ELECTORAL DEMOCRACY IN AFRICA
REFLECTIONS ON REALITIES
This collection of essays, written and published between February and May 2021 was edited by Jamie Hitchen, with support from Idayat Hassan, Austin Aigbe and Sa'eed Husaini.

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More than 13 African countries will see, or have seen, citizens head to the polls to elect new, or re-elect existing, leaders in 2021 despite the ongoing global Covid-19 pandemic.

Incumbent victories remain the most likely electoral outcome on the continent, with four of the five West African elections that took place in the final quarter of 2020 returning the sitting leader. Uganda’s 14 January poll returned the same winner for the sixth consecutive election amid attacks on opposition candidates and an absence of transparency in vote tallying. Elections in Benin, the Republic of Congo and Djibouti also produced overwhelming victories for the incumbent. But in Niger, where President Issoufou stepped down after serving his constitutional mandated two terms, a new leader did emerge – ruling party candidate Mohamed Bazoum – after a run-off election in February 2021 and a failed military intervention.

The removal or non-existence of term limits is one of the key themes of this nine-part series on electoral democracy in Africa. Ayisha Osori’s piece uses this lens to highlight how the longevity of leaders is impacting on the quality and credibility of elections and democracy. Also in the series, Chris Olaoluwa Ògùnmódéde discusses how an increasingly vocal, yet often electorally inactive youth, can translate online and offline activism into significant political gains; Julie Owono analyses the concerning trend of internet shutdowns around elections on the continent; and O’Brien Kabba details how election outcomes are being challenged in courts, with limited, but important, success.
Credibility is a word often associated with the outcome of elections. But what makes for a credible electoral commission? Adele Jinadu seeks to provide some answers to this question. And what of those who cast judgement on whether polls are ‘credible’ or not? The need for the evolution of the role of election observation is discussed at length by Olufunto Akundiro. Questions about the impact that insecurity and the Covid-19 pandemic is having on the capacity of states to hold equitable elections are explored by Jibrin Ibrahim.

Finally, Kojo Asante stresses the need to focus more on legislative elections as indicators of the state of democracy in a country like Ghana. Whilst Su Muhereza and Eshban Kwesiga's highlight the futility of election contests in place like Uganda, where the outcome is all but pre-determined, and look instead at alternatives to elections that can still produce responsive and accountable governance.

_Idayat Hassan_
_August 2021_
HOW TENURE ELONGATION AND A LACK OF TERM LIMITS WEAKENS THE INTEGRITY OF ELECTIONS IN AFRICA

Until the late 1980s, Liberia's constitution was the only one in Africa to provide clearly for presidential term limits. Without these limits, political succession was a major source of instability on the continent, with many countries dominated by a single leader who insisted on his – and it was always a him - indispensability. The end of their rule was invariably by force. In 35 years from 1961 to 1997, Africa witnessed 78 coups d'états.

But by 1995, at least 33 countries had revised their constitutions to include presidential term limits. The Organisation of African Unity (as it then was) built on this trend by developing a rule against coups and what it called “unconstitutional changes in government” with the recommendation that “any manipulation of the constitution aimed at preventing a democratic change of government” be outlawed. By the 2000s elections and term limits had replaced death and coup d'état as the most common way in which African presidents and prime ministers left office. Term limits were one effective way of curtailing the excesses of all-powerful executives and a tool that allowed for greater investment in the independence of critical democracy strengthening institutions such as the judiciary, legislature and election management bodies (EMBs).

Fast forward to 2021, and 16 countries across the continent have either revised their constitutions to remove term limits or seen the extension of the tenure of the incumbent president against the spirit of term limits. A further eight - Eritrea, Ethiopia, The Gambia, Lesotho, Libya, Morocco, Somalia and Eswatini - still have no term limits, whilst another nine countries, have term limits that exist in law, but that have yet to be tested or applied in practice.
ELECTORAL CHOICE

According to academic Andreas Schedler, to qualify as democratic “elections must offer an effective choice of political authorities among a community of free and equal citizens”. He identifies seven conditions that should exist if regular elections are to fulfil the promise of effective democratic choice: empowerment, free supply, free demand, inclusion, insulation, integrity and irreversibility.

Empowerment and insulation speak to voters' ability to vote freely without restrictions, fear or intimidation. In the January 2021 presidential elections in Uganda – where presidential term limits were removed in 2005 and age limits in 2017 - political violence linked to the election resulted in over 50 deaths, while more than 400 individuals have been forcibly disappeared in a pre and post-election clampdown. In Guinea, after changing the constitution through a dubious referendum, President Conde contested, and won, a third term in 2020 amidst sustained protests that saw at least 12 people killed.

Free supply, free demand and inclusion cover citizens ability to form, join and support opposition parties, candidates and their policies; and mitigate against candidates being prevented from participating in the elections through legal or pseudo-legal means. An increasingly common way of preventing candidates from participating in elections is the sponsorship system where presidential candidates are required to secure a minimum threshold endorsement of registered voters or elected representatives. This, along with high filing fees, effectively narrows the number who can contest.

Ahead of the 2020 presidential elections, Cote d'Ivoire's election management body required that to be eligible candidates must secure the signatures of at least 1% of the electorate. This gave a significant advantage to incumbent, Alassane Ouattara, who successfully secured a disputed third term against reduced opposition. In addition to technical obstacles, more direct threats can be used by incumbents. Ahead of April's presidential poll in Chad, leading opponent to President Deby's sixth term in office, Saleh Kebzabo, withdrew his candidacy after a deadly raid by security forces at the home of another opposition candidate.
The integrity factor relates to the election process, rules and execution. When EMBs or courts are perceived as compromised, the impact on the credibility of the electoral outcome is diminished. Like in Uganda in January, many voters in Congo Brazzaville cast their ballot on 21 March 2021 with continued doubts about the independence of the EMB given that nothing has changed since it oversaw a questionable outcome in 2016. An election which followed the 2015 removal of term limits, that gave President Sassou Nguesso the opportunity to seek a third-term in his second spell in power.

Finally, the irreversibility condition covers the sanctity of the result and winners taking office peacefully. Elections should have the desired consequences, where the will of the majority of voters is respected. In 2016, Yahya Jammeh tried, albeit unsuccessfully, to ignore and annul the results of the election, but the EMB, supported by regional powers, held firm to force him from office after two decades at the helm.

**LIMITING POWER**

Those who argue against the imposition of term limits claim that they compromise the sovereignty of the people and their choice, as well as risk undermining the stability and continuity required for development. They argue that instead of term limits, the focus should be on improving the integrity of elections. But a determination to stay in power predisposes leaders to oversee compromised polls. Presidents contesting for, or having won, their sixth term in office in 2021 - Museveni in Uganda, Sassou-Nguesso in Congo Brazzaville and Deby in Chad - do not feel more secure. Instead, with each successive election the violence against opposition, rhetoric of intolerance and abuse from state security actors increases. As Schedler has argued, “the desire of those who manipulate elections is to enjoy the fruits of electoral legitimacy without running the risk of democratic uncertainty”.

*A determination to stay in power predisposes leaders to oversee compromised polls.*
Innovative thinking is needed to tackle anti-democratic forces intent on capturing and controlling access to power whilst maintaining a veneer of electoral legitimacy. But respect for term limits alone is not a vaccine against electoral authoritarianism. Niger's historic transition in February affirmed its commitment, for the first time, to two-term limits, but the vote, which was won by the ruling party candidate amidst protests about the results and an internet shutdown exposed the fragility of the country's democracy. Despite adherence to term-limits in Tanzania, a change of the political party in power has not been forthcoming. In places where the ruling party never loses, there can be a systemic weakening of the checks and balances, and critical voices, required for a healthy democracy. Even in places where term-limits are in place and turnovers have occurred – Benin, Senegal and Nigeria – continued vigilance is required. There have been deep erosions to the independence of democracy strengthening institutions in recent years.

