



HARVARD ILJ ONLINE
VOLUME 51 – JULY 5, 2010

Free and Fair Elections, Violence and Conflict

Muna Ndulo* and Sara Lulo**

I. INTRODUCTION

Elections are a defining characteristic of democracy, and thus form an integral part of the democratization process. Over the past decade, electoral systems and processes have become a centerpiece of UN peacekeeping missions and post-conflict democratization projects undertaken by intergovernmental organizations and donor agencies such as World Bank and USAID. The emphasis on elections as an element of UN peacekeeping missions is linked to a shift in focus to state rebuilding (or state creation, as was the case in East Timor).¹ Elections thus provide a means for “jump-

* LL.B. (Zambia), LL.M. (Harvard Law School), D. Phil (Oxford University); Professor of Law Cornell Law School, Director Cornell University’s Institute for African Development and Honorary Professor University of Cape Town. Muna Ndulo has extensive experience in post-conflict elections, including working on elections in South Africa, East Timor, Afghanistan and Kosovo.

** B.A. (Cornell University), M.A. (New York University), J.D. and LL.M. (Cornell Law School), Executive Director Avon Global Center for Women and Justice, Cornell Law School. Ms. Lulo has served as an election monitor in Dominican Republic.

¹ Benjamin Reilly, *Elections in Post-Conflict Societies*, in *THE UN ROLE IN PROMOTING DEMOCRACY: BETWEEN IDEALS AND REALITY* 113, 113 (Edward Newman & Roland Rich, eds.) (2004) [hereinafter Reilly, *Elections in Post-Conflict Societies*].

starting a new, post-conflict political order; for stimulating the development of democratic politics; for choosing representatives; for forming governments; and for conferring legitimacy upon the new political order.”²

Recent election-related violence in countries such as Iraq, Afghanistan, Kenya, and Zimbabwe have led some to question whether elections reduce the risk of conflict and in fact lead to stability, democracy, peace and development. For example, Havard Hegre and Hanne Fjelde have recently argued that there is no evidence that post-war elections reduce conflict in the short term, but rather that electoral processes are associated with heightened risk of civil war.³ Such violence is often attributed to a lack of “security” before elections take place. There is thus an arguably growing view that security should be the dispositive pre-requisite for the organization of post-conflict elections.⁴

Although it is true that post-conflict elections have resulted in violence in some countries, it is important to keep in mind that this scenario is not the whole story or indeed the only story. The experiences of Namibia (1989), Cambodia (1993) South Africa (1994), Mozambique (1994), El Salvador (1994), East Timor (2001, 2002) and, in many respects, Sierra Leone (2002), and Liberia (2005) are notable examples of successful elections held in so-called “fragile” countries.

This Article examines whether elections are a precondition to democratization and durable peace. We argue that, although elections alone cannot be equated with democracy, elections indeed are an intrinsic component of the dispensation of democracy. Further, while security is one factor that is relevant to planning elections in post-conflict countries, “security” must be considered in the context of a broader set of challenges and conditions in designing an electoral process capable of achieving a peaceful transfer of power reflecting the will of the citizenry.

We first consider the central role of elections in the democratization process, and the corresponding nature of election violence. We then identify some of the key challenges to holding elections in post-conflict countries, before turning to the conditions critical to a successful election. Particular attention is given to the international community’s role in ensuring free and fair post-conflict elections. The Article concludes by arguing that however “successful” the process, elections must not be considered a “one-off” initiative or an end in themselves. Sustained attention is needed to advance not only the establishment of democratic institutions and processes to ensure good governance, but also the economic development of the post-conflict country. Thus, while elections undoubtedly require advance planning and considerable investment of time and money, the achievement of even peaceful

² Benjamin Reilly, *Post-Conflict Elections: Constraints and Dangers*, 9 INT’L PEACEKEEPING, 118 (2002).

³ Havard Hegre & Hanne Fjeld, *Democratization and Post-Conflict Transitions*, in PEACE AND CONFLICT 2010, 79 (J. Joseph Hewitt, Jonathan Wilkenfeld & Ted Robert Gurr, eds., 2010) [hereinafter PEACE AND CONFLICT 2010].

⁴ See, e.g., Wadir Safi, *Security and Elections in Afghanistan: Why the Two Must Go Together*, NATO Review (2009), available at <http://www.nato.int/docu/review/2009/Afghanistan-law-order-elections/security-elections/EN/index.htm>.

elections will be undermined if the citizenry does not experience an improvement in the economic conditions that, more often than not, helped spur the conflict in the first place.

II. INTRINSIC ROLE OF ELECTIONS IN POST-CONFLICT DEMOCRATIZATION

Elections represent an important dimension in the efforts towards democratic consolidation in any country.⁵ Stated differently, elections are not synonymous with democracy, but are a central component of a functioning democratic system.

In discussions of election security and violence, it is relevant to consider the nature and underlying purpose of election violence. Elections are a contest for power, and are therefore inherently contentious; unless conducted fairly, they can (and often do) lead to violence.

