act as an interim parliament, the experience of this assembly from 2011 to 2014 was punctuated by failures attributable to an obvious lack of expertise of almost all the participants. Several conflicts emerged in adopting legislation.

The elections to the CA resulted in quite strong representation for the Islamist party 'Ennahda', which won 41 per cent of seats (see ISIE 2012). The other parties lagged far behind in terms of votes and seats; this is what led to a governmental coalition, the so-called Troika. A disparate composition in the CA as well as in the governments of the following three years, the Troika was a sign of both strength and weakness in the democratic transition. Given the general lack of experience, the constitution-building process was marked by significant levels of protest. Resistance came from the people's representatives in the assembly, as well as some partisan movements that were poorly represented there—and therefore excluded from being

real decision-makers—and some political parties that lost the election. Several crises occurred, some of which even threatened the nascent democratic process.

In this unstable context, the US embassy in Tunisia was attacked by Islamist extremist splinter groups (Reuters 2012a); the headquarters of the Tunisian General Labour Union was similarly ransacked (Reuters 2012b); and two leftist politicians— one of whom was a member of the CA—were assassinated within six months (BBC 2013). Terrorist attacks also took place targeting officers of the army and the police. This type of events, not seen for decades, damaged the morale of the population. Regressive voices were heard, saying that the country was in trouble and that its security was under threat.

Therefore, pre-revolutionary elements used these conditions as an excuse to reposition themselves, and agitate for 'prioritizing security' over the democratic process. Yet the Tunisian people and civil society organizations were vigilant enough to overwhelmingly oppose these attempts to backtrack. Therefore, the Tunisians went *en masse* to the voting centres in 2014 to elect their representatives in legislative and presidential elections. This enthusiasm was not affected, it rather materialized later in a strong participative mobilization that remained more or less even from one election to the other. Voter turnout reached 68 per cent at the legislative elections. It decreased slightly to 63 per cent and 60 per cent in the first and second round of the presidential elections, respectively (NDI 2015). The presidential elections were held only a month after the legislative elections.

In 2014, ISIE faced major constraints particularly related to the timing of the different elections. Indeed, exceptional constitutional requirements—as mentioned in the Constitution's transitional provisions—imposed an obligation to hold the first legislative and presidential elections by the end of the year 2014. It is also worth noting that the Electoral Law pertaining to these elections was only voted in May 2014, which left the ISIE with a period of five to seven months to complete the organization of the elections and the announcement of the final results for three elections. This was challenging, yet successfully overcome by the ISIE.

14.5. Findings and lessons

In 2019, Tunisia will hold its second presidential and legislative elections under the current Constitution. The October and November 2019 elections show that the timing of elections has entered a well-defined periodic cycle following the legal provisions outlined in the Constitution drafted during the transition. This achievement can be traced back to the choice of a quite intensive sequencing of elections that resulted in the establishment of elected councils and permanent state institutions, which contributed significantly to political stability in the country during a period of uncertainty. The decisions made during the transition were the result of concerted efforts to forge consensus among the key national stakeholders, in a process that was locally owned.

The democratic transition in Tunisia is taking its first steps laboriously—in view of the socio-economic challenges and the negative impact of (albeit fairly limited) terrorist acts—but surely, the Tunisian people's resolution to successfully complete the transition remains infallible, if not irrevocable.

References

Al Jazeera, 'Final Tunisian election results announced', 14 November 2011, <https://www.aljazeera.com/news/africa/2011/11/20111114171420907168.html>, accessed 28 February 2019

BBC News, 'Tunisia constituent assembly suspended pending talks', 6 August 2013, <https://www.bbc.com/news/world-africa-23596640>, accessed 6 March 2019

Carter Center, The, 'Legislative and Presidential Elections in Tunisia: Final Report, October, November and December 2014', May 2015, <https://www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/tunisia-final-rpt-2014-elections.pdf>, accessed 1 March 2019

Constitution of Tunisia (2014), <https://www.constituteproject.org/constitution/Tunisia_2014.pdf>, accessed 7 March 2019

Gobe, E., 'Système électoral et révolution : la voie tunisienne' [The electoral system and the revolution: the Tunisian way], *Pouvoirs, revue française d'études constitutionnelles et politiques*, 2016/1 (No. 156, January 2016), pp. 71–82

