Dialogues on Voluntary Codes of Conduct for Political Parties in Elections

A Facilitator's Guide

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Contents

Boxes

Figures

Table

Abbreviations

CA	Constituent Assembly
CoC	Code of conduct
CSO	Civil society organization
DRC	Dispute Resolution Committee
ECN	Election Commission of Nepal
EEP	Electoral Ethical Pact
EII	Electoral Integrity Initiative
EMB	Electoral Management Body
FDFA	Federal Department of Foreign Affairs (Switzerland)
GPPP	Ghana Political Parties Programme
HD	Centre for Humanitarian Dialogue
HSD	Human Security Division
IEA	Institute of Economic Affairs (Ghana)
IEBC	Independent Electoral and Boundaries Commission
IECC	Independent Electoral Complaints Commission
INEC	Independent National Electoral Commission
JNE	National Electoral Jury
NGO	Non-governmental organization
NIMD	Netherlands Institute for Multiparty Democracy
PDP	People's Democratic Party
UEC	Union Election Commission
UNDP	United Nations Development Programme
WCOM	Working Committee

Preface
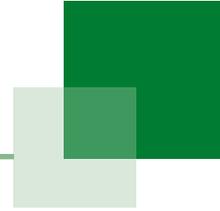
International relations are becoming unpredictable and the challenges to peace and democracy are now highly complex. Violent conflicts have become deadlier, more varied and increasingly intricate as a result. Regimes that assert their power through violence are affecting societies far into the future, as violence taints the legitimacy of the democratic process and obstructs societies on their path to stability and prosperity. The global community is affected too, and bears a responsibility to protect the lives of those who suffer violence or are forced to migrate as result of violence. This is why post-autocratic transitions and peacebuilding have become the key challenges of our century.

Elections, if they are inclusive and fair, can have a stabilizing effect on post-conflict and transitioning democracies. By allocating power in a credible and democratic manner, a genuine electoral process can contribute to the inclusion in society of former combatants, minorities and other marginalized groups that might otherwise resort to violent means to access power or play the role of spoiler. The electoral process is also a national endeavour that can encourage democratic debate during the campaign, offer an opportunity for citizens to make choices and boost a sense of common interest in shaping national institutions. In addition, elections provide the basis for the accountability of elected members of representative institutions.

Because of the competitive nature of elections, the electoral process can also provide entry points for violence and conflict, which can derail peace processes and the first steps in a transition. This can hamper both short-term peacebuilding efforts and long-term democratic gains. In Africa, 15 of the 26 elections held in 2016 led to some level of violence, as tracked by the Armed Conflict Location and Event Data Project. Numerous countries in other regions of the world also regularly experience various forms of intimidation or outbreaks of political violence.

In recent years, various institutions that support democratic transitions have explored the benefits of using political dialogue methodologies. Dialogue facilitates consensus, strengthens legitimacy, builds trust, promotes reconciliation and enables the formation of productive coalitions between important actors. A negotiated electoral code of conduct (CoC) has proved particularly useful in enabling political parties to reaffirm their political and ethical commitments to fair play in the electoral competition.

Speaking about the 2015 CoC in Myanmar, Aung San Suu Kyi noted that: 'All Myanmar people and all the political parties are responsible for establishing a democratic nation. Therefore, we adhere to the Code of Conduct for political parties [and candidates]'. In a separate statement, she added that: 'The main aim of the dialogue should be to resolve the problems of the nation, not to find who the winner is and who the loser is. What matters is to try and find an answer that is acceptable to all parties concerned, which would of course require some give and take.' (Burton, 1999).

This guide is first and foremost a tribute to the political parties and their representatives who volunteered, sometimes agreed to disagree, and often took risks to draft and implement CoCs in various countries. Essentially, the success of a CoC depends on the will and commitment of political parties. The facilitator can at best accompany them on the difficult path of compromise, doubt, hope and ideally an experience of genuine democratic negotiation. On this path, it is important to reaffirm the importance of respect for the centrality of the political parties involved and the sovereignty of the countries in which an election is taking place. This should be central to any initiative, and non-interference by the facilitator is a key criterion throughout this publication.

This guide is the result of collaboration between the Human Security Division of the Swiss Federal Department of Foreign Affairs (FDFA) and the International Institute for Democracy and Electoral Assistance (International IDEA). Both institutions hope to contribute to the efforts of those working as honest brokers of dialogues on democratic reform and peacebuilding, as well as the development of a CoC. Both International IDEA and the Swiss FDFA have many years of field experience in facilitating CoC processes during elections. In developing this guide, International IDEA and the FDFA partnered with Kofi Annan's Electoral Integrity Initiative, the Netherlands Institute for Multiparty Democracy, the Centre for Humanitarian Dialogue and other international and national partners in various countries.

The guide captures the lessons learned on all continents, which we hope will provide sufficient options and ingredients for future facilitators of CoCs. It builds on the set of universal guidelines for voluntary codes produced by International IDEA in 1999. The focus of this guide is on the importance of process and facilitation as much as the content of the agreement. It offers a menu of options and case studies on voluntary agreements from across the globe. We hope it will add value to the efforts of dialogue practitioners and political parties.

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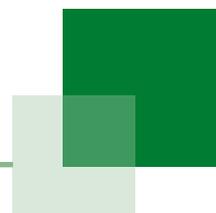
We would like to thank all the contributors, in particular those who took part in an intensive five-day drafting workshop that generated the content for this publication. We would also like to thank the staff at the Netherlands Institute for Multiparty Democracy (NIMD) and the Centre for Humanitarian Dialogue (HD) for their contribution to this guide, as well as the Kofi Annan Foundation and Creatives Associate International for contributing to the case studies in the Annexes.

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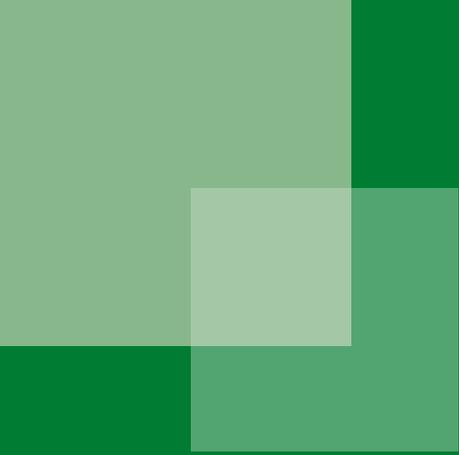
Introduction
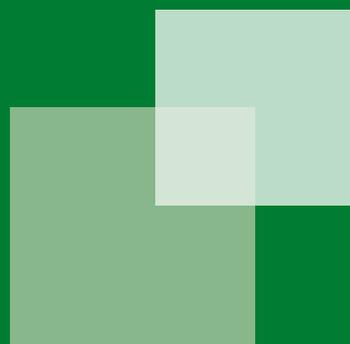
Introduction

The purpose of codes of conduct

As more countries undergo transitions from authoritarian rule, hold their first competitive elections, emerge from conflict or try to prevent violence from erupting during elections, a wide range of actors—from those who work in the field of conflict prevention to those who work on democracy support—is looking for ways to help ensure that elections take place under the best possible conditions. One common tool for attempting to improve the security, quality and legitimacy of the electoral process is a code of conduct (CoC).

Elections are key to nurturing and strengthening a democratic culture, but they also present the particular risk of election-related violence. In Africa, for example, of the 26 elections held in 2016, 15 were characterized by episodes of violence either before or after election day (ACLED 2016). Such risks threaten the democratic gains made through and undermine the legitimacy of elections in different regions of the world.

Political parties are fundamental vehicles for the democratic contestation of power in electoral processes. Depending on how they conduct themselves during this competition, parties can either fuel or aggravate electoral violence, or help to deter or resolve violent situations. Positive efforts can be made to engage political parties that may have played a role in electoral violence and bring them into a dialogue process on improving their conduct. A CoC attempts to restrict and improve the conduct of political parties and to encourage them to adhere to certain standards of behaviour, thereby enhancing trust in the political process.

The adoption of a CoC by a political party or candidates has become common practice in countries in transition. All too often, however, standard templates are used for different purposes, from preventing electoral violence to promoting the implementation of civil and political rights during the electoral

process. While it is useful to start with comparative models or templates for inspiration, it is recommended that each dialogue takes into account the political specificities of the election. Standardization can contribute to a degree of apathy and lack of ownership about how the CoC is created; and the consequence is generally a lesser degree of implementation.

More recently, political parties have become involved in the elaboration of CoCs. Involving political parties helps to bind them in to the results, thereby increasing the chances of successful implementation. It also helps to strengthen democratic debate and the culture of political tolerance and dialogue more broadly.

The authors of this guide suggest that a CoC for political parties—particularly a voluntary code which by its nature is not legally binding—is more likely to achieve its goals when produced as part of a consultative dialogue with the parties. This guide provides options for approaching dialogues, discusses their possible content and examines the challenges and opportunities they present.

About this guide

This guide is written primarily for those who have the expertise, a mandate or the convening power that puts them in a position to facilitate dialogue among political parties on the adoption of a CoC, such as political leaders, EMB officials, or peacebuilding and democracy assistance practitioners. The guide aims to share with them the experience, lessons, essential steps and other considerations drawn from successful implementation of political party dialogue processes on the development of a CoC in a way that fosters the potential of such codes to contribute to the holding of peaceful elections. The guide cross-references each step with comparative examples from a number of countries, allowing readers to make informed strategic decisions about design or facilitation, and dialogue processes on the adoption of a CoC.

Guide outline

Each chapter details a specific element of the development of a CoC. Chapter 1 explains what a CoC is, and what it is not. It outlines the objectives of a CoC and introduces the concept of ownership by the parties.

Chapter 2 explains the scope of a CoC, including to whom, where and when it applies. It outlines its potential goals on the prevention of electoral violence and strengthening democratic culture before examining the actions and commitments that can be included. Comparative examples are provided of specific wording on obligations and commitments.
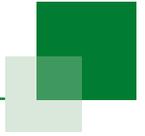
Chapter 3 clarifies the key steps in the process of elaborating a CoC from the perspective of the electoral cycle. It looks at the architecture of the process and the different considerations to be taken into account at each stage of the cycle.

Chapter 4 discusses how incentives and deterrents can be used to reinforce respect for a voluntary CoC. It also explores the use of monitoring and fact finding to verify compliance, in particular during the campaign and polling periods. The risks to implementation and monitoring are also examined.

Chapter 5 tackles the issue of setting criteria for party inclusion and deciding who represents the party in the process. The question of expanding participation beyond political parties to other stakeholders is also discussed.

Chapter 6 explores the considerations to be taken into account when selecting the facilitator of a process to elaborate a CoC, as well as the facilitator's role and essential qualities. A number of techniques for facilitating such processes are briefly outlined.

Chapter 7 addresses practical issues such as the choice of location and venue; set-up; the length, frequency and timing of dialogue sessions; and finance and other resource considerations.

Chapter 8 covers options for communication strategies during the dialogue process and public information campaigns for the dissemination of the CoC.

Country case studies

Cross-references to comparative examples of dialogues on CoCs or similar agreements are provided throughout the guide. These cases are discussed in detail in the Annexes.
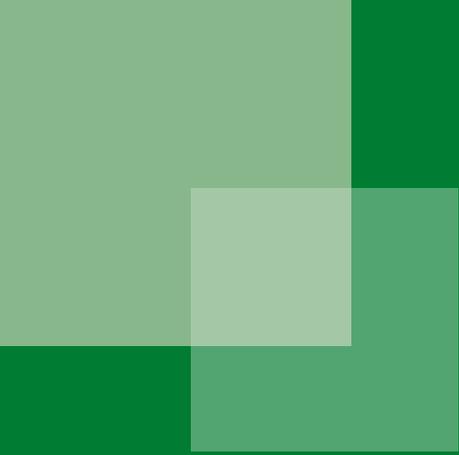
Chapter 1

General framework
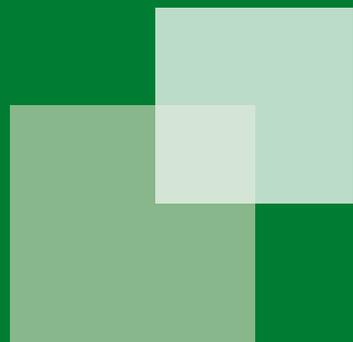
1. General framework
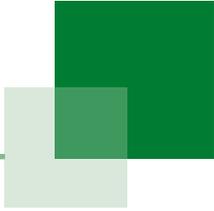
What is a code of conduct?

A CoC is a set of principles and standards of behaviour that persons engaged in a particular area of business or competition are expected to follow. The Hippocratic Oath taken by physicians is perhaps the oldest example of the spirit of a CoC. As a formal oath to do no harm, undertaken to uphold specific ethical standards, it is an action in the public interest. Even if there is no direct legal means of enforcement, the oath provides a known standard to which a physician voluntarily commits, and it guides their behaviour.

Informal and legally non-binding commitments to meet certain standards of conduct are common across societies and cultures, as well as in business and international relations. Examples include 'honour pledges', 'solemn oaths', a person's 'word of honour' and 'vows'. The essence of such commitments relies on the honour of those who pledge to fulfil them and the trust they want to inspire. Infringing the commitment may result in reputational costs that will have a negative impact on the trust between parties to an agreement and/or other stakeholders in a process, who might then opt for an alternative solution.

Formal CoCs often guide the conduct of public officials when dealing with public affairs, and professionals such as lawyers or doctors also abide by specific, formally stated ethical standards in the conduct of their professional duties.

Codes of conduct in electoral contexts

During an election, it is common for political parties to adopt and abide by an agreed electoral CoC to regulate the behaviour of parties, candidates and their supporters. Such codes may also be developed for citizen observers, the media, election officials and security forces. The subject of this guide is voluntarily agreed codes, in particular those negotiated between political parties and candidates.

Older democracies, such as Sweden, have historically used ethical codes to control campaign financing. Since the 1980s, CoCs in countries undergoing a transition have usually aimed to renounce the use of violence and to agree to abide by the results of an election, as in the emblematic cases of Cambodia and South Africa.

Although the product of negotiations between political parties, a CoC should not be confused with other types of political agreement such as government coalitions or power-sharing agreements. Power-sharing agreements and political settlements are not designed to limit or influence conduct, but to guarantee the inclusion of specific groups in state decision-making and governance structures. Furthermore, a CoC should not be confused with the electoral system or the regulation of electoral operations. It usually governs the behaviour of candidates, political parties, and their members and supporters.

Link to the legal framework

In terms of how they relate to the legal framework, there are two basic types of CoC: (a) voluntary codes, where the signatory parties mutually agree a form of self-regulation without any external compulsion and parties can choose whether to sign up; and (b) codes that form part of the legal framework, where an external body such as the police, the courts or an EMB formally enforces the CoC by legal means.

A CoC that forms part of the legal framework is automatically binding on all parties. A voluntary CoC, however, is only ethically binding on the signatory parties, but takes on the role of a 'contract' between them. Irrespective of their type, good implementation mechanisms are essential. This guide focuses on the voluntary CoC that results from dialogue between political parties. However, Annex B provides some examples of statutory CoCs that might be useful inspiration in contexts where a CoC is provided for by the law.

Why develop a code of conduct?

In liberal democracies, political parties often feel that self-regulation is the most appropriate means for governing their relationships with one another and bringing some order to their competition. During transitions to democracy, or in fragile and conflict-affected contexts in which the political climate is more polarized, a CoC can:

- fill gaps in the legal framework governing elections;

- compensate for the lack of state capacity to formally regulate or enforce the law;
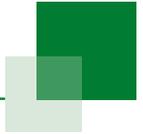
- help to address a lack of political will or incentives to formally regulate or enforce existing laws;

- help to strengthen the legitimacy of an election or the electoral system in certain situations where this is otherwise an issue; and

- help to strengthen the democratic culture.

In all these contexts, the benefit of a CoC—compared to the law or specific regulations—is its ethical dimension. In other words, a CoC can cover behaviour that the law does not address. A CoC can also be an opportunity for political parties to advance measures to promote gender balance, inclusion or transparency in the electoral process. It can also be useful when seeking to enhance the programmatic quality of election campaigns and citizen participation. As Goodwin-Gill (1998) notes:

> Codes of Conduct agreed between the parties are increasingly accepted in potentially tense situations as a practical basis for contributing to a peaceful election; in the long term, such codes may also help to develop confidence in the democratic process as a mechanism for implementing representative government and effecting peaceful change. A crucial problem in transition situations is often the failure of competing parties to communicate with each other, together with a lack of confidence in the ability of the system to produce a free and fair result. Codes of Conduct, in which the parties agree on the basic ground rules and to meet regularly during the campaign period, clearly contribute not only to the avoidance of potentially dangerous confrontation but also to popular support for the democratic process.

When is the right time to discuss a code of conduct?

The concepts of 'timing' and 'time' are significant in the dialogue process leading to the adoption of a CoC. *Timing* refers to the strategic choice of when to begin the dialogue, and is the subject of this section. *Time* refers to the duration of the process and is discussed in Chapter 3.

Timing and the electoral cycle

The process of developing a CoC will usually take longer than anticipated at the outset. It is important to choose the appropriate stage of the electoral

cycle (see Figure 1.1) to commence the dialogue. For example, an early start to the process, at the beginning of the electoral cycle (i.e. during the period of elaboration and reform of the legal framework) avoids the risk that political parties will be engaged in other election-related activities that absorb their attention, such as interacting with the EMB on voter registration or campaigning activities.

Figure 1.1. The electoral cycle
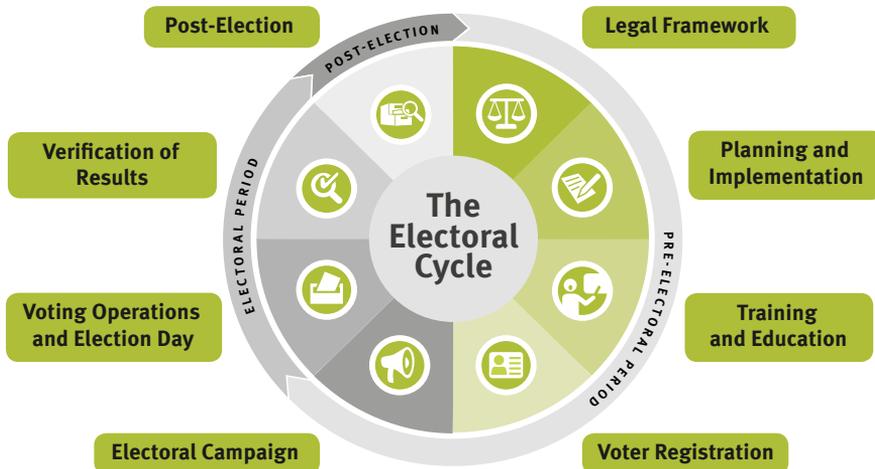
Source: International IDEA

It is also important to take account of the fact that by its very nature, the campaign period could have a polarizing effect on relations between political parties. Bringing the parties together to discuss a CoC too close to an election, especially during the campaign itself, might have a negative effect on interparty relations or even aggravate interparty hostilities. It may also result in the use of the dialogue platform for political ends. Facilitators need to have a good understanding of when to expect periods of high pressure, and of any time-bound legal constraints, for example if laws prohibit parties from convening dialogue sessions or where discussions about a CoC and/or its dissemination might legally be considered campaigning.

Starting too soon before an election, however, also presents significant challenges for the facilitator. For instance, the process may not attract enough interest or attention from political parties, since they may not understand the
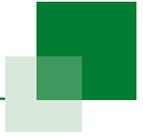
relevance of dialogue at such a time. It is important to plan to initiate the dialogue at the most opportune moment, when parties can see the relevance but when the situation is not too tense to make dialogue ineffective, impossible or even harmful.

Whose code of conduct?

EMBs often have the legal authority and expertise to draft a CoC, and this may involve varying degrees of consultation with political parties. This was the case, for example, in Liberia in 2011 and Nepal in 2008. In Liberia, the National Elections Commission adapted a CoC originally drafted in 2005 and submitted it to the political parties in a single consultation. In Nepal, the National Elections Commission drafted and extensively consulted on several versions of a CoC in the lead-up to the elections to the first Constituent Assembly after 40 years of civil war (see Annex B).

In other countries, independent third parties such as notable personalities or respected civil society organizations (CSOs) have initiated and facilitated the dialogue process leading to the adoption of a CoC. This was the case in the 2001 general elections in Peru, which followed a long period of authoritarian rule, when an independent and credible CSO, Transparencia, took the initiative and called on political parties to negotiate and adopt a CoC aimed at improving the fairness of elections (see Annex A).

Regardless of whether consultation is voluntary or mandated by law, however, genuine and extensive consultation with political parties is essential if a CoC is to achieve its goals. Good practice confirms that a genuine negotiation process in which parties are involved in designing and drafting the CoC is essential in order to increase the likelihood that they will own and commit to implementing it. Each step in the process, and the resulting CoC, must belong to the signatory parties.

This guide focuses on codes developed in a consultative process of dialogue with political parties. The methodology detailed here seeks to increase the willingness of parties to abide by the CoC, based on the principle that the parties themselves have drafted and own the commitments. Particularly with a voluntary CoC, the self-regulatory nature of the commitments ensures greater ownership and readiness to adhere to them.

The approach outlined in this guide sees a CoC as a dialogue process informed by technical electoral expertise leading up to an implementation phase, rather than merely a formally agreed statement. According to this approach, political parties need to develop and agree on their own content, including sets of goals, commitments and mechanisms for implementation. In order to

do this, they will need to understand the context, the overall atmosphere of the electoral process and the consequences of the commitments they make.

The following chapters flag up comparative examples to enable facilitators to consider the lessons learned and experience gained from different circumstances in different places at different times. Using these examples should not affect the ownership of the CoC by the negotiating parties. Just as incorporating ingredients and techniques from another country enriches a chef's cooking, examples from other countries can help the parties develop a CoC that best responds to their needs.
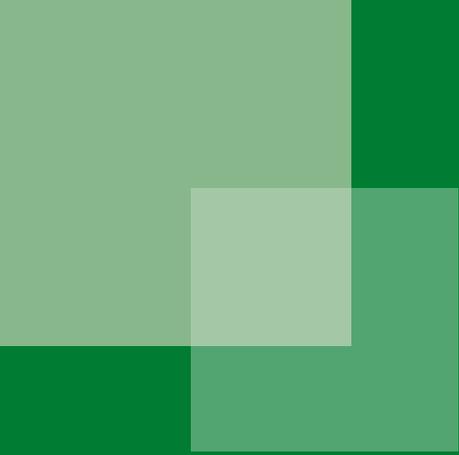
Chapter 2

The content of a code of conduct
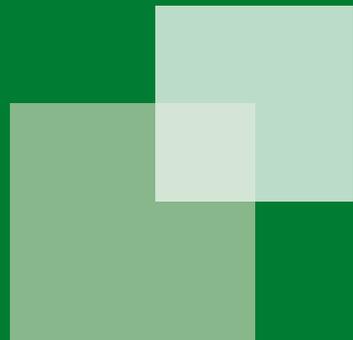
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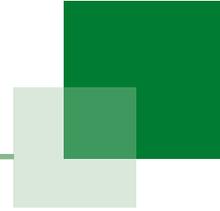
The scope of a code of conduct

The scope of an electoral CoC can be defined according to four main elements:

1. who signs the CoC and who is bound by it;

2. the code's geographical reach;

3. the period of its validity; and

4. the goals it sets.

Defining these elements well will improve the likelihood that a CoC will be effective and implementable.

Who signs and who is bound by the code of conduct?

