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EISA

South Africa 2009 #1

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EDITORIAL TEAM
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Editorial

EISA initiated a project aimed at producing a three part series of *Election Update* covering the forthcoming general elections in South Africa scheduled for 22 April 2009. Through the Election Update project, EISA compiles and disseminates information on various aspects of the elections throughout all three phases of the electoral cycle – namely, the pre-voting, voting and post-voting stages. The update provides relevant information around the electoral process and in that way promotes political dialogue among key actors, including civil society organisations, political parties, the election management body and monitors and observers.

The overall goal of the *Election Update* project is to provide useful information on elections regarding numerous issues emanating from the 2009 general elections in South Africa. The *Update* provides an in-depth insight into the election processes and gives an account of the extent to which democracy in South Africa has taken root after fifteen years of political transition and nation building. This project is an attempt to take stock of how what has happened over the last decade of democracy in South Africa is going to be reflected and/or impact on the 2009 elections. The specific objectives of *Election Update 2009* include the following:

- To contribute to voter education efforts that are aimed at promoting an informed choice by the electorate;
- To promote national dialogue on elections and in the process inculcate a culture of political tolerance; and
- To influence policy debates and electoral reform efforts through published material.

EISA has been involved in the previous elections in South Africa, especially since 1999. Its main involvement has revolved around promotion of public dialogue on the electoral processes; documentation and dissemination of important election-related information to facilitate an informed choice; and publishing of relevant information with a view to influencing debates, policy choices and electoral reform efforts. In fact, EISA participated fully during electoral reform efforts by the Presidential Electoral Task Team, which was led by Prof. F. van Zyl Slabbert, and made substantive contributions during the various public dialogue events that followed between 2000 and 2003. By initiating this election update project, EISA continues its tradition of engaging with elections in South Africa to promote their transparency, integrity and credibility. Only with a clean election will South Africa be able to further

deepen and institutionalise its stable constitutional democracy.

Since 1999, EISA has worked closely with other key stakeholders on elections. Firstly, EISA has worked closely with the Independent Electoral Commission (IEC) on a number of aspects including conflict management and voter and civic education. This is still the case in respect of the forthcoming general elections. Secondly, EISA has also worked closely with civil society organisations on voter education and election observation and monitoring. In particular, EISA and the South African Council of Churches Gauteng have co-ordinated the Gauteng Province on behalf of the South African Civil Society Election Coalition (SACSEC), since 1999. Although EISA will collaborate with SACSEC in monitoring the election, it will also deploy a regional observer mission to observe the elections. Thirdly, EISA has worked closely with political parties with a view to enhancing their capacity to effectively engage in elections especially through campaigns and public outreach.

South Africa has been holding democratic elections on a regular basis since its historic political transition of 1994, which ushered in majority rule following decades of oppressive apartheid rule. The apartheid regime was dislodged through a combination of factors culminating in a negotiated political settlement that led to a government of national unity and subsequently the current government, which is dominated by the African National Congress (ANC). Since its political transition, South Africa has held three democratic general elections (1994, 1999 and 2004). Local government elections are held separately and thus far the country has held three such elections (1995, 2000 and 2006). The next local government elections are due in 2011. The 2009 general election will be the fourth time that South Africans will be called upon to freely express their democratic right to choose their leaders who will run national affairs on their behalf for the next five years. Given the political hegemony of the ANC, the political system in South Africa has evolved into a dominant party system in which the ANC has emerged as the ruling party

under conditions of an enfeebled and fragmented opposition. The official opposition party, the Democratic Alliance (DA), has not been able to pose a serious challenge to the ANC dominance. While the previous elections were interesting as a litmus test of the extent to which the country's democracy was being nurtured and consolidated, the 2009 election will be even more fascinating given that political competition is likely to be even stiffer with the establishment of the Congress of the People (COPE) – a break-away splinter group from the ANC. The big question is how COPE will cope with the ANC dominance and how much political weight the ANC will shed as a result of this opposition party. It will also be interesting to observe whether in fact COPE is likely to eclipse the DA as the official opposition in parliament.

Although a total of 150 political parties have registered with the Independent Electoral Commission (IEC), fewer parties will contest the elections (especially at the national level). In 2004, out of 75 registered parties, only 37 contested the election and even fewer contested at the national level. The IEC has assured the South African electorate that it is ready for the April 22 poll. Registration of voters is a continuous process so voters are expected to register at IEC offices throughout the country. Over and above the continuous voter registration process, the IEC also embarks upon a deliberately targeted voter registration drive. In preparation for the 2009 poll, the IEC plans to undertake two targeted voter registration exercises. The first such exercise was undertaken between 8 and 9 November 2008 in which 1 648 189 new registrants were included on the voter's roll. It is instructive that 77.9% of these new registrants were the youth, who are often considered apathetic and disenchanted with politics. The next targeted voter registration exercise was planned for 7 and 8 February 2009 throughout the country.

This first issue of *Election Update* focuses on the institutional framework of elections with special analytic coverage of:

- The workings of South African electoral system

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- The political environment of Election 2009
- An historical overview of the South African democratic transition since 1994;

and further, province specific elaboration on:

- The preparedness of the Provincial Independent Electoral Commissions;
- The role of civil society organisations and faith-based organisations;
- The role of social movements such as trade unions;
- The role of the media;
- Mechanisms for conflict management and their effectiveness.

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ANALYTIC COVERAGE

The Workings of South African Electoral System: Is the Playing Field Level?

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The legal framework of elections normally affects a wide range of factors that will determine whether the playing field is level. First there is the electoral system; secondly, there are the electoral procedures that determine the rules of participation in the election; thirdly, there is the conduct of the participants, which can only partly be regulated by the legal framework; and, finally, there are factors within a broader environment, such as the media, which are in some instances also subject to legal regulations.

The legal framework of elections is exceptionally important, because the risk of violence and disruptions have become much more visible, as recent elections in Lesotho (1998, 2007), Madagascar (2001), the DRC (2006), Nigeria (2007), Kenya (2007) and Zimbabwe (2008) have vividly demonstrated. A relatively new challenge for legal regulation is to manage not only the election campaign and polling day, but also the high-risk period after the election, when the results have to be accepted and implemented. South Africa had a semblance of it after the 1994 general election in KwaZulu-Natal and after 1999's election when coalition governments had to be negotiated in the Western Cape and KwaZulu-Natal.

Why is it important to look at the electoral legal framework in assessing the playing field? Sometimes an election is an end in itself, but in most instances it is a means towards an end. The end should be to improve the quality of democracy in a country. Improving the quality of democracy itself should also lead to the improvement of the socio-economic well-being of the people. Improving the quality of democracy, however, does not depend solely or

primarily on procedural matters (such as elections), but also on the impact of legislation on a society. Moreover, it depends not only on whether the members of parliament are freely elected, but on whether they promote and adhere to the basic constitutional principles and values once they are elected. A third important determinant of the quality of democracy – and pertinent to South Africa – is whether the political system can reach an optimum equilibrium between the demands of representation and of participation.

The quality of elections is therefore also affected by the credibility of elected institutions (i.e. the quality of representatives, their standards of ethical conduct and their ability to address the main societal issues). Though the legal dimension of elections might be acceptable and democratic, matters such as opportunistic floor-crossing, corruption, nepotism and other malpractice by elected representatives can undermine it. Furthermore, defective legal arrangements can be overcome by opportunities for public participation and exemplary conduct by the representatives.

The first and ultimate test of the legal quality of the electoral framework in South Africa is the Constitution, 1996.

The 1996 Constitution

In view of the Constitution's status as the supreme law of the land, and therefore constitutional supremacy, it follows that the Constitution provides the most important indication whether the electoral playing field is level in South Africa. It also implies that all legislative and executive actions in relation to elections have to be constitutional, which gives the judiciary a more prominent status in relation to the legislatures, than in parliamentary systems.

The constitutional provisions relevant for elections are the following:

- Section 1(d): as a sovereign and democratic state, South Africa is founded on a set of basic values, including "universal adult suffrage, a national common voters' roll, regular elections and a multi-party system of democratic government, to ensure accountability, responsiveness and openness".

- Section 19 (in the Bill of Rights): every citizen (not "everyone" as in most of the other Chapter 2 clauses) is free to make political choices. They include the right to form a political party, to participate in the activities of, or recruit members for, a political party, and to campaign for a political party. Every citizen has also the right to free, fair and regular elections for any of the official legislative bodies. Every adult citizen has the right to vote in secret in elections for any of the official legislative bodies. Citizens have also the right to stand for public office and to hold office.

- Sections 46 and 47: they prescribe the electoral system to be used for the National Assembly and the qualifications of candidates. The electoral system has to be determined by national legislation and it must be based on: a common voters' roll, a minimum voting age of 18 years, and a system that "result[s], in general, in proportional representation". To be a parliamentary member, one must qualify as a voter, but will be disqualified if:

  o appointed by, or in the service of, the State and is remunerated for it;
  o he/she is a member of the other parliamentary house, a provincial legislature or a local council;
  o an non rehabilitated insolvent;
  o declared to be of unsound mind
  o anyone convicted after 1994 of an offence and sentenced to more than 12 months' imprisonment without the option of a fine. The disqualification expires five years after the sentence has been completed.

- Sections 105 and 106: determine the electoral system and qualification of candidates for provincial

legislatures. These provisions are a duplicate of those applicable to the National Assembly.

These sections raise a number of important matters. The first is that the Constitution does not identify a specific form of proportional representation as electoral system. For the 1994 and 1999 general elections a PR system based on rigid party lists was used. For the elections thereafter, the Constitution determined that national legislation should be adopted, but after a proper review. Hence the cabinet's appointment of the Electoral Task Team (ETT) chaired by Frederik van Zyl Slabbert. The fact that the only constitutional prescription is that the electoral system should result in proportional representation meant that systems such as the mixed member proportional representation system were not excluded. The mixed systems as applied in Germany, Lesotho and in local government elections in South Africa were therefore possibilities. The ETT was divided in its recommendations, with a majority report proposing the adoption of a mixed system, and a minority report recommending retention of the status quo. The division within the ETT enabled the government to maintain the current closed party-list PR system. In the 2009 general election, a number of political parties are calling for the adoption of a mixed electoral system, including the Democratic Alliance, the Inkatha Freedom Party (IFP), the Congress of the People (COPE) and the United Democratic Movement (UDM).

A second significant determination by the Constitution is that only South African citizens are extended electoral rights. "Every citizen" here stands in contrast with "everyone", which is the form used in relation to all the other Chapter 2 human rights. Political rights are ostensibly limited to nationality and are not general human rights.

A third significant constitutional determination is that citizens have the *right* to free, fair and regular elections. Free and fair elections are therefore not only a noble objective but a right. Once recognised as a right, it must be enforceable. Who has to take responsibility for it? The first possibility is the government, but as the ruling political party it cannot be "player and referee". More likely it would be the institutions responsible for managing elections, in other words, the Independent Electoral Commission. Secondly, it could also involve the judiciary (including the Electoral Court), which has to deal with serious electoral disputes.

A further significant constitutional stipulation is that all citizens have the right to vote. Two categories of voters have become controversial in this respect and the focus of litigation. The first is the category of prisoners. Section 24B of the Electoral Act (1998) was an amendment included in 2003 which explicitly determined that prisoners are disqualified as voters only if they serve a sentence of imprisonment without the option of a fine. It was declared unconstitutional by the Constitutional Court in 2004 (case CCT 03/04). Before the 1999 election the second Electoral Act (1998) was adopted by Parliament. It did not specifically exclude prisoners as voters. In preparation for the election, however, the IEC disqualified them in the electoral regulations. In the subsequent Constitutional Court case "August and others v Electoral Commission and others" (CCT 8/99) the court declared it unconstitutional. In 2004, therefore, all prisoners could vote.

The second contested category of voters is South African citizens residing abroad for a prolonged period. Section 33(1)(b) and (e) of the Electoral Act determine that the following categories of persons qualify as voters from abroad:

- Persons outside South Africa on government service (and their households)
- Persons temporarily absent from South Africa for the purpose of holiday, a business trip, attendance of a tertiary institution, an educational visit, or participation in an international sports event.

At the time of the 2004 general election the exclusion of a significant number of South Africans was already a contentious issue, as argued by the Democratic Alliance. In November 2008 the DA leader, Helen Zille, again discussed

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the matter with the IEC. Early in 2009 the DA decided to refer the matter to the Constitutional Court. At the same time the Freedom Front Plus took the matter up on behalf of Willem Richter – a South African teacher working in the UK – at the Pretoria High Court. On 9 February 2009 the Court ruled that this disqualification as a voter is unconstitutional. At the time of writing the Constitutional Court still has to pass judgement on this case.

The constitutional framework approaches elections as a human rights matter (and not a political issue) and therefore provides a strong basis for democratic political rights. A number of court cases – mainly against the IEC – have been used to enforce these rights. The fact that the Constitutional Court's authority is respected means that the basic legal framework is very strong.