Political parties participating in an election use violence, intimidation and conflict to influence the results or timing of an election.⁶ This is particularly true when a particular side perceives the process as unfair or exclusive. As Jeff Fischer rightly observes, when electoral violence occurs under these circumstances, “it is *not a product* of an electoral process; it is the *breakdown* of an electoral process.”⁷

The challenge, therefore, is to ensure that elections are fair, credible and transparent. In the words of Fischer:

[A]n electoral process is an *alternative to violence as a means of achieving governance*. However, when an electoral process is perceived as unfair, unresponsive or corrupt, its political legitimacy is compromised and stakeholders are motivated to go outside the established norms to achieve their political objectives. *Electoral conflict and violence become tactics in political competition*.⁸

Thus, in the post-conflict context, it is fundamental that the electoral process be governed by clear and fair rules so that even the losers of the contest can trust that the rules have been applied justly; otherwise, these actors are more likely to continue the contest by other (violent) means.

Experience shows that post-conflict elections can—and do—help countries transition into functioning democracies. In this regard, it is relevant to note the

⁵ Tawanda Mutasah, *Beyond Southern Africa: Electoral Politics and the New Pan-Africanism*, in MEDIA INSTITUTE OF SOUTHERN AFRICA, *OUTSIDE THE BALLOT BOX: PRECONDITIONS FOR ELECTIONS IN SOUTHERN AFRICA 2005/2006*, 51, 51-52 (Jeanette Minnie, ed., 2006), available at <http://www.comminit.com/en/node/278921>.

⁶ See Jeff Fischer, *Electoral Conflict and Violence*, 12 *ELECTIONS TODAY* 6, 6 (2004).

⁷ *Id.* (emphases added).

⁸ *Id.* (emphases added).

“success” of several post-conflict elections in advancing the consolidation of democracy.

Mozambique’s 1994 UN-supervised elections are credited as having played an important role in the country’s transition from violent conflict to democracy. Notably, the three elections held in Mozambique since 1994 (i.e., the 1999, 2004 and 2009 elections) have included the participation of multiple political parties. Although one party has retained control of both the presidency and parliament, the opposition has meaningfully participated in each of the elections. Karbo and Mutisi argue that “[t]his persistent contestation and challenge to the incumbency has helped to consolidate and refine the election process, which has ushered in renewed hopes for all African countries engulfed in violence and protracted conflicts.”⁹

Another important example of a successful “fragile state” election is the 1989 UN-supervised elections in Namibia. Indeed, these elections led to the adoption of a new constitution. For Namibia’s election, the UN developed and applied standards that moved beyond a relatively narrow and technical view of “free and fair elections,” which had essentially focused on the voting activity on election day itself.¹⁰ The new consensus of what constitutes “free and fair elections” is broader and more comprehensive in nature, aiming to ensure that the elections are conducted in a free environment with administratively fair rules. The most important criteria for a free and fair election include the following:

- (1) the right of all voters to participate in the electoral process without hindrance;
- (2) [freedom to campaign for all political parties];
- (3) secrecy of the ballot;
- (4) reasonable speed in the counting of ballots;
- (5) accountability and openness of the electoral process to the competing parties and
- (6) an acceptable electoral law.¹¹

Significantly, since its first free election in 1989, Namibia has successfully held several subsequent elections.

The historic South African general election of 1994 must also be mentioned. These elections, the first multi-racial elections in the country, marked the end of apartheid and the establishment of democratic governance. Special institutions, such

⁹ Tony Karbo & Martha Mutisi, *Post-Conflict Elections and Democracy: A Comparative Analysis of the Mozambique and Angolan Elections*, CONFLICT TRENDS 2006/2, 19, 21 (2006).

¹⁰ Through the Universal Declaration of Human Rights, the United Nations established that “[e]veryone has the right to take part in the government of his country, directly or through freely chosen representatives” and that “[t]he will of the people shall be the basis of the authority of government: this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.” Universal Declaration of Human Rights, art. 21, G.A. Res. 217A(III), U.N. GAOR, 3d Sess., U.N. Doc. A/810 (Dec. 12, 1948).

¹¹ Muna Ndulo, *The United Nations and the Monitoring of National Elections*, 23 CORNELL L. FORUM 13, 15 (1996) (citing to NAT’L DEMOCRATIC INST. FOR INT’L AFFAIRS, NATION BUILDING: U.N. AND NAMIBIA 26 (1990)).

as the Transitional Executive Council (TEC), were created to ensure that the apartheid regime was termed and did not undermine a peaceful transition to democracy. The TEC, which was established by an act of Parliament in 1993, was given powers to effectively level the pre-election playing field for all parties participating in the election. Legal barriers were removed that had constrained the right to free assembly, thereby facilitating free and open campaigning. Through an Act of Parliament, the Independent Broadcasting Authority was created to foster conditions for the operation of free media—an important component of fair elections. Importantly, an Independent Electoral Commission (IEC) was created to supervise and manage the election. The IEC comprised 16 members, including respected South Africans, as well as prominent international figures in the field of human rights such as Gay McDougall (at that time, with the Lawyers' Committee for Human Rights). The success of South Africa's election process is also owed to a concerted dedication to voter education and the training of ample election monitors.¹²

These are but a few of the “success stories” of post-conflict elections helping to bring about a more democratic environment and lasting peace.