Signatories to a CoC directly commit to the norms of conduct contained in the document. They are usually the leaders of or senior office-holders in the political parties to which the code will apply, such as party general secretaries, chairpersons or presidents, who are mandated to make commitments on behalf of the party. The leadership of a political party may also appoint negotiators to draft the CoC, and then bind their respective parties, party members and supporters to abide by its commitments. In some instances, a CoC might only apply to candidates. This was the case in the 2015 elections in Nigeria, for instance, where the Abuja Agreement applied only to the presidential candidates.

In certain cases, signatories may wish to call on third parties such as voters, the media or the EMB to respect certain obligations and cooperate with them to achieve the declared objectives of the CoC. Unlike political parties and their members, the CoC would not be binding on these third parties.

Where does the code of conduct apply?

A CoC may sometimes specify its geographical reach. Factors that define the geographical reach include the type of elections (e.g. local or national) and the chosen signatories. Some geographic regions may be intentionally excluded from the reach of a CoC, for instance if some parts of the territory are outside the control of the state. Generally, the signatories to the CoC are those who define its geographic reach.

When is the code of conduct valid?

The CoC usually specifies the period for which it is valid. When deciding on the period of validity, the facilitator and negotiators need to consider the problems, goals and commitments the CoC is seeking to address. For instance, if the goal is to hold peaceful elections, the period of validity should include all the phases of the electoral cycle in which there is a risk of an outbreak of violence. This might include the voter registration and candidate nomination periods, the campaign itself, election day, the announcement of results and any dispute-resolution process.

Ideally, the CoC should seek to cover the entire electoral process. However, defining a period of validity might improve the chances of its implementation and monitoring. Signatories to the CoC will usually wish to renegotiate or adapt the code after each electoral cycle.

Box 2.1. Example of code of conduct commitment renegotiations in Peru

In Peru, political parties contesting general elections negotiated a CoC in 2001, 2006, 2011 and 2016. Each CoC contained different commitments and new implementation and monitoring mechanisms (see Annex A).

The form of a code of conduct

A CoC usually takes the form of a written document that is distributed to the public as a booklet, or through websites and other media sources. A CoC is a public document, and the public's perception of it as a genuine document is key. The text often includes the signatures of the representatives of the parties, as this adds credibility and legitimacy to its content. A CoC might only be one or two pages long. Others go into far more detail. Shorter declarations might be more relevant if elections are imminent, or where an agreement between parties involves few specific details. More lengthy documents are usually the product of a multi-stage process that has addressed multiple goals. Such a code might be divided into chapters, each of which covers a phase of
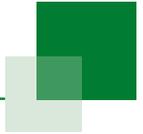
the electoral process, an objective of the CoC or the type of commitments made.

Appropriateness of style

Different styles of writing and presentation may be appropriate to different sections of a CoC. For example, a code might need to be technically and legally solid, but also appeal to citizens' general sense of fairness or ethics. The style of writing used may be more or less descriptive. Some sections, such as the preamble or the introduction, might be more expressive or aspirational, while the sections on actions, commitments and their enforcement could be framed in legal language.

Choice of name

The name given to the CoC needs to be considered carefully. For example, if the EMB is the only body legally allowed to create a CoC, any agreement between parties on the rules of engagement during an election might need to be called a 'charter', 'pact' or 'memorandum' to clearly differentiate it from any other CoC, legally binding or not, that may have been developed by the EMB on the basis of its legal mandate.

Clarity

Above all, a CoC should be readable, specific and contain concrete actions. Any lack of clarity in the commitments would lead to a lack of enforceability. It should clarify, for example, which parties are required to abide by its provisions. Signing the code should also be understood as creating a mechanism for implementation and follow-up.

Language and translation

Depending on the linguistic diversity of the country, the CoC may need to be translated into additional languages. Furthermore, the parties might feel that a popularized version is needed. The CoC may be one of a number of agreements at the national and local levels, or might be a revised version of an earlier code. In some cases, a CoC can be incorporated into national legislation at a later stage. Making the text understandable to the widest possible range of readers will help to embed its provisions in the minds of political party leaders and members, as well as citizens.

The goals of a code of conduct

Once the scope of a CoC has been agreed on, its goals can be defined. This is usually done on the basis of a country's specific context in relation to an upcoming election, and taking account of the differences between the perceptions of political parties.

It is often important for the parties involved to find a common goal around which to rally. For example, after a long period of dictatorship, a reference to a common political will to move towards more democratic institutions might be suitable. Similarly, an emphasis on a peaceful electoral process could bring together parties in a post-conflict setting, or in a country with a history of violent elections.

However, different political parties might perceive challenges differently. For instance, opposition parties might believe that the incumbent has an advantage over other parties due to their greater access to public resources, while the incumbent might not perceive this issue as a problem. Therefore, a CoC is likely to have more than one goal. This creates the dilemma of how to agree on shared goals when parties have different views about existing problems and aims. Facilitators could pursue a strategy of first encouraging parties to agree on universally shared principles. For example, a common commitment to democracy and transparent electoral processes would be a good starting principle or a symbolic aspiration on which everyone can agree.

Criteria for setting goals

Agreeing a common aspiration or goal is a positive first step in the process, but it will also be crucial for the facilitator and the parties to agree criteria for setting any further goals. As a starting point, the goals should be acceptable to all signatories. The goals of a CoC do not necessarily need to address all the problems that are experienced by all parties in the negotiation. At a minimum, however, all parties should accept that a goal is relevant to other parties, and therefore to the process. In addition, the goals of a CoC should be relevant to the country context and grounded in reality. It will be important, for example, to discuss and agree on goals that are responsive to citizens' wishes and concerns about the election.

In helping parties to set goals, the facilitator should make a connection between the desired situation and reality. Again, the goals will usually indicate the main themes of the commitments and actions contained in that section of the CoC. As every context is unique, a CoC might contain several different types of goals. These might relate to:

- *Peaceful elections.* Where past episodes of violence have affected elections, a CoC could be a useful tool to help create an environment that is conducive to peaceful elections. Such codes usually contain specific commitments linked to the different phases of the electoral cycle in which violence is likely to occur. Past codes have identified safe spaces, coordinated public activities and prohibited hate speech in efforts to achieve this goal.

- *The integrity of the elections.* The Global Commission on Democracy, Elections & Security (2012) defines an election with integrity as 'any election that is based on the democratic principles of universal suffrage and political equality as reflected in international standards and agreements, and is professional, impartial, and transparent in its preparation and administration throughout the electoral cycle'.

- *Programmatic campaigns.* In contexts where parties and candidates are concerned about campaigning based on charisma, identity (ethnic or linguistic) or personal attacks over the substance of their platforms, a CoC can offer a way to increase commitment to a campaign based on programmes and policies. While a programmatic election campaign will not guarantee that elected officials will keep their promises, it does provide citizens with a substantive choice. This improves the legitimacy of democracy, as parties make themselves accountable to citizens based on concrete policy offerings.

- *Level playing field.* In contexts where access to resources, media or other features essential to election campaigns is unequal (e.g. due to personal wealth or incumbency) political parties can set limits on these advantages, which can increase the competitiveness of an electoral contest. Competitive elections, in which resources are fairly distributed or accessed, are more likely to produce results that are accepted by all parties, thereby increasing the legitimacy of the elected officials.

- *Inclusiveness.* In contexts where there is insufficient space for marginalized groups or minorities to participate, the CoC can be an opportunity to recognize these gaps and encourage each party to take action to increase the number of candidates from such groups, or actively introduce policies to address these disadvantages.

- *Democratic values and basic freedoms.* Political parties can agree to include specific declarations about recognizing institutions and adhering to democratic procedures.

If signatories are concerned about the risks of vote rigging, electoral fraud, vote buying or other practices that undermine the legitimacy of the elections, a CoC can include measures designed to prevent these and build trust in the electoral process. In setting such goals, the CoC is also likely to include exhortations to other electoral stakeholders that are not signatories, such as media organizations, EMBs or CSOs, to preserve and protect the integrity of the electoral process.

Actions and commitments

Based on the agreed goals, the group, supported by the facilitator or an expert team, can start working on realistic and concrete commitments. These are actions that the parties agree to do—or not do—in order to achieve their goals. To help participants produce actions that can be implemented while retaining the code's ethical basis and its nature as a political agreement, three main criteria should be considered when identifying the concrete commitments:

1. Do they affirm an ethical or moral value?

The purpose of a CoC is to reinforce ethical and moral behaviour during elections. The CoC might sometimes go beyond existing legal requirements. It can be a reaffirmation of legal duties, and thereby foster both respect for the law and self-restraint. Parties should agree to abide by the rules not out of fear of sanction, but because they have declared that they are ethically or morally bound to do so. Other obligations, such as to 'show humility, dignity, goodwill and good faith', may not be measurable or legally binding but would signal parties' commitment to hold themselves to certain higher ethical standards of behaviour.

2. Do they conform with the law?

As noted in the Introduction, a CoC may either include voluntary ethical commitments or be integrated into the legal framework. In both cases, the facilitator needs to be aware that the relationship with the legal framework is a key issue. If a CoC contradicts the law, it will be considered illegal, which would disrupt the electoral process. Alternatively, a CoC can reaffirm or complement the legal framework by filling gaps in existing laws and regulations.

The inclusion of provisions from existing law can help to reassure the authorities that the political parties will continue to adhere to existing rules, and that drafting a voluntary CoC will not undermine their authority enshrined in the legal framework. To achieve this, references to the legal

framework should be included throughout the code, to confirm that it is to be read in conjunction with the existing legal order.

3. Can they be monitored?

Political parties should wish to make commitments that can be easily implemented and monitored. By reaching agreement on specific and practical criteria, the parties will also increase the chances that their supporters will be able to implement and respect these commitments. Examples of such commitments include refraining from the destruction of campaign posters or restrictions on the use of public and religious places for campaigning purposes.

Participants will need to balance all these criteria based on their understanding of the content, the level of consensus and the capacity to enforce or monitor the CoC. The facilitation team will need to provide comparative examples and clarity on the potential consequences of the commitments made.

Box 2.2. Incorporation of code of conduct commitments into national laws

There are several examples of commitments made in a CoC that were later incorporated into national law. Box 2.1 refers to the case of Peru, where the Electoral Ethics Pact of 2011 introduced voluntary disclosure by candidates of their income and assets. Four years later, legislation was passed that required public declaration of income and assets as part of the candidate registration process.

Political parties that commit to a voluntary CoC can resort to internal party mechanisms for sanctions in order to prevent their party candidates or representatives, employees or supporters from violating the CoC, and to discipline them for committing any offence in relation to their commitments.

In certain situations, it may not be possible to reach a consensus on a specific commitment, and parties might favour more general commitments. This might be important, for instance, to demonstrate the political will to commit and make efforts to achieve a goal.

Practical examples of the types of commitment in a code of conduct

Specific commitments that can be actioned and are based on a broad consensus are paramount for the success of any CoC. This section provides details of practical examples of CoC commitments.

1. Democratic values

To reaffirm basic freedoms and obligations

Myanmar's 2015 CoC stated that:

> the parties are committed to respecting and promoting: other parties' right and freedom to assemble peacefully and hold public meetings; to campaign; to have access to and contact voters; to present their ideas, basic principles, and political agendas; to have free access to mass media to carry out political canvassing; and to publish and distribute their electoral documents and materials without hindrance, intimidation or coercion to the limit permitted by any law or regulation in force.

Inclusiveness in the electoral process

Tunisia's 2014 CoC stated that: 'parties will strive, during all stages of the electoral process, to provide equal opportunities and the necessary requirements for greater participation by women, youth and the elderly, and to make as much effort as possible to encourage and facilitate the participation of marginalized, poor and low-income groups'. With the same aim, Myanmar's 2015 CoC established that: 'Campaigning should be arranged to enable women working in the home to be able to participate easily'.

2. Encouraging programmatic debates

To encourage programmatic debates between political parties in Peru, the 2011 CoC called on parties: 'To present plans, ideas and programmes through debates by candidates and technical teams as promoted by the Ethical Pact, to enable citizens to be informed, make comparisons and cast an informed, conscious vote'.

3. Integrity of the electoral process

Parties agreed in Myanmar's 2015 CoC 'not to engage in violations such as impersonation, casting votes more than once in the same election (multiple voting), and giving or taking bribes.' They also committed 'not to abuse the advanced voting procedures'.
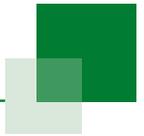
4. Level playing field

Tunisia's 2014 CoC established that 'the parties shall refrain from: (a) abusing a position of power, influence or privilege for electoral purposes by offering rewards, using intimidation or using any other means; and (b) using public resources whether national, regional or local or other state resources for campaign purposes or to prevent others from engaging in political activities permitted by law'.

In Peru, the 2001 Civic Pact for Free and Fair Elections established that parties should 'avoid the direct or indirect use of public resources in support or against any political organization or candidate'. Peru's 2011 CoC makes an identical call.

Georgia's 2016 CoC called on the mass media, in view of the Organic Law of Georgia and the Election Code of Georgia: 'to maintain principles of equal treatment and neutrality with regard to electoral subjects; [and] to ensure well-grounded and balanced media coverage of their activities during the pre-election period, in order to protect citizens' right to make a decision on the basis of objective information'.

5. Peaceful elections

To ensure non-violence. The CoC adopted in Georgia in 2016 called on political parties 'to reject hate speech and refuse to use provocative, slanderous, degrading, xenophobic, threatening or any other types of statements that provoke violence'. Similarly, Myanmar's 2015 CoC stated: 'The Parties undertake to speak out against violence, and not to contribute to it whether directly or indirectly. [...The Parties] shall agree to cooperate with law enforcement services such as the Myanmar Police Force to promote a peaceful electoral environment and maintain public order'.

To restrict religious, cultural or personal attacks. In Ghana's 2008 CoC, political parties agreed that: 'provocative, derogatory and insulting attacks on other parties, personalities, ethnic and religious groupings by way of communication, verbal or non-verbal, shall be avoided at all times. Political parties, candidates, party members and agents shall desist from the carrying of arms and the display of same, and shall extend co-operation to the law enforcement agencies, particularly for the purpose of recovery of illegal arms'.

In Myanmar's 2015 CoC, political parties agreed: 'when addressing the public at political rallies or as part of their communications on mass media, including social media, to refrain from: (a) any form of intimidation or incitement to violence vis-à-vis any person or group of persons; (b) defamation

and incitement to hatred, or accusation of apostasy, treason, terrorism or acquaintance with foreign forces or any other similar serious charge; (c) fuelling regionalist, racial, sectarian or tribal trends that could threaten national unity; and (d) insult, libel and degradation'.

In Tunisia's 2014 CoC, political parties agreed to refrain 'from criticizing leaders, candidates and supporters of opposing parties on the basis of aspects of their private lives. They will also refrain from making criticisms based on unverified allegations or facts that have been distorted; and from insulting or making tendentious innuendoes about the candidates or their family members based on race, religion, creed, gender, social or regional origin, education or any other similar reason'.

Public order and security incidents. To ensure national security and refrain from undermining public order, parties to Myanmar's 2015 CoC: 'in public gatherings, commit not to carry torches, arms and ammunition, and not to display or use sharp and dangerous weapons such as sticks, swords, and knives'. Similarly, in Ghana's 2008 CoC, political parties, their members and agents agreed to 'desist from the carrying of arms and offensive weapons… political parties also renounce violence and pledge not to indulge in violence and intimidation of any kind'.

In Tunisia's 2014 CoC it was agreed that:

> Parties to the Charter of Honour shall, in case of exceptional events that could endanger national security or undermine public order (such as acts of terrorism, political assassinations, natural disasters, etc.) consult with each other and with the competent authorities, avoid heaping unfounded accusations, and refrain from exploiting such events to compromise the electoral process or to achieve electoral gains. The Parties undertake to work towards issuance of a joint statement to reiterate support for the objectives and principles of the Charter and create a cell for coordination, cooperation and crisis management, and to deal with the crisis responsibly.

Chapter 3

Creating a code of conduct in the run-up to an election: the process

3. Creating a code of conduct in the run-up to an election: the process

Figure 3.1. Dialogue process for codes of conduct: workflow and key considerations

Preparation

- Context assessment and analysis of the electoral process
- Consultation with EMB and political parties
- Considerations for selection of dialogue participants: equitable representation, presence in parliament, seniority, expertise in elections, other stakeholders
- Overall process design and setting timelines based on the electoral cycle
- Validation of the timeline, steps and process with all political parties

Agenda setting

- Criteria for setting CoC dialogue goals/objectives
- Consensus on CoC agenda
- Definition of level of necessary consensus for ensuing dialogue

Consensus-building and drafting

- Enough time for discussion and deliberation on potential CoC commitments
- Thematic sessions when necessary on phases of the electoral process, presentations by external experts, comparative examples from other countries
- Feedback loops and consultation between delegates and their officers, members and supporters. Support from the facilitation team with bilateral meetings, all-party sessions
- Establishment of drafting modalities (plenary, drafting committee, thematic groups, expert participation, etc.)
- Content issues: language and style of commitments; scope; validity period; choice of name; discussion and drafting commitments

Adoption and signing

- High level of consensus for adoption; adoption based on feedback loops and final adjustments in case of disagreements; possible endorsement of the EMB and the all-party session
- Consideration of practicalities (venue, timing in the electoral process, publicity and media coverage)
- Agree on signatories
- Consideration of format of ceremony, speakers
- Role and visibility of facilitator in ceremony
- List of invitees, general public, officials and international invitees

Implementation and monitoring

- Reputational costs of lack of enforcement
- Fact finding modalities, participation of third parties such as electoral observers
- Mediation vs adjudication
- Role of signatories, third parties, EMBs in monitoring bodies; rules of operation
- Public expectations and visibility during implementation and monitoring

Overarching process

The process of planning, establishing, conducting and finalizing a dialogue between political parties on a CoC is crucial to creating buy-in and ownership of the resultant code. Such ownership will increase the chances of successful implementation. Five stages of dialogue can be identified in the process of adopting a CoC:

1. preparation;

2. agenda-setting;

3. consensus-building and drafting;

4. adoption and signature; and

5. implementation and monitoring.

Each of these stages is key to the process, and involves multiple considerations (Figure 3.1 provides examples of the key considerations). Shortcomings at any stage might negatively affect the integrity of the process as a whole. Good planning and continuous analysis can enhance the prospects of success. Solid political and technical electoral analysis combined with knowledge of local dynamics will be essential to help the parties reach an agreement. External events such as conflicts, terrorist attacks or natural catastrophes, which are beyond the control of the facilitator and her/his team, can also affect the eventual outcome of the process.

This chapter details the first four stages of the dialogue process. Reflecting their importance, implementation and monitoring are discussed in Chapter 4.

Stage 1: Preparation

Although they may subsequently be revised, decisions about key actors, basic parameters and the design of the dialogue process will be taken at this initial stage.

Assessing the political and electoral context

An assessment and situational analysis are usually required to ensure that a dialogue process is contextually appropriate. The assessment seeks to identify whether there is a need for a CoC, if the relevant parties are interested in such a process, whether other organizations are already engaged in a similar effort and whether the EMB would oppose the process.
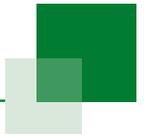
This analysis will also help the team to independently evaluate the local political, electoral, social and security situation, which will be useful if the facilitator needs to make proposals to the parties. Facilitators will need to speak to a wide variety of stakeholders:

- the relevant national agencies, such as the EMB, or any other agencies responsible for monitoring party conduct, such as the registrar of political parties;

- local civil society organizations;

- international organizations (particularly those with formal mandates such as the United Nations, its political and/or peacekeeping missions, the Organization for Security and Co-operation in Europe, and regional organizations such as the European Union, the Organization of American States and the African Union);

- electoral assistance and political party support organizations or experts; and

- independent analysts, electoral observer groups and media groups.

In addition to improving the analysis, these discussions can assist later on in the dialogue process, for example with organizing supplementary activities such as training, political party development, electoral support and electoral observation, which the facilitator will not be able to provide alone.

At this early stage, it is particularly important to consult any national or local EMBs responsible for organizing elections. The status of any potential CoC may need to be negotiated with the EMB. If the EMB has a legal mandate to facilitate a CoC between political parties, as is often the case, it will be essential to liaise with this body in order to obtain its approval for the dialogue process.

In contexts of political transition, multiple processes, such as transitional justice processes, national dialogues and peace processes, are often taking place at the same time. Facilitators will need to be aware of such processes and their potential impact on the CoC dialogue. Wherever possible, synergies with these other processes would be advisable. Even at this early stage, it might be useful to consult with technical election experts to identify risks and requirements.

The facilitator's assessment and analysis should never prejudice the parties' prerogative to identify their own priorities, which might be based on perceptions rather than realities. Their concerns will need to be filtered.

If a party says that the process is unfair, the facilitator should give deeper consideration to what such a concern might mean. Like the techniques used in mediation, the facilitator will need to deconstruct the positions expressed by the parties in order to discover the real interests and the issues reducing the capacity of the parties to compete freely in the process. (Further techniques and skills are discussed in chapter 6.) Being flexible and willing to revise analyses, findings and recommendations is often essential to building an effective process.

Setting a timeline

At this stage, it might also be useful to map out the factors that seem likely to determine the pace and timing of the process. The national electoral calendar, in particular the campaign period and the date of the election, will determine the time available. Other major events, such as national, regional and faith-based holidays, will also need to be taken into account.

The duration of the dialogue on the CoC must fit into the time frame for the electoral process. It is essential to allow sufficient time at each stage of the process for consultation and the inclusion of different perspectives and views. At the same time, there is a need to maintain a sense of momentum throughout the process to ensure that the CoC is ready when it is needed (e.g. at least in time for the campaign). Identifying clear milestones in the process—such as consultation, adoption of the agenda, first draft, legal review, second draft, adoption, signature and convening the compliance mechanism—will keep the parties focused and engaged.

Contacting the political parties

Consultations with political party leaders can help to identify risks, challenges and needs, as well as their positions, interest and intentions while also ensuring their participation and commitment to a future process. These consultations will also help with the selection of participants, one of the most pivotal decisions in any political dialogue process (see Chapter 6).

The facilitation team should attempt to ensure commitment to the process from the beginning and at the highest level of authority within the political parties involved. Where necessary, diplomatic backing from key members of the international community might be useful to strengthen the legitimacy of the CoC dialogue, and secure high level endorsement of the ruling party, the authorities and the opposition. In addition, facilitators could inform the leaders that a commitment to engage in the process is not the same as signing up to the outcome.
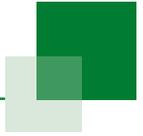
The facilitator may introduce the idea of a CoC during preliminary consultations with political parties. In such cases, the facilitator should be prepared to explain the value and role of a CoC. However, in some cases participants might not initially see the need to develop a CoC before agreeing to engage in a political dialogue process.

The degree of each political party's internal preparedness will have important implications for the efficiency and success of any interparty dialogue process. It is therefore important to allow sufficient time for internal party consultations, gaining formal approval for the process, identifying representatives and discussing positions.

Before any multilateral rounds of dialogue have been held, it is key to secure individual party buy-in to ensure the legitimacy of the mandate and the facilitator. It is during this phase that parties' confidence in and commitment to the process are either won or lost. Bilateral preparations are thus extremely important. A rush to bring the participants to the table could damage the process.

Consulting the EMB

As noted above, EMBs often have the mandate to facilitate a CoC between parties. In such cases, there are two possible scenarios:

1. *The EMB fulfils this mandate and facilitates the dialogue.* It may be possible to provide support to the EMB in its endeavour (see box 3.1).

2. *The EMB is unable or unwilling to fulfil its mandate due to capacity or political constraints, and delegates this mandate to a third-party facilitator.* In such cases, the EMB might still be a participant in the process, oversee the process, attend as an observer or remain outside and be briefed on progress by the facilitator. Even in cases where the EMB is initially reluctant to actively embark on a CoC process, the parties may still decide to engage in a dialogue process but modify its objective in order to avoid legal pitfalls. In some cases, this may mean choosing a different name for the de facto CoC. For example, in Tunisia, political parties adopted a 'Charter of Honour', to complement the binding CoC drafted by the EMB.

