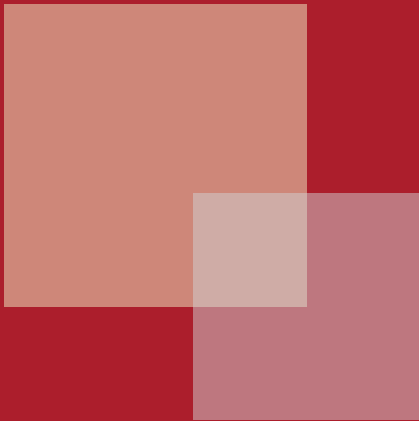# Electoral Crisis Mediation

Responding to a rare but recurring challenge

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Electoral Crisis Mediation

Responding to a rare but recurring challenge

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International IDEA resources on electoral processes

Contents

Acknowledgements

1. Introduction

Over the past 30 years an increasing number of countries have employed elections to determine the will of their people and form representative governments. International actors, including the United Nations General Assembly (2009), have generally welcomed this as contributing to national and thereby international peace and stability. At the same time, this positive trend brings certain challenges. These include scenarios where a major political constituency does not accept the result of the electoral process. Therefore, while noting that elections are technical processes, the UN and other electoral-assistance providers stress that they are intertwined with the political context in which they are held. Their true measure of success is whether they engender public confidence in the electoral process and broad acceptance of the outcome (see UN Secretary-General 2009, 2015).

Related to this, a robust body of best practice has been developed which is focused on achieving credible electoral outcomes and peaceful transfers of power. This technical practice focuses upon promoting the professional, impartial and transparent organization of elections, effective and neutral support by governments and electoral management bodies (EMBs) for the electoral process, and the responsible conduct of participants including political leaders, parties, candidates and voters (UN Secretary-General 2009, 2015). It aims to promote accepted and generally peaceful votes and integrates approaches, practices and mechanisms for resolving conflict between candidates and parties into the elections machinery itself.

Less well developed are responses for dealing with the rare but recurring situations when the electoral process collapses, resulting in the need for some form of political intervention to arrest a spiralling crisis or potential civil war. Typically, this involves a scenario where a major political constituency has formally rejected the electoral process; widespread protests, strikes or violence in response to the results announcement; threats of extra-constitutional steps to seize power or the actual formation of parallel governments; or some combination of all of the above.

While still relatively uncommon, these events often have significant consequences.[1] Electoral crises have the potential to cause significant damage to the national economy and individual livelihoods; result in significant violence, displacement and loss of property; and in the worst case lead to civil war or the fragmentation of the state along ethnic or political lines. Electoral crises may be more likely in transitional settings and in countries with deep identity based fault lines or a history marked by unrest and conflict. In these situations the mediator may be called upon not just to facilitate talks

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[1] Between 2000 and 2012 some 460 elections were held worldwide in which an opposition candidate was allowed to run for head of state. Of these, only a handful devolved into full-fledged crises. Authors' calculations based on the National Elections Across Democracy and Autocracy (NELDA) dataset, <http://hyde.research.yale.edu/nelda/#contact>.

on how to remedy technical flaws and legal shortcomings in the electoral process, but also potentially to review in tandem the national political framework for sharing power and resources.

Moreover, the damage that a serious electoral crisis does to the trust and confidence in the electoral machinery is difficult to repair. It frequently carries over to future votes, raising the prospect of episodic political crises every electoral cycle. This may, in turn, contribute to fatigue among the public, leaders and foreign donors for elections and the act of voting, and sharply reduce confidence in democracy. For example, following its protracted electoral stalemate in 2014, satisfaction with the democratic process in Afghanistan dropped from 73 per cent to 57 per cent, marking the lowest level of support in a decade (Asia Society 2015). Likewise, following two decades of recurring problematic elections, turnout in Haiti's 2015 presidential polls sank to 26 per cent.

A few examples illustrate the damage that electoral crises can cause. The electoral violence in Kenya in 2007–08 saw approximately 1,500 people killed and 600,000 displaced, cost the economy USD 1.5 billion and resulted in the indictment of national leaders by the International Criminal Court (ICC) for the organization of ethnic violence. In 2009–10 the electoral dispute in Côte d'Ivoire resulted in at least 3,000 deaths, one million displaced people, military intervention by UN and French troops, and the arrest and trial of the outgoing president for crimes against humanity. About a decade earlier, Madagascar's 2001 elections reversed a decade of economic development and for a brief period saw the emergence of two rival governments, parliaments, central banks and capital cities in this island nation (*The Economist* 2002).

This paper focuses on elections for a national head of state, whose high stakes are more likely to produce a political or security crisis. It also confines itself to a set of cases where there has been broad participation in the vote by the major political constituencies and a post-election crisis has been sparked by a dispute between leading candidates over acceptance the results.[2] The past 15 years have in fact seen electoral disputes of this type spark political and security crises in a number of countries around the world, including Madagascar (2001), Ukraine (2004), Kenya (2007), Zimbabwe (2008), Côte d'Ivoire (2010), Haiti (2010 and 2015), Cambodia (2013) and Afghanistan (2009 and 2014).

These cases not only suggest that this is a recurring phenomenon but also provide a rich set of experiences that can be used to begin to draw comparative lessons. This paper will attempt to do so with the aim of developing a typology for analysing, responding to and hopefully helping to resolve electoral crises peacefully and democratically.

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2   This is as opposed to cases where crises have been provoked by elections not being held as scheduled or the vote occurring despite a boycott by a major political constituency. These are also important phenomena, but qualitatively different situations requiring potentially distinct remedies.

2. Balancing democracy and stability

The tasks faced by mediators during complex and high stakes electoral crises vary substantially but often relate to a core dilemma: how to balance the will of the people, as expressed through their vote, against an imperative to preserve stability by accommodating the interests of major political constituencies. Any mediation of an electoral crisis must therefore start with two key assessments. This first entails a judgement on the conduct of the election and credibility of its result. The second is an evaluation of the real threat that the electoral dispute poses to national peace and stability. These judgements have potentially far reaching consequences. It is also frequently the case that they need to be made very quickly and under conditions of incomplete information.

Conduct of the elections

The spark for an electoral crisis is typically an alleged defect in the electoral process, usually related to claims of systematic manipulation of electoral preparations, widespread fraud on the day of election, or serious irregularities in the tallying of results. It can be compounded by a professed lack of confidence in the impartiality of the electoral commission and likelihood of there being a transparent and independent handling of complaints of fraud and other malfeasance.

The challenge that the mediator faces when confronted with such crises is more nuanced than simply determining whether fraud was in fact committed. Rather it is to try to distinguish between elections that had fraud or other malfeasance (not uncommon in countries with weak institutions or in post-conflict environments) and a fraudulent election with limited or no credibility.[3] The first admits the possibility of addressing electoral irregularities through technical remedies while the second does not. Moreover, as the UN Secretary-General recently noted, the relationship between the technical quality of an election and legitimacy of its outcome is complex. Most elections produce outcomes that are accepted even in the face of imperfections, while in other cases losing candidates or other stakeholders challenge or refuse to accept the outcome of procedurally well-conducted votes (UN Secretary-General 2015).

The crisis may also be more complicated than simply being about who won the vote. Many countries employ a two-round system to elect their president. This is an electoral system in which a second run-off election is held between the top two candidates if no candidate achieves an absolute majority (50 per cent plus one) in the first election round. This means the electoral crisis could be over whether one of the candidates

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3   Of the 287 competitive elections for a head of state held between 2000 and 2012 that had 'Western observers', observer reports mentioned vote fraud in 48 cases. Authors' calculations based on the NELDA dataset.

won outright in the first round by achieving 50 per cent (Madagascar, Zimbabwe and Afghanistan's 2009 presidential vote) or over who finished in second place in the first round and is therefore entitled to a place in the run-off (Haiti in 2010).