The next step is to investigate the statutory aspects of this framework, which provide the details of the electoral process.

The Statutory Framework

Legislation that has a direct relevance for elections in South Africa and that also affects the role played by political parties is the following –

- Electoral Act, 73 of 1998
- Electoral Commission Act, 51 of 1996
- Public Funding of Represented Political Parties Act, 103 of 1997
- Independent Broadcasting Authority Act, 153 of 1993

A number of regulations have been published in accordance with these Acts. A few examples are the Regulations on Party Liaison Committees (1998), Regulations for the Registration of Political Parties (2004) and amendments to these regulations (2008), Regulations concerning the submission of lists of candidates, and Regulations concerning the registration of voters.

The Electoral Act constitutes a comprehensive framework that deals with all the technical aspects of general elections in the national and provincial spheres of government. Local government elections are governed by a separate electoral act. Only those aspects that can affect contestation between the parties and bureaucratic interference in the election will be discussed here.

Very important for transparency in the election are two mechanisms: the election timetable and the party liaison committees. A prototype of a timetable is provided in the Electoral Act's Schedule 1. Immediately after proclamation of the election date in the *Government Gazette* the IEC has to publish the official Election Timetable. It provides the cut-off dates for all the steps in the electoral process. Raising controversy in the past was parties registering late or submitting their lists of candidates or paying their deposits after the closing date. Non-compliance with these requirements leads to automatic disqualification. A recent example of such disqualification was the ANC's exclusion from 15 local government by-elections in the Western Cape at the end of 2008.

Often a sensitive matter is the requirements applicable to political parties to participate in elections. One of the most common undemocratic practices in the conduct of elections is to disqualify parties and/or their candidates even before the election starts. In South Africa it is the IEC's responsibility, and not that of a government body, to register political parties. In 2009 more than 150 parties were registered with the IEC, many of them mainly for local government elections.

The Electoral Act's section 26 determines the requirements for political parties to contest elections. A party must be registered and must have submitted a list of candidates. Section 27 prescribes how these lists should be submitted. In addition to the list, the party should bind itself and its candidates to the Electoral Code of Conduct. It should include a declaration by each individual candidate that he/she accepts the nomination and the Code of Conduct. The lists must be accompanied by a deposit for the

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national election and for each of the provinces in which the party is involved.

These legal requirements are well established by now. Since 1998 they have remained the same and parties are well acquainted with them. The IEC has avoided amending the legislation too often, and this has contributed to a predictable legal environment. Parties in general accept the nomination process as fair. In some instances the deposit is prohibitive for small parties, but that is exactly its purpose: to prevent too much of a proliferation of small parties. The IEC fees for nomination are R180 000 for participation in the national election, and R40 000 per province per each party contesting in such elections.

The Electoral Code of Conduct plays an important part in regulating proper conduct by the parties and candidates. Its purpose is to promote the values underscoring the Constitution in general and the elections in particular. It also serves as a basis on which political tolerance can be promoted. The Code includes a public commitment that everyone has the right to freely express his or her political beliefs, to challenge and debate the political beliefs of others, and to freely canvass and campaign. It also lists prohibited conduct such as the use of language or acting in a way that may provoke violence during the election or that may provoke intimidation. It also prohibits the use of inducements or rewards during the campaign, the carrying or display of arms and weapons, or abuse of a position of power.

Violations of the Code, especially during the campaign period, are one of the categories of electoral disputes. A number of dispute resolution mechanisms are available to deal with these matters: (a) the party liaison committees, (b) the IEC itself, (c) conflict mediation panels, (d) the police, and (e) the Electoral Court, among others.

A statutory element which is arguably not producing a level playing field is the Public Funding of Represented Political Parties Act (1997). According to the Act, parties represented in the national Parliament and provincial legislatures annually receive public funds from Parliament for a range of party functions, such as to develop "the political will of the people", to inspire and further political education, to promote active participation by individual citizens in political life and similar objectives. About 90% of the annual funds are distributed on a proportional basis to the parties, and the remaining 10% is distributed equally among all the parties. The largest chunk of this fund obviously goes to the ruling party with the smaller opposition parties getting the crumbs from the table. The funding is terminated three weeks before an election and parties have to repay whatever is left of that year's funds.

The fact that most of the funds are distributed on a proportional basis can be justified as one of the dividends for winning an election or being a major opposition party. When it is considered that, although this is not specified as such, much of the funds can be used in the early part of a party's election campaign and that only the last three weeks are excluded, then the proportional distribution perpetuates the advantage into the election period. While proportionality can be justified while parties act as government or opposition, at the time of an election the principle of equality should apply. Public funding does not follow that principle.

Another statutory provision which is specifically directed at levelling the playing field is in relation to the media. The Independent Communications Authority of South Africa (ICASA) is responsible for the "Party Elections Broadcasts and Political Advertisements Regulations" in terms of Section 78(1) of the Independent Broadcasting Authority Act. It regulates party political advertisements and broadcasts during the election broadcast period (i.e. from the submission date of party lists to the IEC, up to 48 hours before polling day).

During this period the conditions are regulated for acceptance, editing and rejection of political adverts and broadcasts; the time period allocated to each party, and related broadcasting specifications. In this respect no difference is made between any of the parties.

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More problematic, however, is equal treatment in respect of editorial comments, political analysis and news reporting. Parties often accuse the SABC of bias in favour of the ANC, or recently in favour of COPE. This is an area which is hard to regulate, because it affects media independence and freedom, freedom of expression and similar considerations.

The statutory framework, generally speaking, is not manipulated by the majority party in its favour. With a few exceptions, the playing field is relatively level. The most inhibiting factor is not a legal one but parties' access to financial resources. This is the single most important factor which prevents a level playing field in all respects.

Some argue that the electoral system of PR party lists also has a negative impact on the quality of democracy. This should be briefly considered.

The Electoral System

As already indicated, the Constitution's main prescription is that the electoral system must result, in general, in proportional representation. Up to the 2004 general election the PR system based on rigid party lists was used. The same system will also be used in the 2009 election.

The system has been criticised mainly from the point of view that it does not promote the values of accountability and representivity. In the absence of constituency representatives, voters feel alienated from the elected representatives. The Electoral Task Team (ETT), chaired by Van Zyl Slabbert, made the following succinct observation about the relevance of an electoral system for accountability and other democratic values (ETT, page 9):

> The point was emphasised that no electoral system can compel an elected representative to behave democratically, take care of a constituency or party responsibilities, or be a disciplined, dedicated Member of Parliament. In so far as these issues may relate to accountability, additional measures, policies, rules or regulations are needed

> to operate alongside or parallel with an electoral system.

The PR system is not intrinsically undemocratic. Many states are perfectly content with it. One of the main democratic advantages of the South African PR application is that it treats all votes as absolutely equal in value, because the threshold is the absolute minimum, namely the quota for one parliamentary seat. Small parties benefit from it, because their representation is directly equal to the number of votes they received. The problem with the electoral system is therefore not amongst the parties, but between the parties and the voters.

Representivity is another consideration. According to the Report of the Independent Panel Assessment of Parliament (13 January 2009), Parliament will be representative if it is "socially and politically representative of the diversity of the people, and ensuring equal opportunities and protections for all its members" (page 22). Representivity, according to the Panel, is determined by the rights in Section 19 in the Constitution. It means that they are satisfied that the legal requirements for representivity already exist, and that their application in practice is the main concern. In the 2009 election campaign the DA, IFP, COPE, UDM and AZAPO are proposing changes to the electoral system, such as a mixed-member proportional representation system and a directly elected President.

Progress was made in granting more credibility to the electoral system when floor-crossing was abolished. Electoral reform might follow, though an important consideration will be notable tendencies in the 2009 election results – especially the ANC's. South Africa is not in the situation of Lesotho (1998), where a post-election political catastrophe forced that country to review its electoral system.

Conclusion

South Africans are fortunate that the electoral legal framework is dominated by the Constitution. The Executive respects the rule of law in this regard, even though

judgements have created many logistical headaches for the IEC. In general, the playing field in respect of the law is relatively level. However, in political and other terms the principles of power and influence apply and therefore one cannot expect a completely level playing field. An advantage of the South African electoral architecture is its diversity, its checks and balances and its ability to resolve disputes.

The Political Environment of Election 2009: Democracy and Contestation

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> *Elections around the world today are marred by pre-electoral conflict and intrigue.*
> Ashish Chaturvedi (2005: 189)

The two worlds of South Africa's elections 1999 and 2004, as opposed to the early campaign period of Election 2009, trigger a pivotal question about South African democracy: Were the degrees of acceptance of the rules of the game contingent upon the continuation of the roughly established balance of power between parties, including the undisputed hegemony of the African National Congress (ANC)?

By 2004 much consensus prevailed that South African democracy had consolidated. Elections appeared to be institutionalised and accepted as the 'only game in town' (see O'Donnell and Schmitter 1986, 51-61). Electoral contestation had been largely peaceful; incidents were minimal and had in fact experienced a steep decline in comparison with 1994. The political parties seemed relatively content, in most corners of the country. Opposition parties frequently revelled in decimal electoral advances. The ANC was hegemonic and in a comfort zone of undisputed, effectively unchallenged rule. It celebrated elections as an opportunity to mobilise voters, close ranks and affirm victory over both now-remote apartheid and the low threat of opposition parties eclipsing the ANC.

In 2009 new tests for both the ANC and opposition parties have emerged. For the ANC the test would be to show whether the party is a 'good weather democrat', which is more likely to play by the rules in conditions of either no or only modest opposition threats. For the opposition parties, the test would be to tailwind the newly emergent Congress of the People

(COPE) and use the new political landscape to reinvigorate opposition politics in general.

The rest of this article first positions the present-day analysis in the comparative contexts of conflict in the preceding elections and then offers a brief conceptual schema for a graded analysis of violence, intimidation and related actions in election campaigns. It recognises the legislative and institutional framework for the conduct of party activities in election periods. It then offers an analysis of the trends in contestation in Election 2009, and draws conclusions about the extent to which 'robust' campaigning impacts on South Africa's reputation for free and fair elections.

New Dynamics of Contestation in South Africa 2009

There were mainly two factors that had engendered a changed context of party politics and electoral contestation ahead of the 2009 South African election. First was the emergence of COPE, splitting from the ANC in the aftermath of the Jacob Zuma–Thabo Mbeki contest, intra-movement politics in the wake of the ANC's Polokwane conference, and the ousting of Mbeki. Second was the continued ascendancy of the ANC in KwaZulu-Natal (also see Mottiar 2004), bolstered by the Zuma-Zulu factor of wanting to finally capture remaining Inkatha Freedom Party (IFP) strongholds in KwaZulu-Natal. Both these phenomena touched on sensitive issues and (re-)exposed raw nerve-endings.

The new dynamics had clear implications for the nature of contestation — whether in 2009 it would be concordant with the largely peaceful political environment of the 1999 and 2004 elections or whether the campaigns would be more 'robust'.[1] The base question was whether elections in South Africa would continue to prevail as 'free and fair'.

The new dynamics, virtually by definition, brought the potential for harsher contestation and conflict, on a more systematic level than before. For South Africa the bubble of fairytale elections might have burst. The new dynamics might also have brought South Africa closer to the unwelcome international dual reality that conflict certainly impacts on elections, but that elections frequently also elicit conflict (see Kingsley 2008; Cocodia 2008).

In this context the Elklit and Svensson (1997) checklist on what constitutes free and fair elections (see Table 1) is a reminder that, in the global scheme of things and despite 2009 problems, South Africa remained relatively close to the straight and narrow. According to these authors, 'free' in the pre-election period denotes freedom of movement, speech, assembly, freedom from fear in relation to election campaigning, absence of impediments to stand for election, and equal and universal suffrage. 'Fair' in the pre-election period designates (in relation to party political actions) equal opportunities for political parties and independents to stand as candidates, an orderly election campaign with the observance of a code of conduct, and no misuse of government facilities for campaign purposes.[2]

In the 2008-09 period South Africa retained measures that helped keep vigorous inter-party contestation in check, especially in formal campaign periods. The Electoral Act of 1998 contains a binding Code of Conduct for political parties and their candidates. The IEC also employs the Electoral Court (established in terms of the Electoral Commission Act of 1996), frameworks for election security, and election monitoring and conflict management capacity (see Piper 2004, 45) to manage inter-party relations.

The purpose of the Code is to promote conditions that are conducive to holding free and fair elections, including the promotion of political tolerance, free campaigning and open public debate (Electoral Act 1998, s.1 of Schedule 2).

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[1] The term 'robust' was often used euphemistically for repertoires of action that fall in a grey area between legitimate and inappropriate (violent or intimidatory) contestation or campaigning.

[2] Other Elklit and Svensson criteria for 'fair' relate to, for example, electoral authority actions (1997).