ISIE [n.d.] Independent High Authority for Elections/*Instance Supérieure Indépendante pour les Elections*, 'Arrêtés' [Decisions, Arabic], <http://www.isie.tn/isie/cadre-juridique/arretes/>, accessed 7 March 2019

—, 'Rapport relative au déroulement des élections de l'Assemblée Nationale Constituante' [Report on the conduct of the Constituent National Assembly elections], February 2012, pp. 190–91, <http://aceproject.org/ero-en/regions/africa/TN/tunisie-rapport-relatif-au-deroulement-des>, accessed 6 March 2019

—, 2014 Presidential election results, (2014a), <http://www.isie.tn/elections/election-presidentielle-2014/>, accessed 7 March 2019

—, 2014 Legislative election results, (2014b), <http://www.isie.tn/elections/elections-legislatives-2014/>, accessed 7 March 2019

—, 2018 Municipal elections, <http://www.isie.tn/elections/elections-municipales-2018/>, accessed 7 March 2019

National Democratic Institute (NDI), Final report on the 2014 legislative and presidential elections in Tunisia, 20 November 2015, <https://www.ndi.org/sites/default/files/Tunisia%20Election%20Report%202014_EN_SOFT%20%281%29.pdf>, accessed 7 March 2019

Reuters, 'Two dead as protesters attack U.S. embassy in Tunisia', 14 September 2012a, <https://www.reuters.com/article/us-protests-tunisia-school/two-dead-

as-protesters-attack-u-s-embassy-in-tunisia-idUSBRE88D18020120914>, accessed 6 March 2019

—, 'Tunisian Islamists, leftists clash in Tunis after job protests', 4 December 2012b, <https://www.reuters.com/article/us-tunisia-clash/tunisian-islamists-leftists-clash-in-tunis-after-job-protests-idUSBRE8B30PU20121204#undefined>, accessed 6 March 2012

Sadiki, L., 'Political liberalization in Bin Ali's Tunisia: façade democracy ', *Democratization*, 9/4 (2002), pp. 122–41, <https://doi.org/10.1080/714000286>

—, 'Tunisia's democratisation taking off', Al Jazeera, 17 May 2014, <https://www.aljazeera.com/indepth/opinion/2014/05/tunisia-constitution-democracy-201451616101024354720.html>, accessed 4 March 2019

Tunisia, Republic of, Décret-loi n° 2011-27 portant création d'une instance supérieure indépendante pour les élections [Decree law No. 2011-27 establishing an Independent Higher Authority for Elections], 18 April 2011a

—, 2011 Electoral Law, (Décret-loi N° 2011-35 du 10 mai 2011 relatif à l'élection d'une Assemblée nationale constituante), 10 May 2011b, <http://aceproject.org/ero-en/regions/africa/TN/tunisia-electoral-law-of-10-may-english>, accessed 7 March 2019

—, Loi organique n° 2012-23 du 20 décembre 2012, relative à l'instance supérieure indépendante pour les élections [Organic Law no. 2012-23 of December 20, 2012, relating to the independent superior body for elections], <https://lib.ohchr.org/HRBodies/UPR/Documents/Session27/TN/15Annexe9Loi2012_23fr.pdf>, accessed 7 March 2019

—, 2014 Electoral Law (*Loi organique n° 2014-16 du 26 mai 2014, relative aux élections et référendums*), <http://www.isie.tn/wp-content/uploads/2018/01/Loi-Organique-n%C2%B02014-16.pdf>, accessed 7 March 2019

15. Venezuela (2013–2018): using timing and sequencing of elections to de-democratize
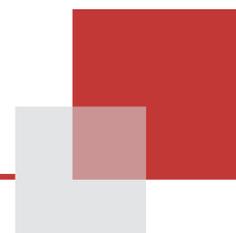
Benigno Alarcon and Juan Manuel Trak

15.1. Introduction

This case study discusses the timing and sequencing of elections in Venezuela, and how these have been manipulated by government and electoral authorities to hinder democratization. Our analysis focuses on the period following the death of President Hugo Chavez in 2013 when an election had to be held to replace him as president. The subsequent arrival to power of Nicolas Maduro meant a change in the Venezuelan political process that started in the late 1990s. Because Venezuela is a negative case of transition from a democratic to an authoritarian form of governance, our outline will address how election sequencing had been manipulated in order to favour the ruling party.