With this context in mind, a number of factors often help to shape the perception of national and international actors on the conduct of elections.

Credibility of electoral institutions

Confidence in EMBs and the judicial system is likely to have a significant impact on responses to losing candidates' allegations of fraud.

In both Haiti and Afghanistan, the independence of the electoral commissions from the executive branch was questioned and in the latter case a senior elections official was actually implicated in commissioning fraud in the 2014 presidential elections. This lack of confidence helped lead to internationally supervised audits of contested results. Similarly, in Madagascar, the incumbent president replaced six of the nine judges on the High Constitutional Court on the eve of the 2001 elections, contributing to the opposition's unwillingness to accept this body's certification of the result. In Zimbabwe and Kenya, unexplained delays in the release of electoral results (for a full five weeks in the case of the former) raised suspicions that the vote count was being manipulated.

Reports of election monitors

Reports of domestic and international observers regarding potential systematic problems with the vote are often critical in determining acceptability of the results, as was the case in Ukraine (2004), Kenya (2007) and Haiti (2010 and 2015). However, as has been the case in Afghanistan, insecurity or inaccessible geography can limit the presence of observers and agents and the comprehensiveness of their reports.

Closeness of the result

The margin of the result can help to determine whether it is feasible for alleged fraud or other malfeasance to have swung the result. This margin can relate to who won the vote, as was seen in Kenya's 2007 election, where official results had incumbent President Mwai Kibaki winning 46 per cent of the vote compared to 44 per cent for challenger Raila Odinga, as well as over who finished second in a two round system. This was the case in Haiti's 2010 vote, where initial results had Jude Célestin in second with 22.4 per cent of the vote and Michel Martelly in third place with 21.8 per cent.[4]

When combined with a perceived lack of transparency or confidence in the fairness of the process, a close outcome can place great stress on the system.

The role of incumbency

Allegations of fraud may be taken more seriously when directed against an incumbent or a ruling party in a position to have influenced the electoral machinery. By way of contrast, incumbent President Gbagbo's allegations of fraud after the Ivorian Election

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4   Martelly was ultimately elevated to second place after a partial audit of the results and went on to win the presidency in the run-off.

Commission declared his rival Alassane Ouatarra the victor in the 2010 presidential elections and the effort of Malawi's incumbent President Joyce Banda to annul Malawi's May 2014 elections (in which she was the runner-up) due to 'rampant irregularities' were viewed more skeptically.

Notwithstanding this, opposition candidates may also be in the position to wield considerable influence over the local branches of electoral institutions within their own regional or communal strongholds.

Unusual or unexplained results

In conjunction with other factors, unusual or unexplained results may impact perceptions of the process. Such trends can take the form of deviations from pre-election or exit polls (which became a major part of the narrative over the disputed 2004 Ukrainian elections), unusual or unexplained high turnout in certain locations or parts of the country (as became an issue in Haiti's 2010 and Afghanistan's 2014 presidential elections), or major deviations between simultaneously held presidential and parliamentary votes.[5] For example, in both Kenya and Zimbabwe, suspicions were raised when incumbent presidents won the presidential vote even though their political parties had suffered reversals to the opposition in simultaneously held parliamentary votes.[6]

The above factors can be helpful in assessing the conduct of a vote but should not be relied upon as definitive. Elections are highly complex logistical, technical and political events. Especially in some developing or post-conflict countries, they can be beset by challenges related to poor infrastructure, low levels of capacity, weak or compromised institutions, inaccessible geography and pervasive insecurity. These challenges make accurately ascertaining what happened on election day or during contested vote-counting processes close to impossible.

Finally, strategic behaviour by elites must also be factored in when assessing the technical conduct of the vote. In some environments, national elites may view elections primarily as a means for measuring political or communal strength for the purpose of gaining access to power and resources. In such contexts, committing fraud to inflate one's own vote total, accusing others of fraud to delegitimize their votes, or questioning the integrity of EMBs may represent viable political strategies. A recent report by the UN Secretary-General highlights this theme, referring to fraud as a political strategy that represents a 'perversion of democracy', but also to how even unfounded allegations of fraud can undermine confidence in electoral processes and the broader political system in a fundamental way (UN Secretary-General 2015).

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5   In the 2004 Ukraine elections, exit polls suggested a 9 to 10% margin of victory for opposition candidate Viktor Yushchenko. Government candidate Viktor Yanukovich was declared the official winner by a margin of 49.5% to 46.6%. Following political negotiations, Yushchenko subsequently won a re-run of the contest, 52% to 44% (Paniotto 2004).

6   In Kenya's 2007 elections, Mwai Kibaki won the presidential vote despite his Party of National Unity (PNU) only winning 43 seats in Parliament. This is as compared to the Orange Democratic Movement Party (ODM) of presidential runner-up Raila Odinga, which won 99 parliamentary seats. From a total vote standpoint, ODM parliamentary candidates reportedly captured a total of 2.95 million votes as compared to the PNU's 2.01 million. In Zimbabwe, the opposition won a majority in Parliament for the first time since independence, but official results had opposition candidate Morgan Tsvangirai failing to secure 50% of the presidential vote.

In the 2010 Côte d'Ivoire elections for example, President Laurent Gbagbo campaigned on the slogan 'we win, or we win' and the theme of fraud by the opposition and electoral commission was a 'constant feature' from the start of his campaign (International Crisis Group 2011). Meanwhile, prior to Afghanistan's 2014 elections, opposition candidate Abdullah Abdullah stated that his 'only opponent' was fraud (Pajhwok Reporter 2014). Haiti's 2010 and 2015 presidential elections reveal what can occur when such political positioning is taken to its logical conclusion. During the 2010 vote, 12 of the 18 presidential candidates called for the election to be voided prior to the closure of polls on election day and each of the top three finishers claimed to have been victims of systematic fraud.[7] In 2015, a coalition of opposition candidates rejected the results of the first round of voting which, so far, has resulted in the second-round run-off being postponed twice and the installation of an interim government. These three countries all have a history of prior problematic elections suggesting that electoral crises build upon themselves, creating increasingly perverse political incentives.

Nature of the threat to national stability

The flipside of a judgement on the conduct of elections itself is a reading of the real threat that the electoral crisis poses to national stability. This also requires a complex and nuanced analysis. Rejection of the results, mass protests and strikes may represent an attempt to secure via the street what could not be won at the ballot box. Indeed one reading of the 2010 Ivorian electoral crisis is that incumbent President Gbagbo miscalculated that playing on the international community's fear of civil war would force a power-sharing compromise despite his having lost the election (Cooke 2010).

This raises the issue of moral hazard—that is, inadvertently encouraging brinkmanship by being seen to respond to pressure tactics such as electoral boycotts and threats of street action or coups. The initial reaction by EMBs and the international community to challenges to a result is therefore typically to encourage losing candidates to pursue complaints with the electoral process via the legal mechanisms and procedures that they agreed to when registering to run. However, this will necessarily be attenuated by the perceived credibility of the overall electoral process and whether existing legal mechanisms for pursuing electoral complaints can realistically be seen to offer the possibility of fair and independent rulings.

The electoral crisis may also have expanded beyond the scope of the electoral process, necessitating a more politically oriented intervention. Such circumstances could include a number of characteristics.

National paralysis

Mass protests or strikes sparked by electoral disputes may have reached a level where they have paralyzed daily life, service delivery and the economy. This was the case with Madagascar in 2001 and Ukraine in 2004, and helped to create a sense that a political solution was required to restore normalcy.

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7   Initial results had Mirlande Manigat winning 31.4% of the vote, Jude Célestin 22.5% and Michel Martelly 21.8%. Manigat's campaign manager said that his candidate received more votes than announced, Célestin stated that he believed he had actually received the most votes in the first round, and Martelly alleged that fraud for Célestin had prevented him from finishing second and securing a spot in the run-off.