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Table 1 Elklit & Svensson's criteria for free & fair elections

FREE	FAIR
PRE-POLLING DAY	
Freedom of movement, - speech (for candidates, the media, voters & others), - assembly, - association, - from fear in relation to election & electoral campaign, absence of impediments to standing for election (for political parties and independent candidates), & equal & universal franchise.	Transparent electoral process, election act & system that grant no special privileges to any political party or social group, independent & impartial electoral commission, impartial treatment of candidates by policy, army & courts, equal opportunities for parties & candidates to stand for election, impartial voter education, orderly campaign (observance of code of conduct), equal access to publicly controlled media, impartial allotment of public funds to parties, no misuse of government facilities for campaign purposes.
ON POLLING DAY	
Opportunity to participate in the election.	Access to all polling stations for party representatives, accredited observers (local & international) & the media, secrecy of the ballot, no intimidation of voters, effective design of ballot papers, impartial assistance to voters (if required), proper counting procedures, proper treatment of void ballot papers, proper precautionary measures when transporting election materials, impartial protection of polling stations.
POST-POLLING DAY	
Legal possibilities of complaint	Official & expeditious announcement of election results, impartial treatment of any election complaints, impartial reports on the election results by the media, acceptance of the election results by all involved

Source: As summarised from Elklit & Svensson 1997, 32-46

In terms of the Code parties commit themselves to non-coercive campaigns.[3] It prohibits any political party from obstructing another's access to voters, and compels parties to refrain from using language that might incite violence and bring on the intimidation of voters and political parties. According to IDASA (2009) most of the Code appears to obtain to electoral *and* non-electoral periods. Yet, the IEC only brings contesting parties to sign the Code at a time close to the election and only monitors compliance once the election is proclaimed.[4] Political

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[3] The IEC also uses a system of Party Liaison Committees (1998) to manage relations between the IEC and the parties.
[4] In 2008 there were suggestions that action against COPE supporters could only be declared wrongful once COPE had become registered as a political party.

parties thus also used the contentious 2008-2009 period to claim exemption from conditions of the Code.

Conceptual Schema for the Analysis of Campaign Actions

For the purposes of this analysis, a three-category typology of illegitimate (or untoward, inappropriate, unfair; also see Piper 2005) political action by political parties, their leaders and supporters is created. The categorisation recognises the inter-linkages between categories and occasional multiple placement possibilities for specific repertoires that had been manifested. To illustrate, all three categories entail intimidation – either immediate and direct or in residual form. The typology thus comprises the categories:

- Violent rhetoric, hate speech, intimidation;
- Obstruction, limiting access, and both immediate and lagged intimidation; and
- Physical violence, intimidation.

The categorisation also suggests the grey area between the outright unlawful, violent and intimidatory, and conduct that is clear in its intention to undermine, sabotage and intimidate opponents yet cannot be pin-pointed as contrary to democratic electoral demeanour.

'Intimidation' and 'intolerance' are umbrella concepts that encompass and undergird a range of specific actions. Many possible illegitimate acts have the effect of intimidation. Intolerance signifies the underlying orientation in many of the untoward forms of electoral behaviour. Violence is a clear-cut category, which is easily distinguished when it is limited (as this analysis does) to physical violence (as opposed to structural). Violent rhetoric and hate speech form a distinct category, which can prompt acts perpetrated against other parties. At best, it has an intimidatory effect; at worst it triggers violence. Chairperson of the IEC, Brigalia Bam, for example pronounced (in *The Star*, 26 November 2008): 'We are aware of the violent nature of how some people speak … intolerance is one of the main causes of war.' One of the

intermediary categories between violent rhetoric and physical violence is obstructive behaviour such as occupation or invasion of opposition-designated venues or meetings, or singing and chanting (often using threatening or demeaning speech) on the fringes of gatherings. Threats to life are a certain manifestation of intimidation.

In a context such as South Africa in 2009, a preceding environment of actions, which denies the properties that Elklit and Svensson link to 'free and fair' (2008-early 2009), could linger and thereby turn a subsequent, *more* free and fair phase (the formal 2009 campaign period) into a terrain that retains an intimidatory impact, despite untoward behaviour having passed.

Conflict Trends In Elections 1994, 1999 And 2004

Incidents of political violence and intimidation, or unfair political practice, in South African elections have been in decline since 1994 (also see Table 3). The first democratic elections emerged from conditions of severe violence. The most extreme was the civil war in the KwaZulu-Natal Midlands, which claimed in excess of 20,000 lives. There were several other mass-killings, including the so-called Shell House massacre, and the bombing of ANC provincial offices in Johannesburg four days prior to the election. There was the continuous threat of a white right-wing revolt. The general mood on the eve of the election was one of fear that the election could result in a bloodbath. These fears failed to materialise, contributing to the widely held perception of the elections not just as a 'miracle' but as a role model for conflict-ridden societies the world over.

The 1999 elections continued the trend towards peaceful conduct. The issues that parties put forward for dispute resolution indicated the reduced nature of threats to 'free and fair'. Major issues, this time around, concerned infringements on the rights of the competing parties, damage to electoral materials, and intimidation. Many of the reported incidents (see Table 1) concerned the

political party–IEC relationships. Only isolated incidents of violence were reported (IEC 1999, 31).

The 'ten years of democracy' elections of 2004 brought a further decline in violence and intimidation. Most of the incidents reported in 2004 concerned problems experienced at registration and voting stations, and were far less about violence and intimidation (EISA 2004b, 7). The 2004 election period is regarded as having experienced only a few major instances of conflict, viz. conflict between rival rallies of the ANC and IFP, and then-deputy ANC president Jacob Zuma being refused access to Gauteng hostels. These trends implied increasing acceptance of the normative framework of liberal democracy.

The reasons for the decline have been manifold. Foremost might have been the acceptance of the culture of party political contestation that results in an electoral verdict that winners and losers equally accept. South Africa's framework for the management and regulation of political parties and their electoral conduct has equally contributed – both in terms of specific management and sanction for non-compliance, and in furthering a culture of freeness and fairness in contestation.

Table 2 Trends in complaints and killings in Elections 1994, 1999 & 2004

Detail	1994	1999	2004
Party political complaints to the IEC	3,594	1,114*	253
Number of persons killed	1,000+	>100	0

*Of these, 359 (80% of these related to violence and intimidation; KwaZulu-Natal was the province with the most instances, followed by the Eastern Cape)
Source: Piper 2004, based on IEC sources; EISA 2004a

South Africa thus witnessed a sustained decline in the occurrence of inter-party violence and intimidation (see Table 2). This was widely interpreted as a sign of the consolidation of democracy.

Trends in the Early Run Up to Election 2009

South Africa is no stranger to inter-party electoral conflict, including in the form of violence and intimidation. Still, stress signals were beamed when in the early run-up to the 2009 elections[5] multiple instances of violent rhetoric,

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[5] The 'early run-up' in this analysis refers to the period from late September 2008 to mid-February 2009.

obstruction and break-up of opposing party meetings, intimidation through presence at opposing party rallies, specific threats to individuals, and some physical violence, threatened to change the increasingly (to this point) stable character of South African elections. In the words of the IEC's Bam (quoted in *The Star*, 26 November 2008):

> *'The ruling party and the breakaway party will be tested in next year's elections. It is our responsibility to ensure that South Africa does not degenerate, because our democracy is fragile'.*

The main triggers for mounting levels of intolerance are the rise of COPE and the potentially increasing ANC penetration of IFP strongholds. The fact that the up-to-now dominant and hegemonic ANC felt more threatened in this election than in preceding elections seemed to contribute to less tolerance of opposition campaign activities.

The parties behind most (but not all) of the incidents of outright violence, obstruction or intolerant rhetoric, across several provinces, were the ANC and IFP. The actions were mostly targeted at each other, or by the ANC at COPE. Intolerant rhetoric was also used in exchanges between youth leaders. The DA, during campaigning in KwaZulu-Natal and Gauteng, was also targeted (by the IFP and ANC, respectively). On a number of recorded occasions COPE supporters retaliated, for example in blocking roads to an ANC event, or engaging in 'poster posting wars' with the DA.

The main forms (in relation to the typology of the analysis) and illustrations of these conflicts in the early 2009 campaign period were:[6]

Violent, demeaning rhetoric The most notable perpetrators were from the ANC Youth League and its associated regional and local structures. Many of the statements were made in defence of ANC president Jacob Zuma. Statements included 'we shall kill for Zuma', and

about the National Authority (NPA) in its legal action against Zuma, as 'the last kick of a stinking and dying horse which will not survive'. A chairperson of an ANC Youth League (YL) branch said: 'People like Terror Lekota [COPE leader] and all those people who want to destroy the history of the organisation …, they behave like cockroaches and they must be destroyed'. The branch secretary explained 'destroy' as 'we must kill them' (see *The Star*, 26 November 2008). COPE was also a perpetrator, with a COPE youth leader stating that a Zuma government would make 'raping official'. The IFP Youth Brigade leader equally stepped into the ring, inviting Malema to 'find boys his own age who will teach him what happens to a loud-mouthed chatterbox imbecile like him'.

Obstruction, intimidation, the creation of no-go areas The main instances were in the form of the disruption of COPE meetings, for example in Orange Farm, Verulam, Welkom, East London; the frequent forcible occupation of venues designated for COPE meetings; holding of counter-rallies by the ANC in areas where COPE and the IFP were gathering; and threats by an ANC KwaZulu-Natal leader that the province would be a no-go area to COPE (see *Sunday Times*, 2 November 2008). Legal battles for the naming of the party were related to the obstruction phenomenon (the ANC dropped its opposition to the name).[7]

ANCYL members regularly sang and danced on the sidelines of COPE meetings, for example in Verulam, Orange Farm and Gugulethu. The abduction of a Lekota bodyguard and anti-COPE threats made to him, along with the withdrawal of Lekota's personal security, further compounded manifestations in this category. Due to fears of being

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[6] This section cites incidents that were gathered from multiple references in news media reports. The cited incidents are illustrations. The listing is not exhaustive.

[7] The saga around the naming of the new party entailed, first, the ANC objecting to the consultative launch event being called the South African National Convention. Second, the initial choice of the name of South African Democratic Congress had to be abandoned upon the 'Shikota' group's discovery that the name already belonged to an IFP split-off floor-crossing party. Third, after some delay, the decision to use Congress of the People (COPE) followed. The ANC objected and launched legal proceedings, but finally abandoned their objection. The ANC argued that voters would confuse the new COPE with the ANC's historically significant Congress of the People of 1955, the event that marked the adoption of the Freedom Charter.

purged from positions in politics and government, COPE members would often not publicly express their new party allegiance.

Physical violence The early 2009 election period that is being assessed in this analysis offered few incidents in this category. The most notable case was the Nongoma attack by IFP supporters on ANC rally-goers in early February 2009.

Nongoma could have been a turning point, even if it also coincided with the formalisation of the election period. By February 2009, notably in the aftermath of Nongoma; ANC and IFP leaders increasingly urged supporters to act in tolerant ways.

The ANC National Executive Committee (NEC) discussed YL president Julius Malema's conduct, including allegations of inciting violence. Malema was largely gagged, and President Kgalema Motlanthe and Zuma, amongst others, repeatedly called for tolerance and dignified demeanour by ANC supporters.

Whilst the jury remained out on the formal late-February to April phase of the Election 2009 campaign, the tide appeared to have turned. Likely reasons were a realisation that norms of electoral conduct needed to be protected and the reputation of elections in South Africa defended.

Contributing reasons may have included the ANC having been victimised by the IFP[8], that ANC objectives of subduing COPE having been sufficiently achieved to move into a mode of tolerance, and that the IFP had come under unprecedented pressure to curb intolerance in its ranks.

Contestation and the State of Elections in South Africa

The early phases of campaigning for Election 2009 thus saw a rise in actions of intimidation and intolerance, especially in the form of violent rhetoric and obstruction. These actions had the potential to affect South Africa's record of 'free and fair' elections (see Table 3). The most brutal of the early-pre-election violence was perpetrated by the IFP. Yet, the intimidatory rhetoric and actions by some ANC supporters and leaders were as likely to impact on the future character of South Africa democracy.

As the parties by mid-February entered the period of proclamation of the election and formal campaigning, a decline in conflictual behaviour materialised. The South African election campaign, even if still relatively pristine judged by international comparison, might have been pulled back from the brink. The decline in incidents followed in the wake of propagation of tolerance by the ANC, the IFP and IEC. At the time, the interventions suggested that South Africa was not on an irreversible path to tainted elections and that the epithet of 'free and fair' might remain associated with South African elections.

Yet there remained the challenge of surmounting the likely persisting impact of the preceding actions of intimidation, and the threat and fear that such actions had generated. Time would have to tell whether lasting damage had been inflicted on democratic foundations of freedom to organise, meet, propagate and recruit.