After Hugo Chavez seized power in 1999, the Venezuelan political system was gradually transformed from an electoral democracy into an authoritarian regime. That is, between 2010 and 2014 it could be labelled as a 'hybrid' regime (Corrales and Hidalgo 2013) or 'competitive authoritarian' regime (Levitsky and Way 2010; Alarcon 2014), while in 2015, elements of authoritarian rule were becoming very visible (Corrales 2015). The changes in the political process began with the approval of a new constitution at the end of 1999. During his campaign, Chavez promised to abolish the Constitution of 1961, and write a new one. Therefore, in 1999 Venezuelans voted in a referendum to decide whether they wanted to call for a National Constituency Assembly (*Asamblea Nacional Constituyente*, ANC). Once the creation of the ANC was approved, people were called to elect its members. After six months of deliberations at the ANC, citizens were called, once again, to cast their votes to approve the new constitution. On 15 December 1999, the new constitution was approved by 72 per cent of voters in a referendum with a turnout of 45 per cent.

After Hugo Chavez and the United Socialist Party of Venezuela (*Partido Socialista Unido de Venezuela*, PSUV) won the presidency in 1999, elections have served the purpose of strengthening undemocratic governance. Chavez learned the advantages of

a hybrid regime, influencing the electoral arena by using and abusing state oil resources, exercising power in an unrestricted way, and manipulating the electoral process—including the timing of sub-national elections—to guarantee PSUV control of its main strongholds in the states and municipalities. During his 13 years in power, Chavez's party held and won more elections than any other previous government, progressively occupying, with its allies, almost every single state position.

During the past term of Nicolas Maduro (2013–2018) the timing and sequencing of elections continued to be used to reinforce the concentration of power by the ruling party. The National Electoral Council (*Consejo Nacional Electoral*, CNE) engineered the timing of elections to favour the winning odds of the ruling party, including the controversial presidential election on 20 May 2018.

15.2. Context analysis

Our analysis focuses on the period following 5 March 2013 when Nicolas Maduro announced that Hugo Chavez had passed away. The Constitution approved in 1999 states that if the president becomes permanently unable to serve, a new election by universal suffrage and direct ballot must be held within 30 consecutive days. Nevertheless, this constitutional precept—a tight and unrealistic deadline to organize a presidential election—was not fulfilled by the CNE, and presidential elections were held 40 days after Chavez's death. The electoral campaign was very short, which gave the incumbent, Nicholas Maduro, an advantage. Despite this advantage, Maduro won the election with less than 1.5 per cent more of the vote than his opponent.

Legislative elections were subsequently held on 16 December 2015. These elections saw the government lose control of the legislature. It is worth noting that the date of this election was not set until 22 June 2015, just five months and eleven days before the election day, while the date of the 2010 parliamentary election was announced eleven months before the elections (Center for Political Studies 2015a). Despite the short campaign, the opposition, united in an electoral coalition named Democratic Unity Roundtable (*Mesa de la Unidad Democrática*, MUD) gained two-thirds of the seats in the National Assembly (NA).

On 29 December 2015, the Electoral Chamber of the Supreme Court suspended the vote-count of four elected representatives in the border state of Amazonas—three of them belonged to the MUD and the other one to the PSUV—over allegations of vote buying. This meant the invalidation of the electoral result in that state, which implied the loss of the two-thirds majority obtained by the opposition. Despite this decision, the president of the NA took the oath of three congress members blocked by the Supreme Court, which resulted in the Supreme Court declaring the NA in disobedience (Sullivan 2017).

Beyond this institutional conflict, the executive branch and the CNE as the electoral management body (EMB) systematically avoided further elections by manipulating the timing and sequencing of elections and the presidential recall referendum as follows. Governors' elections should have been held in December 2016, but they were postponed for one year with the aim of avoiding a bandwagon effect that could have favoured the opposition parties after the parliamentary election. In October 2016, the EMB announced that this election was to be held in December

2017. However, after the inauguration of the ANC in August 2017, it announced that governors' elections would be held on October 2017, i.e. two months before the date initially scheduled by the CNE. Further, the mayoral elections, which had been delayed since 2013, were confirmed only two months before the election date in December 2017.