Inability of a single actor to govern alone

There may be growing consensus among stakeholders that no one group is able to successfully govern the country alone or that the situation is too fragile to leave potential spoilers outside of the tent. This could be due to the underlying nature of politics in a divided society or a new development that has emerged from the polarization created by the electoral dispute. Such realizations were implicit rationales for the governments of national unity that were pursued to end electoral crises in Kenya, Zimbabwe and Afghanistan.

Fears of violence

Protests or dissatisfaction with electoral results may have already devolved into widespread post-electoral violence. In these cases, the need to contain serious ethnic violence (as occurred in Kenya in 2007) or to not allow initial protests to lead to a repeat of past strife (in Haiti in 2010, given that political disputes in the country had historically led to armed rebellion) may lead the parties to accept outside mediation or technical interventions.

Threats of extremism

Electoral crises may offer political space for insurgent or extremist groups to exploit. In Afghanistan, the three-month standoff over the 2014 presidential run-off vote was seen to give the Taliban's insurgency campaign renewed political and military momentum. In Libya, conflict between armed factions loyal to two rival parliaments—one elected in July 2014 and a second reliant on a Supreme Court ruling deeming the original parliamentary vote illegitimate—provided space for extremist groups such as Ansar al-Sharia and the Islamic State in Iraq and Syria (ISIS) to expand in the country.

Danger of state fragmentation

In a nightmare scenario, electoral crises can threaten national unity and territorial integrity. After the 2014 Afghan run-off election, supporters of the runner-up, Abdullah Abdullah, called on him to declare a parallel government and perhaps took steps towards a possible coup (Rosenburg and Gall 2014). Twelve years earlier, Madagascar saw the formation of parallel governments and the very real spectre of civil war. This worst case was realized in Côte d'Ivoire, where Ouattara and Gbagbo each declared themselves president and a civil conflict between rival security forces was only brought to an end by external military intervention. To avoid such circumstances, a political solution to the electoral dispute may be prioritized.

As the foregoing suggests, these are high-stakes situations that require complex and consequential political judgement calls. Mediators therefore need not only to form their own assessment of these issues but to attempt to build a national, regional and international consensus on how to proceed.

3. Technical and political responses to electoral crises

During the past 15 years, electoral mediators have employed a range of technical and political measures to promote acceptance of contested electoral processes and the subsequent formation of new governments broadly viewed as legitimate. Technical options relate to the electoral process itself and how to increase confidence in acceptance of the results. They can entail immediate measures to investigate and remedy complaints regarding the current vote as well as potentially proposals for longer-term electoral reform. Political measures go beyond the electoral system to consider options for power-sharing, constitutional change and dealing with the consequences of electoral violence.

The potential need for something more than technical fixes can be seen in how many of the electoral crises examined in this study relate to a larger underlying political fault line. The Kenyan and Afghan elections raised questions of power-sharing among tribal and ethnic communities, respectively, and whether these should be renegotiated to allow for greater sharing of power in the executive branch and the administrative decentralization of government. The Zimbabwean and Cambodian elections concerned possible gradual openings of authoritarian political systems. The Ivorian electoral crisis related to disputed narratives over national identity and what it means to be Ivorian in a country where over one-third of the inhabitants are immigrants or their descendants. In the 2004 Ukraine electoral crisis, the underlying issue was how the country should balance its relations between the West and Russia.

The central task of the electoral-crisis mediator is therefore to assist the parties in developing a structured process to consider the options available to them for peacefully resolving not just the electoral dispute at hand but possibly also their underlying political differences. The latter could include not just the electoral rules and procedures but also the terms of the electoral victor's prize—in other words, the way in which political and other powers are exercised and shared.

Technical options for restoring credibility to the electoral process

The impetus for an electoral crisis is likely to have been an alleged defect in the electoral process, most likely related to claims of widespread fraud committed on election day; systematic manipulation of preparatory steps such as development of the voter registry and appointments to EMBs; or serious irregularities in the subsequent counting of votes, tallying of results, and/or relaying of results to national counting centres. Technical measures that attempt to restore confidence in the accuracy and credibility of the results therefore form a central element of most agreements to end electoral crises. A number of such mechanisms have been proposed, considered or employed in recent electoral crises.

Re-running the election

Candidates who are either trailing in the process or contesting its results frequently take the position that the best remedy is an entirely new vote. This was the case in Ukraine, Côte d'Ivoire, Kenya, Haiti and Cambodia. This option is however often not followed either because problems with the poll are not seen as rising to the level of requiring an entirely new election (such as Haiti in 2010) or because a re-vote is seen as too impractical, insecure, costly or time-consuming.[8] A re-run may also not be seen as likely to change the underlying technical defects or political fissures which generated the original result.

Notwithstanding this, in December 2004 a re-run of the Ukrainian presidential elections was held as part of the larger political deal to end the electoral crisis.[9] This option was feasible in Ukraine in part because a re-run could be organized in just three weeks, thereby avoiding a period of extended uncertainty. A re-run was also explicitly considered in Kenya but was not undertaken because it was not agreed to by both sides.

Audits, recounts or re-tallies of the vote

More frequently employed alternatives to addressing alleged defects in the electoral process include audits, recounts or re-tallies of the disputed result.

An audit is a process undertaken to investigate alleged fraud or malpractice while a recount involves recounting the individual ballots cast in an election in order to confirm the accuracy of the initial count. Audits usually involve recounts, but can also include other actions to determine if the result has been manipulated, such as examining the integrity of the voter list; physical examination of ballot boxes and other election materials for signs of tampering, fraud and other malfeasance; or investigating if there have been extensive mistakes in electoral administration (Democracy International and International Foundation for Electoral Systems 2015). A re-tally, as was contemplated in Kenya, involves scrutinizing whether the results sheets from individual polling stations were accurately compiled into a national result.

Audits and recounts may be partial or complete. For example, partial audits were used in the 2009 Afghan and 2010 Haitian election crises, while an unprecedented 100 per cent nationwide audit was included in the agreement reached to resolve the dispute over the contested second round of the 2014 Afghan presidential election. In the Haiti example, a statistical analysis of a random sample of eight per cent of the vote and recommendations for exclusion of suspicious votes by the Organization of American States (OAS) mission helped to defuse the electoral crisis and pave the way for a successful second-round vote. In Afghanistan, in contrast, the three-month, UN-led nationwide audit of the 2014 presidential run-off did not succeed in resolving disputes over the extent of fraud committed or the final result. This was despite both candidates having previously agreed to accept the audit's result.[10]

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8 In this case, an Organization of American States technical expert verification mission did not see evidence that the irregularities they found 'warranted' a re-run.

9 The re-run reversed the contested result of the 21 November 2004 vote that had seen the government backed candidate, Viktor Yanukovich, defeat opposition candidate Viktor Yushchenko.

10 See the text of the 12 July 2014 Agreement between Abdullah Abdullah and Ashraf Ghani (UNAMA 2014).

Audits, recounts and re-tallies are therefore not necessarily sufficient in and of themselves to resolve disputes over the election and may need to be considered in tandem with other technical and political measures. They also need to be carefully designed, weighing timeliness against thoroughness, and maintain national ownership of the electoral process while injecting confidence through enhanced observer and international participation. Furthermore, they should be carried out according to clear and accepted criteria and procedures. Achieving these fine balances is particularly challenging in the context of the temporal and political pressures of an electoral crisis.

Parallel certification

Although rare, an international actor may be provided with a mandate to undertake a separate tally of the vote and provide a parallel certification of the result released by the electoral commission.