Innovative thinking is needed to tackle anti-democratic forces intent on capturing and controlling access to power whilst maintaining a veneer of electoral legitimacy. Africa still has more countries that have strengthened and upheld term limits than not. But constitutional power grabs are on the rise, particularly in West Africa, and the complicit silence of the Africa Union (AU), and regional bodies like ECOWAS, is a concern. In addition to considering the adoption of non-amendable presidential term limits, as has been proposed as part of Burkina Faso's constitutional review, the AU should lead a collective review of the application of the non-retroactivity principle to constitutional amendments to make it explicit that leaders who oversee constitutional amendments cannot reset their tenures on that basis. The spirit of the principle is to prevent a retroactive application of punitive law and not to give sit tight men a window to legally hijack their countries.
Most importantly citizens must also be encouraged, and supported, through investments in organising and social movement building to demand for change. After all half of the dozen African leaders who have tried to evade limits over the past 15 years, were foiled by populations who rallied against these tenure extensions. Listening to, and learning from, the experiences of Burkina Faso, Malawi, Niger, Nigeria, Senegal and Zambia can offer valuable lessons.

*Ayisha Osori is Executive Director of Open Society Initiative West Africa*
Can Nigeria’s #EndSARS protests evolve into a force that can restructure electoral politics? Or will the protests, which culminated with the state opening fire on its own citizens in Lagos, simply become a dramatic, but ineffective interlude, to the status quo?

If recent electoral contests held in Lagos, Imo, Bayelsa, Plateau and Abia are an indicator, the civic awakening that seemed apparent at the height of the demonstrations in October 2020, has thus far failed to spill over into the electoral realm. Voter apathy, which typifies Nigerian elections, has been a notable feature of these polls. But as the 2023 elections draw closer amid a gloomy political and economic outlook, Nigeria’s young voters and activists are yet again being pushed to consider their role in politics while trying to navigate the relative power of protest and electoral politics as modes of civic participation.

Activists and organisers who participated in the #EndSARS protests must decide between redoubling their efforts or stepping back from all contentious political activity; whether, and how, to change tactics; what issues they should focus on; or if abstaining completely from electoral politics would be the most powerful statement. These questions are particularly pressing for Nigeria’s so-called “Soro soke generation” or what I like to call the “70 Percent Club” - the cohort of Nigerians believed to be 30 years old or younger.

In a country as large and heterogeneous as Nigeria, these young people come from all walks of life and have different experiences, but they also share some important commonalities. They have no little to no memory of Nigeria under military rule, they increasingly reject the respectability politics that govern intergenerational social interactions, and they are
very online. #EndSARS was undeniably their moment; their introduction to the world as a social force to be reckoned with.

FRESH VOICES

#EndSARS as a struggle in the public square coincided with the takeover of the virtual one, much of it driven by this “70 Percent Club”. Even as the protests gathered steam in early October 2020, the overwhelming majority of Nigeria's print and broadcast media – whose ownership structure is largely concentrated in the hands of political entrepreneurs with close links to government officials and the Nigerian state - gave little to no coverage to the protests. But in a country where 61% of the population has access to the internet, according to the Nigeria Communications Commissions, these attempts to stymie the protests proved to be a miscalculation. Young Nigerians do not rely on newspapers, television and the radio for news and information to the same degree their parents and grandparents do.

According to 2019 findings by NOI Polls, 70% of Nigerians aged 18-35 have access to the internet compared with 56% of those aged 36-60. Roughly 20% of the Nigerian population has a Twitter account, with young people again the more likely users. WhatsApp and Facebook have even more significant numbers of users. During the protests, social media users got the #EndSARS hashtag trending globally. The millions of unique impressions on Twitter and other platforms, gained the attention of international celebrities and the Nigerian diaspora. Online spaces and new media platforms like Pulse Nigeria, Zikoko and The Native quickly worked to fill the gaps left open by legacy media.

The digital prowess young Nigerians displayed during the #EndSARS protests played a huge role in its reach, fundraising, coordination and message discipline. They used online platforms to share information in real-time, coordinate activities with protesters across the country, fight misinformation and document important events such as attempts by hired thugs and pro-government forces to subvert the protests and the fatal shootings in Lekki on 20 October. Women were at the heart of this movement, with The Feminist Coalition playing a critical coordinating role, alongside SARS victims' mothers' groups, in demanding transparency and accountability for victims of police brutality.
The challenge now is how to institutionalise the vibrant online activism demonstrated during the #EndSARS protests into electoral politics and broader civic participation. The protests did a lot to dispel the myth of apathy among so-called “lazy Nigerian youths”, who have been forced to provide social goods and services for themselves amid a weak state incapable of meeting their basic needs. The immense strides the ICT and creative sectors have made in the last decade largely reflects the ingenuity and entrepreneurialism of the “70 Percent Club”. Far from being frivolous and lazy, young Nigerians have simply lost hope in institutions that do not serve their interests or reflect their preferences. Their low participation rates in electoral contests reflecting disenchantment with the ruling elites and the systems of governance they oversee.

But this disillusionment with the political system and the lack of trust in civic norms and institutions represents the best opportunity to reshape political participation in Nigeria. There is a need to shift Nigeria's civic culture from one skewed overwhelmingly towards elections as the primary means of participation, and towards a system inclusive of mass civic activism designed to trigger long-term political development and social change. This effort must start with building the kinds of "mediating structures" Alexis de Tocqueville argued strengthened democracies by providing alternative loyalty bases and sources of information for citizens. These mutually reinforcing online and offline entities would serve as a bulwark against dominant political forces, and as intermediaries between citizens and the Nigerian state, who are socially distant from each other.

The challenge now is how to institutionalise the vibrant online activism demonstrated during the #EndSARS protests into electoral politics and broader civic participation.
LEARNING FROM THE PAST
A crucial mistake made after the collapse of military rule and return to civilian democracy in 1999 was the failure to connect institutional politics - understood narrowly as represented by political parties and elections - to the participatory ethos that energised the pro-democracy movement of the 1990s. Electoral politics returned to being the crown jewel of civic participation in Nigeria's civilian democracy, with many democracy activists - some of them erstwhile politicians - running for and winning elected office, or getting appointed to government and party positions.

At the same time, civil society organisations (CSOs) arguably did not, and still do not, serve as intermediaries between citizens and state, acting more as entrenched, professional middle-class interests or even as an extension of the political class. Many CSOs rely on international donors for funding - when they are not covertly funded by political figures - and have come to prioritise access and closeness to government and foreign donors, raising questions among their critics about their ability to be effective intermediary institutions. The weakness of the rule of law and a culture of opacity in government, combined with the aforementioned tendencies, makes contemporary organised CSOs incapable of, and unsuited to, being a credible mouthpiece for young, socially-networked Nigerians.

LEADERLESS AND DECENTRALISED
Historically, organised activism in Nigeria leaned towards centralised representation, usually in the form of professional organisations, trade associations and farmer, labour and student unions. The #EndSARS protests were structured differently, resembling the many “leaderless” movements that have emerged across the world in recent years. Although Lagos served as a sort of symbolic capital of the movement, the protests were decentralised away from any one geographic location or group and were truly national in scope. Nigerians in 21 of the 36 states participated in demonstrations, along with diaspora supporters in London, Johannesburg, Washington DC and elsewhere.
Time will tell whether this format of mass activism will become the norm in Nigeria, but its spontaneity, message discipline and organisational prowess caught the Nigerian establishment by surprise. This in part explains the violent crackdown that brought the protests to a halt, as well as the continued repression by state authorities against key organisers and ordinary protesters. Many demonstrators remain detained, with the whereabouts of more than a handful an open question. Others saw bank accounts frozen or had their passports seized.