Similarly, the presidential recall referendum suffered major delays by the CNE during 2016. Not only did the CNE impose new requisites and rules that do not exist in the current legislation, it also took more days than allowed by law to respond to the opposition's petition. Consequently, a process that should have lasted 213 days suffered a delay of more than 80 days (Center for Political Studies and International IDEA 2016; Center for Political Studies 2016a, 2016b, 2016c). Despite these delays, the opposition managed to overcome all the requisites added by the CNE. Nevertheless, several courts at regional level prevented the presidential recall referendum on October 2016 by banning the collection of the 20 per cent signatures for calling the recall (BBC 2016).

In parallel to these developments, the President pushed forward with the election of a new constituent assembly (ANC) in a way which was contrary to the Constitution and democratic principles (see below section on constitution-building versus elections first). The result was a one-party legislative body with supra-constitutional powers, free from any institutional control, check or balance, and able to take decisions unconstrained by opposition parties in the parliament.

In this environment, Maduro's Socialists came out as winners of the October 2017 governors' elections, taking 18 of 23 seats elected; and the December 2017 municipal elections, winning 308 of 335 local councils. Given prior indicators of Maduro's poor public approval ratings (Reuters 2017), these results came as surprise. However, as we have argued elsewhere, such results were due to manipulations by the CNE with regard to the timing and sequencing of elections, allocation of polling station, design of ballot papers and so on, with the ultimate purpose of disfranchising and confusing opposition supporters (see Alarcon 2017).

Timing and sequencing controversies also marked the 2018 presidential elections. Initially scheduled for December, then rescheduled for April, the presidential elections finally took place in May 2018. Maduro won with 67 per cent of the vote, with an official turnout of 46 per cent. However, the result was rejected by his opponent and a significant part of the international community, including most Latin American countries, the USA and the EU. Reports of state repression included violence, an uneven playing field for candidates, outright bans on certain political parties and leaders running for election and a lack of impartiality and professionalism on the part of the CNE. This caused boycotts by the opposition and absence of credible international observers (Seelke 2018).

15.3. Timing and sequencing dilemmas

National versus sub-national elections first

Strictly speaking, the factors under discussion do not represent technical dilemmas, nor do they reflect trade-offs between multiple stakeholders and their competing views of political legitimacy. The timing and sequencing of elections between 2013

and 2018 were controlled by the government through the CNE. The decision-making process for calling elections was based on government strategies to handle the crisis of legitimacy that it faced. After the opposition claimed that the CNE was biased towards the government and that the ANC elections were unconstitutional and rigged, the government brought forward the sub-national elections to October 2017. The logic behind this decision was to weaken and divide the opposition (on the question of whether to participate or protest and boycott), as well as to sow distrust against the EMB to induce abstention among opposition followers. Following the favourable outcome of the governors' elections, the government rushed to use a bandwagon effect and organize mayoral elections in December 2017, and to hold presidential and municipal elections in May and December of 2018, respectively. This manipulation of the electoral calendar aimed to prevent the PSUV as ruling party from losing most of the states and municipalities it controlled. At the national level, it ensured the re-election of Nicolas Maduro, but only compounded the crisis of legitimacy and deepened the political conflict. By this point, the country faced mounting risk of more political violence.

Local versus international ownership

During 2016, the international community attempted to build a dialogue between government and opposition. However, this dialogue was used by the government only to buy time. For instance, after the suspension of presidential recall in October 2016, some former presidents attempted to build an agreement between the government and the opposition. Nevertheless, talks were fruitless because the government was unable to provide convincing assurances on releasing political prisoners, respecting the power of the parliament, setting an electoral road map—including the elections of the four members of NA dismissed by the Supreme Court—appointing new members of the judicial branch, and opening of a humanitarian aid channel.