In Côte d'Ivoire, the Special Representative of the UN Secretary-General, Choi Young-jin, was given this authority in advance of the 2010 presidential elections so as to promote acceptance of the result. Choi's certification of Ouattara's victory did not lead to acceptance of the result and was in fact vehemently challenged by incumbent President Gbagbo, although it was likely decisive in mobilizing international and regional consensus to uphold the result.

Immediate technical improvements

In cases where a re-run has been agreed or the electoral crisis emerged after the first round of a two-round presidential system, negotiations may also focus on how to ensure participation by the candidates in the upcoming re-run or run-off, holding it more transparently and independently, and ultimately having its result accepted.

In Ukraine, Zimbabwe, Madagascar and Haiti, the parties considered and in some cases implemented steps such as auditing or recounting the first-round results, making new appointments to electoral bodies and the courts, replacing electoral workers implicated in irregularities, amending the electoral law and related procedures, increasing access to the process by domestic and international observers, and bolstering international technical support and participation in electoral complaints bodies. In Madagascar, the unusual step of labelling the second round a popular referendum between the two leading candidates was taken given that opposition candidate Marc Ravalomanana claimed outright victory in the first round and rejected the need for a run-off.[11]

Such steps may be set as pre-conditions by opposition or trailing candidates to participate in second-round votes, and failure to secure these changes may be cited by candidates as reasons for dropping out. This was the case with opposition candidates Morgan Tsvangirai in Zimbabwe, Abdullah Abdullah in Afghanistan, and Jude Célestin in Haiti, who all chose not contest the second round of their country's disputed presidential contests in 2008, 2009 and 2015 respectively.[12] In contrast, international observers

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11 The second round was never actually held after a recount of the first-round result showed Ravalomanana to have won outright with 51% of the vote.

12 The second-round vote for Haiti's 2015 presidential elections was twice delayed in part because Célestin said he would not participate in it. As of writing it is scheduled to be held on 24 April 2016.

reported 'quite an improvement in many ways' in the conduct of the second round of Haiti's 2010 elections following improvements made after the disputed first round, and the second-round result was broadly accepted (Taft-Morales 2011: 10).

Long-term electoral reform

The parties may also agree on the need to undertake longer-term electoral reform so as to avoid a repeat of the current crisis in future votes. These issues could entail the restructuring of EMBs, new procedures for appointing electoral commissions, the reform of voter registries and electoral constituency boundaries, and changes to the electoral system and law. These changes can also be motivated by electoral systems being seen as at the core of the problem in ensuring inclusive and equitable electoral outcomes, making reform a potentially major part of the remedy to the electoral crises.

Electoral reform commissions were therefore central features of the political agreements to end the 2007 Kenyan, 2013 Cambodian and 2014 Afghan electoral crises. The jury remains out on the Cambodian and Afghan bodies, since new elections have yet to be held in either country. However, the conduct of Kenya's 2013 elections were generally welcomed as noticeably improved over the 2007 polls and their result accepted despite Uhuru Kenyatta only narrowly passing the 50 per cent threshold necessary to win outright and avoid a second-round run-off.[13]

International advice or oversight

Appeals to the international community to intervene in the election process, including via enhanced international participation in any or all of the above-listed mechanisms, is often advocated for by the losing or opposition candidate to rectify an alleged lack of independence of the national electoral and legal machinery.

International participation in or supervision of audits and recounts as well as the temporary international participation in electoral management or complaints bodies were prominent features of agreements to end electoral disputes in Afghanistan and Haiti. In Kenya, international experts contributed to an after-the-fact review of the vote and helped to provide technical advice on options available for electoral reform. Meanwhile, increased international electoral observation for a re-run or second-round vote was important in Ukraine and provisionally agreed to in Madagascar. Alternatively, there may be no international technical role in resolving an electoral crisis at all, such as in the agreement reached in Cambodia solely through negotiations between the government and opposition.

These calls for international technical intervention are often resisted by front-runner candidates or the government as an infringement on national sovereignty, a cover for powerful states to pursue their own interests, and even politically framed as 'neo-colonialist'. Incumbent leaders in Kenya and Cambodia, outgoing presidents in Haiti and Ukraine, and supporters of front-runner candidate Ashraf Ghani in Afghanistan all expressed varying levels of opposition towards an increased international technical role in their countries' electoral crises. Kenyan President Mwai Kibaki for example was

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13 Kenyatta won 50.51% of the vote. Raila Odinga challenged this result in the Supreme Court of Kenya but his petition was dismissed by the body, which declared the elections to be free, fair and credible (Kimenyi 2013).

only willing to enter a process with the title of a 'National Dialogue' rather than the 'international mediation' that opposition candidate Raila Odinga pushed for.

This political dynamic can be somewhat ameliorated by having regional or subregional organizations involved in or play the lead role in the mediation, as the African Union (AU) did in Kenya. However, the strength of regional organizations can be offset by the possibility that they may be more open to pressure by member states with stakes in the crisis, and vulnerable to differences between them (e.g. the AU in Madagascar and Côte d'Ivoire). Ideally, whatever role is foreseen for the international community should be consistent with national laws and the constitution; focused on how to inject international best practice and promote transparency rather than be responsible for decision-making; and have clear timelines for international exit from the process and full restoration of national control over the electoral process.

If agreed to by both parties and successfully implemented, a combination of the above mechanisms may be sufficient to restore confidence in the credibility of the electoral process and promote acceptance of its result. In fact, it is difficult to conceive of a negotiated solution to an electoral crisis that does not involve some technical measures. However, merely addressing the technicalities of the electoral dispute may not be sufficient in and of itself to overcome the wider political crises and possible stacking of the system to ensure dominance by a particular community or political constituency.

Possible political features of agreements to end electoral crises

An electoral crisis is unlikely to occur in a vacuum; instead, it will often be a symptom of deeper political, economic or social tensions and inequities. The mediator will need to understand and work with the parties to determine the extent to which these underlying issues should be included on the negotiating agenda. This also is not a straightforward decision.

At the most basic level, the absence of a correct and fair distribution of power can be a major driver of instability in a country. In many developing or post-conflict countries, including some examined in this study, the control of political power simultaneously constitutes control over economic resources, employment opportunities and the allocation of wealth. In this context, the combination of a centralized state power, a winner-takes-all electoral system, and voter mobilization largely on the basis of identity or community will virtually prescribe polarizing elections with inequitable or exclusionary outcomes. Resolving electoral crises that result from group based monopolization of state power can therefore require the negotiation of interim governance or power-sharing arrangements and constitutional and electoral reforms that promote greater inclusion and a fairer distribution of the political and economic rewards of participation in the political process.

However, the depths of an electoral crisis may not be the ideal moment to consider such issues. Including broader political issues on the negotiating agenda can be decisive in addressing a spiralling electoral crisis, but may also send a signal both to voters and political constituencies that the basis for government is intra-elite political understanding

rather than a mandate from voters. Specifically, in an election crisis atmosphere, power-sharing runs the risk of being reduced to a division of spoils or posts in the executive branch rather than more comprehensive and balanced reform. This paper will return to this fundamental mediation design question in the next section, but first it is beneficial to be aware of the political remedies utilized in various electoral crises.

Interim governing arrangements

In cases where an electoral dispute appears unlikely to be resolved prior to the incumbent president's term expiring, opposition actors in particular may seek the appointment of an interim government until the electoral process is completed in order to provide more 'neutral' supervision of a new vote. This occurred after the disputed first round of Haiti's 2015 elections, where outgoing President Martelly negotiated an agreement with the Haitian Parliament whereby Jocelerme Privert, a former Senate leader, was established as the head of an interim government until the next round can be held. The option of installing an interim government and holding new elections was also proposed by some stakeholders during Afghanistan's protracted 2014 electoral crisis but never gained traction.