III. CHALLENGES PARTICULAR TO POST-CONFLICT ELECTIONS

As post-conflict elections are part of a broader process of democratic reform, clearly “ill-timed, badly designed, or poorly run elections can actually undermine the broader process of democratization”¹³ and the establishment of peace. For example, the legitimacy of the recent Afghani elections was undermined by the fact that as many as 1.5 million of the 6 million votes cast were reported to have been fraudulent,¹⁴ further deepening schisms and leaving the democratization process in uncertainty.

The choice of post-conflict electoral system is crucial, as it can effectively set the stage for power-sharing among competing groups (and thereby dissipate election-related conflict). Angola's election of 1992 is illustrative in this regard. The election was considered flawed, and eventually spiralled into violence. Angola's “failure” is largely attributed to poorly-timed, “fast-tracked” elections that did not take into account country-specific conditions, and failed to provide for the possibility of power-sharing arrangements.¹⁵

Experience has shown that a proportional voting system is generally favourable for post-conflict countries insofar as such a model allows for “power sharing”; even those parties with comparatively fewer votes stand to win representation in government. The proportional voting system aims to correlate the percentage of

¹² See, e.g., Nadine Gordimer, *Rising to the Ballot: The Quiet, Sacred Success of South Africa's Voter Education Crusade*, WASH. POST, Apr. 24, 1994.

¹³ Reilly, *supra* note 1, at 115.

¹⁴ Richard Lappin, *Afghanistan and the Dilemma of Post-Conflict Elections*, THE MÉTROPOLITAIN, Oct. 1, 2009, available at <http://www.themetropolitain.ca/articles/view/695>.

¹⁵ See Karbo & Mutisi, *supra* note 9, at 20.

votes cast for groups of candidates with the percentage of legislative seats allocated – i.e., “proportional representation.” In contrast, a “first-past-the-post” or majoritarian voting system (such as in the United States) establishes a “winner-take-all” model. In such cases, the losing party is assured no role to play in the new government, placing increased pressure (and risk of violence) on the high-stakes election.¹⁶ As Angola illustrated, where there is no stable democracy and opponents are vying for the “only prize worth having,” it is less likely that the loser will accept the elections results -- and it is more likely that violent struggle will ensue.¹⁷ For this reason, most post-conflict elections organized by the UN in recent years have used some form of proportional representation (e.g., Namibia in 1989, Nicaragua in 1990, Cambodia in 1993, Mozambique in 1994, Kosovo in 2001, and Sierra Leone in 2002).

The party list proportional system has become the de facto voting system of choice in UN-managed elections, as the party-list system does not require demarcating electoral districts (and is therefore considerably simpler to organize from a logistics standpoint). It is also easier to gauge which areas are violence prone in order to direct individuals to vote in safer areas. An additional benefit to the party list proportional system is that more women and minorities tend to be nominated and elected through this system.¹⁸

In any event, it is beyond dispute that elections organized in post-conflict environments take place in tense and high-risk environments, and are therefore “fundamentally different from those organised under normal circumstances.”¹⁹ Set against a backdrop of humanitarian and economic crises and the destruction of (usually already inadequate) infrastructure, post-conflict elections involve steep challenges. We highlight below some additional key challenges to organizing and carrying out elections in a country emerging from conflict.

1. WEAK POLITICAL PARTIES

Benjamin Reilly describes political parties as “the key agents of political articulation, aggregation and representation,” making them “the institution which impact most directly on the extent to which social cleavages are translated into

¹⁶ Cf. Muna Ndulo, *The Democratization Process and Structural Adjustment in Africa*, 10 IND. J. OF GLOBAL LEGAL STUD. 315, 355-57 (2003).

¹⁷ See COMPARATIVE CONSTITUTIONALISM AND GOOD GOVERNANCE IN THE COMMONWEALTH 62 (John Hatchard, Muna Ndulo & Peter Slinn, eds., 2004) (citing to Ann Reid, INR Foreign Affairs Brief, *Conflict Resolution in Africa: Lessons from Angola* (Bureau of Intelligence and Research, U.S. Dep’t of State, 1993).

¹⁸ In the party list system, voters cast ballots for the party list versus individual candidates. Therefore, provided the party list contains women and minority candidates whose names are sufficiently prioritized on the list, the party list system guards against voter bias against and reluctance to vote for individual women and minority candidates.

¹⁹ Karbo & Mutisi, *supra* note 9, at 20.

national politics.”²⁰ Indeed, obstacles and problems in democratic transition originate in the weaknesses of the political parties in a post-conflict society. The parties are structurally weak, and they typically lack orientation, focus or ideology. Often the parties are based on individuals or ethnic divides²¹ rather than a clear program, leaving voters with the unappealing choice between the “devil they know” and the possibly-worse “unknown.”

In recent years, international election-related efforts have rightly dedicated greater attention to supporting the capacity-building of political parties as credible institutions to participate in the democratic political system. The danger of failing to develop legitimate political parties is reflected in Angola’s 1992 elections. There the 18-month election window following the Bicesse accords “did not offer adequate time for building a party machinery that was capable of offering a credible challenge to the incumbent [Popular Movement for the Liberation of Angola (MPLA)] government, which had the control of the state and its institutions including the electoral commission.”²² The experience of El Salvador stands in contrast in this regard, with the two current major political parties—the Nationalist Republican Alliance (ARENA) and Farabundo Martí National Liberation Front (FMLN)—transforming themselves from their military roots during the country’s civil war to viable political parties after the peace agreement in 1992.