The precise role of the EMB will vary from process to process and may change over time. This role can usually be defined jointly, in consultation with the parties.

> ## Box 3.1. Requirement to consult with an electoral management body
>
> In Ghana, the Institute for Economic Affairs and its partners, which facilitated the development of a CoC in 2004, 2008 and 2012, were required to coordinate and consult closely with the Electoral Commission (see annex A).

Designing the dialogue process

In some cases, a dedicated process is designed to elaborate a CoC, while in other contexts existing platforms for interparty dialogue are transformed over time into a negotiation space for a CoC. Existing platforms benefit from having already built relationships between participants, and may also be useful when parties do not see an immediate need for a CoC but still see value in meeting with one another. In other contexts, where participants are only willing to come together for a specific predefined objective, or when existing platforms are stagnant or do not include appropriate participants, a dedicated process may be useful.

Parties can be represented in the dialogue process in different ways. However, all parties should feel included and will need to be engaged in the process through multiple mechanisms. There might need to be various levels of dialogue with different compositions, modalities and prerogatives to allow for broader consultations to include stakeholders that are not around the main table.

It may also be advisable to:

- *Conduct bilateral consultations with individual parties.* This could be useful, for example, if a major party refuses to participate in multilateral rounds of dialogue.

- *Encourage the selection of one participant to represent a coalition of like-minded parties.* This might be appropriate, for example, where parties are very small, already working in coalition with one another or represent the same political views and positions. Adding a rotation mechanism would create more equal opportunities for participation.

- *Conduct town hall meetings or large plenary debates to incorporate a wider variety of voices into the process.*

- *Have all accredited parties mandate a select group of parties to negotiate the CoC.* This is often done on the condition that regular debriefing and input sessions are held.

- *Establish thematic subgroups that only include certain parties.* This may be useful in cases where certain parties have a narrow focus or area of interest (e.g. in dialogues involving regional or single-issue parties).

Convening the first session

Even if all the stakeholders have verbally agreed to participate in the dialogue process on a CoC, the facilitator should send a formal written invitation to the first session. In this session, the facilitator should introduce the concept of the meeting, allow participants to introduce themselves and agree on rules for the dialogue process. Proper planning will prepare the ground for the subsequent stages of the process.

Participants could be asked to outline their expectations or views and to brainstorm on the topic. It should be clear that no agreement is likely during the first session. If there is consensus around the need for a CoC, it may be appropriate to share information on comparative examples, including their objectives, opportunities, risks and outcomes. In other cases, it may be too sensitive to do this at such an early stage.

Basic ground rules will ensure that the dialogue process takes place in the best possible conditions. Such rules might include the following:

- All participants agree to treat each other with respect, despite their differences.

- All participants respect the equality of participants in the room, whether they represent large or small political parties.

- All participants agree not to communicate messages about the dialogue process publicly, unless they obtain the agreement of all the other participants.

In multilingual contexts, it may be important to determine the language of the dialogue process at this stage. However, even if the participants can work in a common language, the facilitator should be aware of any potential structural disadvantage at which this may place one or more participant who may, for example, be less comfortable about working in the majority language for long periods.

Stage 2: Agenda-setting

Setting the agenda for the dialogue

Sufficient time should be given for the different parties to mutually agree on the agenda for the dialogue process. This discussion can be either forward or backward looking. In countries undergoing political transitions, it may be appropriate to ask participants what they hope to achieve (e.g. a peaceful, competitive campaign based on issues) or what kind of electoral process they want. In addressing these questions, participants will be setting the goal of the CoC themselves.

In other contexts, the agenda-setting process may be backward looking, drawing on lessons from past experiences and identifying the problems the CoC needs to address. However, it may be necessary to ask participants to avoid raising tensions unnecessarily, and to refrain from making accusations about others in relation to previous problems. Participants may be encouraged to express, from their party's point of view, the key issues or concerns in the electoral process that the CoC needs to address.

The process of agreeing on a mutually acceptable goal or agenda could take several sessions, but it ensures that the CoC is not simply a replication of examples from other contexts, but is contextually appropriate. The facilitator needs to help parties decide between what is currently achievable through the collective commitment of all parties and what should be included in the CoC at a later stage.

Gathering the views of all parties

The facilitator may wish to use a combination of two approaches to secure optimal ownership and plurality of views:

1. *Bilateral consultations.* The facilitator may wish to consult each of the parties bilaterally to obtain individual party perspectives on the need for the CoC and what it should include (see the examples in Box 3.2). This may be the most realistic approach if the level of political polarization is high and bringing political parties together at this stage would create tensions that could block the next steps. However, this approach may not be feasible if there are a very large number of participating parties.

2. *Joint agenda setting.* The facilitator could make the agenda-setting exercise a joint effort whereby topics emerge from a multilateral platform, allowing each participant to give their perspective and to comment on those proposed by their peers (see the example in

Box 3.3). This approach could prove useful in terms of prioritization, given that some political parties are likely to come up with a long, perhaps unrealistic list of issues that should be included in the CoC. In addition, where the context allows for this approach, building trust and consensus about solutions becomes much easier when consensus has been obtained at the problem definition stage.

Box 3.2. Intraparty inputs and buy-in on the agenda

In Georgia, in 2016, bilateral meetings and consultations with different decision-makers took place before a dialogue process (see Annex A). In Ghana, achieving consensus on the priority issues to be addressed in 2004, 2008 and 2012 took time because of the different individual party interests. Some were more concerned about abuse of incumbency, while others felt that addressing matters such as the intimidation of party election observers and the militarization of party youth members should be the main priority.

Where a large number of parties must be consulted, simple tools can be used to canvas opinion and identify priorities, such as the tallying tool used in Tunisia (see Figure 3.2). Such tools can be used by staff with little or no training or experience.

Figure 3.2. Tallying tool used in Tunisia

Violence	IIIII IIIII IIIII IIIII IIIII IIIII IIIII II	37
Corruption	IIIII	5
Hate speech	IIIII IIIII IIIII IIIII IIIII IIIII IIIII	35
Defacing posters	IIIII IIIII IIIII IIIII IIIII II	27
Libel	IIIII IIIII IIII	14
Vote buying	II	2
Non-acceptance of results	IIIII IIIII	10

Depending on the context and time frame, it might be possible at this stage to identify categories of issues or goals for a CoC under which commitments can be organized (see the Myanmar example in box 3.3). This would avoid lengthy discussions of anecdotal examples or detail, and establish an initial sense and degree of consensus.

Box 3.3. From themes to commitments

In Myanmar in 2015, a plenary discussion followed by group work allowed the establishment of five general categories: security, race and religion, party, law and general. Using these categories, some general commitments were identified at the end of the first session. These categories were maintained throughout the drafting process because they had been identified by representatives of all the accredited parties in Myanmar and were strongly supported by them (see Annex A).

If the participants do not raise a particularly important issue that has been identified by the facilitation team during the preparation stage, the facilitator should try to understand why this is the case. Depending on the relationship with the participants and the reason for its omission, the facilitator may want to introduce this issue or general topic into the discussion or invite an outside party to do so. Outside parties could be international experts, peers, election practitioners or national stakeholders such as the EMB or CSOs.

Setting an agenda requires compromise. Not all the participants will necessarily agree that every proposed item is a priority or of genuine concern. Participants may need to be reminded that the primary objective at this stage is to jointly identify problems, and that this is not the appropriate time for exploring alternative solutions.

Consensus on the agenda does not necessarily require unanimity on all the proposed issues. Rather, it means that:

- even if a participant's or party's proposal was not included on the agenda, they are comfortable with the agreed agenda;

- each participant or party feels they have had an equal opportunity to put their issues on the table; and

- the deliberation and decision-making process was fair and even-handed, and each participant is ready to accept and respect the group decision.

Stage 3: Consensus-building and drafting

Finding consensus between parties and bringing in electoral expertise

Once the agenda has been set, it is important that participants are given a reasonable period of time to discuss and explore the potential commitments that they can make to address or resolve the identified issues. Participants
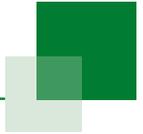
may not have the technical expertise to fulfil these commitments themselves. It is at this point of the process that outside input from experts, peers and practitioners can often be most useful.

Comparative experience, mechanisms, language and formulas from other contexts can be adapted and put on the table for participants to discuss. Options and their potential consequences can also be discussed. Rival political parties in some polarized contexts might accept these more easily as they are coming from a neutral third party. This opens up new avenues for compromise between the parties.

Where possible, agreement at the internal party and multiparty levels should be based on consensus. This increases the likelihood that political parties and their supporters will feel jointly responsible for the outcome and be committed to implementing the resulting CoC.

The number of political parties included in such processes varies widely from country to country. As mentioned above, ensuring political pluralism and inclusiveness will reinforce the legitimacy of the process. However, where there are more than 100 registered parties, for instance, it is not easy to guarantee everyone's active participation in the process and to find consensus between all parties. The design of the process may help to achieve this consensus. Inclusive input-taking and debriefing sessions can help a small core group of parties to be more accountable to the broader group of parties.

In some contexts, it may be necessary to determine what level of consensus is sufficient. This can be useful in preventing smaller parties from blocking a process. However, repeatedly overruling a party and effectively excluding it from a process could transform it into a spoiler and have negative consequences for both the process and the country as a whole. In general, the principle of 'do no harm' should guide the facilitator in trying to reach agreement around the CoC.

Consultation and feedback within political parties

Once again, party representatives should be given adequate time to communicate the issues discussed within their parties, in order to agree internally on what the party's position is on a particular issue and what kind of commitment it wants to make. It is important for the facilitator to support a built-in feedback mechanism for intraparty consultations throughout the drafting process, rather than wait for a final document before conducting internal party reviews. Waiting may result in the party leadership refusing to approve the outcome, thereby rendering the whole effort worthless.

Maintaining the feedback loop between delegates and their respective political parties also helps to keep the party leadership informed of the process and sustains their level of commitment. Where the facilitator is concerned that a delegated representative is not properly consulting with party colleagues, he or she may wish to conduct their own additional consultations within the party. Regular meetings with the executive bureaux of the major parties, or written briefings on the progress of the dialogue, may be useful in this regard.

Balancing political and technical considerations

It is crucial to understand that while an issue such as voter registration may be considered technical, it has the potential to cause political controversy. Every step of the electoral process, and in particular the campaign, is composed of technical considerations that have the potential to provoke political controversy. It is essential to see technical and political issues as part of an interaction between technical elements and political reactions, whereby any issue initially pertaining to a technical matter will have a political impact that in turn will provoke a political decision that will affect the technical process. It is therefore pointless to divide issues between the political and the technical.

The process of drafting the code of conduct

Before drafting the text, it is important that parties decide on the official language(s) of the CoC, and on which version has precedence for the purposes of interpretation. Ideally, any language limitations on the part of the facilitator should not adversely affect the language chosen by the participants. Local ownership is key to the effectiveness of the CoC; writing the code in a language that is understood by the majority of the population will assist in this regard.

Specific technical, electoral, thematic and legal expertise may be required when drafting the CoC. Legal expertise is needed to appropriately frame commitments and ensure they do not violate national legislation or international standards. Technical guidance will help make sure that the solutions proposed in the CoC are feasible and technically implementable.

In addition to practical considerations about thematic and technical expertise, decisions about who drafts the CoC are also highly political. Facilitators should be aware of this sensitivity and allow the political parties to express their own preferences about who should do the drafting. Depending on the context and the choices of the parties, options might include:

- *Drafting in the plenary.* All the participants can have an input into the drafting process and draft versions of the CoC are circulated between the rounds of dialogue. Electoral experts could assist political party representatives by informing them about the potential impact of the measures being considered. Participants can also come back to the group with comments on earlier drafts. This option is only feasible where a relatively small number of parties are included in the dialogue process.

- *Dividing participants into thematic working groups based on their areas of expertise and interests.* Each group takes the lead on drafting its allocated thematic area, with opportunities for peer review and validation throughout the drafting process. This option would be most effective where political parties have sufficient drafting capacity, and where there are political sensitivities regarding external involvement in national political processes. Electoral expertise can be provided to help understand the potential impact of the measures being considered by the parties.

- *Participants nominate a drafting committee.* This group of party representatives, perhaps with specific expertise and skills, would draft the CoC with or without the assistance of experts and present it to the plenary. This option will only work when there is a minimum level of trust between parties, or when the full plurality of political views can be represented in a drafting committee.

- *External experts draft the text.* In the past, it was common for parties to agree to allow external experts, either local or international, to draft the CoC. These experts would often be specialists in elections. This is now considered insufficient, as it can prevent input and buy-in. If this is the only option, experts should draft the CoC in close and continuous consultation with the political parties, allowing the parties multiple opportunities to examine and approve the content of the draft.

- *Participants and experts co-write the text.* A mixed option, whereby party representatives work with external experts to develop the draft, provides the best of both worlds. Experts can help political parties understand the potential impact of technical issues that would require political commitment.

- In all cases, the facilitation team should only actively support the drafting process where it has received a mandate from the political parties and can ensure clear buy-in. This is essential to maintain the impartiality of the facilitation and local ownership of the agreement.

Examples of the specific content and wording of commitments in a CoC can be found in Chapter 2 and in the country case studies in the Annexes.

Stage 4: Adoption and signature of a code of conduct

Once agreement on the CoC text has been reached, many facilitators might consider their role to be over. However, experience has shown that planning for the adoption and signing of the CoC is sometimes as contentious as negotiation of the agreement itself. The planning for the signing ceremony must often be a consultative process with the signatory parties.

Among the issues to be discussed are:

- *The format of the signing ceremony.* This may include details such the content and length of speeches and the order of signatures.

- *The role and visibility of the facilitator during the signing ceremony.* Agreeing on the specific role of the facilitator during the ceremony will help avoid undermining the trust built up during the process.

- *The list of invitees to the ceremony.* Whether intended or not, those present at the signing of an agreement are often considered by the public to be witnesses or guarantors of that agreement. As such, invitations to the signing ceremony may need to be discussed among the signatories.

- *The role of official persons at the signing ceremony.* In some contexts, the opposition may object to the government or head of state presiding over the signing ceremony. Parties may also object to the EMB playing a high-profile role.

- *The role of the international community.* Some parties may wish for representatives of the international community to be present to apply pressure and show support for the CoC; others may have concerns over national sovereignty.

- *The profiles of the signatories themselves.* Since a party member or leader could exploit their role as a signatory to the agreement in order to enhance their public profile, facilitators may need to check whether the party leadership has indeed mandated their representatives to be signatories.

- *Gender and diversity considerations.* The representativeness of a signing ceremony is important and might benefit from a discussion among the parties. It is important to ensure the plurality of political parties and take account of social and/or other important diversity considerations such as gender.

- *The location of the ceremony.* Sometimes a historic or symbolic place, such as parliament, can increase parties' commitment to the process. However, in other contexts, such locations may have strongly negative political connotations that call into question the impartiality of the process.

- *The approach to publicizing the signing ceremony.* In order to support the implementation of the CoC, a strong media presence would probably be useful (see Chapter 9).

Figure 3.3. Myanmar Signing Ceremony of the Code of Conduct for Political Parties and Candidates, Yangon, June 2015

Some of the representatives of the 89 signatories at the signing ceremony.

Figure 3.4. Tunisia Signing Ceremony, July 2014

From left to right: Moncef Marzouki (President of the Tunisian Republic), Mustapha Ben Jaafar (President of the National Constituent Assembly), Kamel Morjane (President of the Moubadara party) and Omeyya Seddik (Representative of the Centre for Humanitarian Dialogue).
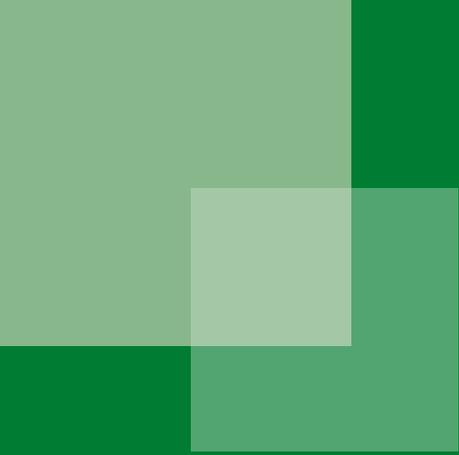
Chapter 4

Implementation and monitoring
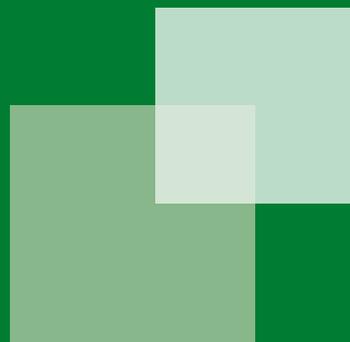
4. Implementation and monitoring
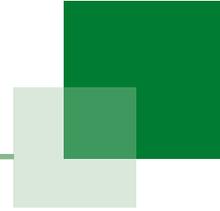
Incentives and deterrents

Signing the CoC is just the starting point: it is at the implementation stage, when political parties show their true commitment to the CoC, that its value is revealed. The previous chapters highlighted the importance of agreeing realistic, achievable commitments to pave the way for effective implementation. They also showed how moral and ethical commitments can encourage parties to go beyond their obligations. This chapter focuses on having the right incentives and deterrents in place to ensure that commitments are translated into good practice.

Enforcement versus reputational costs

Only a legally binding CoC can be enforced through sanctions by the authorities, such as the courts, the police or the EMB. Sanctions would include fines, the deregistration of a political party or candidate and even prison.

A voluntary CoC seeks to encourage parties to live up to their commitments, using both incentives and deterrents. The strongest consequence of a breach of the code would be the reputational cost suffered by the party responsible, which might affect its popular support. A voluntary CoC relies on the fact that parties have publicly committed themselves to it, and that any breach, if made public, would damage the reputation of the party concerned.

In certain contexts, public exposure can be a more effective deterrent than enforceable sanctions. This might be the case where a state has weak enforcement and investigatory capacities or lengthy adjudication procedures. Some parties, however, will be less concerned about their reputation as an ethical party, which makes it more difficult to engage them in the process. These attitudes can change over time, however, and strategies must be identified to encourage commitment to the CoC.

Breaches of the CoC may be unintentional, rather than as a result of bad faith or directed by the leadership of a party. In such cases, mechanisms that draw the attention of party leaders to violations by their members or supporters can sometimes be sufficient to encourage corrective action. Parties may often prefer to resolve their disputes amicably and in private, often with the assistance of the facilitator or a mediator (see Box 4.1).

Box 4.1. Consensual mediated solutions in Tunisia

In Tunisia, the signatories continued to meet every two weeks throughout the campaign to discuss any problems with or violations of the CoC. They worked together in good faith to find solutions to these problems and found agreement on several highly inflammatory issues that might otherwise have escalated. The body monitoring the implementation of the CoC, the follow-up committee, had the authority to denounce parties for violating the CoC, but did not have to do so. Instead, it relied on consensual mediated solutions (see Annex A).

Monitoring and fact finding

A CoC may devise a process for measuring the degree of compliance, and identifying any trends and possible emerging needs. This should be supported by strong capacities to investigate and monitor any breach. This would make it possible to clarify and verify claims, and establish responsibility for alleged breaches. A country may also have existing monitoring capacities that are specific to elections, or carry out more general monitoring of political processes. The CoC can take advantage of these existing capacities. For example:

- The EMB usually has a mandate to monitor whether electoral offences are being committed, including monitoring through its field operations.

- Other enforcement agencies (police, prosecutors and the judiciary) are generally responsible for ensuring respect for the law (e.g. policing violence) and may have capacities dedicated to election security.

- Election observers, such as international and domestic citizen observers, can provide non-partisan election monitoring.

- Political parties have internal structures for receiving information from their regional and local offices. They often also have internal disciplinary and complaints mechanisms. In addition, party agents are involved in observing the electoral process, particularly on election day when they may be present at polling stations.

- Crowdsourcing platforms can be useful for citizen reporting on election-related incidents. This was done in Kenya, in Ushahidi in 2008 and Uwiano in 2010.

- Media monitoring platforms and investigative journalism can aggregate news coverage to identify election trends or conduct investigations of alleged violations.

The CoC could also establish its own monitoring mechanisms to aggregate, filter, systematize and verify information relevant to CoC implementation. This might involve creating a dedicated secretariat or establishing formal or informal partnerships with watchdogs. The monitoring and implementation mechanism might opt for a decentralized structure to ensure the widest possible reach.

Box 4.2. Central and decentralized code of conduct enforcement

Ghana's 2008 CoC contained explicit provisions establishing a central National Enforcement Body, as well as decentralized Regional Enforcement Bodies in each of the country's ten administrative regions. At the regional level, the enforcement mechanisms were comprised of representatives of all the political parties with seats in parliament and the regional directors of the Electoral Commission and National Commission for Civic Education. The key mandate of the Regional Enforcement Bodies was to investigate and report any breaches of the code to the National Enforcement Body in Accra, which made decisions on whether to undertake further investigations (see Annex A).

Options for implementation and monitoring

Political parties can either assume responsibility for implementation and monitoring themselves, or outsource this to a third party. Ideally, the creation of mechanisms for implementation and monitoring will be based on written provisions in the CoC. These can then be further elaborated in detailed terms of reference after the adoption of the CoC. The country case studies in the Annexes provide examples of such detailed terms of reference. When drawing up options for implementation and monitoring, facilitators will need to answer several questions:

- Who has responsibility for convening the implementation and monitoring group?

- Will it meet ad hoc or regularly; and how often?

- Who has the capacity to initiate or request action?

- Who has the right to submit complaints?

- What are the rules of procedure, including on how decisions are taken?

Effective mechanisms for collecting complaints, and a secretariat to oversee them, will facilitate the work of the implementation bodies.

Interparty monitoring and implementation body

Where a CoC is a voluntary mechanism based on self-regulation, the signatories may want to be directly involved in its monitoring and implementation. The CoC will have outlined concrete mechanisms for interparty monitoring and implementation, such as mechanisms for communication, dispute resolution and mediation between the parties (see Box 4.3).

Initially, interparty monitoring may rely on parties gathering information using their own internal structures, liaising with their regional and local offices or deploying party agents. Facilitators should be aware that, due to their varying financial and structural capacities, parties will have different capacities to raise issues and gather information. When designing monitoring mechanisms, facilitators may wish to propose cooperation between political parties and existing monitoring capacities that are acceptable to the signatories.

During the implementation phase, facilitators might find it useful to consider conciliation mechanisms—such as amicable dispute resolution or joint statements—when interpreting CoC commitments. In order to avoid undermining the electoral process or a transition to democracy, and to preserve the credibility of the CoC, parties might jointly decide not to publicly denounce breaches in return for guarantees of non-repetition. Joint statements denouncing specific conduct in breach of a CoC, or declarations calling on other stakeholders to support the CoC, can reaffirm signatories' commitment to refrain from such conduct without ascribing responsibility to individual violators.

Box 4.3. Myanmar's Interparty Monitoring Committee

In Myanmar, an interparty Monitoring Committee was set up of delegates from the parties and coalitions that drafted the CoC. The committee gathered information through internal party structures and third parties such as observer organizations, and travelled the country to collect information and identify the most widespread and significant issues. The committee negotiated joint statements emphasizing the commitments contained in the CoC, such as not using religion for political purposes and not tearing down posters, for the benefit of their party members, supporters and the general public (see Annex C).