The *level* and *durability* of the turning away from the untoward incidents of the early campaign period are the factors that will provide the answers as to whether support for the liberal-democratic norms of freedom to contest was to be contingent upon the nationally dominant and hegemonic party, as well as a strong but threatened provincial party.

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[8] The IFP also targeted the DA in *its* KwaZulu-Natal campaign.

Table 3 Contestation and the State of Elections in Democratic South Africa

	1994 Emerging from conflict	1999 & 2004 The post-conflict elections	2009 Partial reversal to conflict
Campaign rhetoric Obstruction Intimidation Physical violence	Conciliatory yet hard-hitting campaigns, many reports of intimidation, multiple instances of protracted violent conflict	Dominant party rhetoric to delegitimise opposition, IEC legitimacy and general norms entrenched, seeming acceptance of the primacy of elections	Early campaign period evidence of intolerance, hate speech, obstruction and intimidation, but few instances of physical violence
Condition of democracy and elections	Pre-reconciliation and early period in institutionalisation of democracy, but Election Day builds strong foundation	A growing decline in incidents and apparent acceptance of the rules of the electoral game; democracy appears to be consolidating	Continuous acceptance of elections, but numerous instances of using illegitimate actions to affect the balance of power between parties
Party political context	Certainty of ANC victory, but a question of scale and ranking of the opposition parties	ANC hegemony is a known factor, its continuous dominance is accepted	Evidence of ANC hegemony being challenged from within, does not necessarily pose a threat to ANC power, but sensitivity & anger prevail

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An Historical Overview of the South African Democratic Transition Since 1994: Progress, problems and prospects for the 2009 elections

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Five years have passed since South Africa's third democratic elections in 2004. Thus, in keeping with its constitutional provisions, it is election time once more in South Africa, and a historic one at that. Historic because the country is going to the polls for the fourth time to reinforce a democratic tradition launched since 1994 and to strengthen embryonic democratic institutions, and to demonstrate that South Africa is indeed on its way to consolidating democratic gains over the last 15 years.

More significantly, it is historic because the recent 'war of attrition' around succession in the leadership of the African National Congress (ANC), the dominant ruling party in South Africa, a contestation which led to the defeat of the incumbent, president Thabo Mbeki, at the ANC congress in December 2007, and ultimately his dismissal as head of state by the newly elected ANC leadership, has placed the continued success of the South African transition more squarely on the debate. The question has been posited as to whether the South African experiment with democracy and democratic governance is sustainable given the recall of then president Mbeki and the 'war of annihilation' which has been taking place within the ANC since his recall. It has been suggested, in certain quarters, that following the departure of certain key members from the ANC and the formation of a new opposition Congress of the People (COPE), the 2009 elections do present a real possibility of the South African political system moving away from a dominant party system.

It is against this background that the 2009 South African elections are considered pivotal, as it is contended that they will, to a large degree, define the future of the ANC as a dominant political player, and the sustainability of the democratic project in South Africa. This policy brief examines the prospects for the 2009 elections, and the ways in which the outcome is likely to alter the political landscape, and its probable impact on democratic sustainability and consolidation in South Africa. This is done in two parts: the first part provides a historical overview of elections since 1994; this then provides a background against which the 2009 election is assessed.

The 1994 Elections in Retrospect

South Africa's first democratic elections in 1994 were a culmination of four years of protracted negotiations which had begun in 1990 with the unbanning of liberation movements, including the ANC, and a commitment to a negotiated settlement by the then ruling Nationalist Party (NP). The four-year transition period, from February 1990 to April 1994, was characterised by political violence of unprecedented scale even by the standards of South Africa, which had been engaged in low-intensity war over the previous two decades. Not surprisingly, the South African transition process, and the negotiations leading to the elections, attracted a considerable amount of attention both locally and internationally.

It is against this background that the significance of South Africa's first democratic election must be understood. It not only brought to a close four years of protracted negotiations, an end to unmitigated political violence, and finally closed the curtains on the long chapter of apartheid; the most important single factor is that the elections took place.

Two weeks before the elections, Buthelezi's Inkatha Freedom Party was still threatening a boycott and secession of KwaZulu-Natal. A civil war and the 'Savimbinisation' of South Africa appeared more in the offing than a general election. Fortunately when the time came, peace broke out all over the country and the elections took place in an almost carnival atmosphere.

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19.5 million South Africans cast their votes in that first democratic election. The turnout at 86% was probably the highest in the world. The ANC victory was in any case a foregone conclusion. It polled 62.65% of the national vote, a landslide against its nearest rival, the Nationalist Party (NP), which garnered 20.2%. The Inkatha Freedom Party (IFP) came third, with a 10.54% share of the national vote. These three parties constituted the Government of National Unity (GNU) as agreed under the terms of the 1993 Interim Constitution, with the leader of the ANC, Nelson Mandela, assuming the presidency. Thabo Mbeki of the ANC became the first vice-president, and F. W. de Klerk of the NP the second vice-president. Mangosuthu Buthelezi of the IFP became the Minister of Home Affairs.

Of the fringe parties the extreme right wing Freedom Front (FF) made a relatively strong showing, given that it was formed only in early 1994, by securing 2.17 per cent of the national vote. The Democratic Party (DP) managed 1.73% of the vote. This was ahead of the PAC, a long-established liberation movement, that was expected to do better than its 1.25% share of the national vote. At the provincial level, the ANC won outright majorities in six of the nine provinces, while the NP won the Western Cape with a clear majority of 53%. The IFP won KwaZulu-Natal with a razor thin margin of 50.3%.

The 1999 Elections as a Watershed Process for Democratic Consolidation

The most significant development in the run-up to the 1999 elections was the adoption of the South African Constitution in 1996, replacing the Interim Constitution of 1993. However, the significance of the elections lay in the fact that they were to facilitate a democratic transfer of power from one leader to another. Mandela had decided to step aside after one term and give way to Thabo Mbeki, itself a rare occurrence in African politics.

So this was not only a demonstration of the institutionalisation of regular elections, but more importantly, an acceptance of democratic elections as the legitimate framework for the contestation of political power.

The 1999 elections were held ransom by the voter registration controversy, a contestation over which form of identification would be used for purposes of voter registration and, ultimately, for voting. The new democratic regime favoured a single identity document - the bar-coded Identity Document introduced by the previous regime in 1986, which was considered fraud-proof. The minority white opposition parties, however, rallied behind the old South African Identity Document. Perhaps it needs to be explained that the bar-coded ID was introduced at a time when the apartheid regime was doing away with 'petty apartheid', the end of the Group Areas Act, and therefore the introduction of a uniform identification document for all South Africans. Most whites, however, preferred to keep their old apartheid ID well into the democratic era.

The ID controversy, however, captured the reality of a deeply fractured society; at times incapable of reaching consensus on matters of national importance. The controversy divided the country along racial cleavages: the whites rooting for all types of document, the opposition DP going as far as to suggest that people be free to use any kind of registration, including the old pass book.

So passionate were these feelings that the two main white parties - the New National Party (that is, the old Nationalist Party of P.W. Botha and De Klerk, prefixed with 'New' from 1998) and the Democratic Party of Helen Suzman – went to the Constitutional Court to force the ANC government to stop using only the bar coded ID for registration purposes. They claimed that in this way the government would disenfranchise millions of people who did not have the bar coded ID.

The judicial system, however, remained unconvinced and the matter was thrown out of court. Once this matter was settled the parties got down to the serious business of canvassing for votes. This took place in an almost festive atmosphere. Missing from the electoral process this time

round was the violence that almost derailed the 1994 election.

The 1999 elections also took place against a background of realignment of political forces and electoral support. The New National Party, despite the addition of the magical 'New' to its name remained the political home of the Afrikaner establishment, the coloured and the Indian sections of the electorate. It had failed to broaden its appeal beyond these three nationalities and despite the appointment of token black representatives to its policy-making bodies, it had failed to convince the broader electorate that it had indeed changed. Its performance in the National Assembly, where it was perceived to be fighting to retain the privileges of the old order, had not done its image any good.

The Democratic Party (DP), traditionally the party of South African English liberalism, had shifted to the right, in what might be termed subversive liberalism. Since the beginning of the collapse of the NP, it had been poaching from the NP's right-wing flank. It promised the white right its determination to restore the 'merit, justice and honesty' of yesteryear. Ironically, the preamble to the country's constitution, adopted by among others the same party at the end of the constitution making process in 1996, talks of '... we the people of South Africa, recognizing the injustices of our past ....' How the DP reconciled these two statements remained difficult to comprehend. Be that as it may, in their battle over the white vote the two parties effectively bid goodbye to the larger electorate. The elections were contested around three main issues - crime, the economy and the ANC's record of delivery. In different circumstances the ANC would have been severely taken to task on these three issues. But the ANC had cast itself in the role of rectifying the wrongs of the previous 48 years (or was it 300 years?) therefore the attacks on the ANC policies had basically fallen on deaf ears.

Thus the outcome of the 1999 elections was for all practical purposes a foregone conclusion. The absence of a strong parliamentary opposition meant that the ANC would be returned to power with a majority. And so the ANC's relentless march to a possible two thirds majority, and a dominant party status, would be due largely to the fact that South Africa's parliamentary opposition had outlived its purpose. It was estimated at the time that the ANC would win with a margin of between 52% and 63%. In the event, the ANC won with an increased majority of 66.36 per cent compared to 62.65% in 1994. The most notable feature of the result was the dramatic rise of the DP from fourth-largest opposition in National Assembly to the second, in the process displacing the NNP[9] as the main opposition party. Significantly, the DP replaced the NP as the official opposition. The rise of the DP was matched by the dramatic decline of the NNP, which lost close to 3 million voters, and henceforth disappeared into political oblivion.

The IFP also suffered a decline in support, dropping from 10.54% to 8.59%, but precariously held on to power in KwaZulu-Natal with 42% against the ANC's share of 39% of votes. The biggest loser was the PAC, plummeting from 1.25% in 1994 to 0.17%. The remaining fringe parties performed as would have been expected – Bantu Holomisa and Roelf Meyer's UDM garnering 3.42% of the votes, and the United Christian Democratic Party (UCDP) led by Lucas Mangope getting 0.78%. Three other parties made it to the NA: the Minority Front (MF) with 0.30 percent, the Azanian Peoples Organisation (Azapo) at 0.17 percent and the Afrikaner Unity Movement (AEB) with 0.29 percent. The number of parties represented in parliament almost doubled from seven in 1994 to thirteen in 1999. At the provincial level, the ANC continued its dominance, this time winning a clear majority in the seven provinces of Gauteng (68%), North West (79%), Mpumalanga (85%), Limpopo (88%), Free State (79), the Eastern Cape (74%), and the Northern Cape 64%. In the Western Cape, the ANC won the largest share of the vote at 42% but had to contend with a coalition of NP (38%) and DP (12%).

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[9] The New National Party (NP) changed its name to the New National Party (NNP) in 1997 after it left the GNU to position itself in the new dispensation by presenting itself a transformed party.

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The 2004 Elections

The 2004 elections were yet another demonstration that regular democratic elections had become institutionalised in South Africa's political landscape. Once again the election was fought around three critical issues: crime, the economy, and the ANC's record of delivery. And once again the ANC managed to convince the electorate that it was the party best suited to govern.

The ANC continued its dominance, increasing its support to 69.69%, thus attaining the two-thirds majority that had eluded it in 1999.[10] The DA[11] retained its official opposition status, increasing its support from 9.56% in 1999 to 12.37%. The IFP continued to disappear from the national radar, sinking from 8.58% in 199 to 6.97%. The NNP was almost wiped out, managing only 1.65% compared to the 6.87% in 1999. The NNP ultimately disbanded in August 2004, with most of its members decamping to the DA.

The other smaller opposition parties maintained their presence in parliament, neither significantly declining nor increasing in their electoral strength. The Independent democrat (ID), which was formed when Patricia De Lille, a PAC MP, defected to form the party in the first floor-crossing period at the national level in 2003, participated in its first election and attained 1.73 percent of the vote.

At the provincial level the ANC for the first time governed in all the nine provinces, including the Western Cape (which it ruled in coalition with the NNP) and KwaZulu-Natal, the two provinces that it had failed to win in 1994 and 1999. The DA became the official opposition in six of the provincial legislatures, with the exception of the Eastern Cape, where the UDM retained this status, Northwest (UCDP) and KwaZulu-Natal (IFP).