Particularly in cases of weak civil society, “political parties are the key link between masses and elites,” with political parties playing “a crucial role in building a sustainable democratic polity.”²³ In short, a robust democratic system depends largely on the institutional strength and capacity of political parties. Without legitimate participants in the post-conflict political sphere, there will be no credible contest.

2. WEAK GOVERNANCE AND INSTITUTIONS

On a related point, most post-conflict governments suffer from institutional weaknesses beyond political party limitations. This is particularly true in developing countries that have lacked the opportunity and resources to establish a legacy of democratic institutions and good governance. Too often there is reliance on highly personalized and centralized systems of governance in which corruption is rampant and civil servants are inadequately trained for their respective offices. In such circumstances, there is a general lack of accountability at all levels of government.

In terms of political systems, a separation of powers and a system of “checks and balances” is not engrained; to the contrary, a confusion of power reigns among the

²⁰ See Benjamin Reilly, *Post-War Elections: Uncertain Turning Points of Transition*, in FROM WAR TO DEMOCRACY: DILEMMAS OF PEACEBUILDING 157, 177 (Anna K. Jarstad & Timothy D. Sisk, eds., 2008).

²¹ See *id.* at 178 (“In post-war situations, party politics tend to reflect the social cleavages which created the conflict in the first place. If the conflict had a strong ethnic dimension, for instance, then these will tend to be reflected in the new democratic system, particularly if ‘ethnic parties’ are allowed to form freely.”).

²² Karbo & Mutisi, *supra* note 9, at 20.

²³ Reilly, *Elections in Post-Conflict Societies*, *supra* note 1, at 114.

executive, legislature and judicial branches of government. There may also be outright resistance to democratic elections coming from within the government in power. Such factors make it difficult for elections, let alone longer-term democratic processes, to take root and function properly. Thus, the absence of institutional support or effective governance adds a layer of difficulty to post-conflict elections.

3. ABSENCE OF DEMOCRATIC CULTURE AND POLITICAL TOLERANCE

Free and fair elections can be held only where there exists an environment which seeks to provide popular participation, promotes human rights and guarantees fundamental freedoms, ensures accountability of the government, freedom of the judiciary, freedom of the press, and protects and respects political pluralism. Typically, none of these conditions exist in a post-conflict country. As a result, the operating environment is one of suspicion and distrust, both at the governmental level and among the popular masses, which, particularly in developing countries, can be largely uneducated and/or illiterate. At the governmental level, there is a general lack of a sense of state accountability (as well as the lack of individual accountability, noted above); more common is political violence, high levels of intimidation and bias. In turn, there is widespread suspicion and little or no confidence in the governmental system. Such perceptions also stem from previous election experiences that were marred by violence and serious electoral irregularities, as well as the exclusion of marginalized groups. This absence of an underlying democratic culture poses a serious problem in conflict countries, and underscores the need for an inclusive electoral process, voter education and measures to build confidence in the electoral system.

4. DEMOBILIZATION

Demobilization of warring factions should precede a post-conflict election, and presents a worthwhile and necessary component of post-conflict efforts to increase security and decrease the risk of the resumption or re-escalation of fighting. For example, some credit the peaceful execution of the 1994 Mozambique election at least in part to a successful demobilization program.²⁴

The demobilization process should be treated as providing opportunities for institutions of war (such as the army and militias) to begin their transformation into legitimate political actors and structures that can support democratization. Alternatively, if the institutions of war are not transformed and demobilized, they pose a threat to the electoral bodies insofar as they retain the capacity to undermine security and intimidate opposing parties and voters.

Without discounting the importance of demobilization efforts, it is necessary to be cognizant of the limits of such efforts. In the context of long-standing mistrust among warring factions, where a measure of power and survival—in the political and personal sense—has been predicated on the carrying of arms, it is unrealistic to

²⁴ See Karbo & Mutisi, *supra* note 9, at 19-20, 23.

assume that demobilization will be quickly forthcoming and absolute. Soldiers may be offered incentives such as money, land or job training in exchange for surrendering their weapons and thus “demobilizing.” Experience demonstrates that it is typical for previously warring factions to gradually “test” the process and the other side’s good faith before making a meaningful commitment to demobilization; commanders will be inclined to protect their readiness to fight in the event the demobilization process fails.²⁵ For example, it is unlikely (and should not be assumed) that, particularly at the early stages of demobilization, the weapons surrendered will be the most critical or those of best quality; rather, commanders will direct soldiers to “demobilize” by first giving up the least important and oldest weapons in their cadre. In other words, even as the demobilization process is underway, the warring factions remain armed to some degree. Effective demobilization is thus dependent on confidence that there will be a fair transfer of power through democratic elections, and that one’s respective “side” will have an opportunity to, at minimum, fairly compete for a role in the new government.

Individual cooperation with demobilization is further hampered by severe economic constraints and rampant unemployment. For many if not most militia or guerrilla group members involved with internal conflicts, identification with a warring faction is the only means for securing an income (whether or not the income comprises “legitimate” wages or simply spoils taken by force). Demobilization efforts should therefore include a means of identifying and training soldiers suitable for employment in a new representative national army. This integration process entails devising appropriate criteria and assessment methodologies, and training and integration itself. In a broader sense, the link between unemployment and reticence to demobilize highlights the need for economic development to create alternative forms of employment and reduce the risk of (*i.e.*, perceived need for) violence.