Power-sharing mechanisms

Temporary or special power-sharing mechanisms are a common feature of peace agreements and are increasingly used to overcome crises over disputed electoral results. This is typically animated by the desire to avoid the potential instability associated with winner-takes-all outcomes, and therefore these mechanisms more typically come into play in presidential rather than parliamentary systems of government. Such mechanisms are usually seen as stabilizing not only because they broaden access to power, but also because they extend responsibility for effective governance and maintaining stability to the electoral 'loser' and allow for the inclusion of their constituencies in the political process and government.

Power-sharing mechanisms may be prioritized when the electoral process is seen as irretrievably flawed; when there are sharp internal, regional or international divisions regarding the equity of the vote outcome and how to address it; or when ignoring entire communities or potential spoilers poses too great a risk. This tool has however been subject to reservations due to its potential impact on the quality of democratic politics resulting from the legitimization of elite bargains that alienate citizens and allow electoral losers to re-negotiate the 'rules of the game' (LeVan 2011).

On the other hand, the UN Secretary-General has noted that mitigating winner-takes-all outcomes and extremely high stakes politics can increase the likelihood that election results are accepted (UN Secretary-General 2015). Power-sharing is also not automatically contrary to the democratic principle (see e.g. O'Leary 2005). Many countries facing internal challenges and divisions have opted to broaden their base of government support by opting for a government of national unity. As noted above, there are often good reasons for diluting the concentration of power (especially when it is wielded as the monopoly of one political or ethnic group).

Power-sharing can take various forms. For example, a government of national unity may be formed, with a division of cabinet posts on an equal basis or by mutual consent,

as occurred in Afghanistan, Kenya, Zimbabwe and Madagascar.[14] Other forms include creating a new position in the executive branch for the runner up to balance a powerful president such as a prime minister post (Kenya, Zimbabwe), Chief Executive position (Afghanistan), or Chair of a High Transitional Council (agreed to but never implemented in Madagascar); greater power-sharing in the legislature in parliamentary systems in the form of opposition membership and chairing of important committees (Cambodia); or quotas or a role for the runner-up in appointments to key bodies such as electoral commissions, constitutional review committees, economic and security institutions, and reform bodies (Kenya, Afghanistan and Zimbabwe).

The implementation of power-sharing is often challenging. The actual formation of unity governments frequently requires protracted negotiations over the allocation of cabinet posts and distribution of authorities between the president and the potential new executive branch positions such as prime minister. Once seated, the decision-making of such governments is inherently cumbersome. There is also the risk that the temporary becomes permanent, with political, ethnic or sectarian power-sharing becoming a fixed feature of the political landscape. After its 2007 electoral crisis, Kenya was able to avoid this trap and conclude a period of transitional power-sharing once new elections were held in 2013. This was due in part to the enactment of wide-ranging and inclusive constitutional and electoral reform in the interim, including reducing the powers of the president, increasing the independence of the judiciary, decentralizing government structures, reforming electoral procedures and creating a new electoral commission.

A mediator must also be aware that power-sharing talks can unleash multiple levels of negotiations. The first level is between the two candidates in the process the mediator is facilitating, but a second level can also emerge between candidates and their respective coalitions. Partisan figures on both sides may only believe that they can secure their interests through their favoured candidate's absolute victory. Power-sharing negotiations may therefore lead to fractures within candidate coalitions and cause groups on either side to take unpredictable steps. During power-sharing talks after Afghanistan's disputed elections, for example, Kabul was buffeted by reports of power brokers seeking to secure their interests by declaring a 'third-way' interim government that ignored the election entirely (Rosenburg 2014). Meanwhile, in Kenya, a group of Kibaki advisors successfully convinced their candidate to disavow an initial agreement to review election results and negotiate a transition towards a settlement of the crisis.

Finally, in Zimbabwe, initial attempts at power-sharing negotiations may have actually resulted in increased tensions and instability. Following the first round of Zimbabwe's 2008 presidential elections, a group of Zimbabwe African National Union–Patriotic Front (ZANU–PF) moderates reportedly opened backchannel discussions with the opposition Movement for Democratic Change (MDC) on forming a government of national unity headed by the MDC. However, others within ZANU-PF and the security forces reportedly threatened President Robert Mugabe with a coup if formal talks were pursued, and launched a violent security crackdown on MDC supporters. They also reportedly convinced Mugabe to pressure the electoral commission to modify

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14 In Madagascar, the African Union-brokered Dakar Agreement held that if a recount of the disputed first-round vote did not result in either candidate gaining 50% of the vote, the winner of the second-round run-off would form a transitional government of national unity. However, Ravalomanana declared victory after the recount showed him winning 51% of the first-round vote.

the result which, while not yet released, according to some sources had MDC leader Morgan Tsvangirai winning outright by securing more than 50 per cent of the vote (International Crisis Group 2008).[15]

Constitutional reform

In addition to transitional power-sharing, long-term political, social and economic issues may need to be addressed to resolve the electoral crisis. One way for this to happen is by including constitutional reform on the negotiating agenda. While constitutional reforms agreed as part of settlements to electoral crises are often couched in the language of promoting multiparty democracy, at their root they often reflect an imperative to deal with an underlying sense of the exclusion of a major political constituency or ethnic, tribal or religious community from power.

Potential constitutional reform will vary according to political circumstances but could entail agreement to examine either a specific issue of importance or more comprehensive changes. For example, in Afghanistan it was agreed that a constitutional assembly (or Loya Jirga) would be called within a period of two years to consider establishing the post of an executive prime minister. In Ukraine, constitutional amendments weakening the power of the presidency were immediately passed prior to the administration of the re-run of the presidential election. Finally, in Kenya, the negotiations resulted in the undertaking of a multi-year comprehensive constitutional review encompassing a range of issues including the form of the political system, land reform, wealth-sharing and administrative decentralization. In Zimbabwe as well, constitutional reform was also part of the negotiated resolution.

Constitutional reform could also cover making certain types of power-sharing permanent features of the political system, such as by broadening the powers and representation of minorities, the political opposition, or discriminated majorities (such as women). This type of reform can include quotas, regional autonomy guarantees and enshrining reforms to the electoral system in the constitution.

Because constitutional changes are likely to culminate in some form of endorsement by the public or legislature, they are perhaps less likely than power-sharing agreements to be seen as deprioritizing democratic principles. However, constitutions are not easy to change: they provide fundamental rules for ordering the state, regulating the sharing of power and resources, and safeguarding the basic rights of citizens, and are therefore typically protected against easy amendment through super-majority requirements and other mechanisms. This raises the prospect of future crises if constitutional negotiations fail or if a new government is not seen as delivering on promises to undertake constitutional reform. Indeed, Kenya's 2007 electoral crisis was precipitated by 15 years of failed efforts towards constitutional reform.

Meanwhile, the amendments passed during the 2004 Ukraine electoral crisis remain controversial due to their minimal consultation and quick adoption. They were overturned by the country's Supreme Court in 2010 and then re-instated by Parliament

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15 It was only in September 2008, three months after a run-off whose result was not recognized by the international community, that Tsvangirai and Mugabe signed a Global Political Agreement making the former Prime Minister with some executive powers and deputy chair of the Cabinet while the latter remained as President.

in 2014. Finally, as of writing, it is not yet clear when the constitutional assembly agreed to by Abdullah and Ghani as a condition for resolving Afghanistan's electoral dispute will be convened.

Transitional justice

In certain circumstances, electoral violence or corruption and other abuses of authority by incumbents during their time in office may become major issues in the resolution of electoral crises and implementation of a peaceful transfer of power. This can be due to domestic demands for justice and international norms related to accountability but also because the losing candidate and his or her supporters may fear politically motivated prosecutions after leaving office.