However, the main challenge for self-enforcement can be parties' capacity or willingness to criticize or impose sanctions on themselves.
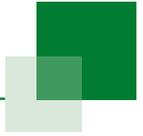
Delegated implementation and monitoring

The parties may decide to create an independent body to oversee the implementation of the CoC. Such a body, sometimes referred to as a tribunal, a commission or a committee, will need a precise mandate to protect its impartiality. For example, its mandate may be to monitor the fulfilment of the CoC's commitments, to receive and act on complaints or to denounce violations (see Box 4.4).

These independent bodies are often comprised of respected citizens who are widely trusted by all signatories. The need for gender equality and to ensure representation of the socio-political diversity of a country is often forgotten, but these are important considerations for the credibility of such a body.

Box 4.4. Public admonishment by a Tribunal of Honour (Tribunal de Honor)

In Peru in 2016, CoC signatories with the support of the EMB created a Tribunal of Honour composed of respected figures acceptable to all parties to support the implementation of the CoC. The Tribunal was tasked with hearing disputes between the parties and issuing denunciations when violations of the CoC were found. An emblematic case was prompted by a media investigation that claimed that a presidential candidate had plagiarized sections of his doctoral thesis. The candidate was summoned to the Tribunal to privately explain his actions. After analysing the case, the Tribunal issued a public admonishment stating that 'the behaviour of the candidate constitutes a violation of commitment 13 of the Ethical Pact and makes him unsuitable for public office'.

Parties could instead give this responsibility to an existing organization, such as a faith-based CSO, an academic institution or any similar organization acceptable to all political parties. Delegated third-party monitoring and implementation has some advantages, as the decisions are outside the parties' control and this makes independent concrete action more likely.

Joint implementation and monitoring by signatories and third parties

A third modality for monitoring and implementation is to share responsibility between parties and external third-party individuals or organizations. This has the advantage of maintaining ownership while adding independent scrutiny and countering public perceptions of deal making between political parties, all of which reinforces the legitimacy of the CoC.

Risks

When designing the implementation mechanisms for a CoC, a careful risk analysis should be carried out and precautions will need to be taken. Risks will include confusion over the nature of the adjudication mechanisms,

political misuse, increasing the visibility of problems and the possibility of over-regulation.

Confusion with formal adjudication

In order to maintain the goodwill of the political parties bound by the provisions of the CoC's implementation mechanisms, it is important to clarify the difference between those mechanisms and formal electoral adjudication processes (see Box 4.5). The risk of a misunderstanding can be minimized by carefully designing the mandate and rules of these mechanisms to make it clear how they differ from formal legal frameworks for addressing electoral disputes.

Box 4.5. Distinguishing between criminal and unethical conduct

In Peru's 2016 general elections, amid increasing public and media pressure to sanction a candidate's past misconduct, the Tribunal of Honour issued a statement to differentiate between criminal and unethical conduct, and to clarify that its mandate was only to deal with the latter.

Political misuse

Political parties could use accusations of a breach of the CoC as a political weapon against one another, which would be contrary to the spirit of improving interparty relations. The CoC should contain provisions to discourage this, or the terms of reference for the implementation and monitoring mechanisms should be designed to minimize this risk (see Box 4.6).

Box 4.6. Preventing political use of the code of conduct

Myanmar's 2015 CoC contained a provision that encouraged all parties to 'cooperate so as to ensure that the Committee does not become a place that promotes propaganda for, or attacks on, an individual party or group of parties'.

In Tunisia in 2014, all parties undertook 'not to abuse the right of appeal and complaint and to refrain from making false, frivolous or vexatious claims with the aim of hindering or discrediting the electoral process'. In addition, the parties agreed to 'refrain from any action or statement that may hinder legal proceedings or lead to violence'.

Increasing visibility of problems

If there are regular accusations of violations of a CoC, public trust in political parties, politicians and the electoral process will be further reduced. After a CoC has been signed and publicized, people will expect immediate changes in political culture and be disappointed if they do not occur. Political parties should be aware of their responsibility to avoid such a situation by acting
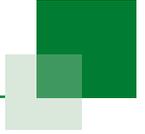
in the public interest and not abusing the implementation and monitoring mechanism. In addition, however, public expectations should be kept in check by reminding voters that a CoC should not be seen as a panacea, but as a tool for improving the electoral process.
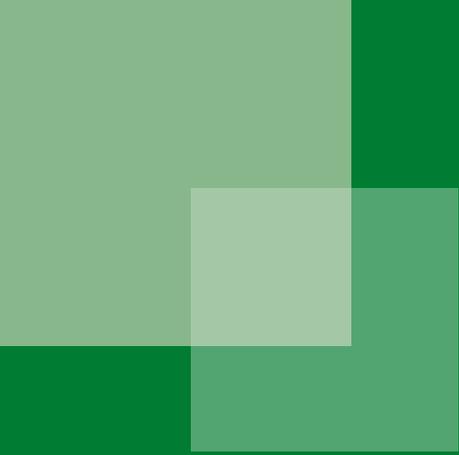
Chapter 5

Selecting the dialogue participants
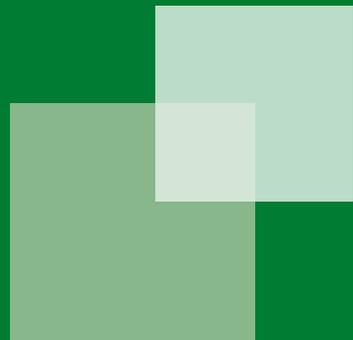
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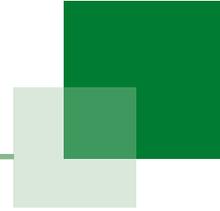
Criteria for party inclusion

Given that CoC development is a multiparty undertaking that involves at least two and often more political parties, whoever is convening the dialogue will be faced with the question of who to invite to participate in the process. Depending on the context, the convener might need to focus on a specific group of parties or all parties registered in the country. The question then arises of whether all registered parties should be invited, or criteria set for selecting which ones to invite and, therefore, which to exclude. How such criteria are set, and who sets them, will be critical to the dialogue's legitimacy, effectiveness, outcomes and level of ownership.

The ideal scenario would be to invite all registered political parties to a meeting and ask them jointly to set the criteria for determining who should be at the dialogue table. One widely accepted criterion is to invite all the political parties represented in parliament. If this is unrealistic in certain contexts, the dialogue facilitator could propose a set of selection criteria. It is important that the criteria are seen as fair, transparent and as representative as possible. The criteria may also be linked to—and take account of—the objective of the dialogue itself. It will be important not to exclude parties based on their ideology (e.g. left wing or right wing, progressive or conservative). The following selection criteria depend on the specific context and might need to be balanced against each other.

Maximum inclusion

This would entail including all registered political parties that field candidates in an election. In practice, however, this might prove difficult if there are too many of them. In such cases, there are mechanisms that allow parties to feed into a multi-layered process. It may sometimes be preferable to include only parties that intend to participate in the elections and/or to field candidates.

Electoral legitimacy

Including only parties with parliamentary representation may be justifiable in the sense that only those parties enjoy legitimacy as expressed through public votes. The risk of such a criterion, however, is that in some contexts, especially in transitioning and post-conflict countries, political support can be volatile and floor-crossing common. It is not rare to find that a party with a majority in one election wins no seats in the next. Excluding such a party from the dialogue might jeopardize the sustainability of the CoC.

Influence

This could, for instance, involve criteria where major parties—determined by either the number of parliamentary seats or their share of the votes at the national and local levels—as well as some smaller but influential parties—linked to an ethnic minority, a former armed group or a media or business owner, or a former ruling party—are included to minimize the potential for 'spoilers'.

Balancing party diversity and pluralism

This criteria would seek to represent a mix of ideological differences—for example, between new and old parties, national and regional representation (e.g. in federal systems with regionally focused parties), and national and specific interest-based parties (e.g. parties representing minorities or other specific interests).

Linking the selection criteria to public funding

Where there are already criteria for political parties to receive public funding, the dialogue process could use the same criteria when inviting parties to the dialogue table. This may be an easy way out, but not always necessarily the fairest way, as some parties may not meet the public funding threshold but would add great value and legitimacy to the dialogue process.

Delegation and party representation

The success and outcomes of the dialogue process will depend on the participants. As the key drivers of the process, the participants have the best knowledge of the local political context, as well as their party's positions, interests and non-negotiable stances. Ensuring that party leaders nominate the appropriate representatives is crucial. There are many elements to consider, but the most fundamental are discussed below.
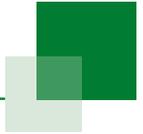
Equitable representation

Ensuring the equitable representation of participating parties is a common challenge for political party dialogues. For CoC processes, every participant must feel they have equal value and are able to share their views and positions equally. However, larger parties may feel that they are under-represented, and that the process is biased or unfair if they have the same number of participants as smaller parties.

Equitable representation occurs when facilitators ensure that larger delegations do not monopolize the process dynamics, by giving smaller delegations an equivalent opportunity to contribute. Irrespective of the number of delegates at the table or the size of the party, a facilitator should ensure that each party is given a voice but is speaking with one voice, and that all decisions are taken by consensus.

Seniority of participants

The facilitator should ensure that party delegates are authorized and have the appropriate standing to take decisions on behalf of the party. Political parties can then designate the person they wish to represent them.

It is risky to have different levels of party representation around the table. If, for instance, high-level delegates such as party presidents represent some parties while others send less senior representatives, this will influence the dynamics, the consensus-building process, decision-making and, consequently, the outcome of the dialogue.

It would be useful for parties to maintain the same representative throughout the process, although in practice and depending on the stage and topic of the dialogue, their representation may change. As parties begin to understand the importance of the process, they might increase the seniority of their attending representatives. Conversely, a declining level of seniority on the part of party representatives may indicate a loss of interest. What will remain important throughout is that the participant is authorized by the leadership to negotiate.

Thematic expertise

In addition to the permanent delegates to the dialogue platform, it may sometimes be important for political parties to send other delegates with thematic expertise, depending on the topic being discussed or the creation of subgroups (or technical groups) to address specific issues.

Inclusivity

To ensure as much inclusivity as possible, a facilitator should encourage political parties to select their representation with achieving a gender, ethnic and regional balance in mind. However, facilitators cannot impose particular participants on the parties and the composition of the dialogue will reflect political realities. The main aims of this kind of inclusion are to ensure that marginalized and special interests are represented, and to foster popular buy-in for the CoC.

Expanding beyond political parties

The primary participants in a dialogue process to elaborate a CoC are political parties. However, in some processes it may be necessary to include other entities, such as CSOs, faith-based organizations and EMBs, as well as state entities, such as the security services, an administrative tribunal or the Court of Auditors. These entities should be invited to participate in the process if they are expected to play a major role in implementation and monitoring.

These stakeholders might be consulted or involved in different capacities at various stages of the CoC process (implementation, monitoring, legal review, communication). Where EMBs are not facilitating the dialogue process, EMB representatives are often invited to attend the rounds of dialogue as observers, or representatives from the Court of Auditors might attend sessions on campaign financing. Ultimately, the primary targets of the process—the political parties—need to decide whether and how to include other actors.

Other entities can also contribute substantively to the quality of the discussions. They may bring specific expertise and knowledge, or new ideas and perspectives. As non-partisan actors, their proposals may be more acceptable to the parties and could contribute to the harmony of the dialogue process. With less invested in the electoral process, they may also be able to raise controversial topics.

Broadening participation in the dialogue process may also have negative consequences. The discussion might become more superficial or rhetorical as some political party representatives 'play to the gallery', addressing their remarks to the non-political audience. The discussions may also become less political, diverting attention away from the core objective of elaborating a CoC for political parties. The content of the CoC could also be affected, depending on what issues the other entities put on the table.

In addition, political parties may not consider these external stakeholders to be non-partisan; they may see them as the agents or proxies of a political
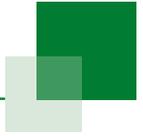
party or trend. The introduction of additional entities could therefore disturb the balance of the group by effectively giving greater representation to one party or another. The involvement of three types of additional entities is discussed in more detail below.

EMBs and regulatory authorities

The involvement of EMBs in the process of preparing, negotiating, implementing and monitoring a CoC is of key importance. In addition, political parties might feel that their main conflicts and tensions are not with their competitors, but instead with other entities such as the EMBs or other regulatory institutions. This might be because of perceptions of bias towards particular parties, perhaps in situations where the security services or courts are openly biased.

Civil society organizations

In some cases, CSOs are the initiators of the CoC process or might even facilitate it. CSOs might want the CoC to address particular electoral issues or commit to adopting specific policies. CSOs may also provide information on the fulfilment of commitments and bring violations to the attention of enforcement bodies or the parties. In such cases, their contribution will depend on their access to networks, and on their production of evidence-based assessments on compliance. In addition, CSOs can bring thematic expertise and voice the concerns of specific groups, such as women and ethnic, religious and sexual minorities.

The media

In the context of a CoC, media organizations are key contributors both during the dialogue process and at the implementation stage. The media's main contribution is to give publicity and legitimacy to the CoC. Media coverage of CoC dialogue proceedings and public discussion of its content make the CoC part of the news and increase public knowledge. The media, together with CSOs, can play a watchdog role, keeping a close eye on whether political parties are honouring the commitments made in the CoC, drawing the attention of the public to violations, and thereby discouraging them. Conversely, if the media undermines and criticizes the process before the final signatures are added, this is likely to reduce the commitment of candidates and politicians (see Chapter 8).
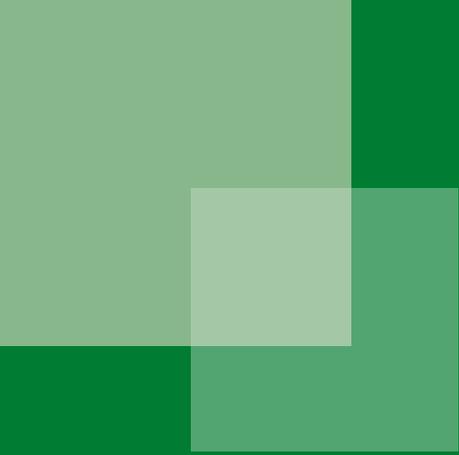
Chapter 6

Facilitating the dialogue process
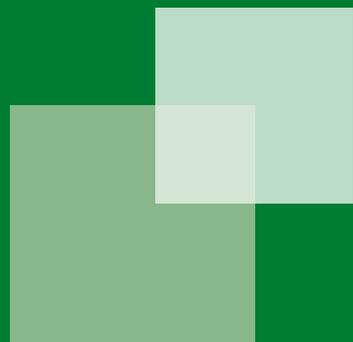
6. Facilitating the dialogue process
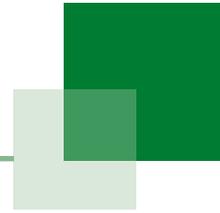
Selecting the facilitator

Why involve a facilitator?

Although political parties will be the primary actors and owners of the process and its outcome, a third party will usually be needed. Facilitators can help political parties achieve consensus on the goals and commitments, and develop an appropriate public communication strategy and implementation mechanisms for the CoC.

The facilitator should be an individual or an institution that convenes, manages and supports the dialogue process without taking ownership of it away from the participating political parties. A facilitator is even more essential during transition or post-conflict elections, where interparty relations are often tense and highly polarized, which hampers effective dialogue between the parties. A facilitator can also build links with EMBs and provide the necessary technical expertise to take account of the particularities of the electoral process.

Selecting the facilitator

The acceptability of a facilitator is as important as how they carry out their mandate. If some of the parties around the table are uncomfortable with the facilitator, they might refuse to participate in the negotiation or to sign the resulting code, which would call the entire process into question.

At the outset, a facilitator will need to enjoy at least a minimum level of acceptance and not be objectionable to the group. The facilitator will gradually build their mandate through a process of interaction with the political parties and relevant institutions. There are a number of possible strategies for facilitators to build their mandate:

- *Facilitator takes the initiative.* Where an organization or individual already has a good working relationship with key political parties, perhaps because they have previously engaged with them on electoral assistance or constitutional issues, they could make a direct approach and propose facilitating a dialogue on a CoC. This approach would require a degree of trust between the parties and the facilitator. If not, the latter's intentions might be questioned, which would jeopardize the entire process (see the Peru case study in Annex A).

- *The piecemeal approach.* A facilitator could also initiate the dialogue process by approaching each political party individually, perhaps staring with the major ones such as the ruling party and the main opposition party, to introduce the idea of developing a CoC (see the Tunisia and Georgia case studies in Annex A).

- *Partial initiative by the parties.* One or several of the political parties might approach a facilitator with a request to help them negotiate a CoC. In such cases it will be even more important for that facilitator to demonstrate and maintain a high degree of impartiality so that none of the parties perceives them to be biased towards those who made the initial approach (see the Nigeria case study in Annex A).

- *Facilitator is approached by a third party.* An institution with responsibility for the electoral process such as an EMB could approach a facilitator. This might be because this institution has seen the need for a dialogue or a CoC but lacks the degree of acceptance or expertise required to act as a facilitator itself.

Individuals versus institutions as facilitators

It is possible for either an individual or an institution to facilitate a dialogue process leading to the adoption of a CoC. Individual facilitators might be invited to facilitate CoC processes based on their technical competencies, experience and relationship with political parties. They could be a national or a foreign citizen, as long as they are acceptable to the political parties. The facilitator will need to have enough support to bring the process to a successful conclusion, and might therefore consider building a support team during the process.

Institutions such as EMBs, political party strengthening organizations, mediation and dialogue organizations or even governments can facilitate interparty dialogues. In such cases, there may be some turnover in the composition of the facilitation team, which makes close communication and coordination even more important. However, trust in the remaining individuals will be essential.
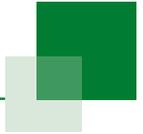
Local versus international facilitators

The decision to engage a local or an international facilitator will depend on the political context and the level of trust among political parties, as well as the trust between the parties and the potential facilitator. In some contexts an international facilitator will be contentious, especially on issues such as elections, due to concerns over sovereignty. Local facilitators may also have a better contextual or cultural understanding of the situation. In other contexts, political parties may be unable to identify a non-partisan local facilitator, and so might agree on an international facilitator as an impartial choice. In some circumstances, a combination of local and international facilitation will be a suitable compromise.

The role of the facilitator

Figure 6.1. The many roles of a facilitator
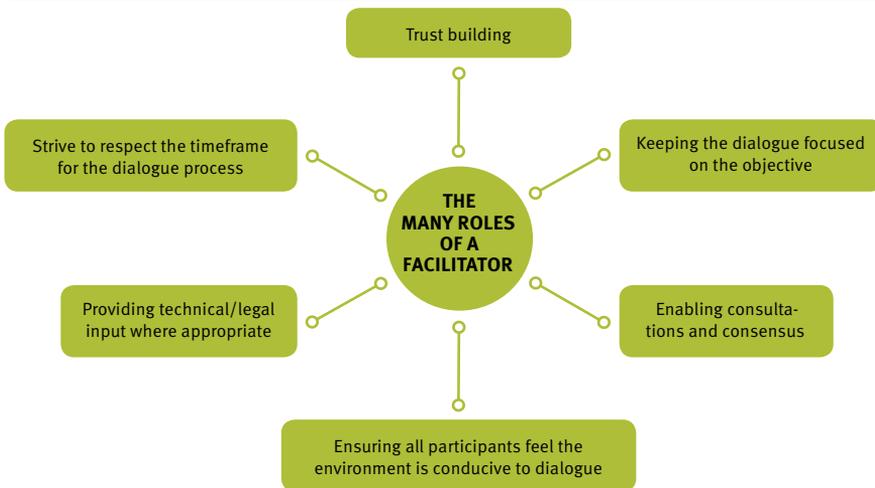
The roles of the facilitator can vary dramatically, depending on a number of factors such as their identity, personality and status, her/his relationship with the participants, the local political context and the mandate accorded to the facilitator by the parties. The roles of a facilitator may also change over the course of a process, as they build relationships with the parties, the mandate changes or different needs arise.

It is usually the duty of the facilitator to move the parties on towards reaching mutual agreement on a CoC within the required timeframe. One of the key initial roles of the facilitator in many contexts is to identify opportunities for

consensus between the parties. This involves closely following the discussions and teasing out points of agreement from a mass of detail.

Facilitators should seek to keep the discussion within the scope of a CoC, help participants to understand the language used in such agreements and avoid issues that a CoC cannot resolve—and which might derail the process. Facilitators must also guide the participants to a workable conclusion and avoid jeopardizing the process at a late stage (e.g. by adopting a provision that contradicts national legislation or is contrary to universal principles). A facilitator must not impose their views on the parties, but can help them to understand the possible consequences of any decisions they take.

In addition to chairing meetings and seeking consensus between the parties, facilitators may fulfil various roles, including those in Figure 6.1 and below:

- building trust between the participants and enabling good communication among them;

- creating a positive environment that is conducive to dialogue;

- ensuring that the dialogue stays focused and moves towards its objective;

- allowing participants to save face and back down from positions;

- checking that decisions are based on interparty and intraparty consensus and consultations;

- providing technical input and capacities for legal review; and

- ensuring that the time frame and the process established by the parties are respected.

Passive versus active facilitation

Facilitators can be active or passive, or a combination of both. Passive facilitators restrict themselves to chairing the meeting, opening the discussion, keeping a list of those who would like to speak and ensuring that the parties stick to the time allocated. Active facilitators propose compromises, consensual language and technical solutions to the parties. The latter must be especially well prepared for each bilateral meeting and round of dialogue, in order to be able to propose technically and politically feasible solutions.
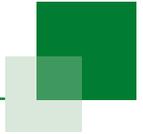
Making use of electoral, technical or legal expertise

Dialogue processes to elaborate CoCs usually require technical expertise and legal input. In this context, experts play a variety of roles. They can help to ensure that the outcome is in conformity with the law, help to identify the issues the CoC should address, provide appropriate language and explain the consequences of specific choices.

These experts may be part of the facilitation team or part of an independent body. They may provide their inputs either directly to the group or through the facilitator. A more passive facilitator might prefer to have technical expert support in the room to respond to questions and offer solutions, while a more active facilitator might prefer experts to assist with the preparation of ideas to put on the table at an opportune moment. The facilitator could also be a technical expert on elections and CoC dialogue processes.

> ## Box 6.1. Example of expert advice given to the Tunisia and Myanmar code of conduct dialogue processes
>
> In Tunisia in 2013–14, a group of Tunisian elections experts was convened in parallel with a dialogue process. Their inputs and ideas were fed into the dialogue between the political parties by the facilitator. At a later stage in the process, several Tunisian experts were brought into the dialogue to respond to technical queries from the political parties (see Annex A).
>
> In Myanmar in 2015, two of the facilitators of the dialogue were technical experts, working on behalf of a third-party country providing its good offices. One was a former head of an EMB in the region. This allowed the team to continually provide options and information about comparative experience and the possible effects of the measures being discussed by the political parties (see Annex A).

The role of the facilitator outside the dialogue

The role of the facilitator does not always end when he/she leaves the room. They will often actively attempt to unblock processes by shuttling between the parties to find agreement on iterations of multilateral dialogue. They may also need to agree a strategy before each round of dialogue; for example, by agreeing which party will propose a certain idea, or which party will accept a certain provision before another party backs down from its position. In all cases, two key tasks of the facilitator are to ensure buy-in from the parties and maintain local ownership of the process. This will be a challenge where facilitators are required to play a more active role.

The role of the facilitator after the adoption of a code of conduct

After the adoption of a CoC, facilitators can act as the secretariat for the implementation mechanism; for example, by providing space for the parties to air grievances or report purported violations, or a mediation and arbitration role in the implementation and monitoring of the CoC (see the Tunisia case study in Annex A). They could also become involved in facilitating joint monitoring by the parties (see the Myanmar case study in Annex C). This role is discussed in more detail in Chapter 4.