5. INEFFECTIVE LOCAL FORCE

A somewhat related challenge is the need for a functioning and effective police force in a post-conflict country. The presence and role of local police forces can impact not only the general security situation, but also the conduct of the election itself. Among other functions, police are needed to guard ballot boxes, guard election materials and maintain order and security at public meetings, campaign events and polling stations.

As Andrew Graham observes, “[t]he electoral process is one that is governed by public policy and can only succeed with independent oversight of the process that establishe[s] credibility with the population. Police serve a supportive role to that

²⁵ See generally Kimberly Mahling Clark, USAID, DocID: PN-ABY-027, *Fostering a Farewell to Arms: Preliminary Lessons Learned in the Demobilization and Reintegration of Combatants*, 9 (1996) (describing various challenges in demobilization efforts, including vigilantism and banditry).

independent oversight.”²⁶ However, in most conflict countries, the police and the army have proven themselves partial in their approach to policing, and are often used by the ruling government as a resource to frustrate free political activity and even intimidate voters.²⁷ In short, the domestic police force in a post-conflict country typically does not inspire confidence in the people. Distrust is heightened by an institutional culture that tolerates a profound disrespect for human rights. In such cases, local police are an unsuitable presence for guarding the polling stations and performing other election-related functions such as transporting ballot papers without supervision.

Because distrusted and/or inadequately trained local police forces can add further roadblocks to elections and even interfere with the electoral process, planning should include appropriate police training supplemented with UN civilian police as necessary. At a practical level, police training should be multi-dimensional, comprising both written materials and interactive “face-to-face” training from superiors or front-line officers and, at a minimum, cover the nature of the electoral legislation and an overview of the electoral process, human rights issues in relation to the police’s role, standards of police conduct and communication mechanisms between the police forces and the electoral commission.²⁸ Further, the role of the police force must be clearly defined—for the benefit of the forces themselves and the public—for each of the different phases of the electoral process (pre-election, election day and post-election).

6. LOGISTICAL CONCERNS

One of the most vexing challenges of organizing post-conflict elections is the degree of logistical planning involved, and the lack of basic infrastructure to facilitate seemingly simple tasks. It must be borne in mind that, in a country emerging from conflict, infrastructure has typically been ravaged by fighting and destruction, and resources are in short supply. This creates enormous practical and logistical hurdles that make elections difficult and cumbersome to organize and carry out. These factors require special consideration and extensive advance planning.

For example, the condition and security of roadways and the availability of adequate transport/vehicles must be assessed for, among other things, the secure transportation of ballot boxes—both to polling stations prior to voting, and to the electoral commission (or other appropriate location) for counting the ballots after votes are cast. In some cases air transportation might be the only safe way to

²⁶ Andrew Graham, *Preparing Police Services in Democratic Regimes to Support the Electoral Process: A Survey of Leading Practice* 14 (Ukraine Proj., Sch. of Pol’y Stud., Queens Univ., 2006), available at <http://aceproject.org/ero-en/topics/elections-security/police-forces-in-elections.doc>.

²⁷ Final Report of the United Nations Observer Mission in South Africa (UNOMSA) to the United Nations Secretary-General, *A Democratic, Non-Racial and United South Africa* (May 26, 1994), 12 [hereinafter 1994 UNOMSA Report].

²⁸ *Id.* at 18, 20-21. See also generally *id.* (setting forth an overall model of how local police should be involved with the electoral process and describing best practices in transitional societies, including Macedonia, Nigeria, Azerbaijan and South Africa).

transport election materials, including ballot boxes, particularly to and from very remote areas that are often not reachable by road.

Road conditions also impact the ease of transport for monitors to travel among polling stations on election day and, of crucial importance, voters' ability to reach polling stations. It likewise bears emphasizing that women voter turnout can be disproportionately impacted by mobility and related security concerns. It is well documented that rape and other crimes targeted at women are pervasive during conflict and post-conflict times, and even as a tactic to terrorize voters.²⁹ Safety concerns should factor into the placement of and distance between polling stations, as well as the scheduling of voting hours. (For example, travel during evening hours, particularly when power outages are frequent, can pose additional risks, if not simply disincentive, to travel even short distances in order to vote.)

Beyond infrastructure and transport, logistical planning must take into account and adapt to unreliable telecommunication services and the lack of local availability of basic office supplies, two key factors that can frustrate day-to-day operations of the electoral planning process, let alone the management of election day. Advance planning must also factor in proper warehousing facilities for critical election materials.

The above is a brief and far-from-exhaustive list of practical elements that should be considered on a country-specific basis as part of the election planning process. The underlying point is that the most basic amenities should not be taken for granted in a post-conflict setting; logistical planning requires attention, time and knowledge of local conditions. It also requires flexibility and adaptability.

IV. CONDITIONS FOR SUCCESSFUL ELECTORAL PROCESS

Having pointed out challenges particular to elections in the post-conflict context, we turn to describing certain points that should form key components of the election planning process.