Table 1 Elections Results (1994, 1999 and 2004) of Major Parties Represented in the National Assembly

Party	% votes 1994	% votes 1999	% votes 2004
African National Congress	62.65	66.35	69.69
National Party/New National Party	20.39	6.87	1.5
Inkatha Freedom Party	10.54	8.58	6.97
Freedom Front/ +	2.17	0.80	0.89
Democratic Party/ Alliance	1.73	9.56	12.37
Pan Africanist Congress	1.25	0.71	0.73
African Christian Democratic Party	0.45	1.43	1.6
United Democratic Movement	-	3.42	2.28
United Christian Democratic Party	-	0.78	0.75
Independent Democrats	-	-	1.73
Federal Alliance	-	0.54	-
Minority Front	-	0.30	0.35
Afrikaner Eenheids Beweging	-	0.29	-
Azanian Peoples Organisation	-	0.17	0.25
Others	0.82	0.17	1.04
Total	100	100	100

Source: Hoeane (2009)

The local government elections of 1995/1996, 2000, 2006: Entrenching democracy at the local level

The electoral system at this level evolved from the PR system, which was utilised in the first election of 1995/1996, to the mixture of FPTP and PR that is currently in use. The changes were promulgated by the Government Municipal Structures Act, 1998 (which restructured local government bodies). This followed major reforms of local government institutions in the run-up to the 2000 poll, which reconstituted municipal boundaries and introduced new administrative structures: Metropolitan, District and Local Councils.

The picture at the local government level reflects the dominance of the ANC at the national and provincial levels, with the party winning 58% of the seats contested nationally in 1995/2006,[12] increasing this tally to 60% in

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[10] The significance of a two-thirds majority is that constitutionally this is the threshold at which a party can change the constitution.

[11] The Democratic Party (DP), the New National Party (NNP) and the Federal Alliance formed the DA in mid-2000. However, the NNP pulled out of the alliance the same year after a fall-out between it and the DP.

[12] The first round of elections was held in 1995, except in KwaZulu-Natal, which followed in 1996. The delay was caused by traditional leaders, who rejected elections out of fear that new forms of democratic governance might erode their powers.

2000 and significantly winning outright victories in four (Johannesburg, Pretoria, East Rand, Port Elizabeth) of the six metropolitan councils, except Cape Town, which was won by the DA, and Durban, where it failed to achieve an absolute majority.

In 2006, it increased its level of support to 66 percent of seats nationally, the DA coming second with 14.8 percent, the IFP third with 8.1 percent followed by the ID with 2 percent in fourth place while the rest of the major parties registered less than 2 percent support each. The ANC won outright majorities in five of the six metropolitan councils (Johannesburg, East Rand-Ekurhuleni, EThekwini-Durban, Tshwane-Pretoria and Nelson Mandela-Port Elizabeth), with the DA retaining power in Cape Town.

A Bird's Eye View of the Forthcoming Elections

Against the background of the foregoing analysis, what are the prospects for the 2009 elections? What impact are they likely to have on the political system, and to what extent are they likely to alter the political balance of power and the ANC's domination of the political landscape?

Going purely by the overview of the past elections presented here, the ANC support appears unshakeable. As we have shown above, the ANC has steadily increased its electoral support from 62% in 1994 to almost 70% in the 2004 election. Its support in the local government elections over the three periods from 1995/6 to 2006 has also increased steadily from 58% to 66% in 2006. This evidence would seem to suggest that this trend is more likely to be repeated rather than reversed.

However, it has been suggested that the 2009 elections will be taking place against a completely changed political environment. For a considerable period now, it has been theorised that a challenge to the ANC's dominance can only come from within; that a break-up of the ANC would splinter the African nationalist block vote, and scatter it in different directions.

The departure from the ANC of the former Defence Minister, and chairman of the ANC, Mosioua Lekota, the former Gauteng Premier, Mbazima Shilowa, and some lesser-known names to form a new party, the Congress of the People (COPE), to challenge the ANC at the next election appears to have fulfilled this prophecy. On the basis of this development, most analysts are convinced that the 2009 elections are going to be a different ball-game altogether, completely different from the trends that we have sketched above.

In the author's opinion, this newly found wisdom about the imminent collapse of the ANC is based on wrong premises, incorrect analysis, and inadequate understanding of the traditions of politics within the ANC. The false promise of COPE foundation was that it already had 40% support within the ANC. This is supposedly the 40% of the ANC delegates who voted for the former president Mbeki at the ANC National Congress held in Polokoane, Limpopo. These were ANC delegates participating in ANC democratic processes. There are absolutely no guarantees that were Mbeki to join another party, or come out openly in support of COPE, that the so-called 40% would automatically follow. So the assumed 40% ANC support for COPE is neither here nor there. It surely is not a scientific calculation of political behaviour and voting patterns in South Africa.

Secondly, the ANC has built a robust tradition of democratic culture in its processes. Even during exile, when centralisation had to creep in, vibrant debate remained very much a culture of the ANC. This has invariably created a culture in which breakaways have not been able to harvest a health proportion of the ANC's support base. The PAC is a case in point: it never captured any viable following from the ANC and its performance since the advent of the democratic processes has demonstrated that it is a party shouting in a political wilderness. Holomisa's UDM is similarly a demonstration of how splinter groups from the ANC have not managed to seriously threaten the latter's historical political hegemony.

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Conclusion

The trends that have been sketched in this article, starting with democratic elections in 1994, are likely to be replicated in the next elections. The ANC will most likely lose the Western Cape Province, not because of the arrival of COPE but because of internal squabbles that have consumed the provincial ANC over the last three years. And, even then, the ANC is still likely to emerge as the largest party in the province. The smaller parties are unlikely to make any considerable improvement. And even though the DA peaked at the last election, it is likely to make some considerable improvement picking up support from the white right. Inkatha is losing support and therefore more likely to be cantankerous as the election approaches. Its intolerance of political competition is already fairly visible.

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PROVINCIAL COVERAGE

The Eastern Cape Province

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This article discusses the institutional framework in place in the Eastern Province in the run-up to the National and Provincial Elections to be held on 22 April 2009. This framework consists of the structural mechanisms in place through which the election will be processed. It specifically focuses on the readiness of the provincial Independent Electoral Commission (IEC), the role of civil society organisations, the media and mechanisms for conflict management.

The Provincial IEC and Its Readiness for the Elections

In assessing the preparedness of this institution, which is charged with the management and conduct of the elections, the following are considered: the structural infrastructure in place and the pre-election activities which the body has undertaken to deliver a credible election in the province. Some of the challenges this institution is faced with will also be highlighted.

As with other provinces, the provincial IEC has at its pinnacle a provincial headquarters that is located in East London, one of the major cities in the province. This is the logistical fulcrum of all IEC activities in the province. It is supported in this task by forty-seven municipal electoral offices located in municipalities throughout the province whose task is to manage and coordinate elections at this level. This is critical for registering voters – both first-time and those who have changed physical locations – during specific voter-registration drives, and assisting voters to check their registration status. Each of the two voter registration drives, launched nationally in November 2008 and in February 2009, was driven by at least three officers and in the words of the Provincial Electoral Officer

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Reverend Bongani Finca "they coped well with the traffic".[13]

The IEC has also identified and is to utilise close to five thousand voting stations (4482) around the province during Election Day. This means that each voting station will on average be expected to process around 677 voters – given that the total number of registered voters in the province is 3, 037 259.

The provincial IEC has also embarked on campaigns to strengthen its capacity to deliver a successful election in the form of conferences and workshops for relevant stakeholders, mostly held in East London. For example, it organised and conducted a two-day provincial seminar for political parties in December 2008.[14] At this event various levels of political party leadership at the national, providential and municipal levels were invited to indicate their support and declaration of commitment to the Electoral Code of Conduct, which governs the behaviour of political parties during elections.

In addition, during the same month, the IEC hosted seminars for 250 representatives of various civil society organisations. These included traditional and religious leaders who were invited to discuss ways in which they could play a role in promoting a violence-free and peaceful election in the province.[15] These functions were explicitly undertaken to forestall any kind of political intolerance that might arise in the province during the election. Specific attention was focused on preventing the outbreak of violence between rival political parties. In addition, in line with its national objectives of assisting the media, both local and international, to cover the elections effectively, and other stakeholders such as election monitors, the provincial IEC will have an operational centre that will provide access to information such as election results and other election information.

Despite these preparations, which the provincial IEC has put into operation, there have however been challenges that have faced the organisation. These have included the fact the province is largely rural, which implies problems of access for IEC officials conducting critical functions like voter registration.[16] Indeed, the IEC has also had to contend with personnel issues such as inexperienced officials who cannot carry out their functions competently.[17]

The sporadic incidents of political intolerance that have cropped up in areas like Port Elizabeth have interfered with the functions of the IEC. These have been dealt with by intervention teams that have been sent by the national IEC to monitor these flashpoint areas.[18]

In terms of infrastructure limitations, it can be pointed out that as the province has one of the highest numbers of registered voters consideration may be given to having sub-regional offices to assist in managing the elections. That is, the volume of work that is supposed to be handled by one regional office appears to be onerous for a province such as the Eastern Cape which might lead to inefficiencies in administering the election. Another way to enhance the working of the IEC would be the strengthening of its working relationship with the provincial department of Local Government to maximise its efficiency. For example, in some provinces the local government websites have links to the IEC website. This would improve access to specific provincial election information, for example, by researchers. Indeed, it would be helpful to also consider each province having a dedicated link on the National IEC website for better access to information on elections.

Notwithstanding some limitations, the IEC appears adequately prepared to conduct a successful election in the province. This is attested to by the fact that the province has registered one of the highest totals of registered voters in the country, coming third after

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[13] http://www.dispatch.co.za/politics/article.aspx?id=268570
[14] http://www.buanews.gov.za/rs/08/08120211451003
[15] *Ibid*

[16] http://www.theherald.co.za/herald/2008/11/10/news/n03_10112008.htm
[17] *Ibid*
[18] http://www.elections.org.za

Gauteng and KwaZulu-Natal. Indeed it surpassed its originally intended target of registering 2 million voters by garnering 3 million.[19]

The Role of Civil Society Organisations

Civil society organisations play a critical role as a stakeholder in assisting the IEC to hold a successful election. The primary role of these organisations in the province is to provide essential functions such as monitoring the elections and voter education campaigns. In relation to the former, it is worth noting that organisations such as the Public Service Accountability Monitor (PSAM), which is located at Rhodes University in Grahamstown, is intimately involved in monitoring the elections and providing commentary on the process. Its role is complemented by organisations such as the Eastern Cape NGO Coalition (ECNGOC).[20]

The other civil society organisation that plays an important role in electoral processes in the province is the South Africa Civil Society Election Coalition (SACSEC). The South African Catholic Bishops Conference (SACBC) partners the organisation in its efforts, and in line with its plans of having an office in each province, it has one in the Eastern Cape. It noted the following in a press release in 2008: "SACSEC has broadened its original objectives to include voter education…. As a result SACSEC partner organisations will also work closely with stakeholders in conducting stake holder education countrywide".[21]

The Role of the Media

Both print and broadcast media in the province are active in covering election-related issues. These outlets have particularly been useful in publicising the role of the IEC and its campaigns in terms of carrying adverts from the organisation on messages about the election. They of course also provide straight news reporting of events that include party activities such as campaign launches and analytical pieces through their columnists and talk shows.

In addition to the national media like the *The Star, Mail and Guardian, Sunday Times, City Press and Sowetan*, the local print media are dominated by two dailies, The *Herald and Daily Dispatch*, whose circulation is province-wide. They are supplemented in their role by their weekly versions – *The Weekend Post and Weekend Dispatch* respectively. The other major newspaper in the province is the Afrikaans language daily *Die Burgher*. The other active component of the print media in elections is community newspapers such as the *Grocott's Mail* (the oldest independently owned newspaper in the country) based in Grahamstown. These are critical sources of news on the elections as they focus on local election news and they are also prime outlets to advertise and carry messages on the activities of the IEC.

The two major national television stations, the South African Broadcasting Corporation (SABC) and ETV, dominate the electronic media. The SABC also utilises its Xhosa language radio channel *Umhlobo we Nene*, which broadcasts out of Port Elizabeth together with the English-language station *Algoa FM*. Providing an ancillary role to these established outlets are a plethora of community radio stations that operate under the banner of the National Community Radio Forum (NCRF) whose listenership countrywide is over 7 million.[22] Quite significantly, the NACRF has partnered with the IEC in hosting capacity building workshops for community radio stations that concentrate on civic and voter education, democracy, human rights and other political issues. To this end, it is holding such workshops around the country, and hosted one in the province in December 2008.[23]

Mechanisms for Conflict Management

Historically, conflict-related election issues have not been rife in the Eastern Cape, although they do sporadically

[19] http://www.dispatch.aco.za/PrintArticle.aspx?ID=292334
[20] http://www.ecngoc.co.za/index.php
[21] http://www.sacc.org.za/news08/sacsec.html

[22] http://www.ncrf.org.za/news/the-national-iec-campiagn
[23] *Ibid*

occur. For example, during the two voter-registration drives in late 2008 and early 2009, there were various incidents of political intimidation reported in areas such as Dimbaza, Queenstown and the Amahlati Municipality.[24]

In anticipation of such incidents, the IEC has noted that "Intervention teams have been identified and are to deployed to the various provinces to assist with on-site mediation and resolution of disputes"[25] In addition, as usually these conflicts arise between rival political parties, the IEC has standing dispute-resolution mechanisms, mainly party liaison committees which are dedicated to liaising with the IEC to deal with such problems.[26] In this regard, the province's premier, Mbulelo Sogoni, in his State of the Province Address delivered in February 2009, specifically exhorted "members and supporters of all political parties in the province to exercise political tolerance and that leaders should effectively use the Party Liaison Structures of the Independent Electoral Commission to resolve conflict, thus making sure that these elections are free of incidents of violence and intimidation".[27]

In sum, it is fair to say that adequate measures are in place to handle and resolve conflicts that may arise with respect to the election. However, this should be qualified in that it will be up to political parties and their supporters to respect and maximise the use of these structures to resolve their differences. Indeed, these structures will be tested and will have to prove their mettle or fail when the campaigning reaches its crescendo close to Election Day on 22 April and in the immediate aftermath of the election.