**MAKING ENGAGEMENT MEANINGFUL**

Given the varied manifestations of poor governance across the country which the #EndSARS protests sought to challenge, it stands to reason that localised organising which reflects the reality of Nigerians in their immediate communities should drive the establishment of mediating structures. But if the broader trends which emerged during the protests are to have any significance during the 2023 elections, the demands of Nigerian political organising should not be directed solely at centres of power like the major cities and state capitals.

While young people should be encouraged to register to vote and join political parties and other organs of institutional politics, these efforts should be coupled with a commitment to building long-term civic institutions that give youths a means of engaging political systems and actors beyond election day.

Although the #EndSARS movement drew on a cross-representation of Nigerians, the most dominant narratives and visible organisers emerged from Lagos, which served as the protests' centre of gravity to a large extent. The emergent forums and collective platforms which
formed during the protests demonstrate the necessity of broader inclusivity of Nigerians across different income groups, regions and communities. Mediating structures must be designed to broaden constituencies and bring in voices who may not be well-represented among Nigeria's online population. The problems of governance in Nigeria might have similar dimensions across the board, but they manifest themselves differently everywhere and these mediating institutions ought to reflect these nuances. Solutions that might work in Abia might not be replicable in Zamfara, and vice versa.

With the myriad of challenges bedevilling Nigeria, efforts to resolve them cannot wait until 2023, and neither should Nigerians. While young people should be encouraged to register to vote and join political parties and other organs of institutional politics, these efforts should be coupled with a commitment to building long-term civic institutions that give youths a means of engaging political systems and actors beyond election day. More civic participation by youths will not guarantee better governance outcomes, but it does raise the odds of bridging the significant gap between those deciding policy and those who have to weather its effects. And that is a useful point of departure.

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That the presidential election which took place in the Republic of Congo on 21 March 2021 would re-elect Denis Sassou Nguesso was a given. Less certain was whether access to the internet, in particular access to social media, would be interrupted on election day, and in the days that followed as it was in 2016. In the end it was. For three days – as voting, counting and the results were announced – the internet remained switched off.

In 2020, several African countries including Burundi, Togo, Guinea and Tanzania cut off internet access during elections. The blocking of social media by the government is often justified on the grounds of “protecting national security”, or more recently, to “fight against the spread of fake news and hate speech”. In its fight to suspend and ban Twitter in Nigeria, the government justified its actions by stating that the platform was enabling “misinformation and fake news to spread… [with] real world violent consequences”.

But these sorts of justifications should not deceive anyone. Governments that block access to the internet or social media are in fact seeking to better control the flow of information online. But this choice to censor is counterproductive. Not only are the economic implications important - according to the latest estimates available, internet shutdowns have cost the continent more than US $2 billion - but as, if not more, importantly internet shutdowns disrupt democratic participation and processes.

THE AUTHORITIES AND THEIR ENABLERS
The process that enables internet shutdowns is covered by a veil of opacity. Due to a lack of technical expertise, governments usually turn
to internet service providers (ISPs) for help in disrupting telecommunications. But it is difficult to know precisely which authorities issue the order to shutdown or throttle the internet. Organisations fighting internet shutdowns must be resourceful to obtain this crucial information, which enables citizens to hold their government officials to account. In 2018, legal action brought by internet Sans Frontieres against mobile operators in Chad, obtained written proof of the order sent by the Ministry of the Interior to all ISPs.

Transparency from ISPs themselves can also help lift this veil of obscurity further. Under pressure from civil society initiatives, such as the Ranking Digital Rights project, many of these companies publish more specific information about the connectivity disruption orders they receive from governments. Orange issued a press released around the 2020 Guinean election to this effect for example. Understanding who orders and facilitates internet shutdowns is an important piece of the puzzle. But it is equally important to prevent the occurrence of these telecommunications outages in the first place.

**ENHANCING TRANSPARENCY**

According to the UN Human Rights Council and the African Commission on Human Rights, cutting off access to the internet is a serious violation of the right to freedom of expression. This is even more so when this act of censorship takes place during an election period, a critically important moment in democratic life.

Faced with media landscapes under the strict control of autocratic governments, citizens of many African countries have found space for free expression online. For some, it is the first time that they can speak without filter on the governance of their country and question the government propaganda. The internet and use of smartphones are
also key tools for opposition parties and civil society groups to collect and centralise information about anomalies observed during an electoral process.

The democratisation of online communication tools and access to bandwidth offers an increasingly formidable electoral transparency tool for civil society and citizens of African countries. Citizen electoral monitoring initiatives, have emerged in Cote d’ Ivoire (2010), Togo (2013), Kenya (2017), and Guinea (2020), to give just a few examples. All have offered significant contributions to exposing the existence of fraud, which in turn have called into question the results claimed by the authorities. But blocking the internet or social networks during an election prevents them from being able to do so and degrades the credibility and sincerity of the vote. The #KeepItOn coalition, which was created to fight internet shutdowns, are campaigning for the inclusion of internet access in the assessment of elections by national and international observation missions.

KEEPING IT ON
The internet challenges our existing social and governance structures to adapt or reinvent themselves. For some of them, the challenge seems insurmountable, and censorship becomes a refuge. But this refuge is only temporary. Governments that prefer to censor, for fear of a free flow of information online, would be better served by putting this energy into innovating in their relationships with citizens and voters. In the decades to come, and as more and more Africans come online, the internet must stay on.

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In 2017 the Kenyan Supreme Court became the first court on the African continent to annul a presidential election following full due process. In February 2020 the Malawian High Court, sitting as a constitutional court, followed suit in cancelling the results of the May 2019 presidential election. Not only did the judges demonstrate extraordinary courage in pronouncing these verdicts, but they demonstrated what a competent and independent judiciary can do to ensure democratic electoral processes are free, fair and credible on the continent.

HIDING BEHIND TECHNICALITIES
For the most part courts across Africa have been unwilling to reverse electoral outcomes, preferring instead to seek refuge in technicalities when casting judgement. This reflects poorly on judicial independence, and brings to the fore the reality that many judges are appointed as a reward for their loyalty to those in power, not because of their competence and capabilities.

The first of these is the use of procedural technicalities to dismiss the case, thereby avoiding hearing its merits. In 2016, the Zambian Constitutional Court decided to abandon the election petition, without determining its merits, on the pretext that the 14 days set by the Constitution, during which the case should be heard and determined, had elapsed.

Another technicality used by courts is simply to abdicate judicial responsibility and avoid rendering a judgment. This has been a common approach deployed by the Zimbabwean judiciary. Following the 2002 elections, a petition was filed in the High Court by losing opposition candidate Morgan Tsvangirai seeking the nullification of the
presidential election results on the grounds that the election was characterised by widespread violence and intimidation, corruption, voter fraud and ballot-stuffing. After hearing the case for seven months, Justice Ben Hlatshwayo, in a terse one-page ruling, dismissed the allegations and promised to render a reasoned judgment in two weeks the judgement never came.

The 2013 Zimbabwean elections were also challenged in Court. To prepare their case, the petitioner made a preliminary application to the Court to allow him to have access to election materials. The Constitutional Court reserved ruling on the application and by the time the hearing of the petition commenced, had still to take a decision. This forced the petitioner to withdraw the petition, indicating that it was going to be impossible to substantiate the allegations of irregularities without access to election materials.

A final, and arguably most common technicality, is to misapply the materiality test, also known as the substantive effect rule. This rule is premised on the idea that some electoral irregularities may be minor and inconsequential, while others may be significant enough to have a bearing on an election's fairness and legitimacy. Inconsequential mistakes, omissions and commissions should not lead to an annulment of an election, provided that its overall fairness was not vitiated. But the substantive effect rule has provided an escape route to timorous or compromised judges who prefer to defer to incumbents.