It warrants mention that post-conflict elections should not be judged solely by the standards of well-established democracies. Such an approach would ignore the situation on the ground and a core strategic purpose of post-conflict elections: to induce warring parties to stop fighting and agree to a non-violent resolution of the conflict. In this regard, the bar should not be set unreasonably too high for judging the "success" of a post-conflict election. A key factor to be considered is whether the results of the election, overall, reflect the will of the people, and whether the election advances the peace process and the establishment of democratic dispensation. In the

²⁹ See, e.g., AIDS-FREE WORLD, ELECTING TO RAPE: SEXUAL TERROR IN MUGABE'S ZIMBABWE (2009), available at <http://www.aids-freeworld.org/images/stories/Zimbabwe/zim%20grid%20screenversionfinal.pdf> (documenting systematic and widespread rape in connection with the 2008 election and specifically aimed at terrorizing the political opposition; according to the report, all the women targeted were members of the opposition party Movement for Democratic Change (MDC)).

1994 South African elections because there were some logistical and administrative problems observed in parts of the country especially in Natal, the UN Observer Mission, the European Union (EU) Mission, The Commonwealth Observer Missions and the Organization of African Unity Observer Mission in the joint verdict agreed to use term: “the election reflected the will of the people” rather than the term “free and fair.”³⁰

What constitutes a “successful” election has changed over time—and certainly depends on the circumstances of the country. For example, some hold the view that “[i]n Sudan, the logistical and political barriers to the elections even happening are so high that having the election happen at all, and in a way that does not jeopardize the fragile peace, would be an achievement.”³¹ There is, however, a case to be made that in a country like Sudan, in the midst of an ongoing conflict and genocide in Darfur, conditions do not exist to hold elections; any such elections cannot advance peace or lead to the establishment of democratic governance, and instead are likely to be used by the Bashir regime in an effort to legitimize itself. The example of Sudan can be contrasted with Mozambique and Cambodia, “where elections are increasingly becoming a test of the maturity of the broader political environment and of the openness of elites to change, [and] a more demanding standard [for elections] is increasingly expected.”³²

As discussed above, the consolidation of peace often depends on the election of a government freely chosen by the people and can be impacted by the voting system that is selected. Regardless of whether the voting system follows the proportional representation or majoritarian model, there is an absolute need to ensure that the elections are—and are perceived to be—free and fair. Much will turn on the design and implementation of an electoral process that takes into account country-specific history and factors (e.g., potential ethnic divisions and the nature of the conflict), and which maximizes the transparency and security at all stages of the electoral process, including pre-election planning and administration, and certification of the results.

Election planners should keep in mind that previous elections in a post-conflict country typically would have been characterized by selective voter registration, intimidation and gerrymandering of electoral districts. There may be limited or no local experience in running an election that emphasizes the freedom of voters to make their choice freely and in secrecy.³³

³⁰ 1994 UNOMSA Report, *supra* note 27, at 34-36.

³¹ Mary An, et al., Woodrow Wilson School of Public & Int’l Affairs, Princeton Univ., *Idealism Without Illusions: Lessons from Post-Conflict Elections*, 11 (2008), available at <http://www.cmi.no/sudan/doc/?id=932>.

³² *Id.*

³³ JOHN HATCHARD, MUNA NDULO & PETER SLINN, COMPARATIVE CONSTITUTIONALISM AND GOOD GOVERNANCE IN THE COMMONWEALTH: AN EASTERN AND SOUTHERN AFRICAN PERSPECTIVE 115 (2004). See Report of the Secretary-General on United Nations Operations in Mozambique (ONUMOZ), U.N. Doc S/25518 (Apr. 2, 1993); see also REPORT OF THE COMMONWEALTH OBSERVER GROUP TO THE SOUTH AFRICAN ELECTIONS, THE END OF APARTHEID 22-29 (1994).

The goal in any election is thus to create a secure, level playing field for voters and candidates, as well as to provide voter education and civic involvement throughout the electoral process and translate the will of the people into a representative government. At the core of its purpose, the electoral process must be accessible to all citizens—irrespective of where they live and their political affiliations—and with respect to universal registration and access to polling stations. Likewise, a truly democratic election is predicated on political candidates themselves having a level playing field for campaigning; candidates should have access to all communities and not be limited by de facto “no-go zones.” The existence of an uneven playing field—for either voters or candidates—runs contrary to the spirit and reality of fair elections.

To foster conditions conducive to such a level playing field, election planners should pay particular attention to establishing (i) an effective electoral framework, including an independent electoral administration and (ii) a comprehensive plan of administrative and procedural matters. A useful resource detailing the internationally-recognized standards has been elaborated by the International Institute for Democracy and Electoral Assistance.³⁴

1. EFFECTIVE FRAMEWORK AND ELECTORAL ADMINISTRATION

Electoral planning cannot be limited to what happens on election day; effective election administration requires long-range planning, and efficient and impartial administrators. If the probability of rigging is to be reduced and the integrity of the electoral process enhanced, considerable weight must be given to the conditions on the ground leading up to the elections, not simply concentrating on what transpires on the voting day.