Essential qualities of facilitators

The successful facilitation of negotiations leading to a CoC will in part depend on the qualities of the facilitator. These include but are not limited to:

- *Impartiality.* Facilitators must be aware of their role in the discussions and not impose their own points of view. All parties must have the opportunity to express themselves without taking sides.

- *Political sensitivity.* The facilitator should be well aware of the local political environment, politically sensitive and recognize the various interests of the political parties.

- *Flexibility and firmness.* Negotiating a CoC can be a messy process involving lengthy debates and different political and personal dynamics. It is important for the facilitator to maintain a degree of flexibility about changing views or the reopening of long-closed discussions. However, a facilitator must also know when to conclude a debate, remain focused and help political parties reflect on the goals and commitments within the agreed time limits.

- *Humility.* The participating political parties should own the dialogue process. Facilitators must be humble enough to allow the parties to remain at the forefront of the process. Enabling them to take joint ownership of the process will be key to a successful negotiation.

- *Trustworthiness.* Being trusted is especially important when seeking to maintain an environment that is conducive to dialogue. To build trust, facilitators should never lie to participants, and should only make commitments they are able to implement.

- *The ability to listen and communicate.* It is essential for a dialogue facilitator to be a good and attentive listener, ensuring that they understand all the nuances of the participants' interventions and can bring them out in the deliberations. They can be supported in this by a strong secretariat.

No single person is born with all these qualities and skills. A facilitator will need to develop new skills over the course of the process and bring in additional resources to supplement their weaknesses (see Table 6.1).

Tools and techniques for facilitation

Table 6.1. Simple tools and techniques that can help the facilitator build consensus

Tool/Technique	Role in helping the facilitator build consensus
Brainstorming	This technique uses a non-committal mechanism to bring ideas to the table, encouraging participants to think 'out of the box' and not stick to their official positions. The participants would not be bound by the ideas they put on the table.
Non-papers or white papers	An informal paper circulated without source or attribution can be used to inform and present options to the parties. It does not have the status of a draft or a proposal.
Annotated agenda	Facilitators can keep track, in writing, of who does what and when; this supports role allocation within the team during the meetings.
Use the essential skills of communication in a dialogue	Ask questions, listen actively, summarize issues, reframe questions, analyse the body language of the participants and clarify hidden messages.
Summing up and roaming	This keeps the discussion moving forward by switching topics and inserting 30-second summaries of positions and the conclusions reached.
Keep/discard/improve boxes	Feedback mechanisms might involve asking participants to confidentially share information on the process in order to improve weak areas, identify inappropriate approaches and build on exhibited strengths.

Pre-mortem	Facilitators can ask parties to imagine that the election has failed and then work backwards to determine what could have led to this failure. This technique helps participants move away from preconceptions about how the situation will develop. It can also be used in a positive sense, by imagining that the election has succeeded and working backwards from there.
Parking lot/fridge	Facilitators could ask participants to postpone discussion of a particular topic; this is useful when an issue pertains to another discussion or risks undermining trust between the parties at a particular stage.
Minutes or reports	A more or less exhaustive record of the discussions keeps track, in writing, of the progress made towards consensus and the remaining points of disagreement. This technique can help to record useful ideas for later use and create a sense of progress. In certain cultural contexts, a written record is crucial for establishing the seriousness of the process and its importance.
Comparative table	When various versions of a CoC are being proposed, the facilitator would be well advised not to decide—or make the group decide—on which one to use. Instead, he/she can present a comparison of the alternative paragraphs to help the group decide which text or part of the text to integrate into the main body.
When parties become facilitators	When a subgroup is in charge of drafting the CoC, the facilitator might need to find techniques for debriefing the larger group of parties. One such technique is to ask a member of the drafting group to chair consultations, explain the status of negotiations (debrief) and take inputs and comments.
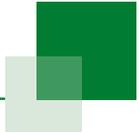
Written consultations	To ensure that representatives reflect the views of their parties, and to strengthen their internal communication, written consultations may also prove useful in tracking progress on consensus points and confirming party buy-in.

Other informal training techniques, such as icebreakers, may be useful in some settings but are not likely to be appropriate for a CoC negotiation, as the participants may be too senior, or else in conflict and tense competition with one another.
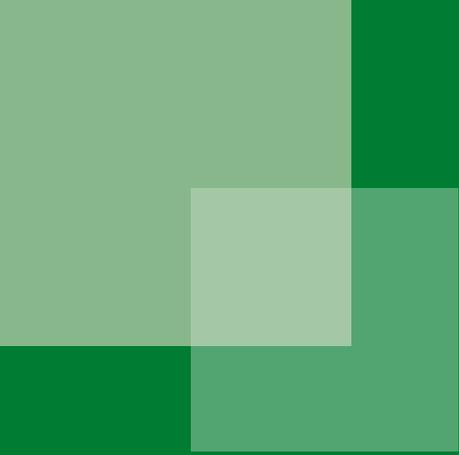
Chapter 7

Practical issues
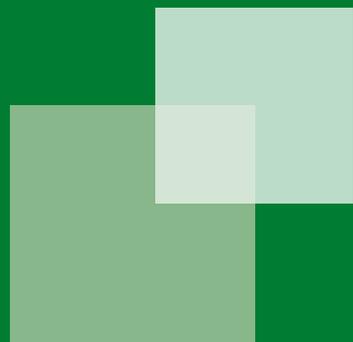
7. Practical issues

Location and venue

The location and venue of the dialogue process are not simply logistical details; they can have profound effects on the process and the outcome. In deciding where to hold a dialogue process, a number of factors should be considered.

Inside or outside the country?

When countries are undergoing periods of instability and insecurity, or when the authorities prohibit meetings between parties, it may be necessary to hold rounds of dialogue in diplomatic missions or outside the country. Taking participants out of their usual context may also make the group dynamic more conducive to compromise and consensus. However, out-of-country dialogues can present significant risks and challenges to the quality of the process. For instance:

- Meetings abroad create additional financial and logistical burdens, such as air travel, ground transport and additional hotel costs.

- Holding the dialogue abroad may be seen as disconnected from the reality on the ground, reducing the buy-in of the participating parties and the general public.

- Questions of sovereignty and foreign interference may be heightened, and neutrality may be questioned if the host country has ties to or is seen as a supporter of one party, or has historic links to the country (e.g. a history of conflict or colonization).

- If the process takes place in a stable and prosperous country, the public may perceive it as symptomatic of the corruption of the political class, and parties may even send representatives as a reward rather than because of their potential to contribute to the process.

- Any potential tangential impact on the country hosting the dialogue should be considered too. Holding a political dialogue with representatives from another country might spark a debate about the political situation in the host country, which the facilitator and the national authorities are not prepared to deal with.

However, parties should reflect on what the prevailing reality means for the implementation of the outcomes from the dialogue process. A non-conducive environment for dialogue could indicate a non-conducive environment for implementation of the CoC—although these conditions could change over the course of the process, or because of it.

Capital city or elsewhere?

Because political elites tend to cluster in capital cities, where institutions and government are headquartered, holding rounds of dialogue there might facilitate the regular attendance of participants of an appropriate seniority. The group can usually meet more frequently if meetings take place where the majority of the participants live. Costs and logistical burdens will also be minimized if sessions are held in the capital.

However, it can be useful to take participants out of their usual context to where there are fewer distractions. This ensures that participants are focused, provides greater opportunities for building trust and relationships between participants, and allows the facilitation team to control more parameters (e.g. preventing or discouraging uninvited guests from attending the sessions, or preventing participants from dipping in and out of sessions).

The location of the meetings can change throughout the duration of the process. Parties may, for example, consider combining regular meetings in the capital city with longer 'retreats' outside the capital or abroad during critical moments in the dialogue process.

Choosing an appropriate venue

Considerable time and thought should be invested in choosing a venue for the rounds of dialogue. One question that should be considered is whether the venue has political and historical connotations that could be useful or detrimental to the process.

Venues can be chosen because they are the location of a historic event, such as the founding of the republic or an agreement between parties. Conversely, some should be avoided for the same reason if this jeopardizes perceived neutrality. Some venues have real or symbolic ties to a particular
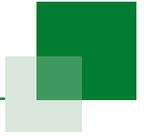
political party, or are frequented by members of the security services, and are therefore 'no-go areas' for members of rival parties. A luxury hotel, while it may provide benefits such as comfort and quality of service, can have negative connotations for the public.

Some dialogue processes have been held on the grounds of a diplomatic mission, and have benefited from the inviolability of such missions. This can address concerns about security and electronic surveillance, but might also call into question the impartiality of the process and create negative public perceptions. The signing ceremony of the Charter of Honour in Tunisia was held in the Palace of the Municipality of Tunis, a grand and historic location that was considered acceptable and neutral by the signatories.

Who owns the venue?

International investors or national owners may have ties to a particular party, which can raise suspicions and sensitivities. For example, participants may fear that the meeting room is subject to electronic surveillance, and may thus be reluctant to speak freely.

What other types of events are taking place at this venue at the same time?

If other events are happening in parallel with the dialogue process, participants may be concerned about chance encounters with participants in other events—particularly if the process is intended to be discreet or confidential. In such cases, maintaining a low profile is important: organizers can ask venue employees to use discreet signage to indicate the location of the meeting.

Is the venue accessible for all participants?

Even if the best, most neutral venue is chosen, participants may not be able to attend if it is inaccessible. Proximity to locations frequented by participants (e.g. parliament or the diplomatic quarter) may therefore be desirable. The accessibility of the venue also relates to the timing and frequency of the rounds of dialogue. For example, certain venues are impossible to reach during rush hour or become insecure at night.

If participants with disabilities or special needs are involved in the process, their needs should be taken into account when choosing the venue. In some cultures, certain venues are considered inappropriate for female participants or for the religiously observant (e.g. places that serve alcohol), and their choice may discourage the participation of these groups.

Set-up

Well-managed logistics, an appropriate venue and the set-up of the dialogue meeting can contribute to a positive outcome.

The room

The set-up of the meeting should be comfortable, informal and collegial. Factors such as enough natural light and sufficient amenities are likely to provide an environment conducive to long discussions. When planning the set-up of the meeting, it is important to ensure that all participants feel equally respected and valued, and that they are encouraged to speak freely.

The room set-up should avoid any suggestion that the facilitator is presiding over the meeting: he/she should usually not, for example, be on a raised podium or stage during the rounds of dialogue. In some cases, it may be useful to have access to several rooms to allow for breakout sessions and bilateral consultations among the parties. In addition to these fundamentals, the set-up of the meeting will depend on the size of the group.

Seating arrangements

The seating arrangements may change depending on the political environment, the level of polarization and the purpose of the meeting. A facilitator might decide to seat delegates in a random mix, or to allocate blocks of seating to delegates from the same background. The former may be more appropriate at the agenda-setting stage, while the latter might be needed during the process of adoption or fine-tuning the draft CoC.

Similarly, as the dialogue process evolves, the dynamics will probably change and the parties might feel more comfortable sitting and working together. The facilitator must also decide whether to allocate places to delegates or to allow for free seating.

Distractions

The presence of unrelated reading material, electronic devices, telephones and laptops could distract the participants and shift their attention away from the process. In addition, if the process is confidential, electronic devices present a risk.
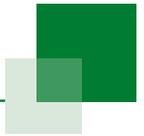
Interpretation

Where participants do not share a common language, it may be necessary to organize interpretation. It should be noted, however, that interpretation tends to make the discussion more formal and less fluid.

Length, frequency and timing of meetings

The length (number of days and hours) and frequency of the dialogue meetings will depend on factors such as the purpose of the meeting, the level of representation, the nature of a particular milestone and the stage in the dialogue process. It is extremely important that the facilitator discusses with participants the frequency and length of each meeting based on its specific purpose and objective.

The length of dialogue meetings may differ from case to case, from a short, two-hour meeting to a week-long one. The level of representation may also influence the format and length of the meeting. A facilitator might decide that party decision-makers/leaders would be put off from participating in frequent, very long meetings.

The best time for meetings is culturally contextual. In some contexts, participants may prefer or refuse to meet during meal times, or at different times of the day. In Peru, parties prefer to meet over breakfast or lunch, but in Myanmar it is culturally inappropriate to discuss business while eating. In Tunisia, where party representatives often also have full-time jobs, the dialogue sessions are usually held after work hours.

Finances and resources

Costs

Dialogue processes for the elaboration of CoCs are often incremental and difficult to budget for. They may also not respond to the usual format demanded by donors. As the process develops, unanticipated needs may arise that were not budgeted for. There are several options for dealing with these financial and resource challenges:

- *Flexible donor funding.* Donors should be flexible in allocating additional resources to a dialogue process if it has a viable chance of producing the desired outcome.

- *Partnering with other organizations.* The facilitator might be well advised to try to partner with other organizations that can undertake supplementary and supportive activities. This may be

difficult, as potential partners may be reluctant to get involved in implementing an agreement that they have had no role in negotiating. Early discussions and inclusion, as well as institutional and personal ties, can help to reduce this reluctance.

- *Party contributions*. In some cases, participating political parties have made contributions to cover, either wholly or in part, the cost of printing copies of the CoC. Some parties may also make contributions to cover their own hotel or transport costs. State institutions, such as the EMB, often make in-kind contributions, such as by providing venues, security, or interpretation and communication services. Agreement to contribute to the costs of the process is a strong indicator of commitment and buy-in. However, such contributions should not endanger the impartiality of the process. Nor should a party be excluded because it does not have the financial resources to contribute.

- *Party benefits*. The payment of a daily subsistence allowance is not advisable in the context of participation by political parties. The benefits of the dialogue, its voluntary nature and the convening power of the facilitator should be sufficient to enable active participation.

Financial transparency and oversight are key to maintaining the trust of political parties. It is important to consider the political connotations of sources of financing, which are profoundly linked to concerns around national sovereignty. Even if the facilitator is independent and neutral, suspicions will be raised if financing is from an interested external party such as a former colonial power or a regional power.
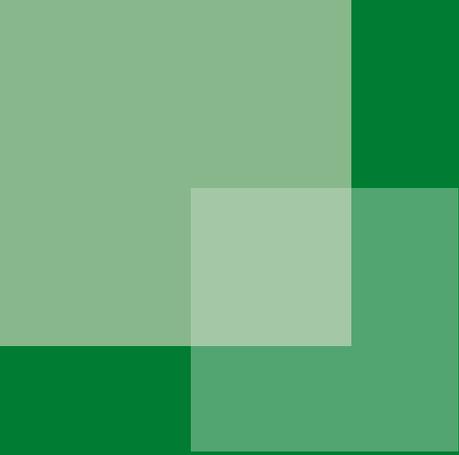
Chapter 8

Communication and public information
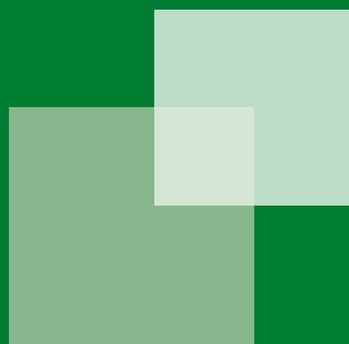
8. Communication and public information
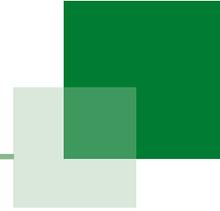
Communication during the dialogue process

A good communication strategy about the dialogue process is crucial to its success. Such a strategy must balance the need for a safe space for open and honest discussion with demands for transparency and public involvement. Various options could be considered along a spectrum that ranges from a completely open or transparent process to a closed or confidential process.

Completely open processes

In a completely open process, the public and media will have access to all the information related to the issues being discussed, and to the divergent views expressed within the dialogue platform. This could be a good approach if it is used to:

- reinforce the debate and provide alternative forums for public discussion of the issues;

- build public support for the CoC development process;

- pressure parties that are reluctant to join the process;

- allow a wider variety of views and perspectives from outside the dialogue to enrich the process and outcome; or

- reinforce democracy by engaging citizens in discussions about the electoral process.

However, this approach may also:

- result in political parties playing to the gallery to maximize media attention;

- remove the possibility of honest and frank dialogue between political parties;

- bring in too many voices, making it difficult to build consensus and trust; or

- generate a negative dynamic, with the media criticizing the parties.

Closed processes

In a closed process, dialogue takes place in a confidential setting and no information is shared with those outside the dialogue platform until the CoC has been agreed (see Box 8.1). This type of approach:

- reduces the risk of any misrepresentation by the public or media;

- reassures politicians that what they are discussing in confidence will not be published;

- creates a protected space that brings together participants who are in conflict with one another; and

- gives the parties and facilitator more control over the message and what is shared—and when.

However, a closed approach might raise suspicions about deal making and conspiracies, and will not facilitate a broader debate about the CoC. In addition, a malicious leak from within this protected space could damage the process, since the public will have had no alternative information. Counter-information in response to the leak might also raise suspicions of honesty, as the public was kept out of the loop in the first place.

Box 8.1. Protecting the integrity of a code of conduct dialogue process: the case of Tunisia

In Tunisia, the dialogue process leading to the CoC took place during a period of high tension between the parties. The parties therefore chose a closed process since they were unsure about the intentions of the other parties with which they were negotiating. They also wished to avoid negative reactions if the process failed to produce a result (see Annex A).

Balancing confidentiality and public access to essential information

A third option is to attempt to balance confidentiality with providing access to essential information. Political parties agree on who will communicate on behalf of the dialogue platform, when they will communicate and what will be communicated. This allows the public to be informed of agreed messages at appropriate moments, and provides clarity about who is speaking on

behalf of the dialogue process. This also helps to minimize and/or discredit malicious information leaks.

At the end of each round of dialogue, or at agreed milestones during the process, the parties can nominate a spokesperson to speak to the media, agree on the talking points to be used by all participants and/or issue a written statement. The type of information released can be descriptive (details of the issues discussed) or simply formalistic (releasing a statement that 'a meeting took place on X date with Y political parties. The discussions were very fruitful and positive'.)

Box 8.2. Interparty agreement on the external communication strategy: the case of Myanmar

In Myanmar, the political parties decided that they would communicate the fact that they were working on a CoC for political parties and candidates, but would not disclose the details of the negotiation until it was ready to be signed in order to avoid pressuring the drafters and having to take public positions into account. This approach helped to facilitate a frank discussion (see Annex A).

Participants can also agree on what not to disclose. For example, they might agree not to set a target date for concluding the CoC to avoid raising false expectations. They may also agree to use the Chatham House rule, whereby the content of the discussions is shared but the source of the content is not explicitly or implicitly identified.

Communication after the code of conduct is signed

For a CoC to be effectively implemented by all the signatories, people must first know that it exists. Public knowledge increases the incentives for parties to abide by its rules. It is therefore important for the CoC and its content to be disseminated as widely as possible. An obligation to disseminate the CoC is often included in the CoC itself. For example:

> Any party signatory to the present Charter shall undertake to disseminate it and promote its respect on all occasions and by any means, and introduce it to all its officials, agents, members, activists, representatives and supporters and to the general public as well. To this end, the Parties shall take all steps to educate and train their followers, and to remind [them] as much as possible of the main rules and commitments of the Charter; and adopt internal procedures to review and, if necessary, issue disciplinary measures for any shortcomings or

> violations and to take corrective action. (Charter of Honour, Tunisia 2014)

After the adoption and signature of a CoC, a number of dissemination options are available.

1. An official launch/signing ceremony can be a prime opportunity to inform the public about the CoC and its content.

2. Hard copies of the CoC can be distributed to voters through a wide variety of networks. Signatories and the EMB can disseminate the CoC to their members. International organizations and local CSO networks can also be used for distribution. Public officials from agencies with a mandate concerning the elections would benefit from this knowledge.

3. Electronic versions of the CoC should be put on the websites of the parties and the EMB, to give the public easy access to it. A specific website could also be created for the CoC.

4. The facilitator or signatory parties can organize media briefings and give television, radio and press interviews to promote the CoC. The facilitator can play a role in ensuring that this publicity is shared equitably among the signatories. Otherwise, one party might be seen as trying to take credit for the code.

5. The facilitator or signatory parties can organize briefings with domestic and international observers to explain the content and extent of the CoC. A good understanding of the document would help observers make an informed assessment about its implementation.

6. The parties might agree on shared talking points when addressing the media on the CoC, in order to avoid misrepresenting its purpose.

7. Tailor-made video and radio clips can be used to disseminate the content of the CoC. These can be particularly effective at putting the dry, legalistic content of the code into language that can be more easily understood by the general population.

8. Social media organizations—such as Facebook and Twitter—will become increasingly important for disseminating information about the CoC and gathering information on its implementation.

9. Networks can be used to disseminate information about the CoC in different formats and in different cultural contexts, such as faith-based organizations, traditional networks and trade unions.

These public information campaigns can be organized by the institution that facilitated the dialogue process or by a separate body or organization.

Box 8.3. The communication of codes of conduct

In Tunisia, the facilitators organized a comprehensive public information campaign at the request of the signatory political parties in addition to their own efforts to publicize the CoC. This campaign included cartoons to explain the content of the CoC in simple language, and a short film showing party leaders committing to the principles of the code. A website, Facebook page and Twitter account were also developed and maintained, and hard copies of the CoC were widely distributed.

In Myanmar, parties had a strong desire to make the CoC known to the public, so that members of political parties were aware of the commitments their leadership had made, and voters could judge whether these commitments were being respected. The facilitation team encouraged the creation of a video in which the chairpersons of the six main parties explained their reasons for signing the code, and a cartoon was used to disseminate the content of the CoC. Training material on the code was distributed to electoral assistance and political party support organizations. Material was also distributed to local and international observers so that they could assess whether commitments were being respected.
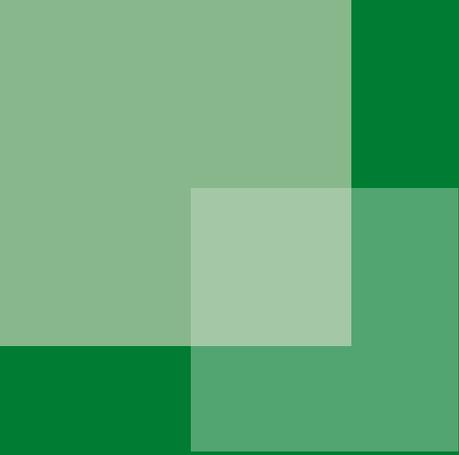
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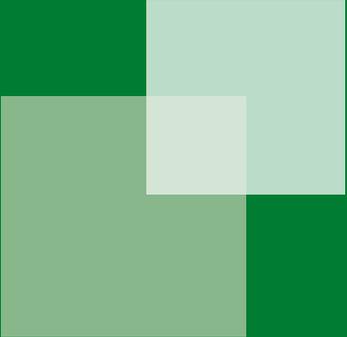
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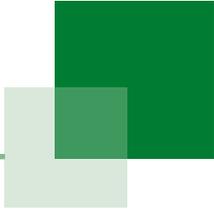
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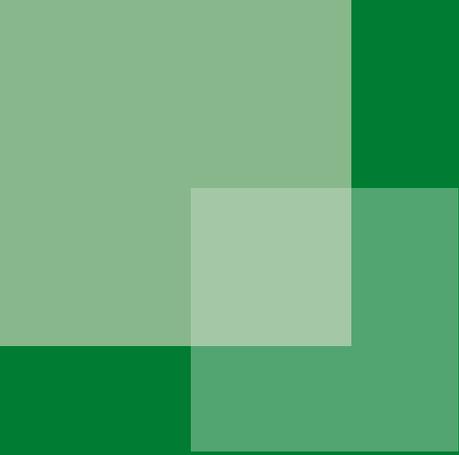
Annex A. Country case studies: Voluntary codes of conduct for political parties and candidates
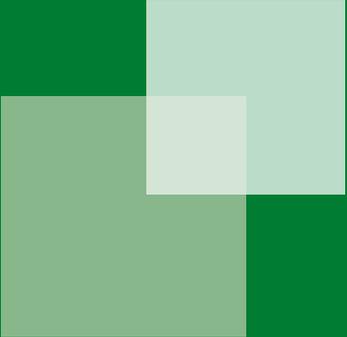
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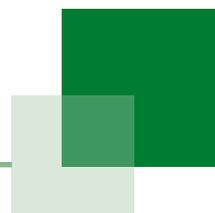
Code of Conduct for political parties: 'On the protection of the ethics rules' during the 2016 elections in Georgia

Salome Mukhuradze

Introduction

Despite its turbulent political past and the numerous challenges it has faced, there have been significant achievements in Georgia's democratic transition. Efforts to curb corruption and increase the effectiveness of the bureaucracy, media plurality and political competition, as well as the peaceful change of government in 2012 and the well-organized, free elections in October 2016 provide solid foundations for future progress. The country still faces challenges in ensuring inclusive political participation, however, and preventing informal influences and financial interests from dominating the political scene. Moreover, the history of conflicts and high levels of political polarization affected the run-up to the parliamentary elections of October 2016. Violence and antagonism between the political parties greatly increased. In May 2016, there were physical attacks between the supporters and activists of the main parties in Kortskheli and infringements of the private lives of political leaders.