The CNE as electoral management body has forbidden internationally recognized electoral observers from monitoring elections in Venezuela, but to maintain the appearance of transparency, it has substituted them with what they have called 'international companions'. For instance, in the parliamentary election of 2015, this kind of observers (from the Union of South American Nations) arrived a few days beforehand and were supervised by the government (Center for Political Studies 2015c). They did not provide any report about the quality of the 2015 elections in Venezuela (Lansberg-Rodriguez 2015). Similar missions were welcomed by the CNE in the consequent elections. By simulating fair and impartial electoral observation, they were clearly intended to work as legitimation strategies and were aimed towards the international community.

Constitution-building versus elections first

The ruling establishment was keen to maintain a façade of an electoral democracy in the face of their action to undermine democratic processes and institutions. Therefore, after several weeks of demonstrations in May 2017, the president decided to call the new constitutional assembly (ANC). However, although the 1999 Constitution required the holding of a referendum to call a national constituent

assembly, the executive branch did so without consulting the people. Not only was this election unconstitutional, but the rules to elect the ANC members violated the principle of one person one vote: the president stated that the ANC had to be elected by the municipality and sectors or corporations. Hence, each municipality, irrespective of its population, elected only one member of the ANC by a plurality of votes—except for large cities in which voters elected two. Additionally, the government decided that 176 ANC members had to be elected by eight corporations defined by the government itself, namely: farmers and fishers, students, workers, people with disabilities, businessmen, indigenous communities, pensioners, and members of communes. This election was rigged and the turnout percentage engineered by the electoral authority (Center for Political Studies 2017a, 2017b). The result was a one-party ANC with unlimited powers that can make decisions that favour the ruling establishment without effective instruments to challenge them.

Choice of electoral administration

The Venezuelan Constitution states that National Electoral Council must be elected by two-thirds of the National Assembly members, and those elected must be politically independent. Contrary to this principle, the CNE members were appointed by the Supreme Court in 2014 and 2016 and four out of the five are linked to the ruling party, with one linked to the opposition.

During the legislative term of 2010–2015, the PSUV and its allies controlled 59 per cent of NA seats. In 2014, the NA had to choose three out of five members of the CNE whose term had finished; the government and the opposition should have negotiated an agreement, but the President of the NA, Diosdado Cabello (PSUV)— current president of the ANC—indicated there was no possibility of reaching an agreement with the opposition, and asked the Constitutional Chamber of the Supreme Court to take the decision.

In December 2014 the Supreme Court decided to confirm two out of the three members linked to the government for a seven-year period and appointed a new one linked to the opposition (Center for Political Studies 2015b). In 2016, the NA had to appoint the other two members whose term had ended. However, even when the opposition controlled two-thirds of the NA, the Supreme Court stated that the NA did not satisfy the requisites to make such appointments and, as occurred in 2014, decided to keep in office those members of the CNE that should have been changed in that year (Center for Political Studies 2016d).

15.4. Findings and lessons

By 2018, even though the government had transformed into an authoritarian regime, it still needed elections as a way to project the legitimacy of its rule at home and abroad. Consequently, the government was using the electoral cycle to keep the opposition competing for small quotas of power at the sub-national level, and thereby to preserve a democratic appearance.

In this context, the timing and sequencing of elections was broadly used as strategy to control the process. In the absence of fixed dates for elections, some were held months before they should have been, while others were postponed even beyond the

constitutional timelines or the fixed terms of mandates, depending on the incumbent's convenience. This strategy kept opposition leaders and followers distracted from having a coherent strategy to achieve a process of democratization. The case of Venezuela in this period also confirms that the independence of the EMB is a key element to guarantee fair competition. Finally, we have found the inverse of constitution-building, whereby the government used the elections to the ANC as a mechanism to increase its power and to eliminate the check and balance capacities of institutions such as the NA or the Attorney General.

There are several challenges that must be addressed to restore democratic transition in Venezuela, among them:

1. Venezuela needs an electoral reform by which national and sub-national elections are held according to a legally binding schedule. Fixed dates would offer information to all parties and citizens as to the timing of elections and the duration of the electoral campaign.

2. It is necessary to improve citizens' confidence in the electoral process by appointing a truly independent CNE, able to enforce the electoral law. Moreover, credible international electoral observation missions are necessary to guarantee adequate monitoring of elections.

3. Any democratization process should consider resuming public funding of political parties, which was banned in the 1999 Constitution. The public financing of political parties would avoid the use of sub-national elections as a source of clientelism among political parties.

