

# Electoral Democracy in Africa: Beyond Ensuring Free, Fair and Transparent Elections

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## Introduction

The implementation of every African citizen's rights to vote and stand for public office has arguably gained momentum in Africa. However, generally couched in international law as universal suffrage, most Africans were only allowed to fully participate in their domestic elections in the 1990s. In terms of women's participation, black African women continued to be particularly marginalised in most countries across the continent. In the 1990s, multiparty representation was furthermore introduced in most African countries. However, the slow implementation of this critical system is related to the fact that most African states, at the time, were ruled by dictators who would go to any length to stay in power. Although the dictatorial rule is still predominant in Africa, it is worth noting that the number of dictators has reduced drastically since the 1990s. Consequently, some democratic principles, such as the right of citizens to vote, are now regularly implemented.

Since the 1990s, and particularly during the last decade, the practice of electoral democracy has developed exponentially in Africa. Importantly, emphasis has been placed on universal suffrage, the credibility and fairness of electoral processes. In 2018 and 2019 alone, twenty-five presidential elections were scheduled in various countries across the continent. During this time, fifteen of the twenty five scheduled elections were conducted, and results were announced. In 2020, twenty-five local, regional, and presidential elections were equally scheduled, out of which sixteen were postponed due to the break of COVID-19 and ensuing non-pharmaceutical regulations adopted by States in Africa. However, as is further argued in the six articles making up this Special Edition, the quality of these elections, i.e., whether they were free, fair, and transparent, remains questionable. Consequently, it is important to further explore what constitutes and regulates the mechanisms and principles necessary to promote a vigorous, fair, and

free electoral competition on the continent and what conditions (socio-economic and political) foster such elections.

As a point of departure, within the African Union's human rights framework, article 13 of the African Charter on Human and People's Rights (African Charter) stipulates the right of every person to participate freely in the government of his or her country either directly or through freely chosen representatives. Similarly, article 9 of the Protocol on the African Charter on the Rights of Women in Africa prescribes that States Parties to the Protocol must 'take specific, positive action to promote participative governance and the equal participation of women in the political life of their countries through affirmative action, enabling national legislation and other measures...'

Furthermore, general elections constitute an important component in fostering comprehensive liberal democratic systems of governance on the continent. To protect these systems, article 23 of the African Charter on Democracy, Elections and Governance (African Democracy Charter) importantly provides that unconstitutional changes of government should be met with sanctions by the African Union. Thus, making it mandatory for state parties to act in good faith, primarily to ensure that the laws that govern and regulate elections are in accordance with the standards required by the African Union. As an example, in *Actions pour la Protection des Droits de l'Homme (APDH) v Côte d'Ivoire*, the African Court on Human and Peoples' Rights (ACtHPR) called on the government of Côte d'Ivoire to amend its Independent Electoral Commission to make it compliant with the African Charter and the African Democracy Charter.

In response to the legal framework established by the African Union, most African countries have adopted domestic laws that protect and promote the right to participate freely in the government either directly or through freely chosen representatives. Several African countries have also adopted Electoral Codes to regulate and ensure the smooth running of elections and the pronouncement of election results. As an element to enhance democratic rule in a country, a free, fair, and transparent election is crucial. It allows the 'oppressed' to put the question of an alternative leadership with alternative ideas on the agenda.

In light of the developments that have taken place on the continent, and the challenges that still lay ahead, the African Network of Constitutional Lawyers, together with the Department of Public Law, University of Stellenbosch, invited a number of prominent scholars in the field of electoral democracy to Stellenbosch in early March 2020. The outcome of this roundtable on electoral democracy is presented in this Special Edition, which covers the width and breadth of the African continent and the challenges and ingenious solutions offered.

In the first article, Slade and Kreuser consider the trends in voter participation in South Africa at a national level. They analyse the various calls for electoral reform in light of

the claim brought by the New Nation Movement NPC to permit independent candidates to contest elections at national and provincial levels. In the *New Nation Movement NPC v President of the Republic of South Africa*, the South African Constitutional Court declared relevant sections of the South African Electoral Act invalid. In its opinion, it did not allow individual candidates in the national and provincial elections and thus, violated the Constitution. Their contribution considers the reasoning of the Constitutional Court in light of the jurisprudence of the African Court, and ultimately, to what extent an amendment to the Electoral Act in the terms prescribed by the Constitutional Court can address the decreasing participation rate in electoral processes.

Further, in the Southern African region, Mavedzenge evaluates whether the 2018 Zimbabwe elections were free and fair. Through an analysis of a number of cases presented before the Zimbabwean courts, he examines whether Zimbabweans enjoyed their right to freely express political views and associate with, campaign and vote for their candidates in the period towards and during the 2018 elections.

Following the preceding engagement with electoral disputes in South Africa and Zimbabwe, Kaaba and Fagbayibo explore, this topic by analysing the role and challenges attached to election technology as applied on the continent in adjudicating presidential elections disputes in Africa. Almost all presidential election disputes on the continent in the last ten years have revolved around failures or alleged tampering with ICT facilities involved in the electoral process. Their article therefore analyses how domestic courts are dealing with the challenge of an increased use of technology in elections and explores the way forward in terms of progressive interpretation and proactive adjudication of election matters. They depart from the assumption that although helpful in increasing efficiency in the electoral process, ICTs may provide new ways of election fraud.

From a different vantage point, Kasita and Kariseb then analyse the impact of populism on Namibia's electoral democracy. Their article argues that populism, in the 2019 Namibian presidential election, served as an indicator, and consequently, as a determinant of the declining political hegemony of SWAPO; the country's leading liberation movement.

Vohito examines how the financing of political parties is regulated, and its impact on the rule of law and good governance in Burkina Faso and Ghana. She explores the assumption that smaller political parties' access to public or private funds affects their ability to function properly and to participate in elections actively. The article analyses party funding regulation in Burkina Faso and Ghana as a developing process which needs reinforcing to be fair and inclusive.

Finally, Mbanje uses a regional perspective to explore Africa's multifaceted, intertwined, and complex electoral malpractices. He argues that Regional Economic Communities (RECs) have assumed a role to address these challenges by adopting legal

instruments to promote democratic elections and by being involved in observing elections, mediation, political negotiations, and dialogues. Mbanje specifically focuses on how the RECs have dealt with election disputes in the past decades and their strategies to promote and uphold credible and legitimate electoral processes in their regions.

Ultimately, all progress in terms of general human rights, socio-economic development and the protection of minorities and vulnerable groups are intimately intertwined with electoral democracy. As such, the engagement with this important topic in this Special Edition is a key contribution to the continental knowledge in this field of law as well as to the prospect of development of human experiences.