The general international norm is that amnesties cannot be provided for major violations of human rights. In both Kenya and Côte d'Ivoire, electoral violence led to senior national politicians being indicted by the ICC on charges of crimes against humanity. Notwithstanding this, political agreements on electoral crises may include the establishment of truth and reconciliation commissions, conditional amnesties for less serious crimes, and negotiation over how alleged major human rights violators will be prosecuted.

In Kenya, the National Accord that ended the electoral crisis established a Truth and Reconciliation Commission that could recommend conditional amnesties for perpetrators who made full disclosures to the body and had not committed gross human rights violations. The Accord also established a Commission of Inquiry into Post-Election Violence that subsequently recommended establishment of a special tribunal to hold those most responsible to account in national trials. When the Kenyan Parliament failed to establish a tribunal, the electoral crisis mediator (Kofi Annan) was requested by this Commission to pass the names of its chief suspects to the ICC.

The possibility of future prosecutions for corruption or other abuses of authority while in office may also be a significant unspoken factor in incumbents' calculations during an electoral crisis. Understandings between the candidates on how to handle this issue may be struck via private channels. For example, there is speculation that Viktor Yushchenko offered outgoing President Leonid Kuchma assurances regarding an amnesty for past activities in order to obtain his backing for a re-run of Ukraine's disputed 2004 presidential run-off (Pifer 2007). Similarly, in Zimbabwe, before their collapse, backchannel national-unity-government discussions reportedly focused on the political and security leadership of ZANU-PF seeking twin guarantees from the MDC regarding their personal security and land holdings (International Crisis Group 2008).

Electoral crises can therefore raise a sweeping set of interlocking technical and political issues. The chief task for a mediator is to find and develop a structure to aid the parties to constructively address their differences across these realms against a possible backdrop of rising instability.

4. Process management: organizing electoral crisis talks

Mediation is generally defined as a structured process where an impartial third party, typically without decision-making authority, assists others to negotiate a mutually acceptable outcome to a dispute. Under this conception, the chief task of the mediator is to determine the way talks are organized and major issues are sequenced and worked on so as to help the parties find a fair and lasting agreement.

Recognizing that the specific nature of each electoral crisis will in large part determine the way in which the mediation is approached, this section nonetheless attempts to outline key factors that could affect a mediator's ability to accomplish this task.

Mandate and other sources of influence

A mediator with a formal mandate from the UN, a regional organization or a subregional organization is likely to be able to be more directive in terms of designing the process and proposing solutions. The AU, for example, provided the Panel of Eminent African Personalities with an electoral mediation mandate in the 2007 Kenya crisis and has also given AU electoral observation missions a mediation mandate 'directed at assisting disputants to find mutually acceptable outcomes and solutions to electoral disputes' (AU 2002).[16]

The third party in the crisis, particularly if it happens to be a regional or international power, may also go beyond a mediation role to engage in high-powered diplomacy (as the United States did in the 2014 Afghanistan elections). This can entail offering 'carrot-and-stick' incentives to the parties and championing a proposed agreement.

At the other end of the spectrum, a mediator lacking a formal mandate or leverage over the parties may need to take on a more facilitative role, focusing on guiding the process, ensuring that contending viewpoints are heard and understood, and helping the parties to generate solutions rather than producing her or his own proposals.

During a complex electoral dispute, different actors may play different roles at different points in the process. For example, prior to the release of preliminary results in Afghanistan's 2014 presidential run-off, the UN Assistance Mission for Afghanistan (UNAMA) played a facilitator role. It sought to facilitate technical discussions between the Ghani and Abdullah campaigns on developing mutually agreed criteria for an audit of the results but did not make proposals of its own. When this failed, and the

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16 Subregional organizations such as the Southern African Development Community (in Madagascar in 2013 and in Lesotho in 2015) and the East Africa Community (in Burundi in 2015) have also sometimes 'double-hatted' chief electoral observers as mediators. For this reason the AU and subregional organizations sometimes appoint former heads of states as chief electoral observers so that this individual automatically has the stature and access to mediate.

disputed results were released, US Secretary of State John Kerry engaged in high-powered diplomacy, warning Abdullah that US aid would be cut off if his supporters proceeded to establish a parallel government. Kerry then secured the agreement of the two candidates to a plan that called for a vote audit and formation of a government of national unity (Crowley 2014).

International and regional unity

The degree of international and regional unity regarding the electoral result can have a major impact on whether mediation is feasible. Unified support for a mediation process on the part of the international community, including major donors and key regional actors, sharply reduces the attractiveness to the parties of alternatives to a negotiated solution to the crisis. In Ukraine, for example, the involvement of the presidents of Poland and Lithuania, the European Union, the Organization for Security and Co-operation in Europe and Russia as members of a mediation 'round table' was seen as critical to helping to 'ensure that the guys with the guns kept their guns in their holsters' (Pifer 2007).

International actors and neighbouring countries are however frequently interested in the result of elections, especially when ethnic, language, ideological or commercial ties exist or when an important principle or international precedent is seen to be at stake. Such principles could include the responsibility to protect (which galvanized international involvement in Kenya's disputed 2007 elections), non-intervention in the internal affairs of other states (which was demonstrated when Russia did not initially see a need for outside mediation in Ukraine's 2004 elections), or a policy of avoiding 'irregular' transfers of power (which became an issue for the AU in various Malagasy electoral crises). The mediation field is also increasingly crowded, leading to the possibility of competing mediation efforts between private or national initiatives, regional organizations and international organizations such as the UN. This creates a risk of the parties being able to play outside actors off against each other and to shop for the most favourable mediation forum.

In the worst-case scenario, the parties may also believe that regional or international allies will protect them against sanctions or other penalties if they take extra-constitutional steps to end the electoral crisis. Mediators may therefore be advised to develop a structure, such as an international contact group or group of friends, to maintain support for their mission and promote constructive engagement by outside actors in the crisis.[17] A specific delineation of responsibilities among international actors may also be considered.

The 2007 Kenya electoral crisis stands out as a positive example of such coordination. The AU-mandated Panel of Eminent African Personalities, headed by former UN Secretary-General Kofi Annan, led the mediation effort and was provided with support by the UN's Electoral Assistance Division and the Centre for Humanitarian Dialogue (a non-governmental organization focused on private mediation). The mediation

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17 Groups of friends or contact groups are informal mini-coalitions of states or intergovernmental organizations that provide support for resolving conflicts and implementing peace agreements, including by attempting to unify the approach of external actors.

process was also fully supported by the EU and the USA, despite the latter's earlier push for a full recount. This was in part a result of Annan insisting that 'a condition for him . . . leading the mediation' was that 'his team would be the only team mandated to coordinate the effort' (Lindenmayer and Kaye 2009). Annan also used an existing Donor Coordination Group as a mechanism to convey progress in the mediation to the international community and to mobilize support for his efforts.

In other cases, lack of consensus between Western donors and regional organizations (as occurred in the Zimbabwean and Cambodian crises) or divisions within regional organizations that are leading the mediation (as was the case in Madagascar) have hampered international mediation efforts.[18] This can have significant consequences. In Zimbabwe, political violence escalated and the MDC candidate, Tsvangirai, withdrew from the second round. Madagascar teetered on the brink of civil war until the incumbent, Didier Ratsiraka, effectively conceded by fleeing the country. In Cambodia, the government and opposition were ultimately able to directly negotiate a resolution to the disputed July 2013 polls but this was only after a 12-month parliamentary boycott by the opposition, a series of strikes in the country's USD 5-billion-per-year garment sector, and deadly clashes between protesters and the police.

Distinguishing between technical advice and mediation roles

Thought may also need to be given to potentially overlapping technical electoral assistance and political mediation roles. For example, in many post-conflict environments the UN is given a mandate to provide both technical assistance to the electoral process and political good offices for dispute resolution but in certain circumstances the execution of the former can complicate the UN's ability to undertake the latter. This is because the UN's technical role positions it as the protector of the electoral process and of the need to accept its results. From a political standpoint, however, the UN's technical undergirding of the electoral process may cause it to be perceived by the trailing campaign as being associated with the candidate who is ahead in the vote count.