Conclusion

In conclusion, it can be stated that the institutional framework and the elections in the Eastern Cape appear to be on the right track. The IEC is well prepared despite the problems that it has faced, civil society organisations are present that will provide an ancillary role to the IEC, the media is playing its part and mechanisms of dispute resolution are in place.

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[24] http://www.dispatch.co.za/politics/article.aspx?19=268570
[25] http://www.elections.org.za/
[26] http://www.info.gov.za/speeches/2007/07100514451001.htm
[27] Speech Delivered by Premier of the Eastern Cape Province Mbulelo Sogon on 13 February 2009; http://www.ecprov.gov.za

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The Free State Province

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Introduction

Given the rich experience of the Free State Province Electoral Commission (PEC) in managing previous general and local government elections, it is reasonable to expect the PEC to acquit itself well in handling the 2009 general elections. Most of the staff component has been there for at least for the previous two general elections. As for Mr Chris Mepha, the Provincial Electoral Officer, he has been there since the establishment of the IEC. He has had an opportunity to groom young talent within the office and the team work is exceptional. Basically, all staff members understand their roles clearly and are able to work independently and interdependently throughout the process of preparing for the elections.

This article will focus on IEC preparedness, the role of civic society organisations and faith-based organisations, the role of the media, and mechanisms for conflict management and their effectiveness.

IEC Preparedness

IEC preparedness refers, inter alia, to the extent to which the IEC is ready to manage and conduct the forthcoming poll scheduled for April 22 in terms of its mandate as clearly spelled out in the electoral act. The objective of the IEC is to strengthen constitutional democracy and promote democratic electoral processes. Among its powers, duties and functions as stipulated in the Electoral Commission Act, Act 51 of 1996, section 5(1) lists the following:

- to manage any election, that is at national, provincial and local levels as well as the by-elections;
- to compile and maintain the national voters' roll;

- to promote conditions conducive to free and fair elections;
- to establish and maintain party liaison committees;
- to review electoral legislation;
- to undertake and promote research;
- to declare results within seven days of an election;
- to promote voter education; and
- to promote knowledge of sound democratic electoral processes.

It is important to note that election readiness is not dependent on one person or group, but a broad spectrum of stakeholders, and at different stages of the process. Therefore, the IEC has a huge task and it does seem like the Free State office of the IEC is well prepared for the task at hand.

It is important to note that each time an election is scheduled the date set out in the election calendar for each phase of the process must allow adequate time for effective campaigning and public information efforts to happen, in order for people to make arrangements where necessary. The election calendar should itself be published as part of the civic information activities, in the interest of transparency and of securing public understanding and confidence in the process.

Role of Civil Society and Faith Based Organisations

There is commitment among the civil society organisations as well as faith-based organisations to promote tolerance among the civil society. The spirit of elections is empowering people to take responsibility for educating voters and the general society about the importance of voting. These organisations have a close relationship with the IEC and many of them work tirelessly to publicise events, and to make sure that people attend rallies and public meetings to get more information.

Civil society is waking up and positioning itself well for the upcoming election. Part of this is asking questions and critiquing what the political parties are promising in order

to allow voters to make an informed decision when casting their votes. People are starting to appreciate the value of a vote and are really beginning to respect it as a basic responsibility and a right.

Role of the Media

The role of the media has been critical in the preparations of the IEC. The media made it easier for the IEC to reach a multitude of people. The manner in which information was provided was attractive even to the youth. The media has played its role: marketing the registration weekends, bringing the views of the political parties to the people and allowing comments and critique to be heard.

The media has been operating with a high level of fairness and political parties in the Free State have not raised any serious issues of media bias or impartiality in its role to inform and educate the public on election issues.

Mechanisms for Conflict Management and their Effectiveness

Party liaison committees

Section 5(g) of the Electoral Commission Act, 51 of 1996, stipulates that the IEC will "establish and maintain liaison and co-operation with parties".

It has been reported by the IEC office in the Free State that there is a working relationship with the Electoral institute of Southern Africa (EISA) in facilitating the establishment of the Conflict Management Committees. In fact, the Committee operates throughout the year and regular meetings are held. Already, the PEO, Mr Mepha, has called a meeting with the members of the parties represented at national and provincial levels, to impart information and discuss issues of concern. There has to be two representatives per political party in each of the five Municipal Districts of the Free State. Those parties that are newly registered in the Free State, for example the Congress of the People (COPE) and Basotho Khutlisa Botho,

will be invited only once they have registered and submitted their nomination lists. This will be done in the interests of inclusiveness.

Liaison with political parties and building a working relationship of trust benefits both sides and makes it easier for conflicts to be resolved among political parties. This relationship ensures that political parties take accountability for the behaviour of their members and supporters.

When there is openness and accessibility from both sides, it becomes clear to all that there is nothing to hide and the rules are clear. It is essential to liaise with political parties throughout the three-stage cycle of the electoral process – namely, the pre-voting, voting and post-voting stages. Conflict diminishes to a basic minimum, especially when organisations know where to go for support.

South African Police Service (SAPS)

Another institution that is crucial is the South African Police Service (SAPS). The SAPS has a huge task in managing conflict during elections, including the period before and after elections. In the Free State, a clear example was when the Congress of the People (COPE) held its inaugural conference and at the same time the African National Congress (ANC) was celebrating in Bloemfontein, roughly 20 kms from each other. Conflict is normal and it is even more possible when two political parties, who are competing for the support of the same electorate, come that close to each other. Provocation can happen and derail all proceedings, but with the support and tactful planning of the three days, conflict was kept in check. The SAPS was under tremendous pressure to safeguard the leadership as well as members of both parties, while allowing free movement of both parties around the city.

It is for operations like these that one can commend the SAPS for putting mechanisms in place to avoid conflict between the two parties by all means reasonably possible.

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Interviews with individual party agents

The Limpopo Province

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Introduction

The aim of this report is to give a brief but analytical view of the electoral process in the Limpopo Province. To this end, it addresses five main issues. First it highlights the preparedness of the Provincial Electoral Commission. Secondly, it examines the role of civil society organisations and faith-based organisations. Thirdly, it outlines the role of social movements such as trade unions. Fourthly, it reviews the role of the media. Fifthly, it investigates the mechanisms for conflict management and their effectiveness.

IEC Preparedness

The Limpopo Province is fairly large, with a high population concentration around the (peri) urban areas. In an attempt to ensure its visibility and for its voice to be heard, the Commission has created structures across the province. It is consistently in the news and updating the population on developments regarding the election.

An inspection *in loco* at its IEC warehouse has convinced the reporter that appropriate steps have been taken to ensure that the infrastructure is in place and ready to be deployed. At the time of the visit workers were busy, suggesting that they are almost at the tail-end of their preparations.

An interaction with the IEC Limpopo PEO, Ms Nkaro Mateta, shed more light on measures in place to ensure a speedy roll-out of programmes and deployment of staff and equipment as soon as the election date has been gazetted. What could not be established is the readiness of the prospective electoral officers, although it could be surmised that since they recently held by-elections in some district municipalities this experience could be invoked in future elections.

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Ms Mateta did concede, though, that there are challenges in certain areas, especially Moutse, next to Groblersdal, where her team found it difficult to register people for the election. The Moutse Cross-border Forum has vowed not to participate in the 2009 elections until the matter of their transfer from Limpopo to Mpumalanga has been resolved. As a result, any person who tried to defy the Forum ended up being intimidated and/or assaulted. Some culprits were arrested and appeared in court, some as recently as 9 February 2009.

Besides the above concerns, the IEC was able to register more than 3000 voters in Moutse East alone. The police played an integral part in ensuring that potential voters were not severely disadvantaged. The few service delivery protests in Ga-Mampuru and Ga-Masemola villages did not affect the registration process. The protest in Moutse West did at one point lead to the temporary closure of the station.

The Provincial Electoral Commission (PEC) has made commendable efforts in redressing violence stemming from this cross-border dispute and political intolerance between parties. In this regard, the Commission trained some police officers in their operations. This initiative proved vital because, when it became evident that special measures had to be resorted to in order to maintain law and order, the trained officers took over and proceeded to help the IEC officials.

During the weekend of 7-8 February 2009, the author visited at least six areas in order to assess developments and levels of preparedness of the IEC, the political parties and the voting population. The mood was upbeat and very encouraging, though further voter education could help boost the voters' roll. The areas visited are Mankweng. Moletji, Seshego, Polokwane, Mokopane and Mahwelereng.

Role of Civil Society and Faith Based Organisations

The IEC has adopted a mass voter education project. To achieve its goals, it enlisted the services of thirty civil society organisations. It has deployed them across the province to cover at least 513 wards.

The Commission has set up meetings with stakeholders in order to update them on the preparations, the role they expect them to play, and the challenges they could face and how they would be tackled whilst there is still time. To this end, a meeting with traditional healers and leaders was held on 13 February 2009. Subsequent to this engagement, the commission will embark on a road-show to five district municipalities for an interface with farming communities, that is, labourers and employers, and as well with farmers' unions. This intervention is crucial because there are often unfavourable reports on the farms, especially during the election period. It is important that both parties are advised of their rights and duties and that what happens should do so within the confines of the law. It would therefore be prudent for a conflict resolutions mechanism to be in place, and within reach for if and when it is sought. Voter education would ease the fractious relations that often prevail during this period. An audit of the problems that often beset this sector could be a starting point in seeking to smooth the operations and ensure a free and fair election.

Role of the Media

This is one area where the Commission is doing a commendable work. Election-related material is constantly in print and the electronic media are churning out information on the election process. Local newspapers and government department newsletters constantly carry updates on the elections and challenges often confronted in areas engaged in cross-border disputes. The author attended a media briefing at the Commission's office in Polokwane on Monday 9 February 2009. The session was informative and the officers clearly on top of the proceedings. Valuable information given to the media included the following:

- More than 600 000 prospective voters visited more than 2,400 registration stations on the weekend of 7-8

February 2009 either to register for the first time, or to re-register or inspect their details on the voters' roll.

- Vhember District had the highest number of new registrations (39 299) followed by Mopani with 35 608 and Capricorn District with 26 215.
- 85% of all new registrations were in the youth category.
- As of 9 February 2009, the voters' roll in the province stood at 2, 194 160 persons.
- The Moutse area remains volatile, making it difficult for people to visit the stations.
- Voter education and stakeholder engagements remain priorities to be addressed in collaboration with relevant state organs and interested parties.

Mechanisms for Conflict Resolution

It was brought to the author's attention that the IEC in the province was in the past assisted by EISA when it came to resolving electoral disputes. Apparently, there was a major financial cost involved and as a result the provinces were advised to fend for themselves as from 2009. As at the time of preparing this report, the Commission was still waiting for criteria and guidelines for developing an instrument that they can use in the event of disputes. This framework should be provided by the IEC national office.

In the meantime the Commission convened a meeting with the South African Council of Churches, non governmental organisations and interested parties whose primary aim is to promote and deepen democracy. The stakeholders were advised about the possible role that they would be expected to play after attending a workshop on conflict resolution. First, there would be a provincial structure vested with powers to resolve or make recommendations. Second, there would be sub structures across the five districts, but, where necessary, especially in hotspot areas, people with superior skills and experience could be deployed. Political parties and electoral officers will be given the relevant documents as part of the electoral tool-kit.

The Kwazulu-Natal Province

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Introduction

The South African Constitution provides for "universal adult suffrage, a national common voters' roll, regular elections and a multi-party system of democratic government, to ensure accountability, responsiveness and openness" (Constitution,1 d). Regular elections are often cited as an indicator for democratic consolidation or the entrenchment of the democratic process (Lodge, 1999). Ever since the advent of democracy in South Africa, elections have been held regularly and the results accepted without significant dispute. A harsher test for democratic consolidation in terms of elections, however, is Samuel Huntington's two turnover test, whereby the party who held power at the time of the transition to democracy turns power over to an opposition party in a subsequent election and they, in turn, peacefully turn over power to winners of a later election (Huntington, 1991, 267).