The Electoral Commission is the key body for administering elections, and proved central to the success of post-conflict elections in Namibia, Cambodia and East Timor.³⁵ The Commission must be independent and legitimate in order to act effectively; if the referee of a contest is perceived to be biased, the result will not be readily accepted and the losing side feels cheated. By the same token, run-off elections will work only if people trust in the process and supervising authority. In the 2009 Afghanistan elections, the first round of the presidential elections were adjudged to have been riddled with corruption and badly managed; the opposition refused to contest the run-off elections because the Independent Electoral Commission was perceived as incapable of conducting a free election.³⁶

³⁴ INT'L INST. FOR DEMOCRACY AND ELECTORAL ASSISTANCE (IDEA), INTERNATIONAL ELECTORAL STANDARDS: GUIDELINES FOR REVIEWING THE LEGAL FRAMEWORK OF ELECTIONS (2002).

³⁵ See Reilly, *Elections in Post-Conflict Societies*, *supra* note 1.

³⁶ See Carlotta Gall & Jeff Zeleny, *Out of Race, Karzai Rival Is Harsh Critic of Election*, N.Y. TIMES, Nov. 1, 2009, available at http://www.nytimes.com/2009/11/02/world/asia/02afghan.html?_r=1&scp=5&sq=&st=nyt.

As guardians of the public trust in the democratic system, it is critical that the election administrators are impartial. Further, the administrative apparatus should incorporate the local communities, engage civic participation and include substantial voter education.³⁷

2. ADMINISTRATIVE AND PROCEDURAL MATTERS

Insufficient attention to administrative and procedural matters will negatively impact the organization of a transparent and legitimate election. The significance of these practical steps should not be underestimated in the post-conflict environment where, as noted, tension is high and public trust is low. The following administrative and procedural matters should be prioritized in planning post-conflict elections:

- (a) Inspection of the voters roll. The voters roll should be made available for public inspection to allow for public accountability and the participation of various stakeholders. Additionally, public accountability promotes the accuracy and integrity of the voters roll.
- (b) Proper accounting for election materials and equipment. In many post-conflict elections, distribution of election materials and equipment is chaotic, leading to accusations of vote-rigging. Shortage of materials, whether intentional or not, also can lead to the disenfranchisement of voters.
- (c) A transparent process for vote reconciliation. Typically, ballot counting takes place at pre-determined centralized points in each constituency. However, lack of reconciliation and secrecy in the counting of votes undermines public confidence in the elections. Vote counting therefore must be a transparent process, and must not take place before an accounting of spoiled papers, unused voting papers, vote registers and all election materials. Many post-conflict elections see widespread accusations of ballot boxes mysteriously appearing or disappearing, which, unsurprisingly, results in allegations of vote rigging and contesting of the results.
- (d) A code of conduct should be implemented for the campaign period. As discussed, free and fair elections hinge on the freedom of political parties to campaign for votes. Access to all areas of the country must be guaranteed. A code of conduct is important because it emphasizes the fact that political parties

³⁷ For an overview of Electoral Commission involvement in voter education across select African countries, see the Electoral Institute for the Sustainability of Democracy in Africa (EISA), Comparative Data: Voter Education (updated May 2010), *available at* <http://www.eisa.org.za/WEP/comeducation.htm>.

must share in the responsibility of ensuring the freedom of others to campaign and canvas for votes.

V. INTERNATIONAL INVOLVEMENT IN POST-CONFLICT ELECTIONS

International involvement has proven invaluable in navigating and overseeing the logistical hurdles noted above. International support is crucial to planning and conducting post-conflict elections because conflict countries typically lack the necessary domestic resources and personnel required to conduct a free and fair election. For the international community, post-conflict elections are also an important signal that legitimate democratic authority has been returned (or instituted) in a country, and that the on-the-ground presence of the international community may be coming to an end. Donor nations therefore seek evidence of concrete steps towards the establishment of a capable state as part of their “exit strategy.”³⁸

To create the foundation for lasting democracy, international support should focus on supporting and building capacity within key institutions such as the electoral commission and local police forces. International involvement is likewise important to plan and oversee the electoral process, and lend economic assistance and expertise to further the development of sound electoral laws and processes. This is particularly relevant in situations of state creation such as East Timor, where there is no history or legacy of pre-conflict democratic governance.

Election monitoring (including through providing international monitors and training local monitors) is another crucial way for the international community to ensure and support free and fair elections. A distinct concern relating to international involvement is to avoid legitimizing a flawed election. This concern underscores the importance of effective monitoring throughout the entire electoral process.

Monitoring activity should cover—geographically and chronologically—the entire electoral process, from the initial stages of registration through the elections themselves.³⁹ To minimize the chance of a disputed outcome,⁴⁰ each of the election stages (i.e., voter registration, campaigning, printing of election materials, storage and transportation of election materials, casting and counting ballots) should be certified as compliant with the principles of a free and fair election before proceeding to the next stage. Otherwise, the international observation exercise will be superficial and its conclusions vague or empirically untenable.

International observation thus requires the oversight of the actions of the Electoral Commission and its organs at all stages of the electoral process to verify compatibility under the governing legislation, the extent of freedom of assembly, expression and organization, voter education efforts, access to media by all political parties, registration of voters (to ensure, for example, that qualified voters are not denied identification documents that would allow them to exercise their right to vote),

³⁸ See Reilly, *Elections in Post-Conflict Societies*, *supra* note 1, at 118.