The process

These incidents motivated many party leaders to develop a CoC to prevent further violence during the pre-electoral period. Various political leaders initiated discussions on a CoC. The NIMD facilitated a constructive dialogue to enable the ruling and opposition parties to make the relevant commitments; and the document was drafted and passed by parliament.

At the initial stage of the process, a NIMD representative held bilateral meetings with a number of decision-makers, including the speaker of the parliament, members of parliament and various party leaders. After numerous meetings and much e-mail correspondence, the speaker of the parliament

along with other parliamentary leaders expressed their readiness to support the process in parliament.

Negotiation and dialogue

The CoC was developed and adopted as a result of active discussion and consultations among the parliamentary factions and/or committees. Prime Minister Giorgi Kvirikashvili and President Giorgi Margvelashvili also supported the process. Both leaders separately expressed their support for creating an agreed set of rules on the conduct of elections. NIMD convened the political parties to reinvigorate the debate and parties voted for the Code in parliament.

On 22 June 2016, parliament adopted the CoC for political parties, 'On the Protection of the Ethics Rules during the Elections' initiated by seven parliamentary factions. In the plenary session, 87 of the 150 parliamentarians voted to support the code. The opposition UNM, however, did not join the initiative. It refused to participate in any parliamentary discussions on the matter while 'the perpetrators of the violent incident in Kortskheli went unpunished'.

Implementation and monitoring

The CoC refers to existing norms in domestic legislation as well as international declarations and recommendations. The document states that 'political party leaders, members and activists are obliged to fulfil the provisions of this statement, in order to guarantee a free and democratic environment during the pre-election period as well as in its aftermath'. The code:

1. calls on all political parties to reject hate speech and refrain from using provocative, slanderous, degrading, xenophobic, threatening or any other types of statements that provoke violence;

2. recognizes the importance of depoliticizing the state and municipal structures, public offices, police and military (militarized) departments, and the impermissibility of using administrative resources for elections;

3. calls on the mass media to, in view of the 'Election Code of Georgia', maintain principles of equal treatment and neutrality with regard to electoral subjects; also, to ensure well-grounded and balanced media coverage of their activities during the pre-election period, in order to protect citizens' right to make a decision on the basis of objective information;

4. emphasizes the special role of the courts in conducting an independent, impartial and well-grounded decision-making process to resolve electoral disputes, and recognizes the supremacy of judicial decisions;

5. claims that the political parties should actively cooperate with international and local observers in the pre-election and election periods. Political parties should fully and transparently provide them with all information essential for the assessment of the electoral process.

Outputs and lessons learned

The Georgian experience shows that in the highly polarized pre-election period, reaching a political consensus between many (but not all) political parties was symbolically and politically important. The support of the parliamentary leadership and the active engagement of various decision-makers and members of parliament made the passage of the parliamentary resolution possible. The NIMD's role was important in this area, encouraging both to work more proactively on the matter. The combination of a degree of internal ownership of the political process—by several leaders of the Georgian Parliament, among others—and the external facilitation of non-governmental organizations or international organizations has the potential to succeed in a polarized environment.

The CoC provided an additional moral imperative for political parties to act more responsibly during elections. The timely reaction of the NIMD contributed to an increased sense of urgency among politicians, and gave them early signals that the international community was concerned about the violence. This galvanized action in parliament.

On a broader scale, however, a truly effective and fully inclusive CoC would require more sustained and greater effort. The NIMD tried to respond to the crisis situation that arose from the violent incidents that threatened to escalate. However, longer-term parliamentary capacity-building, more sustained dialogue and, most importantly, the creation of a political context in which participation is seen as advantageous to all actors will be necessary elements for future success.

The voluntary Code of Conduct for the 2012 elections in Ghana

Professor Ransford Gyampo

Introduction

Elections in Ghana have been fraught with several acts of intimidation and violence, thuggery, acrimony and rancour since 1992, leading to the wanton destruction of property and a number of casualties. Ballot boxes have been snatched and destroyed on election day. One way to discourage electoral violence has been to encourage political parties to agree on ethical behaviour

in the form of a CoC to guide them and their supporters throughout the electoral process. The first CoC was developed in 2000. Among other things, it enjoined political parties to safeguard the integrity and transparency of the electoral process and to cooperate with electoral officers in the performance of their duties. Other codes were developed for the 2004 and 2008 elections, each of which sought to address weaknesses and incorporate lessons learned from the previous versions. The 2012 Political Parties CoC was introduced to regulate the activities of political parties before, during and after elections, in order to prevent democratic relapse and promote peaceful elections.

The drafting process of the 2012 code

The 2012 CoC was prepared by the political parties themselves under the aegis of the Institute of Economic Affairs (IEA)–Ghana Political Parties Programme (GPPP). The process was initiated and owned by the IEA-GPPP, which is comprised of representatives of all the political parties with seats in Ghana's Parliament. The programme brings together the leadership of the political parties in parliament once a month to brainstorm on issues of national importance in an apolitical manner, with a view to proposing practical solutions. The GPPP also involves non-parliamentary parties in activities such as workshops, symposia and skills training programmes. Under the GPPP, political parties also receive some funding from the IEA for their operations and activities.

Formed in 2003, the GPPP has created a platform for interparty dialogue among the political elites in Ghana and dissipated the tension that had existed among party officials since 1992. Prior to the GPPP, interparty dialogue was almost non-existent, as it was perceived as suspicious for a party official to be seen engaging in discussions with a political opponent. The formation of the GPPP is therefore seen as a historic move to create and deepen interparty dialogue and to address matters of mutual interest to all parties. A major challenge to Ghana's democracy that has been discussed since the inception of the GPPP is elections-related violence and its threat to the country's democratic advancement.

Negotiation and dialogue

The IEA-GPPP hired a consultant to draft the initial CoC. The competence, legitimacy and credibility of the consultant, who also facilitated a retreat, were above reproach as the party leaders played a role in agreeing the appointment. The draft code was extensively circulated to all members of the GPPP for their study. The weekend retreat was then organized to deliberate, discuss and agree on the document. The consultant made available the draft code and provided clarifications and explanations where necessary but left the

entire discussion—as well as all decisions and agreements—in the hands of the party leaders. The retreat, which was convened by the IEA, was attended by leadership figures from all registered political parties, representatives of the EMB, representatives of key media houses and the National Commission for Civic Education. Key stakeholders such as EMB representatives made inputs to the draft code in order to strengthen it. The camaraderie that existed between the party leaders under the aegis of the GPPP made consensus on major aspects of the code easy to achieve.

Communication

The media was invited to cover the opening session of the retreat, and publish the rationale for the retreat in order to stimulate discussion on violence-free elections in the body politic. The agreement and consensus reached at the retreat were also published and widely circulated in the media through communiqués. Final copies of the code were distributed to key stakeholders such as the National Commission for Civic Education, party officials, media houses and other CSOs for public education.

Implementation and monitoring

The code, which was developed at least 12 months before the general elections, includes provisions that regulate the conduct of political parties before, during and after elections. These enjoin all political actors to adhere to existing electoral and civil laws as well as the provisions of the Criminal Code, Act 29 (1960), and generally prohibit them and their supporters from engaging in disruptive, provocative, violent or corrupt behaviour and activities. The code also enjoins political parties to safeguard the integrity and transparency of the electoral process, cooperate with electoral officers in the performance of their duties on election day, and discourage their members from multiple voting or other forms of electoral malpractice. After the elections, the code urges political actors to scrupulously observe all laws and rules outside election and campaign periods. The code also contains explicit provisions on what is considered an abuse of incumbency. Finally, there is a provision for a National and Regional Enforcement Body to oversee implementation and ensure compliance.

While Ghana's CoC does not legally bind party leaders and their supporters, their adherence to its provision is greater because they prepared and signed the document. Given the institutionalized nature of the GPPP, the party leaders meet once a month at the IEA Secretariat to review and discuss their own compliance with the provisions of the code. Those who have been found to have flouted the code have been rebuked or reprimanded by their peers on the GPPP platform. In addition, the Regional Enforcement Bodies send

monthly reports on compliance with the code to the National Enforcement Body, which publicly names and shames parties that have violated the code. Where their conduct poses a security threat, the National Enforcement Body notifies the appropriate state agencies. The threat of public shaming compels the party leaders to comply with the code and to encourage their supporters to act within its confines.

Output and lessons learned

Institutionalizing interparty dialogue allowed for meaningful discussion and an effective CoC for political parties. Codes drafted by political actors through dialogue may not be legally binding, but go a long way towards ensuring peaceful electoral processes. The codes have been instrumental in shaping the peace of the nation and preventing democratic relapse, particularly during the peak election season. With its enforcement bodies at the regional and national levels, the 2012 code has played a key role in safeguarding Ghana's peace compared to previous codes. However, the generally non-binding nature of the code sometimes creates room for political actors to ignore some of its provisions and resort to acts that could threaten the peace.

Code of Conduct for political parties and candidates for the 2015 elections in Myanmar

Tatiana Monney

Introduction

Following decades of military rule and local armed conflicts, Myanmar is undergoing a democratic transition; the 2015 elections represented a historic turning point. In 2013, the authority in charge of organizing the elections, the Union Election Commission (UEC), started to engage with political parties to prepare for the elections. Given the country's electoral history, which until 2010 included overturning election results and incarcerating members of political parties, and the strength of the opposition since the 2012 by-elections, the level of trust between the political parties and the UEC was low.

At the end of 2013, the chairman of the UEC presented its strategic planning for the 2015 elections in Myanmar in an informal exchange with the former chairman of the National Election Commission of Nepal and Swiss experts, who in turn presented international experiences of attempts to foster confidence in the electoral process. The UEC chair expressed a particular interest in a voluntary CoC for Peaceful Elections that would be drafted by the political parties, provided the CoC adhered to the country's legal framework.
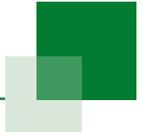
The process

Consultations on the CoC were initiated in late 2014. The process involved three key steps. First, the UEC launched a first consultation with representatives of all 71 registered political parties in Myanmar on their interest in a CoC and the main areas they would like to see included. Next, the chairman of the UEC asked the Swiss-Nepalese delegation to conduct the necessary consultations with the chairpersons of the political parties on whether the parties would agree to embark on such a project, and the chairpersons in turn sent a representative to a third tier of consultations. The third level of consultations was a brainstorming event involving the ruling party, a traditional party and the main opposition party led by Aung San Suu Kyi, as well as two coalitions of 43 ethnic parties. Following discussion of comparative examples of codes from elsewhere in the world with two electoral experts and the UEC chairperson, they confirmed that their parties were interested in drafting a CoC.

To ensure that the CoC was in line with the legal framework, the commissioner of the UEC in charge of liaising with political parties, who is well versed in the constitution and the laws of Myanmar, observed the drafting process. The UEC also reviewed and made minor changes to the final draft CoC one month before it was signed and adopted. An important risk identified early on by the political parties was drafting non-binding commitments that the UEC might use later on to set additional restrictions on their political activities, should the UEC decide to enforce the CoC as law. The facilitation team paid great attention to obtaining guarantees, however, and these fears were allayed as the participants built trust during the process and began to see concrete results.

Negotiation and dialogue

The results of the brainstorming led to the creation of a Working Committee (WCOM) consisting of the three parties and the two coalitions that had participated in the third-level consultation. The initial consultation involving all parties was used as a benchmark for the WCOM. A timeline was agreed, which set a deadline for the signing ceremony two months before the start of the electoral campaign. The WCOM held monthly meetings between February and June to negotiate the content of the CoC and agree on the wording of the commitments. The participants volunteered their time without receiving any financial reward. Every other month, representatives of the WCOM, supported by the facilitation team, held a debrief with all the registered political parties in Myanmar. The plenary provided new inputs and adopted drafts. Each time the principles of the WCOM were explained:

participants were working on behalf of all parties, dedicating more time to the process in which not every party could be represented at all stages. A comparison was made with cooking a meal: all the participants decided on the ingredients but only a few were involved in the preparation. The CoC was negotiated in both Burmese and English with live interpretation. This allowed the consideration of international comparative experience, ensured respect for ethnicity and ensured the visibility of the CoC among the international community observing the transition. Based on the positive feedback from political parties, the UEC let Switzerland facilitate the drafting of the CoC for political parties. In order to service the process led by the parties and the UEC, Switzerland set up a facilitation team led by its ambassador to Myanmar, which was supported by the former chairman of the National Election Commission of Nepal, two national facilitators and two Swiss political and electoral advisers. While several international examples were presented from various countries, the importance of using local ingredients was emphasized. The electoral expertise included in the facilitation team allowed the participants to anticipate the potential effects of the measures envisaged by the parties.

Implementation and monitoring

The parties identified three key objectives of the CoC: (1) to prevent any form of intimidation or incitement to violence at political rallies or as part of their communications in the mass media, in particular to refrain from fuelling regionalist, racial or sectarian trends; (2) to reaffirm the freedom of association and peaceful assembly, and refrain from abusing a position of power for electoral purposes or using public resources during campaigns; and (3) to limit electoral violations (impersonation, intimidation, multiple voting and bribery) and contribute to the integrity of the process from election day until the announcement of the results.

Eight months into the process and five months prior to the elections, the CoC was officially signed on 26 June 2015. The vast majority of the 70 registered political parties, the UEC, the international community and the media attended the ceremony. The CoC became morally binding on and applicable to all political parties, including alliances, coalitions and independent candidates, running in the elections, as well as political party officials, candidates, members, agents and representatives. The signing ceremony was the first time in the recent history of Myanmar that the parties and the UEC had found a common goal: a successful transition and a first peaceful and competitive election. In July and August, 20 additional parties and 6135 candidates registered ahead of the elections and were informed by the UEC (supported by the facilitation team) about the process and content of
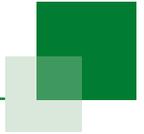
the CoC. This brought the number of signatories to 89 (of the 90 registered).

The parties considered the monitoring and implementation of the CoC to be a crucial component of the credibility of the process. If electoral violence were to occur, the CoC foresees that parties would rely on their internal communication mechanisms to assess the actions and, depending on the circumstances, denounce them publicly and take the necessary disciplinary action within the party. The parties also established a central CoC Monitoring Committee, MCOM (with the same composition as the WCOM) to discuss the most widespread and significant breaches of the CoC. Fieldtrips were organized to six states and regions of Myanmar for representatives of the MCOM based in the capital to consult their field offices and improve the flow of information. Party candidates and supporters were also the target of a communications campaign by the parties in order to maximize knowledge of (and respect for) the moral obligations. The facilitation team remained, at the request of the parties and the UEC, as a Secretariat and facilitator of the MCOM. Together with other international stakeholders the Support to Electoral Processes (STEP) to Democracy Consortium helped to support the communication, consultation, training and field trips of the MCOM.

Outputs and lessons learned

According to an assessment by the parties and the UEC, the process improved the relationships among them, bringing reassurance regarding intentions on all sides to contribute to an orderly and free and impartial process. It created a sense of joint success and a culture of consensus. The main challenge was to facilitate a process that allowed 90 parties to agree on the CoC in a highly polarized and unpredictable environment. However, several verbal attacks were carried out by powerful groups that are active politically but not covered by the CoC. Decentralization of the mechanism to more than 300 localities, which was called for by the parties, also proved difficult and remained limited.

Electoral ethical pacts for elections in Peru, 2005–15

Percy Medina Masías

Introduction

The 1990s was a difficult decade for Peru. It began with unprecedented political violence and an economic crisis followed by a coup d'état in 1992, the weakening of the political party system and deep citizen mistrust of democracy and politics. There were also difficulties in the following decade, which began with a transitioning government after the fall of President Fujimori's regime and efforts to promote democracy and citizens' trust. Social

demands were not always appropriately met, and hundreds of social conflicts erupted. Between 2001 and 2006 the president's approval rating sank to less than 10 per cent and a presidential impeachment was even discussed. This all generated an overall atmosphere of mistrust in political parties and politicians.

In this context, in 2005 Peru's top electoral institution, the National Electoral Jury (JNE), launched efforts to develop the Electoral Ethical Pact (EEP), learning from previous civil society efforts in this area. The JNE requested help from other renowned institutions with experience of the promotion of democratic values, such as the National Accord, Transparencia Association, the Andean Jurist Commission and International IDEA. The objective of developing an EEP was to generate political consensus, improve and increase citizen participation, and consolidate democracy and the rule of law in the country.

The 2005 EEP in the run-up to the 2006 presidential elections was signed by 20 political parties. The JNE invited official representatives from all registered political parties. The JNE facilitated the meetings to define the agreement's content as well as its monitoring and enforcement mechanisms. The EEP was defined as an honourable commitment made by political organizations based on mutual respect among all candidates running in the elections. The pact included commitments on specific topics such as electoral advertising, state neutrality, candidates' background information, programmatic platforms and commitments to protect public order during campaigning. It aimed to guarantee that all political groups felt represented in this effort.

The 2005–2006 experience was so successful that it has been re-edited in all subsequent elections, both local and national, ever since. It has become an institutionalized practice that relies on the support of all parties, citizens and the media.

The main characteristics of the dialogue process on EEPs since 2005 are described in the following sections.

Negotiation and dialogue

The negotiation round tables create space for political organizations to agree what is to be incorporated into the EEP. In order to avoid the election campaign dynamics, which would make it difficult to reach agreement among competitors, the JNE and political parties begin meetings one year before the start of the candidate nomination period. In the negotiation, the JNE presents draft proposals for agreement to the political organizations, which participants then debate. They usually reach consensus, but sometimes
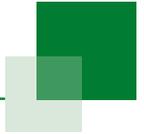
it is necessary to call for a majority vote. The facilitator of the round table guides the negotiations, and presents options that only political organizations can decide whether or not to incorporate into the final agreement.

Implementation and monitoring

EEPs contain a tool that complements the electoral process by monitoring and following up the level of compliance. An essential tool of the EEP is the creation of the Tribunal of Honour, an organ consisting of a group of people whose professional and moral background are beyond reproach. They are selected by consensus from political organizations to ensure compliance and resolve potential controversies. Its mandate does not originate in the law and it does not have the capacity to penalize, but as respected public figures, their critical voice entails a moral sanction.

There are five members of the Tribunal and two alternates. A president is elected from among the five principal members to run the working sessions and serve as the Tribunal's official spokesperson. The Tribunal begins work after the signing of each EEP and stops after the official result of the elections is announced. In order to clearly define the principles that apply, its attributions and competences, the Tribunal of Honour elaborates regulations. The members are not paid and the JNE provides only logistical and administrative support. The Tribunal relies on a technical secretary who provides advice and administrative support. He/she continually researches political facts and information in the press in order to keep the Tribunal informed about relevant situations.

The Tribunal can act on its own or on request to tackle claims and complaints from political organizations or other actors. When it takes a clear stance against a specific act, it issues a declaration. This could involve resolutions, exhortations, public warnings or another type of communication for dissemination. While exhortations call on candidates and political organizations to conform and comply with the EEP's agreements, and to adopt corrective measures to clear up infractions, public warnings often entail public criticism of actions that violate the EEP's agreements.

These announcements allow the Tribunal to express its stance on events, and help the media monitor compliance with the EEP. To that end, it is important that the Tribunal has a communications strategy to channel these announcements. Media interviews with its members (usually the president) are promoted.

Although political organizations are the main actors in the signing of this pact, other actors—including international organizations, NGOs and the

media—also sign the EEP and commit to comply with its objectives. The media plays a fundamental role as it helps monitor compliance with the pact and follows up on the Tribunal's announcements and activities.

Communication

The first milestone in the EEP's communications strategy is its signing in a public ceremony attended by a diverse group of the country's political and social actors. The press is called to record and make the political organizations' commitments clear to citizens. EEPs in 2005 and 2015 contained a plea for the media to support the dissemination of the pact among citizens. Nonetheless, the scope of its impact is largely subject to the actions of the Tribunal. If it has an active profile and is constantly participating in incidents and events throughout the campaign, such activity will be reported by the media.

Output

The EEPs have crystallized a forward-looking goal of strengthening democracy. For this reason, political organizations have made many cutting-edge voluntary commitments that go beyond the scope of electoral legislation. This vision has been a key contribution of the EEP.

During each negotiation, a political consensus is built that generates diverse agreements. This space for dialogue and debate can be considered a first step that could facilitate the possibility that the voluntary commitments might later become electoral norms, after discussion in Congress. This was the case for the voluntary agreement undertaken in the 2005 EEP, which formed the framework for the 2006 general elections. Political parties agreed to voluntarily submit candidates' biographical and background information as well as details about their programmatic platforms. This good practice became law when Congress modified the Political Parties Law, which now states that nominated candidates must submit this information to the JNE.

The Charter of Honour for the 2014 elections in Tunisia

Christopher Thornton

Introduction

In 2013 Tunisia's political transition to democracy was under serious threat. The assassination of the opposition politicians, Chokri Belaid (February 2013) and Mohamed Brahmi (July 2013), had precipitated widespread protest and social unrest, which led to the collapse of the government of Hamdi Jebali and paralysed the National Constituent Assembly. After President Mohamed Morsi was ousted in Egypt in July 2013, many feared that Tunisia
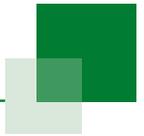
would see a return to authoritarianism or a descent into anarchy. Trust between political parties was at an all-time low and political polarization was seemingly entrenched. Few believed that the legislative and presidential elections scheduled for 2014 would take place.

The process

In this context, the Centre for Humanitarian Dialogue (HD), in consultation with the Swiss Federal Department of Foreign Affairs, explored the possibility of a dialogue on the electoral process between Tunisian political parties. HD began by convening and facilitating two meetings with around 10 Tunisian electoral experts and practitioners in order to identify the risks and challenges associated with the coming electoral period, as well as mechanisms to address these risks and challenges. During the second expert meeting, international experts shared their experiences of other contexts with their Tunisian counterparts. Consultations then began with Tunisia's main political parties. The facilitation team identified a shared interest among the parties in ensuring that the elections took place, and took place in the best conditions possible.

Parties were asked to officially designate the person responsible for their party's electoral campaign (usually someone from the executive bureau) to participate in a discreet dialogue process. This process proved more difficult to establish than initially anticipated. Few parties had campaign managers, and the political crisis had left many wondering whether democratic elections would take place in the near future.