In Uganda, successive election petitions by opponents of the incumbent have been unsuccessful, ultimately because the petitioners have been unable to prove, quantitatively, that the alleged malpractice has substantially affected the outcome of the election. This focus on numbers can effectively legitimise large scale election cheating. But proving substantive effect is difficult. It is further complicated by short time frames and the fact that the data that can be used to validate the claim is often in the hands of the electoral management body and that some irregularities, such as political violence, are not susceptible to numerical quantification in relation to election results. Interpretations of the substantive effect rule have been applied in judgements that confirmed the outcome of recent elections in Namibia, Botswana and Zimbabwe.
HISTORIC DECISIONS

In August 2017, the Kenyan Supreme Court made a ground-breaking decision when it annulled the election of Uhuru Kenyatta. By a majority of four to two, the court held that the presidential poll was not conducted in accordance with the Constitution and the applicable laws, rendering the declared result invalid, null and void; that the irregularities and illegalities in the election were substantial and affected its integrity, the result notwithstanding; that Uhuru Kenyatta was not validly declared as president-elect and that the declaration was invalid, null and void; and that the electoral commission should conduct fresh presidential elections in strict conformity with the constitution and applicable electoral laws within 60 days.

The Kenyan Court's decision demonstrated the value of proactive adjudication. Prior to the elections, the 2011 Elections Act was amended to introduce the Kenya Integrated Electoral Management System. This was intended to be used in biometric voter registration and, on polling day, in voter identification as well as instantaneous transmission of election results from polling stations to the Constituency Tallying Center and the National Tallying Center. The transmission of results required the use of standard forms - Forms 34A and 34B - but in many instances the results were not transmitted in the manner required by law.

The Independent Electoral and Boundaries Commission (IEBC) gave no plausible explanation for this, while the petitioners alleged that the system had been hacked and results tampered with in favour of the incumbent. The Court appointed its own IT experts to assess the IEBC servers and report their findings. However the IEBC, in violation of the court order, declined to give the court-appointed IT experts access. The Court held that the failures by IEBC were a clear violation of the 2010 Constitution and the Elections Act (as amended). It raised serious doubt as to whether the election results could be said to be a free expression of the will of the people, as required by the Constitution.

Perhaps the judgment's greatest contribution to electoral jurisprudence in Africa was its correct application of the substantial effect rule. It held that elections are not just about numbers and that
the quality of the entire process matters when gauging whether the result reflects the will of the people. In the words of the Court, “even in numbers, we used to be told in school that to arrive at a mathematical solution, there is always a computation path one has to take, as proof that the process indeed gives rise to the stated solution.”

Similar jurisprudence was applied in relation to Malawi’s 2019 presidential election petition. The Court found that election results forms, which were used to tabulate national figures, were pervasively altered unlawfully. Based on adduced evidence, it concluded that a substantial number of the official result sheets had results altered using correction fluid, popularly known as Tippex. The judgement reached was that the Electoral Commission had failed to preside over a free and fair election, that the electoral process was compromised and that it was conducted in a manner that violated electoral laws and the Constitution. It nullified the election and ordered a new election to be held within 150 days. The rerun saw opposition candidate Lazarus Chakwera win 58.6% of the vote to comprehensively defeat incumbent, and winner of the 2019 poll, President Peter Mutharika.

In terms of the threshold for the integrity of the election, Malawi’s High Court, followed the Kenyan precedent of 2017, in agreeing that it is not just numbers, but the quality of the electoral process that matter in determining the substantial effect of irregularities on election results.
CONTINUITY...FOR NOW

The decisions reached in Kenya and Malawi demonstrate the capacity of what competent and courageous judges can do to enforce electoral rules. The judgments also pose a challenge to other African judges: will they follow in their footsteps or will they choose to hold fast to the archaic and pro status quo jurisprudence that has prevailed up to now?

Early indications suggest that continuity, rather than change, continues to prevail. Recent electoral decisions in the Democratic Republic of Congo, Zimbabwe, Botswana and Namibia have continued to produce judgements that look for substantive effect on the outcome, and less on the process. In Uganda, a petition to challenge the outcome of the January 2021 presidential election was withdrawn over concerns about the judicial independence.

Nonetheless, the verdicts handed down in Kenya and Malawi serve as landmark decisions, that over time will serve as a yardstick of contextually relevant presidential election jurisprudence in Africa. Both set a precedent that the quality of an election and the environment in which the election is held matter, and have a bearing on the outcome, regardless of numbers.

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The crass and partisan manipulation of African electoral management bodies (EMBs) was a central feature of the legacy of abuse that successor regimes to colonial rule in Africa inherited and perpetuated. Embedded in partisan politics through “outright control” by successor regimes, EMBs became “ineffectual mechanisms for democratically managing diversity”

To lay the ghost of such partisan political abuse, and to nurture and strengthen trust in electoral commissions, the democratic transitions of the 1990s stipulated new norms and rules for redesigning competitive party and electoral politics and systems. These norms included democratic political succession, entrenched provisions for the periodic conduct of credible elections, in the case of presidential systems, fixed presidential term limits, the promotion of diversity, civic participation, and engagement, especially through an increased role of civil society and marginalised groups and the establishment of independent EMBs.

Indicators of what credible EMBs and electoral integrity should look like were set out in African codes and standards such as the African Charter on Popular Participation in Development and Transformation (1990) and the African Charter of Democracy, Elections, and Governance (2007) to name just two. But has the objective of nurturing credible EMBs and electoral integrity been achieved?

**MULTIPLE MANAGEMENT MODELS**

EMBs in Africa are currently either a single, independent body; comprised of two or more bodies with shared responsibilities for election management; or a hybrid government-civil society EMB under
an independent oversight supervisory body of experts, usually judges. Non-autonomous or fully government controlled EMBs inherited at independence, notably in francophone and lusophone countries, have been replaced with autonomous or semi-autonomous ones. But within these classificatory models, structures and composition vary significantly, dictated by each country’s constitutional and political history, and the interplay of contending sociocultural forces and prevailing circumstances.

However, appointment processes and the tenure terms of the chair and members of election commissions are problematic areas across the continent. Concerns remain about the transparency of the nomination, appointment and removal process of EMB members according to a 2013 Economic Commission for Africa expert opinion survey. It found that “in only 10 of the 40 African countries surveyed did more than half the respondents consider the procedure to be mostly or always transparent and credible...[with] serious implications for the integrity of elections in Africa.”

Renewal under consecutive fixed tenure for members tends to enhance EMBs' credibility, but remains problematic and is diminished by the power of appointment and renewal, which is also the power of removal. This power can be used to remove members perceived as resisting or not pliable to executive branch partisan influence, or who, by general perception, have not lived up to the integrity expectations of their office. In Nigeria and Sierra Leone, EMB members have been removed before their tenure expired. To pre-empt such a possibility, it has been suggested that the tenure of EMB members should be fixed, like judges, to their retirement age, except for cause, as is the case in Ghana.

AUTONOMOUS ACTORS?
Recent studies of West African EMBs distinguish between their formal, administrative and financial autonomy. The level of autonomy varies not only from country to country but also within country over electoral cycles according to a 2019 study of six West African countries commissioned by the ECOWAS Network of Electoral Commissions (ECONEC). The study explored factors driving or constraining the
autonomy of the EMBs and how these impact election integrity.

In Benin, the financial autonomy of the Commission Electorale Nationale Autonome (CENA) is constrained by attempts by the Ministry of Finance to exercise a priori control over its expenditure. This leads to dysfunctions in the electoral administration process. Another problem is the dependence of the CENA on the executive to obtain electoral funds. A challenge that confronts many EMBs in the ECOWAS region. Furthermore, in Senegal, the 2019 ECONEC study found that when the funds were released, almost half the election budget was spent by the other institutional actors such as the judiciary and security agencies.