³⁹ Ndulo, *supra* note 11, at 15.

⁴⁰ *Id.* at 16.

proper security measures of transport and custody of ballots, and timely announcement of election results. International consultants should also help create transparent and speedy dispute resolution mechanisms for claims of irregularities, fraud and denial of access. Elections always entail such disputes, and it is important that disputes are settled in a timely manner and a new democracy is equipped with an impartial and speedy system of electoral dispute settlement.

The training of local monitors is likewise important—and efficient—in achieving “total observation” that would otherwise extend beyond the reach and capacity (and funding) of strictly international efforts. For example, local monitors should be professionally trained and work alongside international monitors, as has been done in South Africa⁴¹ and East Timor.⁴² In addition to broader geographical coverage at lower expense, the use of local monitors brings enormous benefits, including greater understanding of the local language(s) and nuances (including covert forms of intimidation that might elude international observers). Further, local monitors are an important way of involving the citizenry with accountability and oversight of their own election process.

For all these reasons, effective and committed international involvement is crucial to the success of post-conflict elections and to creating the foundation for a sustainable democratic system. As a colloquium of African Electoral administrators observed: “[D]emocratic elections cannot be created by the election law itself, or even by the electoral authorities alone. Democratic elections and sustainable democracy are built through a partnership of electoral authorities, political parties, NGOs, ordinary citizens, and sometimes international support.”⁴³

VI. CONCLUSION

Post-conflict elections are marked by great promise, commensurate with immense pressure to meet domestic and international expectations. While there may be competing interests and timeframes in the planning of post-conflict elections, in order to maximize the potential for the consolidation of peace and democracy, particular attention should be paid to the practical challenges set forth above, and to the country-specific context and conditions that further shape such challenges. In addition, a successful and peaceful post-conflict election requires an effective electoral framework and a comprehensive plan of administrative and procedural matters. International resources and expertise can prove critical to post-conflict elections;

⁴¹ 1994 UNOMSA Report, *supra* note 27, at 42.

⁴² BELUN, INT’L FOUNDATION FOR ELECTORAL SYSTEMS, ELECTION VIOLENCE EDUCATION AND RESOLUTION (EVER) IN TIMOR-LESTE FINAL REPORT 5 (2007).

⁴³ Workshop on Electoral Operations in a Democratic System, African Election Administrator’s Colloquium, Victoria Falls, Zimbabwe, Nov. 15-18, 1994, in AFRICA REGIONAL ELECTORAL ASSISTANCE FUND (AREAF), FINAL REPORT: DEMOCRACY DEVELOPMENT PROGRAMS 150, 161 (1996), *available at* http://pdf.usaid.gov/pdf_docs/PDABN401.pdf.

however, international agents should prioritize working with local institutions, leaders and communities in order to benefit from relevant local expertise, while simultaneously building local capacity and public accountability.

Importantly, the international community needs to remain engaged long after polling day and ballot counting. Post-conflict elections must not be viewed by the international community simply as a “punctuation point” at the end of a conflict. Developing institutions of governance is complex and takes time. Further, although international involvement in post-conflict elections is important, such involvement must be coupled with genuine efforts to jump-start not only the post-conflict political order, but also the post-conflict *economy*.

Indeed, the major challenge that post-conflict countries will continue to face after election day is economic recovery. Regardless of how successful an election may be run, conditions for conflict will remain ripe if the populace does not see an improvement in economic conditions. In plain terms, there can be no enduring democracy in the midst of poverty. Studies show that economic growth, reduction of unemployment and diversification of the economy are important conditions both for promoting democratic stability and avoiding the recurrence of conflict.⁴⁴

Long-term conflict prevention strategies should not disregard the correlation between armed conflict on the one hand, and poverty and the marginalization of minority groups on the other.⁴⁵ In this sense, post-conflict elections should aim “to promote human rights, to protect minority rights and to institute political arrangements in which all groups are represented... [e]very group needs to become concerned that the state belongs to all people.”⁴⁶ Moreover, elections should be coupled with concerted plans to stimulate economic growth, enfranchise marginalized groups and improve the overall population’s standard of living. As Former UN Secretary-General Kofi Annan has remarked: “[E]very step taken towards reducing poverty and achieving broad-based economic growth [] is a step toward conflict prevention.”⁴⁷ Thus, a genuine commitment to consolidating democracy in post-conflict areas does not end with elections – it extends to thoughtful, planned economic investment in the country’s future and sustained economic development.

⁴⁴ J. Joseph Hewitt, *The Peace and Conflict Instability Ledger: Ranking States on Future Risks*, in PEACE AND CONFLICT 2010 *supra* note 3, at 7.

⁴⁵ MILLENNIUM REPORT OF THE SECRETARY GENERAL, ‘WE THE PEOPLES’: THE ROLE OF THE UNITED NATIONS IN THE TWENTY-FIRST CENTURY, U.N. Doc. A/54/2000, at ¶ 202 (2000) (remarking that in many cases of internal conflict, “poverty is coupled with sharp or religious cleavages,” in which minority rights are “insufficiently respected and the institutions of government are insufficiently inclusive”).

⁴⁶ *Id.* at ¶ 204.

⁴⁷ *Id.*