In Côte d'Ivoire, Choi was branded an 'enemy' by the Gbagbo camp when he provided parallel certification of Ouattara's victory as per his UN Security Council mandate. This limited the UN mission's ability to play a good offices mediation role in the crisis as it was also mandated to do by the Security Council (International Crisis Group 2011).

In Afghanistan, the UN was given a role in the 12 July Agreement to provide 'international supervision' of the comprehensive electoral audit. As it became increasingly clear that the technical audit would not reverse the preliminary result of a Ghani victory in the presidential run-off, Abdullah supporters alleged that the UN, the Afghan electoral commission and outgoing Afghan President Hamid Karzai had conspired to orchestrate fraud (*Mandegar Daily* 2014; Pajhwok Afghan News 2014). This may have circumscribed the good-offices role that the UN could play in the parallel national unity talks ongoing between Abdullah and Ghani.

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18 After a recount ordered by Madagascar's High Constitutional Court certified opposition candidate Marc Ravalomanana the outright winner of the first round, the AU continued to call for a transitional government of national unity. The AU's own mediator for the Madagascar crisis, President Abdoulaye Wade of Senegal, along with several other African heads of state, broke with the body and recognized Ravalomanana's administration.

Agreeing on criteria and principles

A common mediation practice at the outset of talks is to agree on a set of criteria among the parties by which to judge what a fair solution would look like. This provides a reference point to structure the agenda for negotiations, evaluate alternative technical and political proposals; and can serve as a confidence-building measure in respect of the process. The mediator may also be advised to obtain the parties' commitment to avoid certain behaviours or actions, especially in tense or conflictual situations.

For example, in Ukraine, the mediators' goal at the first round-table session was to lay down basic principles to guide the talks, including no use of force, transparency, the need for a legitimate process acceptable to Ukraine and the wider region, and protesters reinstating access to government buildings. In an environment in which eastern and western Ukraine had voted substantially differently, the principle of maintaining national unity and Ukraine's territorial integrity was added at the second round table. Round tables may in fact be a particularly useful format for agreeing on criteria and principles. This is because they have their roots in Eastern Europe's democratic transitions in the 1990s, during which they were used as informal consultation processes to negotiate initial steps in situations of national crisis when existing formal mechanisms were seen to have lost legitimacy.

Agenda sequencing

The identification and sequencing of the agenda for negotiations is a critical task for any mediator. In the case of electoral crises, the mediator faces the particular challenge of deciding whether to address the technical aspects of the electoral process or political issues first. This will likely depend on on the nature of the crisis, and in particular on how unstable the situation has become and whether the results have already been released. Mediators should also be aware that political and technical negotiations cannot be neatly separated from each other. Difficulties on one track, such as a dispute on the implementation of a vote audit, can bring political negotiations on power-sharing to a halt until they are resolved, or vice versa.

In Kenya, the scale of the ethnic violence following the release of the 2007 election results was such that Kofi Annan's immediate priority was to re-establish an environment of safety and calm. His strategy therefore emphasized national unity and reconciliation by focusing on 'issues of power and the functioning of state institutions' as opposed to the technicalities of the electoral dispute. Indeed, rather than attempt to mediate agreement for a re-run, recount or re-tally of the elections, the results were essentially put to the side as an issue in the talks. The parties instead agreed that an Independent Review Committee would investigate all aspects of the elections and make recommendations to improve the electoral process in three to six months' time (well after a power-sharing agreement would or would not be struck).

Unlike Kenya, where the crisis began following the contested announcement of incumbent Mwai Kibaki's victory, the crisis during Afghanistan's presidential elections began with Abdullah withdrawing from the electoral process prior to the release of results. In this context, the 12 July 2014 Agreement negotiated by US Secretary of State Kerry contained both a technical and a political framework. The technical framework

called for a comprehensive audit to increase confidence in the final results. Both candidates then agreed to abide by the audit results in forming a government of national unity in which the winner would serve as president. With the possibility of unrest put on hold by the agreement, implementation of the audit provided Abdullah and Ghani with the time and space to undertake complicated negotiations on the details of the government of national unity (which were not concluded until 19 September).

Mediation formats

A variety of mediation formats have been attempting to end electoral crises, each with its own merits and drawbacks. In the initial stages of the crisis, prospective mediators may engage in shuttle diplomacy between the two candidates and their respective advisors prior to the parties agreeing on a lead mediator and agreeing on the terms, agenda and format of the next stage of talks. For instance, Kenya saw a plethora of private, national and AU shuttle efforts prior to Annan's panel being established.

The shuttle format may be particularly suitable for this stage of the crisis, as one party may reject the legitimacy of the other's victory and refuse to meet them directly. Shuttle diplomacy can therefore be used to broker a first meeting between the candidates prior to launching a structured mediation process (as occurred in Madagascar). However, shuttle diplomacy also carries a risk of a lack of commitment to the agreement by the parties if it remains the sole or primary means by which the text is negotiated (i.e. it is seen more as the mediator's agreement as opposed to an agreement between the parties).

Face-to-face negotiations are therefore typically ultimately required and have been pursued in a variety of formats to resolve electoral crises including an informal round-table consultation process (Ukraine), an internationally facilitated national dialogue with parallel inputs from civil society (Kenya), and direct negotiation between the parties without third-party assistance (Cambodia).

The mediation format can also include a single lead mediator, such as US Secretary of State Kerry in the 2014 Afghan presidential elections, or the mediation can be carried out by a group of actors, such as the Panel of Eminent African Personalities in Kenya or the round table in Ukraine. A single lead mediator may be able to take decisive action more quickly than a group of mediators, while the advantage of the latter can be to draw in a range of external organizations and actors with various sources of influence over the stakeholders. In Ukraine, for example, national actors developed the main elements of the political settlement but the only venue in which Yushchenko and Yanukovich agreed to directly interact was in the international round-table format where several regional heads of state were present.

5. Conclusion: The need for a more informed approach

The mediation of electoral crises is a relatively understudied field. Recent history suggests, however, that as the number of countries holding elections has increased, a major political and security crisis resulting from an election is likely to occur somewhere in the world on an annual basis. The potential pool from which such crises could emerge may also be larger than we believe. Out of the 460 openly contested elections for a head of state held from 2000 to 2012, some 137 (almost one-third) could be considered to have been challenging by virtue of there having been deaths from electoral violence during the process, some level of public protest following the results or vote fraud reported by international monitors.[19] Given these trends, there are at least three reasons why mediation responses to electoral crises can benefit from being further informed by international comparative experience.

The first is practical. The mediation efforts required to address political and security crises emerging from disputed electoral results are just as challenging as any peace talks. Electoral crisis mediation also increasingly requires decisions on whether to integrate issues such as power-sharing, constitutional reform and transitional justice into talks. Furthermore, such mediation carries the unique complication of trying to determine how to sequence dealing with these political issues alongside the range of complex technical measures available to enhance the credibility of flawed electoral processes. Without being prescriptive, this paper has sought to identify a set of key considerations and choices the electoral crisis mediator may be called upon to address.

Second, unlike other potential triggers for political and security crisis, elections are regularly recurring events. The precedents set during the mediation of an electoral crisis can become immediately and concretely relevant in just a few years' time. In the context of Afghanistan, Haiti and Côte d'Ivoire, problematic elections and the urgently assembled solutions to the crises that arise from them, can build on themselves to create increasingly perverse political incentives.