But formal autonomy on paper does not always translate into practice. In West Africa, several EMBs have almost identical legal provisions protecting their independence, yet they have widely differing degrees of autonomy. An EMB, like CENA in Benin, made up of members nominated by political parties, whatever its defects, has sometimes conducted elections with more independence and competence than an expert commission such as Nigeria's. Cape Verde's EMB has a longer tradition of effective performance and independence in action than Senegal's. Even though both exemplify the same classificatory model.

Although the different systems of appointment and composition do have an impact, institutional partnership and collaboration - like the Inter-Agency Consultative Committee on Election Security established by Nigeria's Independent National Electoral Commission (INEC) - between EMBs and other institutions with election-related mandates, can play an equally important role in shaping perceptions of EMB capability. Issues like a country's size, the relative balance of powers among political parties, the internal security situation, and the strength of courts, the civil service and civil society, are critical for the conduct of credible elections.

In short, an autonomous EMB is a necessary, but not a sufficient condition for conducting credible elections.
In short, an autonomous EMB is a necessary, but not a sufficient condition for conducting credible elections. An anti-democratic political culture of impunity characterised by abuse of power by incumbent parties for partisan electoral gain; a zero-sum approach to electoral competition that ignites and fuels electoral violence; and high-levels of vote-buying and voter-intimidation create an environment in which conducting credible elections is difficult, regardless of the technocratic skills and technological innovations deployed. This is the experience in Nigeria, where controversial elections were held in 2015 and 2019, despite the popular perception of INEC as increasingly credible after it invested in technology such as smart-card readers and undertook internal administrative and financial reforms, after polls in 2011, to try and limit the space for electoral malpractice.

**ADVANCING CREDIBILITY**

Enhancing the application of ICT and internal administrative reforms that improve the transparency of EMBs has improved electoral transparency in Ghana and Nigeria. So too can enhancing the administrative and financial independence of EMBs. This can be done by vesting in them powers to recruit their own staff, professionalise their bureaucracies, and make their annual budget and election budget direct charges on national consolidated revenue funds. Reforming EMBs also requires removing their members' appointment and reappointment process from political officeholders and vesting them in independent, non-partisan individuals or bodies.

But election commissions need to be supported in their efforts to conduct credible polls. Partnerships with civil society organisations can improve civic awareness and tackle prevailing problems such as vote-
buying. Allying with impartial security actors can also discourage campaign and election-day violence, whilst regular dialogue with all political parties can go some way to reducing the zero-sum, winner-takes-all approach to politics. They also must continue to learn from each other. ECONEC, and the Electoral Commissions Forum of Southern African Development Community countries, are constantly sharing experiences that can shape regional best practices.

The impact of these discussions and dialogues become clear on election day, but the work to get there is ongoing and unending. Maintaining credibility does not just mean standing still. Election commissions across West Africa must be constantly evolving if they are to do their part to oversee elections that reflect the will of voters.

*Prof. Jinadu, Senior Fellow, Centre for Democracy & Development*
The core value of election observation lies in the recommendations offered in observer reports, which serve as the basis for post-election reforms and long-term strengthening of democracy. Observers also contribute by building confidence in democratic practices and in deterring irregularities, particularly in transition and post-conflict contexts. However recent court annulments of presidential elections in Kenya (2017) and Malawi (2019), that were initially deemed satisfactory by international and citizen observer groups, have led to questions about the credibility and relevance of their assessments.

A recent academic paper by Khabele Matlosa, described international election observation as “wounded and noted that the Covid-19 pandemic has added salt to this wound. Pandemic restrictions have prevented international groups from fully observing critical elections on the continent in the past year. As the electoral landscape in Africa continues to evolve, technical and political developments over the past decade, coupled with the new reality of the Covid-19 pandemic, call for a shift in the focus and practices of election observation.

Observers are still needed within the African context, but election observation has reached an inflection point where its relevance and credibility are dependent on a review of the methodological approach used and enhanced collaboration between domestic, regional and international actors.
ARE OBSERVERS STILL RELEVANT WITHIN THE RAPIDLY EVOLVING ELECTORAL CONTEXT IN AFRICA?

Observers are still needed within the African context, but election observation has reached an inflection point where its relevance and credibility are dependent on a review of the methodological approach used and enhanced collaboration between domestic, regional and international actors.

Over the past two decades, elections have become the accepted means of ascendance to power in most African countries. Many of which welcome observers deployed by African intergovernmental bodies (IGBs) such as the African Union (AU) and African regional economic communities; non-African IGBs like the European Union, the Commonwealth, and the International Organisation of La Francophonie; and representatives of international non-governmental organisations like the Electoral Institute for Sustainable Democracy in Africa (EISA), National Democratic Institute (NDI) and The Carter Center (TCC). However, the increased regularity of elections is not commensurate with increased credibility of polls.

Politics in Africa remains ethnicised and divisive, with the widespread distrust of electoral institutions and processes contributing to contested electoral outcomes and, in some cases, electoral violence. In the 21 elections held in Africa between March 2020 and March 2021, the opposition rejected the outcome in nine countries and boycotted in two, with protests sparking post-election clashes in several. In these contexts, African IGBs in their election assessments face the dilemma of promoting peace and stability at the expense of democracy. This tension was exemplified in the ECOWAS mission's statement on Guinea's 2020 election.

The fact that the AU did not issue statements during controversial polls in Tanzania (2020) and Uganda (2021) and its recall of AU observers from Guinea's controversial legislative elections and referendum in
**Election observer groups across the board are increasingly challenged by their limited access, and insufficient technical capacity, to assess more digitised electoral processes**

2020 could suggest a subtle shift, but overall African IGBs struggle to balance their role as election observers - a largely technical endeavour - with their political and diplomatic commitments as regional authorities. Although these groups have expanded their observation methodology to create a stronger link between observation, conflict prevention and mediation and technical assistance, they still face challenges linked to budgetary constraints, political interference and weak technical capacity that undermines their ability to undertake a robust assessment of electoral processes within member states. Here, the deployment of observers by international NGOs like EISA, NDI and TCC, drawing on same principles as the African IGBs, provides a more balanced outlook and assessment of elections on the continent as they are less constrained by regional politics.

But election observer groups across the board are increasingly challenged by their limited access, and insufficient technical capacity, to assess more digitised electoral processes. Technology is used by almost half of the election management bodies (EMBs) on the continent - for voter registration and identification, to voting machines and results management systems - but observer access to these processes remain restricted. Observer groups in their methodological approaches are also struggling to effectively assess the emerging digital threats to electoral integrity exacerbated by the increased use of social media and online campaigning. They are also limited in their ability to assess party and campaign finance, which is crucial to their conclusions on the fairness of the electoral playing field. These gaps have led to criticism of election observation missions as electoral tourists whose methodology does not match up to the rapid pace of technological and political developments and emerging trends in electoral manipulation.
EVOLVING APPROACHES

In the last decade, there has been a gradual shift away from the narrow focus on election day to more robust assessments of electoral processes across the electoral cycle; from the pre-election context to the adjudication of appeals. This methodological evolution has incorporated the longer-term deployment of observers and deployment of post-election follow-up missions to advocate for the implementation of mission recommendations. The community of international observers is also leading efforts to develop methodologies for assessing thematic issues like social media, disinformation, online campaign and reform advocacy and facilitating knowledge transfer to citizen observers on these issues.

There is also progress in efforts to improve the working relationship between citizen observer groups and their regional and international counterparts. The value of citizen observation lies in their presence in-country throughout the electoral cycle; their work on electoral reform advocacy; the strength of their geographical coverage offered by large deployments; and their robust assessment of different thematic aspects of the electoral cycle. Whilst citizen observers serve a watchdog role to keep authorities accountable, they are also more constrained by the political context in which they operate.