Negotiation and dialogue

It was only after the Tunisian National Dialogue process (a distinct process facilitated by a quartet of Tunisian civil society institutions) resulted in the designation of a technocratic interim prime minister in December 2013 that the parties began to exhibit a strong interest in preparing for the elections and participating in the dialogue process. At the first meeting, in December 2013, the participants (as the experts had done before) identified the risks and challenges posed by the forthcoming electoral period, as well as mechanisms to address these risks and challenges. The conclusions from the earlier expert meetings were used to guide the discussions.

At this meeting, participants agreed that a voluntary CoC for political parties might be a useful tool for reducing tensions and improving behaviour, on the condition that the CoC emerged from a genuinely consultative process with the political parties and was subsequently followed up through various measures—unlike the CoC developed for the 2011 elections. The parties decided to work on elaborating a draft CoC in subsequent meetings.

Over the course of the next several months, the parties held seven rounds of interparty dialogue and an extensive number of bilateral meetings with the facilitator and his team. The facilitator of this process was a respected Tunisian former opposition activist with a long history of pro-democracy activism against the former regime and experience of facilitating dialogue between different streams of the opposition.

During this process, the participants elaborated an agreement entitled the Charter of Honour for Tunisian Elections and Referendums. More than 15 political parties participated in the dialogue process. Most participants were members of the executive bureaux of their respective parties and/or responsible for handling their party's election campaign. Tunisian electoral experts participated in some of the rounds of dialogue, and Tunisian and international experts helped transform the ideas proposed by the parties into a CoC. The capacity of political party representatives was very high; many had electoral and/or legal expertise. The rounds of dialogue were facilitated by a respected Tunisian mediator who was considered neutral by all parties. International support was low profile at the request of participants.

In many ways, the text agreed by the parties resembles other codes. Signatories publicly committed to respect existing laws and regulations, adhere to the principles of fair play, promote a peaceful and positive climate for the elections to take place and accept the results. However, there are also important specificities. It was agreed, for example, that the greatest risk to the Tunisian democratic transition was that an act of political violence or terrorism would be used to contest the results of the elections, justify their postponement or cancellation, or mobilize mass protests and foment public unrest. Ultimately, this could have led to a return to authoritarianism, repression and dictatorship, as happened in Egypt. The Charter of Honour contains specific provisions concerning the conduct of political parties in the event of such an occurrence, and the process was designed to build sufficient trust and contacts between the parties to offset the risk of such a breakdown in communication.

Implementation and monitoring

The Charter of Honour was formally signed on 22 July 2014, in the Palace of the Municipality of Tunis, by the leaders of 19 Tunisian political parties in the presence of the President of the Republic, the President of the National Constituent Assembly and the President of the Electoral Commission, as well as other officials and representatives of the international community.

Importantly, the charter contained obligations to promote and diffuse its principles to members and supporters of the signatory parties, as well as the
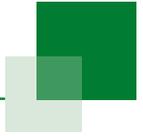
Tunisian public. With this in mind, the charter was publicly disseminated through a website devoted to the agreement, the production of video clips, and the printing and distribution of over 50,000 copies of the charter throughout Tunisia. These tools to improve respect for the agreement were accompanied by a comprehensive publicity campaign on Tunisian television and radio and in the press.

Signatory parties also agreed to participate in a follow-up committee, which explored consensual solutions through dialogue and mediation to any problems with or violations of the charter. The follow-up committee held seven meetings between the signing of the charter in late July and the second round of the Tunisian presidential elections on 21 December 2014. It also dealt with several problems during the electoral campaign. Participants have confirmed that agreements designed by the follow-up committee played an active role in reducing tensions in the lead-up to the elections and contributed to the positive responses by signatory parties to the results of the legislative elections.

Outputs and lessons learned

The political parties and the Electoral Commission all recognized that the Charter of Honour contributed to reducing tensions during the electoral process, and facilitated acceptance of the results. However, the stakeholders recognized that the dialogue process that produced the CoC was also pivotal to creating a positive climate. The process created connections between the parties that were used to deal with a variety of problems during the elections—some of which were beyond the scope of the CoC—and set the stage for future collaboration after the elections.

Some of the principal challenges during the political dialogue were the lack of confidence between political parties, a lack of belief in the efficacy of non-judicial instruments and the litigious nature of Tunisian elite society.

From political parties to the Electoral Commission, all actors have expressed a desire to transform the CoC into a binding legal document. This fails to recognize the risk of duplicating existing mechanisms, and the challenge of transforming moral commitments into legal obligations. How, for example, can a requirement to promote a peaceful and respectful atmosphere be enforced in law? These fears were allayed as the participants built trust during the process and saw concrete results, particularly from the follow-up committee.
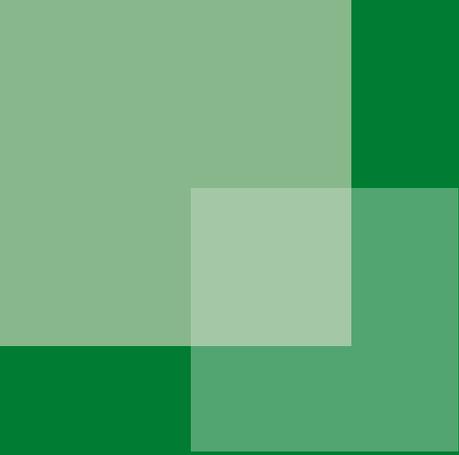
Annex B. Statutory codes of conduct and other types of agreement on peaceful election processes
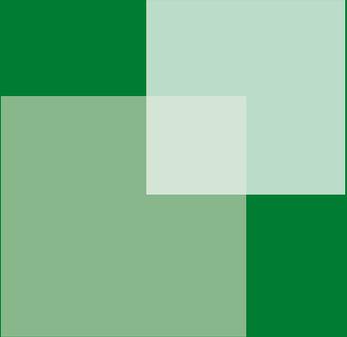
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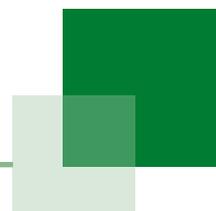
Electoral Code of Conduct for the 2013 elections in Kenya

Neha Sanghrajka

Introduction

The 2013 general election was held in the aftermath of the controversial 2007 general election, which led to post-election violence that caused over 1,000 deaths and the displacement of over 600,000 people. In Kenya, all elections since the reintroduction of multiparty politics in 1992 have resulted in serious violence, with the exception of the 2002 general election. As a result of this history of electoral violence, which emanates from the inadequacies of the dispute resolution mechanisms, stakeholders went into overdrive to institute significant reforms and society-wide efforts to put in place measures that would guarantee a peaceful, transparent and credible general election, leading to the creation of an electoral CoC.

The main objective of the CoC was to promote conditions that were conducive to the conduct of free and fair elections and a climate of tolerance in which political activity could take place without fear, coercion, intimidation or fear of reprisals. Even more importantly, it promoted ethnic tolerance, cultural diversity, gender equality and voter education campaigns with the aim of creating an electoral process that was devoid of any violence or intimidation of members and supporters of other parties.

The process

The 2010 Constitution sought to address the anomalies that led to the 2007 post-election violence by instituting electoral and judicial reforms to guide the electoral process. The subsequent legislation (the Independent Electoral and Boundaries Commission Act 2011, the Elections Act 2011 and the Political Parties Act 2011) provided the necessary legal framework to facilitate the conduct of free and fair elections. This legislation mandates

the Independent Electoral and Boundaries Commission (IEBC) to settle pre-election disputes, including those relating to (or arising from) nominations but excluding election petitions and disputes subsequent to the declaration of election results.

The process of developing a CoC began when the Elections Bill (which became the Elections Act of 2011) was received by the Commission for the Implementation of the Constitution in May 2011. The CoC was included as an annex to this bill. It was developed in collaboration with a multi-stakeholder forum, which brought together political parties, the EMB, which was the Interim Independent Electoral Commission at the time, government institutions and civil society. The bill subsequently received input from stakeholders from all of Kenya's 47 counties. The bill was then taken to parliament, where it was debated, amended and ultimately passed. Government institutions, civil society organizations and the general public provided input during the parliamentary debate.

The Elections Act of 2011 stipulated that the CoC take effect from the date of the dissolution of parliament until polling day. This covered the period from 14 January 2013 to 4 March 2013. Fifty-nine political parties and their candidates signed the CoC, committing themselves to peaceful campaigning and being held personally responsible for electoral malpractice.

Negotiation and dialogue

All the stakeholders involved in the electoral process participated in the development of the CoC, which was finalized on 27 August 2011 but amended several times between 2012 and early 2013. The Commission for the Implementation of the Constitution was charged with facilitating the development of the code and ensuring public participation in the development of the bill. Civil society participated in deliberations on the CoC. The electoral body was involved in ensuring that the code was created in tandem with other laws being developed so that its provisions were in line with the timelines for the conduct of the elections. Political parties were involved in the development of the code by providing input and deliberating on its implementation together with the electoral body.

Most importantly, all political parties with seats in parliament debated the bill, amended it and passed it for the president to sign into law. In addition to the CoC, there is also a Political Parties' CoC enshrined in the Political Parties Act 2011, which provides guidelines on how political parties should enhance national unity, embrace diversity and promote free and fair elections.
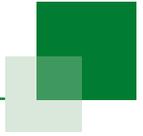
Implementation and monitoring

The Electoral CoC applies to all stages of an election. Its main pillar is the provision that all signatories should publicly and repeatedly condemn violence and intimidation, and avoid the use of hate speech, language or any kind of action that might lead to violence or intimidation. All parties (including leaders, officials, candidates, members and supporters) are required to sign and comply with the provisions of the CoC. Parties must also take reasonable steps to discipline and restrain affiliates from infringing the code or breaking electoral laws. Political parties, candidates, members and supporters are also expected to acknowledge the authority of the IEBC in the conduct of the elections and to establish effective lines of communication with monitoring institutions. The sanctions for violating the code include a formal warning, a fine determined by the IEBC and an order prohibiting a political party from engaging in certain aspects of the electoral process.

The IEBC's mandate includes enforcing compliance with the CoC and ensuring that political parties, their candidates, members and supporters adhere to the code. The IEBC executed this mandate by creating the Electoral Code of Conduct Enforcement Committee, also known as the Dispute Resolution Committee (DRC). At the constituency level, the IEBC created peace committees, which contained representatives of government, political parties, civil society and other stakeholders, to provide a platform for curbing violence during the election period. The peace committees undertook functions such as mediating political disputes in the constituencies, liaising with government security agencies in the constituencies, and reporting suspected electoral malpractice and violations of the CoC to the IEBC for appropriate action. The dispute resolution process commences once a candidate or political party lodges a complaint with the DRC against any party participating in the elections for violating the Electoral CoC. The aggrieved party files a complaint with the IEBC accompanied by a statement and named witnesses. The DRC then hears the dispute, provides the other party with a chance to present its case and rules on the complaint.

The Political Parties Act 2011 also established several dispute resolution mechanisms, including the Political Parties Dispute Tribunal and the Political Parties Liaison Committee. The Tribunal was established to resolve disputes between: the members of a political party, a member of a political party and a political party, political parties, an independent candidate and a political party, and coalition partners, as well as appeals of the decisions of the Registrar of Political Parties. Other organs involved in the conduct of free, fair and peaceful elections include Conflict Management Panels, which are established in all constituencies, and the Investigation and Prosecution

Unit, which works in collaboration with the Office of the Director of Public Prosecutions. The Political Parties Liaison Committee was established at the national and county levels to provide a platform for dialogue between the Office of the Registrar of Political Parties, the IEBC and political parties. The Elections CoC obliges political parties to attend and participate in the committee's meetings. However, inadequate funding and dominance by non-parliamentary political parties have curtailed the committee's ability to function effectively at the county level.

Confusion over whether to petition a dispute with the DRC, the Political Parties Dispute Tribunal or the High Court has led to some aggrieved parties resorting to the High Court to resolve party disputes. Fortunately, the High Court has referred the cases to the Tribunal. However, the DRC and the Tribunal have exercised concurrent jurisdiction on political party disputes, which has on occasion caused confusion and led to conflicting orders from the two forums.

Communication

The CoC requires political parties and their candidates to respect the role of the media in the electoral process; they must not prevent media access to public political meetings, marches, demonstrations or rallies. Consequently, the media has played an important role in covering party activities, which has helped dissuade parties from contravening the CoC. Most importantly, the dispute resolution process was open to the media, which covered all the proceedings.

Outputs and lessons learned

The Electoral CoC was instrumental in preventing an outbreak of violence during the 2013 elections and constraining political parties from engaging in activities that would have triggered violence. The DRC adjudicated 206 disputes arising from political parties' nominations and 600 disputes concerning the allocation of seats from party lists. The majority of the stakeholders were satisfied with the DRC's decisions in these cases. The participatory nature of the process and the involvement of stakeholders led to the acceptance of its rulings.

However, the IEBC's failure to adequately monitor the conduct of party primaries to ensure they were compliant with the CoC, which resulted in chaotic primaries, alleged violence and vote rigging, has discredited its effectiveness in enforcing compliance with the CoC. Some political parties stated that the IEBC's enforcement mechanisms were inadequate, while others concluded that it had been overwhelmed by the volume of activities it

was expected to oversee. Some felt that the IEBC was too lenient in punishing the main parties for failing to comply with the code.

The most important lesson learned from the implementation of the CoC is the importance of adhering to timelines. The IEBC must ensure that political parties adhere to the electoral timelines in order to provide ample time to determine disputes arising during the electoral process before the ballot papers are printed.

The complexity of the legal framework for dispute resolution and the multiplicity of actors involved—the DRC, political parties' internal mechanisms, the Political Parties Dispute Tribunal and the judiciary—provided candidates and political parties with other forums to seek redress for unfavourable decisions. This led to forum shopping, overlapping jurisdictions and, in certain cases, conflicting decisions or duplication. Going forward, the legal framework for electoral dispute resolution should be examined in order to address the weaknesses that negatively affected the process during the 2013 general election, while retaining the strengths of the system.

Code of Conduct for the 2008 constituent assembly elections in Nepal

Bhojraj Pokharel

Introduction

In April 2006, the major political parties formed an alliance and united with the Maoists in a mass movement and uprising against the monarchy. This forced a return of power to a reinstated parliament, and the formation of a coalition government that initiated a peace process with the Maoists. The peace process continued to move forward, leading to a Comprehensive Peace Agreement that was signed by the government and the Maoists. The agreement declared an end to the war, placed the Nepal Army in barracks and Maoist combatants in cantonments and provided for their supervision by the UN. Constituent Assembly (CA) elections were one of the key components of the peace agreement.

The 2008 CA elections were a major milestone in a resoundingly successful peace process. The election helped transform the contestation of power from a violent conflict into a political process. Although elections had been held since the early 1990s, the 2008 elections were the first to aim to draft a new democratic constitution and to take active measures to ensure that the legislative body reflect the diversity of the cultures/ethnic groups in the country. The process was highly challenging at the operational and political

levels, given the remaining security issues and the high level of political tension.

In this context, the Election Commission of Nepal (ECN), which was responsible for organizing the elections, was also in charge of enforcing a CoC for political parties. The ECN had the challenging task of bringing all the stakeholders on board with the process. Some of the political parties—in particular the Maoists, who believed their victory would require an active electoral campaign—saw the CoC as an additional restriction on their campaigning activities.

Process

The ECN as regulator. The CoC was legally binding and partially reaffirmed the electoral code. It foresaw that violations of the code would be penalized. Based on the nature of the offence, the ECN could take various actions such as suspending a candidate or an election process in a polling centre, barring candidates for six years, annulling a winning candidacy or imposing a fine.

The ECN as facilitator. The drafting process started months before election day. Several rounds of intense consultations were organized with all the stakeholders, such as the government, political parties, media, civil society organizations, private sector representatives, academics, former election officials, NGOs and election observers. The ECN developed a draft based on a first extensive consultation. The following consultations were open to the media and every agreed point was minuted and signed by the political representatives. The final draft was approved by the ECN and promulgated in the official gazette.

Within its legal mandate, the ECN played a leading role in the drafting of the CoC. Due to the post-conflict context, bringing all the political parties to agreement was quite challenging. Since it was impossible to consult all 75 registered political parties on a daily basis, it was agreed that only the 13 political parties represented in the Interim Legislature/parliament would develop the draft, which would then be shared among all parties. In some areas, major disputes arose between the parties. Such disputes were settled through the ECN, which led and arbitrated negotiations in order to generate agreement on the content of the CoC.

Content

Parties agreed on several objectives, such as a secure, orderly and peaceful campaign; to campaign on party policies and promote diversity; limits on election costs and a related reporting mechanism; controlling state resources;

creating a level playing field; limiting religious and racially discriminatory messages during the campaign; and monitoring mechanisms.

Implementation

Implementation of the CoC was decentralized to local ECN structures and staff, which were empowered to take action against any violations or recommend cases to headquarters for further action. A high-level committee led by a commissioner was formed to facilitate and monitor implementation.

Law enforcement authorities had a legal duty to strictly follow the instructions of election officials. Security coordination meetings were organized, but there was confusion between the roles of security and election officials during the campaign phase. 'Peace dealers' and negotiators were mobilized throughout the election process to carry out intense negotiations whenever a major political killing, important disagreement or major CoC violation threatened an election crisis.

However, the overlap and duplication in legislation and enforcement authority, as well as the lack of clear demarcation between the CoC and the Election Dispute Resolution mechanisms, created considerable confusion that threatened inaction against some violators in various cases.

Communication

The CoC development process was open to all media and once approved, the code was promulgated in the official gazette. Copies were printed and distributed to the political parties, candidates and concerned stakeholders. For the first time in Nepal's history, the ECN extended a direct invitation to every household to inform people about voting procedures and the, 'dos and don'ts' based on the CoC.

Outputs

With some exceptions, parties respected and applied the CoC. The people, civil society and the media also adhered to the code. Even the head of state respected advance approval of the ECN. It was extremely difficult to strike a balance between the provisions in the CoC, campaign legislation and the fragile peace process. Law enforcement agencies and election officials were worried about the effect of enforcing the electoral code on their future prospects, in the context of the growing political influence of the opposition party. Overall, with a few exceptions, the elections were peacefully and successfully conducted and all parties accepted the results.

Lessons learned

Nepal's unique political culture enabled concrete cooperation and discussion among the political parties on the CoC. While this allowed many of its provisions to be successfully enforced, several crimes and violations could not be addressed through the follow-up mechanism. In particular, the CoC could not address the long history of political violence: many individuals—including candidates—were killed, injured or kidnapped during the electoral process. Moreover, elections were either postponed or cancelled in 106 polling stations partly due to violence disrupting the process. Implementation of the CoC was also weakened due to the duplication and overlap of authority and responsibilities among the various actors and agencies under the legislation.

However, the credibility of the commission had a positive impact on the negotiations and on enforcement, which was clearly enhanced by its policy of communicating actively with the political parties. Intense and continuing consultative processes helped create a feeling of ownership among the stakeholders. This sentiment helped develop good relationships and trust among the political parties, and remained helpful during the implementation phase. Transparency throughout the process, and the fact that the media were present at every step, created an enabling environment and won the trust of the people, giving informal authority to the commission.

The Abuja Agreement on the 2015 presidential elections in Nigeria

Sébastien F. Brack

Introduction

Due to deep-seated regional, ethnic and religious cleavages, elections in Nigeria have been bitterly contested ever since their reintroduction in 1999. In a country where politics is widely regarded as the way to access power and resources, the stakes are invariably high, but the context of the 2015 elections was particularly worrying.

The terrorist group Boko Haram killed 41 people at voting centres on polling day, including an opposition politician, on the grounds that elections are 'unIslamic'. In parallel, the militant groups in the Niger Delta, from the same Ijaw ethnic group as the incumbent, Goodluck Jonathan, threatened to resume their insurgency if their kinsman failed to be re-elected.

Jonathan's People's Democratic Party (PDP) had been in power since the return to multiparty democracy in 1999 and was widely regarded as corrupt and high-handed. Moreover, the party was divided: its founder and *éminence*

grise, former President Olusegun Obasanjo, had publicly denounced Jonathan's decision to run for re-election. Initially, Obasanjo stressed the gentleman's agreement according to which the presidency had to rotate between northern and southern candidates to manage regional sensitivities. In the run-up to the election, however, he became increasingly scathing, openly questioning Jonathan's competency and integrity in the media.

This created an environment in which Muhammadu Buhari, the main opposition candidate, was able to rally some of the major opposition parties to form the All Progressives Congress in 2013, with a broad support base that included parts of southern Nigeria and especially Lagos, the country's economic powerhouse

Tensions also ran high because Buhari (who had lost in 2003, 2007 and 2011) declared that he would not accept another defeat. He was convinced his victory had been stolen each time due to electoral fraud, which is not impossible given the highly critical reports of international observers. More than 800 people died in protests after Buhari lost in 2011. There were widespread fears that the 2015 election would be even more violent.

One of the few grounds for optimism was the reputation for competence and independence of Nigeria's Independent National Electoral Commission (INEC). Despite its chequered history, its reputation had steadily improved since 2010 under the chairmanship of a respected academic, Attahiru Jega. However, a number of delays and technical glitches in the run-up to the election threatened to undermine these gains.

In this context, election candidates signed an agreement to prevent electoral violence, which became known as the Abuja Accord. The agreement was a voluntary, fairly ad hoc process born of the shared concern of Nigerian elites and the international community that the elections might trigger widespread violence and exacerbate ethnic and religious tensions to the point of destabilizing the country.

The process

A number of parallel initiatives to call for peaceful elections emerged locally in the months prior to the 2015 elections. The Swiss Embassy, in support of other initiatives, undertook efforts to unite elder statesmen, traditional and religious leaders and CSOs under the aegis of Bishop Mathew Kukah, a charismatic Catholic prelate from Muslim-majority Northern Nigeria.

Kofi Annan's Electoral Integrity Initiative (EII), a network of like-minded senior experts from the world's leading election-related organizations working

with Annan to support credible and peaceful elections, sent a political officer to examine the risks posed by the elections and assess what, if anything, it might do. The EII supported the Swiss Embassy's efforts. The prospect of a visit to Abuja by Kofi Annan in the run-up to the elections in support of a common civil society initiative helped galvanize the protagonists of the various initiatives to come together and form the National Peace Commission, which comprised a combination of elder statesmen, religious leaders and senior traditional leaders.

The foundation and the Swiss Embassy also used the prospect of a visit by Kofi Annan to generate interest in a potential peace declaration from the government, which feared an outbreak of violence in case of another victory by the incumbent, and the international community. The Office of the President, UNDP Country Office and Kofi Annan Foundation prepared what became the Abuja Declaration in parallel with the National Peace Commission's event.

Negotiation and dialogue

Although chaired by Chief Emeka Anyaoku, a former secretary general of the Commonwealth, the Abuja Accord was prepared mainly by Senator Obi, the president's adviser on interparty relations, who convinced the 12 other presidential candidates running against President Jonathan to sign a declaration that committed them to eschew violence during the campaign and accept the results of the vote, as declared by INEC.

Buhari, however, showed no interest in the initiative, and was convinced that it was merely a ploy to get him to concede defeat a fourth time. He explained to Annan that with his genuine popularity and the support of the APC coalition, he had no intention of letting the PDP 'steal' another victory from him. He also declared his contempt for Nigeria's electoral courts, which had compromised their independence in every past election. In a last-ditch, late-night session in his hotel suite, Annan eventually convinced Buhari to attend the event and commit to the accord regardless, explaining that it would limit the incumbent's room for manoeuvre as much as his own.