4. There is some consensus among political actors about the need for an amnesty, transitional justice and a transitional government. It is necessary to offer incentives to those in government to accept such conditions as part of securing a peaceful resolution and averting escalation of the crisis, with unpredictable consequences. However, there must be a clear vision about the difference between impunity and transitional justice. Impunity for those involved in illegal activities would create risks for the sustainability of the democratization process.

5. A transitional government will need international support, experience and knowledge to consolidate a democratic transition.

References

Alarcon, B., *El Desafío Venezolano* [The Venezuelan Challenge], (Caraccas: UCAB, 2014)

—, 'Venezuela's elections are just a new way for Maduro to cling to power', *The Conversation*, 6 December 2017, <https://theconversation.com/venezuelas-elections-are-just-a-new-way-for-maduro-to-cling-to-power-87072>, accessed 8 February 2019

BBC News, 'Venezuela's Maduro recall referendum drive suspended', 21 October 2016, <https://www.bbc.com/news/world-latin-america-37724322>, accessed 8 February 2019.

Center for Political Studies, 'Unilateral CNE', Venezuelan Electoral Integrity Project Special Report No. 5, January 2015a (Andrés Bello Catholic University, Caracas, Venezuela), <https://politikaucab.files.wordpress.com/2015/01/piev-reporte-especial-05.pdf>, accessed 6 December 2018

—, 'Elecciones en el Horizonte' [Elections on the Horizon], Venezuelan Electoral Integrity Project Special Report No. 14, July 2015b (Andrés Bello Catholic University, Caracas, Venezuela), <https://politikaucab.files.wordpress.com/2015/07/boletc3adn-14-preview-1.pdf>, accessed 6 December 2018

—, 'Observation, Nominations and Pre-campaign', Venezuelan Electoral Integrity Project Special Report No. 21, November 2015c (Andrés Bello Catholic University, Caracas, Venezuela), <https://politikaucab.files.wordpress.com/2015/10/boletc3adn-21-final.pdf>, accessed 6 December 2018

—, 'Recall Referendum I', Venezuelan Electoral Integrity Project Special Report No. 28, April 2016a (Andrés Bello Catholic University, Caracas, Venezuela), <https://politikaucab.files.wordpress.com/2016/04/boletc3adn-28-final1.pdf>, accessed 6 December 2016

—, 'Recall Referendum II', Venezuelan Electoral Integrity Project Special Report No. 30, June 2016b (Andrés Bello Catholic University, Caracas, Venezuela), <https://politikaucab.files.wordpress.com/2016/06/boletc3adn-30.pdf>, accessed 6 December 2018

—, 'Recall Referendum III', Venezuelan Electoral Integrity Project Special Report No. 31, June 2016c (Andrés Bello Catholic University, Caracas, Venezuela), <https://politikaucab.files.wordpress.com/2016/06/boletc3adn-31-final.pdf>, accessed 6 December 2018

—, 'Appointment of CNE Directors 2016', Venezuelan Electoral Integrity Project Special Report No. 33, December 2016d (Andrés Bello Catholic University, Caracas, Venezuela), <https://politikaucab.files.wordpress.com/2016/12/boletc3adn-33-final.pdf>, accessed 6 December 2018

—, 'The Constituent Assembly process in 2017', Venezuelan Electoral Integrity Project Special Report No. 38, July 2017a (Andrés Bello Catholic University, Caracas, Venezuela), <https://politikaucab.files.wordpress.com/2017/07/boletc3adn-38-final.pdf>, accessed 6 December 2018

—, 'Resultado de la Asamblea Nacional Constituyente e Inicio de Ciclo Electoral de Elecciones Regionales' [Result of the National Constituent Assembly and beginning of the electoral cycle of regional elections], Venezuelan Electoral Integrity Project Special Report No. 39, August 2017b (Andrés Bello Catholic

University, Caracas, Venezuela), <https://politikaucab.files.wordpress.com/2017/08/boletc3adn-39-final-esp.pdf>, accessed 6 December 2018

Center for Political Studies and International IDEA, 'Follow-up report on the activation of the Presidential Recall Referendum' (Andrés Bello Catholic University, Caracas, Venezuela, 2016), <https://politikaucab.files.wordpress.com/2016/10/follow-up-report-on-the-activation-of-the-presidential-recall-referendum.pdf>, accessed 6 December 2018