Over the past decade, eleven African countries passed restrictive laws to constrain the civic space for civil society organisations (CSOs). During elections, clampdowns are more common. In Kenya in 2017 police raided CSO offices, whilst others were threatened by the government with deregistration. Here, international observers have a comparative advantage, in that they are positioned to hold states accountable and mediate conflicts, which is beyond the remit of citizen observers. While international observation is an expression of international community’s support for the promotion of democratic norms and an assessment of compliance with international human rights as enshrined in the Universal Declaration of Human Rights (UDHR) and other international instruments, for citizens, it is an expression of their right to participate in the public affairs of their countries as enshrined in Article 21 of the UDHR and Article 25 of the International Covenant on Civil and Political Rights.
CLOSER COLLABORATION

In the context of the Covid-19 pandemic, closer collaboration between regional, international and citizen observers has gained more prominence. As international election observation missions have adjusted their methodology to the current realities—by reducing the length of their deployment and employing alternative methodologies like virtual pre-election assessments, recruitment of in-country diplomats and in some cases nationals as analysts, and with the deployment of smaller technical teams—they have also sought greater collaboration with citizen observers. This collaboration, predominantly done by international non-governmental organisation observer groups, involves providing technical support to citizen groups. The NDI’s deployment of virtual long-term thematic analysts is one example of adaptation of methodology and collaboration.

Improved collaboration will not only strengthen the credibility of election observation assessments, by drawing on citizen observer’s longer-term thematic analysis and their familiarity with the context, but also strengthen the recommendations of observer groups. Ultimately, the core value of observation lies in the recommendations offered in observer reports, which should align with and feed into post-election reforms agenda and long term democracy strengthening efforts. The publication of AU EOM final reports since 2012 is a welcome development in this regard and should be emulated by regional bodies. Published reports serve as the basis for post-election reform advocacy which is the first point of collaboration with citizen groups. The AU and regional bodies should also streamline their mediation and observation efforts within the framework of the principle of subsidiarity.

Ultimately, the core value of observation lies in the recommendations offered in observer reports, which should align with and feed into post-election reforms agenda and long term democracy strengthening efforts.
INFORMING REFORM
To achieve its goal of promoting democracy, election observation must do more to ensure its recommendations inform wider reform processes. National groups should lead reform initiatives in the post-election period, with support from regional and international observation missions through their follow-up and electoral support initiatives. Beyond collaboration within the election observation community of practice, there is need to strengthen exchanges between the observation community and the electoral management community. This can be achieved through the continental and regional networks of EMBs, to facilitate dialogue on the issue of full access throughout the electoral process for observers.

Rather than highlight the irrelevance of election observation, recent developments point to the need to refocus observation methodology to embrace an electoral cycle-based approach that promotes greater complementarity between international and citizen observers. Collaboration that is cognisant that the purpose and objectives of citizen and international observers differ, though both groups work towards the same goal, and that one group may not ultimately replace the other.

Election support providers should recognise this by investing in strengthening the capacity of citizen observers to look beyond large election day deployments and towards longer term, in-depth analysis of key thematic issues – such as the digital information eco-system and campaign finance - throughout the electoral cycle. These issues require in-depth analysis and familiarity with the context that international groups struggle to obtain in short stints in the country.

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More than 13 African countries are scheduled to hold, or have already held, parliamentary or presidential elections in 2021. Reflective of the democratic backsliding observed on the continent in recent years, more than a third of these polls are likely to be little more than political theatre – aimed at garnering a fig leaf of legitimacy for leaders need to be seen to have a popular mandate.

In Uganda's January poll the same winner was returned for the sixth consecutive election following a campaign marred by attacks on opposition candidates. Measures put in place by the Electoral Commission for 'scientific campaigns' designed to limit the spread of Covid-19 were implemented more rigorously on opposition candidates, by security agencies who remained loyal to President Museveni. In November 2020, security forces clashed with protestors in Kampala demanding the release of opposition candidate Bobi Wine, after he was arrested for violating the guidelines that required presidential candidates to meet or address crowds of less than 200 people. Over 50 Ugandans were killed in the clashes. The combination of, and links between, Covid-19 and insecurity are an increasingly common challenge facing polls on the continent.

THE CORONAVIRUS CONTEXT

According to the 2016 Infectious Disease Vulnerability Index 2016, 22 of the 25 countries most vulnerable to infectious disease are in Africa. But to date, the continent has recorded a little more than 4 million cases of Covid-19 and over 100,000 deaths out of a global total of more than 120 million cases and more than 2.5 million deaths. But the social and economic impacts of the pandemic might end up having the greatest impact. The imposition of lockdowns, designed to restrict movement
Restrictions aimed at limiting the spread of the virus have also impacted on the space for political discontent.

and slow down the spread of the disease, have equally affected jobs and livelihoods especially for the poor. These measures have also created opportunities for authoritarian regimes to restrict people's ability to engage in civic and political processes like elections.

In Ethiopia, Prime Minister Abiy's tenure was elongated after parliamentary elections scheduled for August 2020 were postponed due to COVID-19. Despite opposition from the federal government, political actors in Tigray province opposed this decision and decided to go ahead with its own regional election. The region is now involved in an active conflict with the Ethiopian state, with the problematic elections one of several triggers for a multifaceted conflict that has drawn in actors from neighbouring countries.

For the most part elections did proceed as planned in 2020, even if scheduled by-elections were postponed in eleven countries - Botswana, Chad, Ethiopia, Gabon, The Gambia, Kenya, Liberia, Nigeria, South Africa, Uganda and Zimbabwe. But the health risks of doing so quickly became apparent. In Burundi, having stood aside after serving three-terms President Nkurunziza died in office, shortly before his elected successor was due to succeed him. Covid-19 was the suspected cause, though officially his death was ascribed to a heart attack. A similar fate befell President Magufuli in Tanzania, just five months in to his second tenure at the helm. Nkurunziza and Magufuli were both vocal deniers of the existence of Covid-19 and did not seek to introduce measures to stop its spread.

Elsewhere restrictions aimed at limiting the spread of the virus have also impacted on the space for political discontent. It is not just the election campaign period that is being affected, restrictions on public gatherings can impact voter education efforts and wider demands for greater transparency and accountability in how governments operate.
That is not to say that measures to limit the spread of the deadly disease should not be in place to protect voters and candidates alike during elections but that they must be balanced carefully with commitments to a fair and equitable process.

**GROWING INSECURITY**

In contexts like Chad, Ethiopia, Libya, Niger, Burkina Faso and Somalia, the challenge of holding elections during a pandemic has been, or will be, further exacerbated by prevailing insecurity. Armed Conflict Location and Event Data Project data showed a steep upsurge in violent attacks taking place in March and April 2020 across Africa – when restrictive measures were first introduced to address the threat posed by Covid-19. This suggests that terrorist and non-state armed groups capitalised on the pandemic to increase attacks. If these trends continue, “Africa is at risk of losing ground to violent groups following years of counterterrorism advances alongside regional and international security partners” according to experts at the Centre for Strategic and International Studies. Recent events in Niger are a concern in this regard.

On 2 April 2021, Mohamed Bazoum was sworn in as elected President of Niger. He took over from Mohammed Issoufou who stood down after completing his two constitutionally-mandated terms in office in what was the first ever democratic transition from one elected administration to another in country’s history. But Bazoum inherits an insecurity pandemic. In January at least 100 people were killed in a terrorist attack near the border with Mali: ‘seven members of Niger’s election commission died when their car hit an explosive device on election day in February; whilst in March another 137 Nigeriens civilians perished in two separate attacks by gunmen on motorbikes. Niger has been troubled by insecurity for several years but the spate of attacks by hardlines Islamist groups in early 2021 seem to have been aimed at disrupting and undermining the election process.

However, Bazoum and the ruling party – to which he and Issoufou both belong – have also been able to utilise the prevailing insecurity narrative for political ends in recent weeks. After unsuccessfully challenging the election outcome at Niger’s Constitutional Court, leading opponent
Mahamane Ousmane called for mass protests to overcome what he claimed was a rigged outcome. But the prevailing insecurity, including an attempted coup d'état on 30 March, created the conditions for the rallies to be banned by the government.