Interestingly enough, the province of KwaZulu-Natal is an example of a change in power (at the provincial level) in a national system of ruling party electoral dominance. In the 1994 and 1999 elections the province was an Inkatha Freedom Party (IFP) stronghold, with the IFP winning 50.3% of the vote and 41 seats in the provincial legislature and 41.91% of the vote and 34 seats in the legislature respectively (Mottiar, 2004).

In the 2004 election, however, the African National Congress (ANC) secured victory in KwaZulu-Natal, taking 46.98% of the vote to the IFP's 36.82% (IEC, 2004). The turnover of power from the IFP to the ANC was relatively smooth. This was evident in the way the election-related disputes were dealt with by the Independent Electoral Commission (IEC) and accepted by political parties. Notwithstanding arguments about ruling party electoral dominance nationally, the turnover of power in KwaZulu-

Natal was evidence that processes and mechanisms of democracy were progressively becoming well entrenched.

The Electoral System

South Africa uses a national list system of proportional representation, where voters complete two ballot papers: one for the national assembly and one for the legislature of one of the nine provinces. No personal names appear on the ballot papers, only the names of parties. Parties will submit lists of their candidates for national and provincial legislatures to the IEC. Effectively this means that voters cast their votes for parties and not for individual representatives and MPs are accountable to their parties and not to the electorate.

Parliamentary seats are allocated in accordance with the share of the vote received by each party using the Droop Formula which assures that there is no formal threshold for party representation in elected office. One of the main reasons for this choice of election system, in keeping with the constitutional requirement for multi-partyism, was to accommodate smaller political parties which at the time of the constitutional negotiations represented racial minorities.

During the first democratic election the IFP drew most of its support from rural KwaZulu-Natal where it asserted itself in Zulu nationalist terms. By the second election, however, the IFP had begun to realise a need to transform itself from a Zulu nationalist-cum-traditionalist party in keeping with the pluralism and freedom associated with a liberal democracy. The IFP's loss of support in the province paralleled the ANC's rise of support, which has been accredited to stronger campaigning in KwaZulu-Natal as well as the ANC's promulgation of the KZN Traditional Leadership and Governance Act in 2005 which meant that the 249 traditional leaders in the province receive salaries from provincial government.

The ANC has also managed to make inroads into rural provincial support in KwaZulu-Natal through a relationship with Zulu King Zwelithini who has a somewhat fragile relationship with IFP leader Mangosuthu Buthelezi (*Mail & Guardian*, 6 February 2009). Aside from the ANC's strengthened position in the province, the IFP also suffered a loss of support to the splinter party the National Democratic Convention (NADECO). NADECO was formed in September 2005 during the floor-crossing session and headed up by former IFP national chairman Ziba Jiyane, who claimed that the party represented the views of younger more progressive members of the IFP. More recently, the IFP and NADECO have both lost support to the Congress of the People (COPE), which recently established a Durban office and consolidated a number of defectors from other parties such as Mhlabunzima Mthuli, who was an IFP member before joining NADECO.

Prevention, Management and Resolution of Election Related Conflicts

Aside from the procedural aspects of elections, the Electoral Code of Conduct outlines various provisions that allow for the more substantive elements of democracy to endure. Among these is the promotion of conditions conducive to free and fair elections such as the 'tolerance of democratic political activity' and 'free political campaigning and open public debate' (Electoral Code of Conduct Schedule 2). The province of KwaZulu-Natal has since the first election faced some challenges in this regard. During the run-up to the 1994 elections KwaZulu-Natal was seen as "the most serious instance of political obstruction of free electioneering" (Lodge, 1999, 7). In the 1999 election political campaigning by other parties in traditional IFP strongholds was described as 'discreet' (Lodge, 1999, 84).

During the 2004 elections, although hotspots of violence existed, they were not significant enough to deter successful campaigning by other parties such as the ANC, who successfully made inroads in terms of establishing a support base in the province. In the current run-up to elections there have, once again, been reports of election-related violence. Mary de Haas of the Independent Violence Monitor in KwaZulu-Natal stated that "there is ongoing low level political intimidation in KZN between

elections with an upsurge in the build-up to them" (*Mail & Guardian* 6 Feb 2009).

De Haas was referring to various incidents of violence in the province. These included the stoning of ANC buses by IFP supporters in Ulundi and Nongoma and the alleged intimidation of ANC supporters in Pongola. Umvoti has also been labelled as potentially dangerous, there have been ongoing threats to ANC supporters in Sweetwaters, Pietermaritzburg, threats to the life of an ANC councillor in Camperdown, Umlalasi and Emacambini declared 'no-go' areas, tensions between COPE and ANC supporters in KwaDukuza, and Izingolweni has been declared potentially volatile. The *Mercury* reported that an ANC MP and two other people were shot and wounded after political rallies in Nongoma on 1 February (*Mercury* 2 February 2009).

Addressing the rally, ANC president Jacob Zuma said that political intolerance would not be accepted and that the stoning of the bus carrying ANC supporters to the rally would be duly reported to the IEC. IFP's Albert Mncwango responded by accusing ANC leaders of being irresponsible and holding their rally too near an IFP venue. Buthelezi however told his supporters that all parties were allowed to canvass anywhere in the country. The outbreak of electoral violence at Nongoma resulted in the deployment by the department of safety and security of a strategic intervention unit. The unit is to be operative at violence hotspots and flashpoints throughout the country through "individuals who will coordinate the election machinery for the security cluster (for each province)" (*Mercury* 3 February 2009).

The IFP officially condemned the incidents in Nongoma but added that the clashes were in fact between IFP supporters and the police, who "brutalised" the public without provocation. IFP officials have also complained that their public meetings in the province are often "disrupted by rowdy ANC supporters" and that their billboards have been set alight and posters defaced (*Daily News* 2 February 2009). The *Witness* reported that the ANC laid a formal complaint with the IEC in Durban, claiming that, "Our view

is that the IFP has taken a deliberate long term view that they will never allow the ANC to freely campaign in Ulundi and Nongoma even if it results in the death of their opponents" (*Witness* 4 February 2009). The SA Institute of Race Relations has argued however that political violence in the province has been exaggerated and is isolated to minor incidents. This view is held in the light of the fact that relative to the situation in the province fifteen years ago, when violence and intimidation were rife and a genuine barrier to election campaigning and freedom of the electoral process, the current situation is markedly improved in terms of political tolerance (*Mercury* 6 February 2009).

Despite the flashpoints of violence and intimidation, the province of KwaZulu-Natal does not seem to pose a significant threat to free campaigning by political parties or voting by the electorate in the forthcoming elections. In the wake of the incidents of violence in KwaZulu-Natal, the IEC held a two-day workshop promoting tolerance around electioneering in general with an emphasis on increased public participation (Sapa 12 February 2009).

Sixteen political parties, the ANC and IFP included, have signed a code of conduct committing themselves to non-violence and non-intimidation during electioneering. The Electoral Code of Conduct further obliges parties to "Liaise with other contesting parties and endeavour to ensure that they do not call public meetings, marches, rallies or other public political events at the same time or place" (*Mail & Guardian*, 11 February 2009). Political party leaders have also pledged themselves to the Electoral Code of Conduct. ANC's Jacob Zuma visited a registration station in Nkandla where he will cast his vote and IFP's Mangosuthu Buthelezi visited registration stations in Umlazi and KwaMashu. Both leaders also warned against the dangers of voter apathy (iol 7 February 2009).

Role of Civil Society Organisations

Civil society in KwaZulu-Natal is actively engaged in supporting a peaceful election process under the banner of

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the KwaZulu-Natal Democracy and Elections Forum (KZNDEF). The KZNDEF is made up of civil society organisations in the province and divided into five subcommittees: democracy and voter education, mediation, violence monitoring, mitigation and polling. The Democracy Development Program (DDP), heading the democracy and voter education subcommittee, is currently running some 300 voter education workshops across ten districts in the province. The workshops follow on from foundation workshops, which educated citizens on why they should vote and how the voting process works. The current workshops focus on how to make informed choices and what issues to raise with politicians during the campaigning and electioneering. The training is also innovative in that it is designed for quick interventions such as in a taxi rank (Naidu, DDP).

The voter education process is being carried out by the DDP in conjunction with fifteen partners in the province who are part of the KwaZulu-Natal CBO Coalition (COMBOCO). COMBOCO represents some 300 organisations throughout the province. Conflict management training is being carried out by the KwaZulu-Natal Christian Council (KZNCC) on the mediation subcommittee. The training follows the mediation training carried out by the KZNCC prior to elections and is taking place in five main areas: eThekwini, the south coast area, the Midlands, the Tugela area and Zululand (Baumann, KZNCC).

Some of the conflict management training was provided by the African Centre for the Constructive Resolution of Disputes (ACCORD) and involved a specific course in elections and conflict management which was formulated specifically to improve electoral processes and to advance conflict prevention and mitigation of election-related conflicts in Africa (www.accord.org.za – Elections Programme). The course involves dealing with various election-related conflict elements such as intolerance, no-go areas, hate speech, campaigns of violence, issues related to voter registration and the voters' roll, the role of the media, exclusion of women candidates, the counting process and the issue of frivolous lawsuits.

The KZNCC also sits on the violence monitoring subcommittee which, since November of last year, has deployed ten monitors throughout the province to monitor potential and actual incidents of violence and also to compile information on violence trends in the province. The information is shared with civil society, political parties and police in order to help mitigate politically motivated violence in the run up to and during elections.

The subcommittee on mitigation is tasked with providing information on the Electoral Code of Conduct and the Electoral Court. It also provides assistance to recourse by the Electoral Court in the event of conduct transgressions. The subcommittee on polling is responsible for all issues pertaining to the voting process as well as observation of the provincial election (Dziva, KZNCC).

Role of Social Movements

An integral element of civil society in South Africa is the rise of the new social movements. Many South African social movements have been credited with impacting upon pro-poor policy between elections. One of these social movements is the Durban shack dwellers movement Abahlali Base Mjondolo situated in the Kennedy Street informal settlement in Durban which has declared an active abstention (from voting) as the only strategic and tactical approach to the upcoming elections. This is in line with revolutionary anti capitalistic politics.

Abahlali advocates for land and housing for the poor as well as an end to forced removals and access by the poor to basic services. It has grown in membership from its original 6,000 supporters in the Kennedy Road settlement and now claims to represent "tens of thousands of people from more than 30 settlements". (Abahlali, 2006) Abahlali, under the Zabalaza Anarchist Communist Front, argues that voting, registering or even spoiling the ballot is not, from a working class perspective, active but rather an acceptance of bourgeoisie authority. The Front argues for working class action in the form of mass struggle and direct action, outside and against the institutions of capital, political parties and the state (Abahlali, 2009).

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The involvement of trade unions in electioneering in the province has seen COSATU actively campaigning for the ruling ANC. It has officially called on workers in KwaZulu-Natal to mobilize their families to vote for the ANC in order for the ANC to secure at least 60% of the vote (COSATU Today, 2009). Following the Nongoma incident of violence between the IFP and ANC, COSATU called on the IEC to disqualify the IFP from contesting in the 2009 elections (iol 2 February 2009). COSATU has also been distributing its booklet "Defend Our Movement: Advance the Gains of Polokwane – Expose and Isolate the Black DA". The booklet is available at both organisation headquarters in KwaZulu-Natal and details the dangers to the trade union federation should COPE come to power in the 2009 elections (iol 28 January 2009).

Role of the Media

Democratic governance is significantly supported by media that ensures the voters' right to make informed political party choices and promotes their right to be accurately informed as to what is happening around elections. In KwaZulu-Natal the two main newspapers, the *Mercury* and *Witness*, have chosen to focus on the incidents of violence between the ANC and IFP in the province. While the *Mercury* has tended to sensationalise the violence with headlines such as "Flashpoint at Nongoma" (2 February 1999) and "Army Stands by to Quell Violence" (3 February 2009). The *Witness* has responded in more measured terms with article headlines such as "Parties Trade Blame" (3 February 2009). The *Witness* has also published a call and guide for registration through adverts in its 'Echo' supplement produced by the Centre for Adult Education detailing the registration process in both English and Zulu.

IEC Preparedness

In terms of election preparations, the provincial IEC claims that it is ready for the voting process following successful provincial registration. In November of 2008 the IEC reported that KwaZulu-Natal had the lowest percentage in terms of voter registration among the provinces and identified 2.2 million unregistered voters mostly in the

Durban and Pietermaritzburg areas. Following the registration cut-off in February 2009, however, out of an eligible 5.9 million voters in the province 4,475,217 had registered to vote. Following a prevailing national trend, 2,548,839 of registered voters are female and 1,926,378 are male (IEC web site 2009, http://www.elections.org.za/Statistics1.asp?page=1). The call for registration was therefore well received. Following the announcement of the election date on 22 April, registration has officially closed and the provincial IEC is preparing for the election, having set up 4,187 voting stations in the province with 12,561 electoral officers available to man them (1 September 2008 Sapa).