Corrales, J., 'The authoritarian resurgence, autocratic legalism in Venezuela', *Journal of Democracy*, 26/2 (2015), pp. 37–51, <https://www.journalofdemocracy.org/articles/the-authoritarian-resurgence-autocratic-legalism-in-venezuela/>, accessed 13 February 2019

Corrales, J. and Hidalgo, M., 'El régimen híbrido de Hugo Chávez en transición' [The hybrid regime of Hugo Chavez in transition], *Desafíos* 25/1 (2013), pp. 47–86

Lansberg-Rodriguez, D., 'For Venezuela, election monitoring with a wink and a nod', *Foreign Policy*, 10 August 2015, <https://foreignpolicy.com/2015/08/10/for-venezuela-election-monitoring-with-a-wink-and-a-nod/>, accessed 08 February 2019

Levitsky, S. and Way, L., *Competitive Authoritarianism: Hybrid Regimes after the Cold War* (New York: Cambridge University Press, 2010), <https://doi.org/10.1017/CBO9780511781353>

Reuters, 'Venezuela's Maduro approval rises to 23 per cent after Trump sanctions: poll', 3 October 2017, <https://www.reuters.com/article/us-venezuela-politics/venezuelas-maduro-approval-rises-to-23-percent-after-trump-sanctions-poll-idUSKCN1C8037>, accessed 08 February 2019

Seelke, C. R., 'Venezuela's 2018 Presidential Elections', Congressional Research Service Insight (IN10902), 24 May 2018, <https://fas.org/sgp/crs/row/IN10902.pdf>, accessed 08 February 2019

Sullivan, M. P., 'Venezuela: Issues for Congress, 2013–2016', Congressional Research Service Report (R43239), 23 January 2017, <https://fas.org/sgp/crs/row/R43239.pdf>, accessed 13 February 2019

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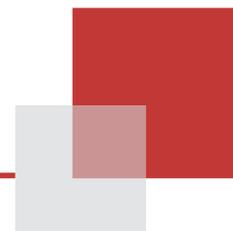
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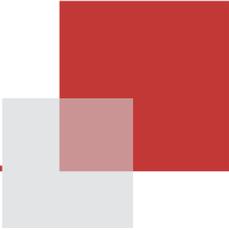
The International Institute for Democracy and Electoral Assistance (International IDEA) is an intergovernmental organization with the mission to advance democracy worldwide, as a universal human aspiration and enabler of sustainable development. We do this by supporting the building, strengthening and safeguarding of democratic political institutions and processes at all levels.

Our vision is a world in which democratic processes, actors and institutions are inclusive and accountable and deliver sustainable development to all.

What do we do?

In our work we focus on three main impact areas: electoral processes; constitution-building processes; and political participation and representation. The themes of gender and inclusion, conflict sensitivity and sustainable development are mainstreamed across all our areas of work.

International IDEA provides analyses of global and regional democratic trends; produces comparative knowledge of good international democratic practices; offers technical assistance and capacity-building on democratic reform to actors engaged in democratic processes; and convenes dialogue on issues relevant to the public debate on democracy and democracy building.

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The conduct of elections has been a central pillar in contemporary strategies to build and restore democratic government after armed conflicts, authoritarian rule and deep political crises. There is a growing recognition that hastily held or long-delayed elections can have undemocratic outcomes, deepen divisions and undermine peace. Increasing attention is therefore paid to decision-making processes, with a view of understanding circumstances that lead to appropriate timing and sequencing of transitional elections.

International IDEA's project on the Timing and Sequencing of Transitional Elections was designed to assist key national and international stakeholders to design processes that favour well-informed and context-sensitive choices, and hence improve the chances of democratic development and consolidation. The key project output includes a Policy Paper as well as the 15 case studies. These case studies provide insight on how stakeholders and decision-makers in a given transitional context have taken decisions, what factors influenced their decision and what are the effects of different choices. Given the unique perspectives, wealth of practical details and comparative perspectives that these case studies bring, International IDEA has decided to publish them in the form of an appendix to the Policy Paper.