Amid concerns that he might not come after all, Buhari appeared the next day after some delay, which in turn led to the arrival of President Jonathan. They met in a private room at the conference centre with Kofi Annan and Chief Anyaoku and finally hugged and agreed not to let the election engulf the country in violence.
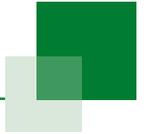
Communication

While preparation of the Abuja Accord was conducted discreetly, behind the scenes, signing the accord was a very public event, held in the presence of the parties' leaderships, the National Peace Commission and the diplomatic corps, and broadcast live on all major media. The intention of the public signing ceremony was to signal to the parties' rank and file and numerous candidates in the field, where the violence actually takes place, that the leaders of all the main parties would not condone it this time.

Implementation and monitoring

All the presidential candidates eventually signed the Abuja Accord, thereby committing to 'take proactive measures to prevent electoral violence before, during and after the elections' and to 'place national interest above personal and partisan concern'. They further reaffirmed their 'commitment to fully abide by all rules and regulations as laid down in the legal framework for elections in Nigeria'.

The candidates pledged to base their campaigns on issues rather than religious, ethnic or tribal allegiances, and to refrain from inciting violence, but instead speak out against it. They further committed to monitor adherence to the accord. They made these commitments in the presence of Kofi Annan, their development partners, including the ambassadors of the five permanent members of the UN Security Council, and traditional and religious leaders.

Output and lessons learned

In the 2015 general elections, Muhammadu Buhari became the first candidate in Nigeria to defeat a sitting president through the ballot box. His victory was also the first transition of power away from the PDP since elections were resumed in 1999. Although there were some isolated incidents of violence, these were limited and did not jeopardize the process itself—not even the Boko Haram attacks.

Five main lessons can be learned from Nigeria's experience. First, such declarations can have a major impact on an election, even in fraught circumstances. Second, it is important to get the main protagonists to sign the declaration, and not just representatives or party leaders. Elections are becoming increasingly personalized, and the candidates themselves have to be on board. Third, the international community can play a major role, provided it teams up with local leaders with uncontested legitimacy and authority. Fourth, to unite public opinion, local leaders can be marshalled into commissions or councils that, taken as a whole, can be beyond partisan,

ethnic or religious reproach. Fifth, an international public figure like Kofi Annan can confer a degree of moral authority on a process that can help overcome personal animosities.

There were also some other highly specific factors at work in this election. First, although both sides attacked INEC, its chairman and his leadership team were widely respected, which meant that its official results were, on the whole, accepted despite local cases of fraud. This is very rare indeed. Second, President Jonathan appears to have rapidly come to the conclusion that he no longer had wide support and therefore conceded defeat.

Agreement among presidential candidates on the 2015 Audit in Afghanistan

Jeff Fischer

In 2014, the Independent Election Commission (IEC) of Afghanistan conducted two rounds of presidential elections. As required under Afghan election law, a second round of balloting was conducted between the two candidates with the highest number of votes since neither received a majority. According to the National Tally Centre, Abdullah Abdullah received 2,972,141 votes and Ashraf Ghani Ahmadzai 2,084,547 votes.

Two days after the 14 June second round of voting, Abdullah sent a letter to the IEC alleging that sufficient fraud had occurred to affect the outcome. Although the IEC responded to the points raised in the letter, Adbullah withdrew from the electoral process on 18 June and accused the IEC, the Independent Electoral Complaints Commission (IECC) and President Hamid Karzai of manipulating the process. He also demanded the resignation of the chief electoral officer, who resigned on 23 June.

While the IEC continued the dialogue with the candidates as the votes were tallied, the United Nations special representative of the Secretary-General also mediated discussions between the two candidates to encourage a peaceful resolution of the crisis. On 29 June the IEC audited 930 of the 22,828 polling stations. On 7 July the IEC announced that Ghani had won with 56.44 per cent of the valid votes against Abdullah's 43.99 per cent (UNDP 2014: 9–10).

The following day Abdullah announced victory and threatened to form a parallel government. However, mediation by the US Secretary of State, John Kerry, dissipated this threat. Instead, both candidates agreed on 12 July to support a 100 per cent audit of the second-round results, conducted by the IEC and supervised by the UN. The outcome of the audit would determine the presidency and vice-presidency and both candidates agreed to
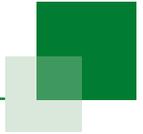
accept this outcome. During the negotiations, representatives from the UN Electoral Assistance Division met with candidate representatives in order to understand where they believed that the malpractice had occurred so that an audit methodology could be designed to address those vulnerabilities and practices.

Audit process

The audit of the second round of voting was conducted from 17 July to 5 September. The technical framework for the audit was put forward in a document agreed on by the presidential candidates on 12 July 2014, which the IEC passed into law on 17 July. The four key features of this document, which framed the parameters of the audit were: (a) 100 per cent of the ballots would be examined; (b) the audit would be centralized at the IEC compound in Kabul; (c) it would be 'internationally supervised in a manner proposed by the UN, in consultation with both candidates'; and (d) it would be observed by candidate agents.

Audit operations commenced the same day the decision was agreed. The number of audit teams grew from 30 to 150, and 23 of the auditors were women. Most of the women were in gender-segregated teams but two teams were mixed. A total of 128 UN audit advisers also took part (the maximum number permitted).

Negotiation and dialogue

The procedural framework was a source of continued debate, particularly with Abdullah's campaign. The campaign put forward five initial demands for changes to the framework. The UN's position was that only the procedural framework—not the rules of the audit—could be redefined.

Moreover, the Abdullah campaign requested measures to identify identical marks on ballots (similarly marked ballots), and to invalidate ballots that did not comply with the marking requirements. Furthermore, due to concerns that election documents used as audit evidence would be altered, the Abdullah campaign asked to see the surveillance video of the secure storage location used for these documents. Finally, although clearly outside of the procedural framework, the campaign presented 1,700 cases of polling station result forms that were allegedly 'similarly signed'. The UN and the IEC conducted a separate investigation of claims of similarly signed ballots and found that only a small number were fraudulent. The examination was done through an IEC-established Review Management Committee.

The Review Management Committee established Review Panels, to which they assigned various cases for investigation. The IEC made its final decisions based on the findings of the Review Panels, the advice of the Review Management Committee and the recommendations of UN advisers (UNDP 2014: 20).

Implementation and monitoring

In implementing the terms of the framework at the operational level, the UN developed a checklist of 16 issues to evaluate and determine whether individual ballots or the entire polling station should be validated, invalidated or subject to recount. This checklist was developed in consultation with the candidates and their representatives as well as other Afghan and international electoral stakeholders.

Each table involved in the audit was observed by candidate agents, CSOs, IECC representatives and international observers. A total of 1,165 candidate agents were registered with the IEC: 665 for Abdullah and 500 for Ghani. There were 338 national observers and 736 international observers monitoring the audit. National monitoring organizations included the Youth National and Social Organization, Election Watch Afghanistan, Afghan Civil Society Election Network, Afghan Analysts' Network and the Afghanistan National Participation Organization.[1]

A 'special scrutiny' audit was also proposed and commenced on 16 August. Each candidate was authorized to identify 3,000 polling stations where they believed fraud had occurred. For these polling stations, each ballot box was subject to a complete recount. Strategically, this procedure was intended to 'red flag' the most contentious cases. While it was originally thought that this might reduce the processing time, it had the opposite effect because of the sensitivities and contentiousness surrounding these polling stations.

Three main structural obstacles increased the length of time it took to complete audit operations. First, all the audit stakeholders had to be in place for the audit to commence—the IEC, candidates, IECC, UN and the international community. Second, the UN advisers were deployed in a ratio of one adviser to two or three audit tables. If called on to mediate at a particular table, audit operations at the other tables often halted. Third, such stoppage protocols also empowered the candidates' agents to stage walkouts or fail to show up in an effort to slow the process to achieve some short-term political objective.

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1   UNDP/ELECT II, daily reports, 20 July–4 September.

The audit experienced three types of electoral violence. First, candidate agents at the audit tables frequently engaged in heated verbal exchanges, and physical altercations such as pushing and fist fights were not uncommon. Second, on two occasions, the violence spilled on to the road in front of the audit facilities and involved dozens of individuals. The third form of violence was verbal abuse and intimidation tactics by candidates' agents against UN advisers, including racial and gender slurs. Their photographs were taken, posted on Facebook sites, and labelled with derogatory statements about their purported bias or unfairness.

However, the general security situation did not deteriorate further due to the security measures put in place. The IEC compound and the warehouses were not attacked, and were secured by national and international security forces. The international observer delegations were also accompanied by private close protection contractors. CoCs were developed to guide the participation of candidate agents, UN advisers and media representatives in the audit process.

Finally, for most of August, daily meetings were scheduled with representatives of the UN, the IEC, candidates and international observers to discuss the issues that had been exposed by the audit. These meetings allowed the the candidates' representatives to voice concerns about trends in the audit and make requests for procedural clarifications, and gave the UN an opportunity to brief the candidates' representatives about activities such as the data entry checklists and the adjudication process.

Communications

The audit was the subject of intense interest from the Afghan media, particularly the electronic media. Nearly every day, tens of journalists and camera people reported from the warehouses on the progress of the audit. It was anecdotally noted that some candidate agents appeared to create conflict when television cameras were present in order to obtain media coverage for themselves. It was also rumoured that some candidate agents were paid to act as agents provocateurs.

Conclusion

Late in the audit process, Abdullah withdrew and ordered his agents to boycott the IEC premises. Nonetheless, the audit proceeded to its conclusion. When the results were released, the audit found that a total of 7,120,585 valid ballots had been counted; Ghani received 55.27 per cent of the votes and was thus declared the winning candidate. This did not persuade Abdullah to discontinue his protest over 'industrialized' fraud in the election. As a consequence, the two candidates agreed to form a unity government.
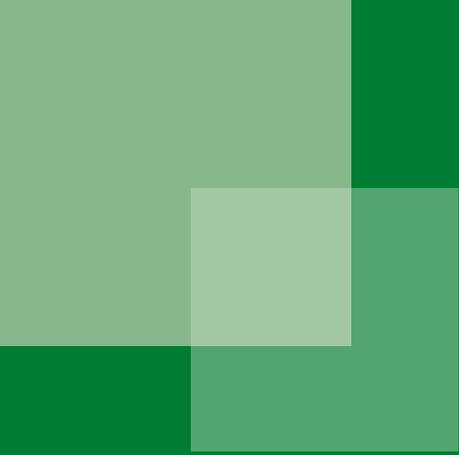
Annex C. An example of code of conduct implementation monitoring: Myanmar
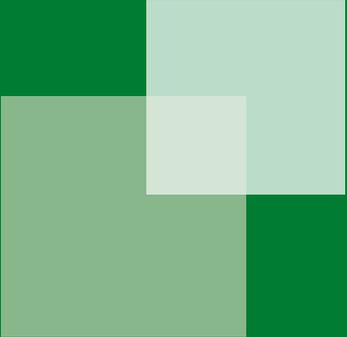
Annex C. An example of code of conduct implementation monitoring: Myanmar

Based on the methodology developed for monitoring the peace agreement, at the request of political parties, the Facilitation Team in Myanmar organized field monitoring visits to enable Monitoring Committee (MCOM) members to exchange views with local representatives and candidates. Five field trips were planned to take place during the 2015 election campaign period.

MCOM field visits: modalities and criteria

According to the CoC, the parties established an MCOM to, among other things, discuss and facilitate the implementation of the CoC and gather information and evidence on possible non-compliance with the code. Members of the MCOM relied heavily on the communications that each party received from its various committees in the constituencies, as well as briefings from the observers and CSOs involved in the electoral process. In addition, the MCOM decided to conduct a limited number of field visits in order to gather information on campaigning and the level of respect for the CoC at the local level.

Purpose of the visits

The visits were made representing the MCOM to disseminate the CoC and advocate for its respect. MCOM members met with candidates and the representatives of political parties and mobilized partner organizations. The aim was to collect information about local understanding of and respect for the CoC and report on their findings. Members of the MCOM were authorized to meet with their own party committees but not allowed to conduct any type of campaigning activity on behalf of their party, themselves or anyone else during the visits.

Criteria for selecting the location of visits

The MCOM attempted to reach remote areas of the country as well as areas where the political competition was particularly intense, there were a

particularly large number of parties contesting the election or of different ethnic or religious groups making up the electorate. Because of time constraints, the MCOM decided to visit seven of the 15 states and regions.

Partners

The MCOM worked with international NGOs and CSOs active in the areas they visited to organize consultations with at least one representative of each political party in a meeting open to all the political parties registered in the area. These support organizations publicized the purpose of the meeting and facilitated the consultation in the region. MCOM members were also given meeting notes to assist their reporting.

Members of the MCOM should ideally not be a candidate in the elections. If they were, they were not allowed to act as official visitors in the constituency where they were standing. There were three participants in every visit. The aim was for each party/coalition represented in the MCOM to take part in at least one visit.

Reporting

MCOM members reported back on: (a) the type of issues raised by political parties and candidates during the visit; (b) what the local representatives considered to be the most widespread and most significant issues of the campaign; (c) whether there were more issues raised about the local elections or the national election; and (d) whether solutions were found and the issues discussed in the Mediation Committee.

MCOM members sought information on: the overall atmosphere of the campaign in the constituency, district, state or region; whether campaigning was taking place; details of positive accounts; and whether the commitments made in Chapter 2 of the CoC on freedom of peaceful assembly and to campaign peacefully were being honoured. If not, the visit sought to find out whether any limitations were due to the behaviour of political parties. In addition, the meetings discussed how the regulations were being applied by the authorities; whether political parties were honouring their commitment in Chapter 4 of the CoC to campaign on party policies and not use religious or discriminatory messages; and whether there were any security issue or electoral violations related to Chapter 5 of the CoC. If so, were these reported to the authorities and what was the response? Any issues regarding the 'level playing field', abuse of position, disrespect of electoral finances or use of state resources could also be raised according to Chapter 6 of the CoC.

About the contributors
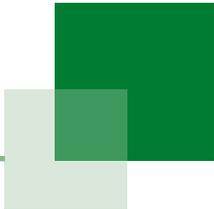
Editors

Tatiana Monney has worked as an Electoral Assistance Adviser for the Human Security Division of the Swiss Federal Department of Foreign Affairs since 2013 and has been working for 15 years in the fields of international relations, conflict prevention and elections. In this capacity and at the request of the Union Election Commission of Myanmar, she facilitated the negotiation of a CoC for the holding of competitive and non-violent elections, which was ratified by 90 political parties in Myanmar. She helped to launch a similar process in Tunisia and has managed conflict prevention activities in the run-up to elections in Burundi, Nigeria and North Africa.

During a recent leave of absence, Monney was appointed as a UN Electoral expert on the voter registration update in New Caledonia. In the run-up to the 2011 general elections in Liberia, she served as a policy adviser to the Representative of the UN Secretary-General in Liberia. From 2007 to 2009, Monney served at UN headquarters in New York in the Electoral Assistance Division of the United Nations Department of Political Affairs where she conducted needs assessment missions for the UN system and contributed to conflict prevention initiatives in the run-up to elections. Tatiana Monney is also an election observer in the Swiss Expert Pool for the Organization for Security and Co-operation in Europe and European Union observer missions. Previously, she has worked in various programmes to promote citizenship, democracy and human rights, and led sessions of several courses on conflict prevention and mediation. She studied International Law and holds an MA in political science and history.

Jorge Valladares Molleda was International IDEA's Head of Mission to Myanmar until 2016. He implemented STEP Democracy, an EU-funded initiative to empower Myanmar's electoral management, voter education and observer groups, and political parties before and after the November 2015 general elections, which led to the first democratically elected government in over 50 years.

Valladares's work in democracy support started in Peru when he joined Transparencia at the time of its foundation in 1994. Five years later he coordinated its election monitoring programme, which earned international praise for its documentation of the unfair 2000 general elections. He served at the Secretariat of Peru's landmark Acuerdo Nacional in 2002. He coordinated the drafting by consensus of the first Political Parties Law in the country's history. Since then, he has given advice on democratic reform in Latin America (Bolivia, Ecuador, Dominican Republic and Venezuela), Africa (Mozambique, Malawi, Lesotho) and Asia (the Philippines, Indonesia, Myanmar). He has authored, co-authored and edited works on corruption, elections, legislative politics, democratic accountability and party competition.

Contributors

Frank Kayitare is a Programme Officer in the Political Participation and Representation Programme at International IDEA. His main responsibilities are developing comparative knowledge resources and practical tools for policymakers and practitioners in the areas of political party dialogue, political party policy development and strategic planning.

His work also involves providing policy advice to national and regional policy reform processes and actors in the above-mentioned thematic areas. Before joining International IDEA, Kayitare worked for European Parliamentarians with Africa, where he focused on parliamentary strengthening on a range of issues such as oversight, strengthening parliament-citizen engagement, law-making and facilitating cross-party dialogues on key legal/policy reforms in parliaments. He also provided research and advice to national and regional parliaments on issues related to children's rights (in particular orphans and vulnerable children), and gender and women's rights. In his 13-year career in the international development and democracy support field, Frank has contributed to policy dialogues/reform processes and democracy support programmes in South Africa, Tanzania, Kenya, Ghana, Haiti, Nepal, Sweden and the Netherlands.

Percy Medina Masías is the Head of Mission for International IDEA in Peru. Medina is in constant contact with political leaders and other policy actors in the country. His opinion on public affairs is regularly sought by the media. Medina is an expert on political parties and electoral processes. He has broad experience of undertaking international missions as an observer and as an adviser to electoral management bodies and civic and local electoral observation groups. He has served two terms as the Executive Secretary of the Lima Agreement for the Latin American Network of Electoral Observation Organizations. Before joining International IDEA, Medina was the Secretary
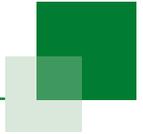
General of Transparency for Peru. In this role he led democratic training and education processes, as well as political party assistance and national electoral observation programmes, and supported dialogue processes to secure political consensus on key national issues. He has also worked as a consultant on topics related to democracy and elections for the Organization of American States, the Inter-American Development Bank, the World Bank, the National Democratic Institute and the International Republican Institute.

Salome Mukhuradze works as a Political Party Assistance Programme Officer at the NIMD Eastern European Neighbourhood Office. Throughout her professional career, Salome has been actively engaged with international organizations, local NGOs and state institutions. She has also worked as an invited lecturer on Public International Law and the Law of International Organizations. Salome received a BA and MA in Public International Law from Tbilisi State University. She also holds an MA in Intercultural Conflict Management from the Alice Salomon University of Applied Sciences, Berlin.

Christopher Thornton works for the Centre for Humanitarian Dialogue (HD), a Geneva-based conflict resolution organization. Chris has covered Libya for HD since 2011, and has written about the conflict and travelled extensively throughout the country. He was based in Tunisia in 2013–14, working on interparty dialogue on Tunisia's electoral process. He has also researched or been directly involved in mediation and dialogue processes in Zimbabwe, Colombia, Sri Lanka and Thailand.

Thornton holds a Master's degree from the Graduate Institute of International and Development Studies in Geneva, where he was the recipient of the Mariano Garcia Rubio Prize for International Law. He also holds a Master's degree in History from the University of Edinburgh. Prior to joining HD in 2011, Chris worked for the Geneva Centre for the Democratic Control of Armed Forces.
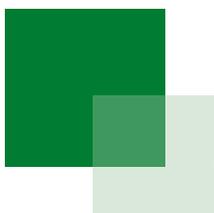
About the organizations

Human Security Division

What is the Human Security Division?

The Human Security Division (HSD) in Switzerland's Federal Department of Foreign Affairs (FDFA) is responsible for promoting peace and human rights as set out in the Federal Council's foreign policy strategy. This focuses on the security of individuals and protecting people from violence, war and despotism.

In order to perform its tasks in the fields of peacebuilding and human rights, the HSD has seven sections that focus on the prevention and resolution of violent conflict as well as ensuring lasting peace. Their core competencies include mediation and electoral support, and the main spheres of activity are conflict prevention and peacebuilding, in particular as part of international organizations (such as the UN) and support for corresponding initiatives.

What does the Human Security Division do?

Switzerland assists states in their reform efforts after a dictatorship or an armed conflict by supporting the different stakeholders in the transition on the path to democratization and the separation of powers. Thanks to its long-standing experience in democracy and providing good offices, Switzerland is viewed worldwide as a credible and impartial partner.

The HSD combines technical assistance with dialogue facilitation to support national stakeholders in holding elections and carrying out the necessary reforms to prevent the outbreak of new conflicts. Through the provision of advice and expertise, the HSD aims to foster consensus among decision-makers, lawmakers and other key stakeholders in electoral, constitutional and parliamentary processes.
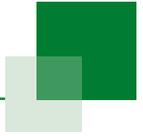
The HSD supports the peaceful resolution of conflict throughout the electoral process. Its activities include dialogue facilitation between competitors and electoral authorities to help them reach an agreement on the modalities of elections. In addition, the HSD provides technical support to strengthen the capacities of the various national stakeholders so they can play a constructive role and prevent violent reactions to the outcome of elections.

The HSD also supports constitutional and parliamentary processes. The objectives are to help authorities foster a national consensus on core democratic values and reforms. The aim is also to strengthen the separation of powers to prevent the return to an autocratic regime or violent conflict.

International IDEA

What is International IDEA?

The International Institute for Democracy and Electoral Assistance (International IDEA) is an intergovernmental organization that supports sustainable democracy institutions and processes worldwide. International IDEA acts as a catalyst for democracy-building by providing knowledge resources and policy proposals, and supporting democratic reforms in response to specific national requests. It works with policymakers, governments, international organizations and agencies, as well as regional organizations engaged in the field of democracy-building.

What does International IDEA do?

The institute's work is organized at the global, regional and country levels, focusing on the citizen as the driver of change. International IDEA produces comparative knowledge in its key areas of expertise: electoral processes, constitution-building, political participation and representation, and democracy and development, as well as about democracy as it relates to gender, diversity, and conflict and security.

International IDEA brings this knowledge to national and local representatives who are working for democratic reform, and facilitates dialogue in support of democratic change.

In its work, International IDEA aims for:

- increased capacity, legitimacy and credibility of democracy;
- more inclusive participation and accountable representation; and
- more effective and legitimate democracy cooperation.

Where does International IDEA work?

International IDEA works worldwide. Based in Stockholm, Sweden, the institute has offices in Africa, the Asia-Pacific, Europe and Latin America and the Caribbean.

International IDEA is a permanent observer to the United Nations.
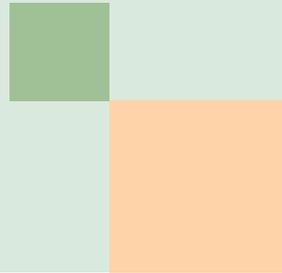
Elections, if they are inclusive and fair, can have a stabilizing effect on post-conflict and transitioning democracies. The competitive nature of elections can however provide entry points for violence and conflict, which can derail peace and the first steps in a transition. The conduct of political parties is central to the protection of peacebuilding and democratic efforts. Political parties can either fuel electoral violence, or, help to deter or resolve violent situations.

Codes of conduct have proved particularly useful in enabling political parties to reaffirm their commitments to fair play in elections. This guide captures lessons learned from all continents for facilitators of voluntary codes of conduct. It offers a menu of options and case studies from across the globe, with a focus on the importance of process and facilitation as much as the content of the agreements. The authors of this guide suggest that a code of conduct for political parties—particularly a voluntary code which by its nature is not legally binding—is more likely to achieve its goals when produced as part of a consultative dialogue with the parties.

The guide is the result of a collaboration between the Human Security Division of the Swiss Federal Department of Foreign Affairs (FDFA) and the International Institute for Democracy and Electoral Assistance (International IDEA). Both institutions hope to contribute to the efforts of those working as honest brokers of dialogues on democratic reform and peacebuilding, as well as the development of codes of conduct for political parties in elections around the world.