Moreover, neighbouring and regional countries are watching. The precedents set in one electoral mediation can be transmitted very quickly to become demands elsewhere. For example, a mere three days after the 12 July 2014 agreement on the 100 per cent Afghan audit was reached, Pakistani opposition candidate Imran Khan cited the Afghan example to call for the same exercise to be carried out on the disputed results of Pakistan's 2013 elections (*Express Tribune* 2014). Further afield, in Haiti, opposition candidate Jude Célestin called for a 100 per cent recount of the first round of that country's 2015 presidential elections. Likewise, the precedent of incumbents emerging as heads of national unity governments after discredited elections in Kenya in 2007

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19 Authors' calculations based on the NELDA dataset.

and Zimbabwe in 2009 may have informed incumbent President Gbagbo's decision to violently contest the results of the 2010 Côte d'Ivoire vote.

Developing a comparative practice on electoral crisis mediation may help individual mediators and international or regional organizations to build a fuller understanding of the consequences of potential options and trade-offs in talks. In time, a prevention lens could be added to electoral crisis mediators' mandates—in other words, it could become possible to pursue agreements which not only address the current dispute but also do not inadvertently make future national or regional electoral crises more likely.

Third, electoral crises raise unique normative questions that deserve additional thought. A key issue in the negotiation of ceasefires and peace accords is how to expand participation in the process so that it has wider societal buy-in beyond the warring parties. Electoral mediation presents this dilemma in reverse. This is because it follows an event, however flawed it may have been, whose intrinsic purpose was to allow the public as a whole to express their preference on who should be their leaders and what policies their government should follow. What level of deficiency in the electoral process, exclusion in the broader political system or possible serious threat to national stability should be sufficient to trigger the consideration of political arrangements that go beyond the popular vote?

The answer to this complicated question may require consideration of whether political and power-sharing agreements to end electoral crises are found to undermine or promote the functioning of democracy in a country or, conversely, whether they make it more difficult to obtain the acceptance of results in future national elections. In Kenya, for example, the 2007 power-sharing agreement seemed to enhance the quality of the country's democracy. It was followed by a genuine, comprehensive, and inclusive reform process and the country's next elections were better organized, held on time, and accepted despite a very close result. Meanwhile, the experience of national unity governments in Zimbabwe and in Afghanistan are more mixed. In the latter case, power-sharing without the full release of electoral results has given space to opponents of the Government of National Unity to question its legality and to raise the possibility of it being replaced by extra-constitutional means (Trofimov 2015).

Developing a better understanding of which of these experiences is more representative and how different features of political agreements to end electoral crises impact local democratic institutions and the inclusivity of the political system should be a priority for further investigation. The findings from such research may significantly shape future approaches to electoral crisis mediation.

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About International IDEA

The International Institute for Democracy and Electoral Assistance (International IDEA) is an intergovernmental organization that supports sustainable democracy worldwide. International IDEA's mission is to support sustainable democratic change by providing comparative knowledge, assisting in democratic reform, and influencing policies and politics.
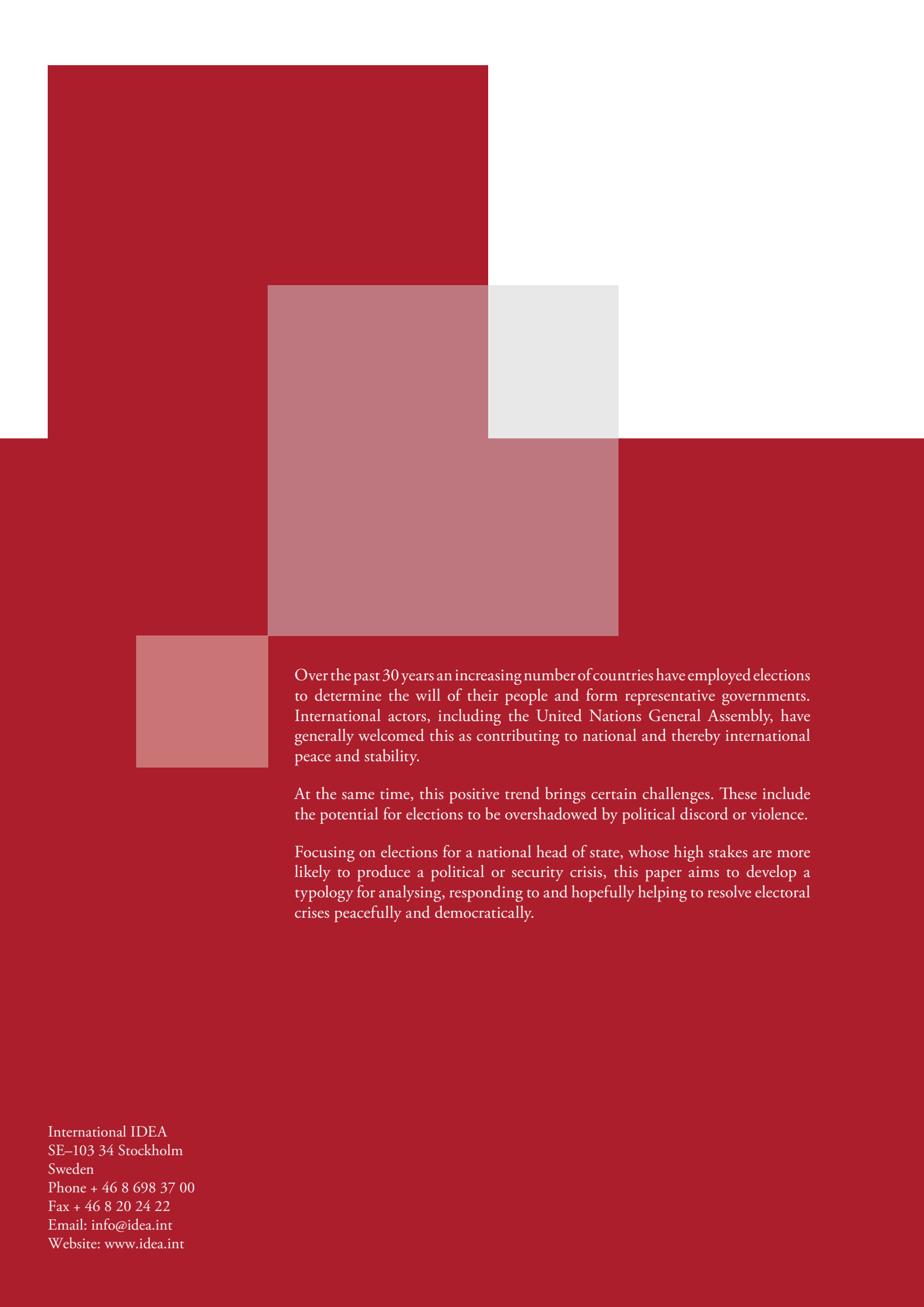
What does International IDEA do?

In the fields of elections, constitution-building, political parties, gender in democracy and women's political empowerment, democracy self-assessments, and democracy and development, we undertake our work in three activity areas:

- providing comparative knowledge derived from practical experience on democracy building processes from diverse contexts around the world;

- assisting political actors in reforming democratic institutions and processes, and engaging in political processes when invited to do so; and

- influencing democracy building policies through the provision of our comparative knowledge resources and assistance to political actors.

Where does International IDEA work?

International IDEA works worldwide. Based in Stockholm, it has offices in Africa, the Asia-Pacific, and Latin America and the Caribbean. International IDEA is a Permanent Observer to the United Nations.

Over the past 30 years an increasing number of countries have employed elections to determine the will of their people and form representative governments. International actors, including the United Nations General Assembly, have generally welcomed this as contributing to national and thereby international peace and stability.

At the same time, this positive trend brings certain challenges. These include the potential for elections to be overshadowed by political discord or violence.

Focusing on elections for a national head of state, whose high stakes are more likely to produce a political or security crisis, this paper aims to develop a typology for analysing, responding to and hopefully helping to resolve electoral crises peacefully and democratically.