Prevailing insecurity also limited the participation of voters in Burkina Faso's November 2020 poll. Although provisions were put in place to support voting for those internally displaced by insecurity, the amended electoral code stated that the more than one million IDPs were to be enrolled where they were displaced, and their vote counted in the constituency they currently occupied, not where they have previously lived. The impact of this was that under threat constituencies elected officials charged with trying to address multiple challenges, are now doing so with a very small popular mandate. Furthermore, voting amidst a string security presence can have implications for voters' perceptions of freedom.

Invariably, the responsibilities of maintaining internal security, peace, order and justice within a country lies with the police. However due to the lack of an effective internal security mechanism, several African states regularly deploy the army to maintain internal insecurity and forestall instability. With military personnel that are usually earmarked for counterterrorism measures now being deployed, or having been deployed, to enforce lockdowns or implement pandemic response measures, in Nigeria, Ghana, Uganda and Kenya, there are concerns about an oversecuritisation of key state functions, without an improvement in the prevailing security situation.

**IMPLICATIONS FOR DEMOCRACY**

Politically, Covid-19 has created conditions that have worsened the state of insecurity on the continent. It has also impacted on the electioneering process and political campaigns by providing justification for leaders with authoritarian ambitions to restrict rights...
and oppress opposition. Selective use of pandemic control measures to restrict the ability of opposition parties to campaign poses a threat to multi-party democracy. While Africa has so far largely avoided the worst case Covid-19 scenario, the emergence of new variants could potentially create health, social, economic and political emergencies in the coming months and years, especially as vaccine rollouts remain slow. All with serious implications for democratic accountability.

But on a more positive note, the pandemic has increased the speed at which digital tools are being developed and deployed for democratic accountability. Notwithstanding the challenges, these have the potential to make African elections safer, cheaper, more efficient and more accurate.

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Parliamentary elections were scheduled in as many as 16 African countries in 2020 but due to the disruption caused by the Covid-19 pandemic four of these polls were postponed. In 2021, a further ten countries are scheduled to hold legislative votes. Despite the frequency of these elections, rarely do they attract significant international media coverage or scrutiny from election observation groups. In fact, legislative polls seldom feature in the planning of domestic or international election observation missions. Even though parliamentary processes are used as indicators for tracking fraud or the potential for conflict in presidential polls, particularly when the two are held concurrently.

Recent elections in Uganda are a good example. The international media was almost exclusively focused on the presidential contest between President Museveni and Bobi Wine. There was little mention of the process that produced 529 parliamentarians. Whilst in Uganda the majority of MPs elected were members of the ruling National Resistance Movement, in other recent elections in Africa the president's party has not been able to secure a legislative majority.

**GHANA’S HUNG PARLIAMENT**

For the first time since the Fourth Republic began in 1993, Ghana has a hung parliament. Despite its failure to win back the presidency in the December 2020 polls, the National Democratic Congress (NDC) did claw back a 63 seat deficit in the parliament. Both it and the incumbent New Patriotic Party (NPP) won 137 seats, in the 275 member parliament. The single independent member has so far chosen to align with the NPP. But the Speaker of the House, Alban Sumana Bagbin, is a member of the NDC; elected after two members of the NPP broke rank and voted for him during the secret ballot process.
The current situation has already generated several contentious issues for Speaker Bagbin to resolve, including who should be the majority side, how should the allocation of committee members be done and who should chair which committee. The Speaker recently ruled that NPP shall be the majority side because of the independent MP's formal request to seat with the NPP. But with the NPP and the NDC challenging 12 parliamentary results, the make-up of parliament could still change significantly.

There are parallels between Ghana's current reality and the outcome of Sierra Leone's March 2018 general election where, initially at least, the All People's Congress's candidate lost the presidential race, but the party was still able to maintain its parliamentary majority. Subsequent legal challenges changed those dynamics, handing the Sierra Leone People's Party a slender majority in the legislature to go with its control of the executive. But these two recent examples, both in dominant two-party systems, raise important questions about voter choice and have implications for elections and governance in West Africa.

**SENDING A MESSAGE?**

A pre-election survey led by academics from the University of Ghana predicted that the incumbent NPP was going to face a strong challenge from the opposition in the parliamentary elections, but no one predicted just how strong. Several factors contributed to the unexpected result. First, many NPP candidates and supporters emerged from the party primary process deeply dissatisfied. In some cases, candidates with greater popular support were bullied or priced out of the contest by those with greater resources and the backing of the president or senior party officials. In other constituencies, ministers of state and existing MPs were shielded from a party primary challenge and were elected unopposed. Scholars working on electoral politics in Ghana have shown that parties suffer at the polls when they try to impose candidates on constituents and that voters become more sophisticated the more they participate in elections. In short, the NPP paid the penalty for the way it conducted its primaries.

However, this is not the full story. In several cases where the NPP parliamentary candidate was rejected by voters, ‘the party's presidential
candidate was still favoured. Similarly, in some constituencies, voters voted for the NDC presidential candidate but elected an NPP MP. For example, in the Kintampo South constituency in Bono East Region, former President Mahama, the NDC presidential aspirant, took 52.99% of the vote but the same constituents elected an NPP MP with 49.44% of the vote. In Agona East constituency in the Central Region, President Akuffo Addo received 51.99% of the vote but a NDC candidate was elected as MP, with 50.5% of the vote. This phenomenon of ticket-splitting - referred to in local parlance as “skirt and blouse voting”- is becoming more prevalent. In 2008, there were 19 skirt and blouse seats, that rose to 26 in 2012, 28 in 2016 and 33 in 2020.

If the current configuration of Ghana’s parliament avoids governance gridlock and instead functions to promote stronger accountability and transparency, this type of voting may increase still further in Ghana in 2024. ‘Speaker Bagbins remarks at the first sitting of the 8th parliament signalled his intention to steer the legislature away from excessive partisanship and gridlock; to ensure it can exercise its oversight responsibilities and assert its independence. If realised, the impact of this could be greater scrutiny exercised by a legislature that is not simply a rubber stamp approving the will of the executive.

PARLIAMENTARY SCRUTINY
Credible elections remain an important mechanism for sustaining and strengthening democracy in Africa. Over the years, election watchers have been consumed by presidential elections, in part because of the dominance of the executive in many countries on the continent. As a result, parliamentary polls have not received the serious attention they deserve. But recent elections in Ghana and Sierra Leone underscore the
growing importance of the outcome of legislative races for the way in which democratic institutions function in the periods between polls.

In Ghana's most recent vote, as results began to trickle there was an increased focus on the parliamentary outcome among election observers. But moving forward, this focus in Ghana and elsewhere, should be embedded into the initial approach. Domestic election observation groups should mount special observation of selected parliamentary races in addition to the general presidential election watch, whilst international observers should send missions to watch parliamentary polls even when there are no presidential polls. Results at this level indicate an increased level of sophistication in how voters cast their ballots and offer a more nuanced indicator of people's evaluation of a government. It is time to start paying more attention to what they tell us about the state of a country's electoral democracy.

Results at this level indicate an increased level of sophistication in how voters cast their ballots and offer a more nuanced indicator of people's evaluation of a government.

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Despite their frequency and venerated place in the functioning of democracies, elections in East Africa are increasingly violent, plagued by coercion and widespread irregularities and tend to exacerbate existing socio-political tensions without resulting in meaningful political change, improved quality of governance or citizen participation. Recent polls in Rwanda, the Democratic Republic of Congo, Kenya, Tanzania, Burundi, South Sudan and Uganda have all been heavily criticised. But with the elevation of elections as the most sacred anchor point for a functioning democracy, electoral “winners” can claim their victories as legitimate despite the dubious circumstances under which they are earned.

DEMOCRATIC DECLINE
In the 1990s and 2000s, participatory politics in Africa grew exponentially as the percentage of African countries holding democratic elections increased from 7% to 40%. In 2010, Freedom House classified 18 countries on the continent as electoral democracies. During the past two decades, the general trend in Africa has been towards demands for greater accountability from political leaders, whose domestic legitimacy is largely linked and limited to elections. However, the 2020 Freedom in the World report documented the 14th year of global decline in democratic governance and respect for human rights, with Africa contributing to the backsliding. Freedom House now ranks just seven countries on the continent, none of which are in East Africa.
Africa, in its ‘free’ category. The lowest figure since 1991. As elections have become more commonplace, the quality of public participation has declined. While elections have advanced political participation in some African states, they have also been one of the major causes of instability and economic setbacks. Instability that has gone beyond the harassment and detention of opposition leaders, to outright clashes between voters, and between voters and security forces. In 2005, Ethiopia suffered 200 election-violence related fatalities. Over 1,000 Kenyans died during and after the country’s 2007 elections and triple that figure were killed in election and post-election clashes in Ivory Coast in 2010-11. In the run-up to Uganda’s recently concluded elections clashes with security actors, during riots sparked by the detention of opposition candidate Bobi Wine in November 2020, resulted in the deaths of 54 people.

There are economic electoral consequences too. 11 of the 13 elections held in Uganda, Rwanda, Tanzania and Kenya over the last two decades have been accompanied by a fall in GDP during the election year or in the year after, with the raiding of central banks to fund increasingly expensive election campaigns a key driver of socio-economic pressures. Political instability and uncertainty also impact small and big businesses. Uganda’s 2021 election driven internet shutdown saw companies lose an estimated 66 billion Uganda shillings daily (US$17.9 million) according to the country’s Financial Technology and Service Providers Association. In this regard, elections risk undermining the very forces that help consolidate a democracy, such as access to economic opportunities and better standards of living.

The threat of election related violence, and the accompanying instability and economic uncertainty, bring into question the value of elections to a region grappling to consolidate democracy.

But ensuring free, vibrant and informed mass engagement in political life and governance choices - key tenants of democracy - should not be conflated with the holding of regular elections.
ELECTIONS IN VAIN?

Elections as the basis of democracy is a strongly held global norm, defended and enforced by a wide array of individuals and institutions even though governments produced by credible polls can also be corrupt, short sighted, dominated by special interests and inefficient. Afterall, it was an electorate that chose Donald Trump and Jair Bolsonaro to preside over the United States and Brazil, respectively. But ensuring free, vibrant and informed mass engagement in political life and governance choices - key tenants of democracy - should not be conflated with the holding of regular elections.

In January 2021, Uganda held its sixth consecutive election – four of which have been held in a multi-party dispensation – but each resulting process has happened within a context of restricted political competition and limited changes towards an open political culture. Ahead of the 2021 poll, analysts and citizens alike questioned the value of holding an expensive election in the middle of a global health pandemic when the outcome was all but predetermined.

President Museveni’s 58% share of the vote – his nearest challenger Bobi Wine secured 35% - was announced amidst a five day internet shutdown. Procedural irregularities and claims of fraud by the opposition centred around failing biometric voter verification machines, videos on social media of ruling party agents ticking ballot papers in favour of Museveni and a lack of clarity about the way votes were tallied at the districts and announced by the Electoral Commission. Administrative hurdles, along with the internet blackout, prevented both international and domestic election observers and media from observing these processes across the country. Widespread claims of kidnappings and extrajudicial arrests of opposition agents and supporters charged with planning riots have been reported before, during and after polling day, whilst the house arrest of Bobi Wine from 14-26 January, continuing a pre-election pattern of detaining political opponents.

But despite violence and coercion consistently revealing themselves as the most relied on and direct means for changing power in Uganda, there is an almost unshakeable belief in, and need for, elections by all sides. Yes, elections provide an opportunity for yesterday's losers to
become today’s winners, but they also have downsides. While acknowledging that it is not elections that make bad leaders - it is leaders that make elections less than desirable and it is easy to blame political actors that have failed to play by the rules - we must also ask ourselves if ‘electoral fundamentalism’ prevents us from seeing the problems they produce.

According to David Van Reybrouck, author of “Against Elections: The Case for Democracy, ‘electoral fundamentalism’ is an unshakeable belief in the idea that democracy is inconceivable without elections and elections are a necessary and fundamental precondition when speaking about democracy. Electoral fundamentalists refuse to regard elections as a means of taking part in democracy, seeing them instead as an end in themselves, as a doctrine with an intrinsic, inalienable value. They argue that at the very least elections produce some qualified politicians who act as democratic punching bags; representatives that can be held accountable and blamed for a lack of service delivery. But in Uganda, even this bare minimum has struggled to be realised. Most parliamentarians know they will likely only get one term in office and as such use that time to recover funds lost during expensive campaigns and to build connections to advance their own personal interests, rather than to improve service delivery.

RENEWING DEMOCRACY

Resistance to re-imagining political participation beyond elections does a grave disservice to the many ways in which citizens have found to participate in civic and political life within their communities beyond queuing at polling stations once every few years.
There are many examples of active citizen participation in political and civic life at the village level that go beyond the narrative of declining voter turnout across East Africa. Ugandans remain actively involved in village and municipal level politics, and interact regularly with leaders of local councils. Prior to the 2016 elections, 62% of respondents to a Twaweza public opinion poll said they sought information from their local council office, the smallest administrative unit in Uganda. In Rwanda, national and district youth councils channel the voices of young people into annual budget conferences and allocation cycles. In Kenya and Tanzania, citizens were an active part of constitutional review processes.

Despite the limited devolvement of decision making power and funding from central governments there is a real possibility for democratic decision making and citizen participation at village and municipal levels across East Africa. Examples exist of community innovation, participation and voice in transitional restorative justice practices and land dispute resolution mechanisms across Uganda, Rwanda, Burundi and Kenya. Unfortunately, these types of civic organising and participation are overlooked by donors, civil society organisations and political parties working to advance democracy who favour a narrower focus on elections.

**BEYOND THE BALLOT**

What does it say for East Africa that recent elections have, by and large, failed to be conducted fairly, transparently, and peacefully? Or to produce outcomes that foster meaningful civic participation, improve the quality of governance and usher new voices and ideas into the arena of political participation? Acknowledging the limitation of elections as the primary institution of democracy would be a good start. Beyond that we must start to see them as a transient system in the organisation of human affairs.

*To safeguard the democratic experiment in the region, we should begin to consider elections as a feature of, and not the basis for, democracy.*
Political analyst, Chris Ògúnmédédé recently tweeted that “institutions are not organisms with supernatural, self-correcting powers. Institutions simply are collective agreements people come to. In other words, they can change over time and produce good or bad outcomes.” Even though the words “election” and “democracy” have become synonymous, elections alone cannot, and do not, adequately reflect the will of the people. Over the last decade citizens of 13 of 15 countries regularly polled by Afrobarometer have expressed a decline in support for elections.

The tendency to focus on citizen participation in elections has pushed aside local democratic and proto-democratic institutions such as village meetings, traditional conflict mediation or established jurisprudence even though they are valuable in encouraging a peaceful and collective discussion on the issues that affect people’s daily lives. Although they have not always done so, these institutions are perfectly capable of reflecting more inclusive values that acknowledge the equal status of women, youth and other excluded demographics.

Ultimately a democratic society should not be identified by whether or how it conducts winner-takes-all elections but rather how it allows for liberal freedoms such as political inclusivity, freedom of speech, media, expression, and association, access to property rights and judicial independence. Ensuring a combination of these elements supports greater everyday political participation and the building and consolidating of democracy, as opposed to a decisive vote once every few years in a sham election. To safeguard the democratic experiment in the region, we should begin to consider elections as a feature of, and not the basis for, democracy.

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