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The Mpumalanga Province

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Introduction

This first update focuses on the institutional framework of the Independent Electoral Commission (IEC), its preparations for the elections, applicable legislation, the role of the media, community organisations and conflict resolution plans. The Republic of South Africa comes from an apartheid era that was characterised by discrimination, disenfranchisement and the denial of basic human rights and dignity to the majority of its citizens. When democracy was achieved and the first democratic elections held in 1994, a governing document was prepared to serve as the constitution of the country. This constitution was drafted to uphold certain democratic values on which South Africa as a democratic state was founded:

- Human dignity, the achievement of equality and the advancement of human rights and freedoms;
- Non-racialism and non-sexism;
- Supremacy of the constitution and the rule of law;
- Universal adult suffrage, a national common voters' roll, regular elections and a multi-party system of democratic government, to ensure accountability, responsiveness and openness.

This Constitution is the supreme law of the Republic and any law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled. Included in the constitution is a Bill of Rights, which is fundamental for democracy to flourish in the Republic of South Africa because it enshrines the rights of all of the country's citizens and seeks to uphold the democratic values of human dignity, equality and freedom.

According to Chapter 2, Paragraph 19 of the constitution, the Bill of Rights grants all citizens in South Africa a plethora of freedoms including the right to form a political party, the right to participate in the activities of that

political party and the right to campaign for a political party. Every citizen therefore has a right to free, fair and regular elections for any legislative body established in terms of the constitution.

These elections should be organised, coordinated and observed by an independent body for them to be seen to be free and fair. This independent body was established as a statutory institution called the Independent Electoral Commission (IEC) with the object of strengthening constitutional democracy and the promotion of democratic electoral processes. The Independent Electoral Commission is expected to conduct its activities in an impartial manner and to exercise its powers and duties without any fear, favour and prejudice.

The powers and duties of the Independent Electoral Commission are to:

- manage any election and to ensure that any election is free and fair and does not prejudice any of the participants;
- promote conditions conducive to free and fair elections;
- promote knowledge of sound and democratic electoral processes by conducting electoral education;
- compile and maintain voters' rolls by means of a system of registering of eligible voters by utilising data available from government sources and information furnished by voters;
- compile and maintain a register of parties and establish and maintain liaison and co-operation with parties;
- undertake and promote research into electoral matters;
- develop and promote the development of electoral expertise and technology in all spheres of government;
- continuously review electoral legislation and proposed electoral
- legislation, and to make recommendations in connection herewith;
- promote voter education;

- promote co-operation with and between persons, institutions, governments and administrations for the achievement of its objects;
- declare the results of elections for national, provincial and municipal legislative bodies within seven days after such elections;
- adjudicate disputes which may arise from the organisation, administration or conducting of elections and which are of an administrative nature; and
- appoint appropriate public administrations in any sphere of government to conduct elections when necessary.

The Electoral Law

The Independent Electoral Commission was established as a statutory body that is governed by the Electoral Commission Act 51 of 1996. This Act makes provision for the establishment and composition of the Electoral Commission to manage elections for national, provincial and local legislative bodies and referenda and to make provision for the establishment and composition and the powers, duties and functions of an Electoral Court; and to provide for matters in connection therewith.

This Act also provides for the composition of the Commission, appointment of Commissioners, the conditions of service of the Commissioners, their conduct, administration of the Commission, the appointment of staff and the accountability of the Commission.

The regulations under this Act are:

- Regulations for the registration of political parties
- Regulations on party liaison committees
- Regulations on the conditions of service, remuneration, allowances and other benefits of the Chief Electoral Officer and other administration staff

Another piece of statute that applies to the operations of the Independent Electoral Commission is the Electoral Act 73 of 1998, which seeks to regulate elections of the

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National Assembly, the provincial legislatures and municipal councils and to provide for related matters. This Act provides for the registration of voters, maintaining the voters' roll, the general preparations for the elections, managing and administering the elections and the electoral code of conduct. The regulations under the Electoral Act are:

- election regulations;
- regulations concerning the submission of the lists of candidates;
- regulations on the accreditation of observers;
- regulations on the accreditation of voter education providers;
- voter registration regulations.

Preparedness of the Provincial IEC in Mpumalanga

The Mpumalanga Provincial office of the IEC has just finished the second round of voter registration, which was very successful, and its election timetable will be gazetted on 16 February 2009. It has designed a program for itself which will assist it in co-ordinating its activities to enhance its preparations for the elections. On 16 February 2009 there was the first of many training programmes organised to train the trainers – i.e. the people who will be providing electoral/voter education to the voters and the public at large. They will be conducting 18 road shows throughout the province to raise awareness among potential voters and the general public about their right to vote, the importance of exercising that right, and how they should vote.

For the reason that some parts of Mpumalanga are rural areas which are governed by traditional leaders, they will organise *izimbizo* in those areas where they enlist the assistance of the traditional leader concerned so that they can educate people in the rural areas about the elections and the importance of voting.

On 6 March 2009 the provincial office of the IEC in Mpumalanga officially launched the elections and invited all registered political parties to sign the electoral code of conduct. They have also established a party liaison committee which is in constant communication with the political parties about any problems or complaints that the parties might have so that they can be resolved as soon as possible.

The Registration of Political Parties

In terms of the Electoral Commission Act sections 15 to 17 (chapter 4), political parties who want to participate in or to contest the elections must apply for registration to the IEC. The chief electoral officer shall, upon application by a party in the prescribed form, register such party. The registration of political parties is governed by sections 15-17 of the Electoral Commission Act of 1996 ("the Act") read with the Regulations for the Registration of Political Parties of April 1998 (as amended).

Any party that wants to participate in an election must be registered with the IEC. A party may choose to register at national level, which will allow such registered party to contest elections of the National Assembly, provincial legislatures and all municipal councils. A party may however choose to register only at municipal level for a particular municipality, and such party will then be allowed to only contest local government elections for those particular municipal councils stated in its registration application.

The form shall, *inter alia*, make provision for the following:

- the name of the party;
- the distinguishing mark or symbol of the party in colour; and
- the abbreviation, if any, of the name of the party consisting of not more than eight letters.

The application shall be accompanied by:

- that party's deed of foundation which has been adopted at a meeting of, and has been signed by the prescribed number of persons who are qualified voters;

- the prescribed amount, if any; and
- that party's constitution.

The party's deed of foundation shall contain the prescribed particulars. After a party has been registered the chief electoral officer shall issue that party with a registration certificate in the prescribed form and publish the prescribed particulars of such registration in the *Gazette*. Every registered party not represented in a legislative body shall annually renew its registration in the prescribed manner and at the prescribed time.

According to the Electoral Act, one of the requirements for parties to contest the election is that the party must have submitted a list of candidates to the chief electoral officer in a prescribed manner by no later than the relevant date stated in the election timetable. The list must be accompanied by a prescribed:

- undertaking, signed by the duly authorised representative of the party, binding the party, persons holding political office in the party, and its representatives and members, to the Code;
- declaration, signed by the duly authorised representative of the party, that each candidate on the list is qualified to stand for election in terms of the Constitution or national or provincial legislation under Chapter 7 of the Constitution;
- acceptance of nomination, signed by each candidate;
- undertaking signed by each candidate, that that candidate will be bound by the Code; and
- deposit.

The only problem with the registration process was that of the newly formed Congress of the People (COPE), where the African National Congress (ANC) made a court application to prevent COPE from using that name because it is argued that the name is inextricably linked to its historical tradition. However, the court granted COPE the permission to use the name and the party was registered as such. At the moment the IEC has registered 115 parties for the national elections and only two parties are registered

for the Mpumalanga Province. All the eleven main parties are registered, i.e. ANC, COPE, UDM, DA, ACDP, IFP, APC, AZAPO, PAC, ID and NADECO. These are the main political formations in South Africa, but there are a lot of other smaller political parties.

Role of Civil Society and Faith Based Organisations

Civil Society Organisations

The role of civil society organisations is to organise the community so that it speaks with one voice in relation to the social welfare, economic, developmental needs. These organisations serve to mobilise the masses and make them aware of their rights and needs and how those needs can be satisfied.

This type of organisation is not affiliated to any political party but represents the whole community irrespective of its political affiliation. They are more effective at community level where they are able to engage their local authorities about issues that affect the community at large. In many communities where these organisations are present they are allowed to sit in their local council meetings so that they represent the voice of the community. This makes the municipality more accountable and if used properly could enhance service delivery.

There is sometimes common ground between these organisations and one or more political party as they use most of the community needs to mobilise people to vote for them with a promise to address those needs once in power. This phenomenon has led to the politicisation of civil society organisations and they end up embroiled in party politics and are thus seen as affiliates of a particular political party.

In the end the community becomes divided along party political lines and these organisations are rendered ineffective, service delivery is hampered and the needs of the community are not satisfied.

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Faith Based Organisations

These organisations mobilise members of the community according to their religious conviction, beliefs, culture and tradition. They mostly concentrate on the spiritual needs of their members and tend not to focus on the political issues affecting the people. These organisations are often apolitical and have a different way of addressing the social and economic issues that confront them in their day-to-day lives.

Due to their diversity, they do not always agree even on the religious and cultural matters for which they were formed. In recently years, they have tried to organise forums where the leaders of these organisations would meet and debate and deliberate on the socio-economic issues that affect them. With these organisations it depends on the political perspective of their leaders whether or not they make any political impact. While some are involved in politics, most prefer not to be. Those leaders that are involved in some political activities are able to mobilise and conscientise the people about their rights and needs.

Role of Social Movements (Trade Unions)

The role of social movements like the trade unions is primarily to promote the protection of the worker's rights and to create a working environment that is conducive, safe and secure for workers to exercise their skills. These movements organise the labour force in all sectors and industries of the economy in such a way that they speak in one voice.

This gives workers the advantage of using the collective efforts to bargain against the employer in times of disputes and it creates a climate that is conducive for dispute resolution on labour-related issues. It also keeps the employers on their toes and forces them to implement labour laws as promulgated by the legislatures. Members of these movements have access to a lot of economic and political education. They are politically enlightened and also informed about voting and the general election process.

However, these movements are also politicised in a way that they become aligned with certain political parties, which they believe will assist them in their fight for workers' rights and economic freedom. This results in their involvement in party political agendas. By doing that they are able to push for the regulation of the labour market by the government through the promulgation of labour laws that are sympathetic to the plight of the workers. This has been criticised by many businessmen as having a negative effect on the economy of the country because it drives away potential investors and foreign capital, thereby increasing the rate of unemployment.

A typical example of this is the Congress of South African Trade Unions (COSATU), which is a union federation with many unions affiliated to it and it is in alliance with the African National Congress (ANC). The Solidarity Union and South African Police Union (SAPU) are aligned with the Democratic Alliance (DA). When the election time comes, these labour movements become very instrumental in mobilising support for their political allies and they have an influence on the voting of their members.

Role of the Media

The South African constitution guarantees all citizens their basic rights. This includes freedom of expression by those who want to express themselves politically, socially, artistically and otherwise. This freedom of expression is equally applicable to the media, both electronic and print media. According to the constitution of the Republic (section 16 of the Bill of Rights), everyone has the right to freedom of expression, which includes

Freedom of the Press and Other Media

The media is allowed to report on factual issues of public interest without any fear of intimidation from any political party. They however have the responsibility to report

without favour, prejudice and bias and without sensationalisation of stories to sell the newspapers or to increase their television ratings. Members of the media should at all times exercise due professional care and utmost objectivity. This is not always easy to do because of the human element involved. In many instances members of the media have their own subjective opinions which they pass to the public as facts hence the different reports about the same incident. Some of the media houses are owned by big conglomerates who are aligned to a certain political ideology and in their reporting on issues those ideologies tend to play themselves out.

The role of the media therefore is to inform the public and report about everything including the elections and the activities of the different political formations and the IEC. This informs and educates the public and it helps to shape their opinions and perceptions on issues affecting them and the country at large. Through the media, political parties are able to reach and sell themselves to millions of South African and inform them about their respective party's agenda/ideology. The IEC is also able to inform the public about its activities, plans and

Freedom to Receive or Impart Information or Idea

The public has a right to access to information and the media plays a crucial role in disseminating the information as members of the public do not always have the resources and ability to access such information themselves. They therefore rely on the media houses to provide them with information and based on that information the public is able to make crucial decisions like which party to vote for.

However, the right mentioned above does not extend to:

- propaganda for war;
- incitement of imminent violence; or
- advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.

Every registered party and every candidate:

- must respect the role of the media before, during and after an election conducted in terms of this Act;
- may not prevent access by members of the media to public political meetings, marches, demonstrations and rallies; and
- must take all reasonable steps to ensure that journalists are not subjected to harassment, intimidation, hazard, threat or physical assault by any of their representatives or supporters.

Mechanisms for Conflict Management and Their Effectiveness

The Electoral Act gives the Commission the powers to deal with conflict situations that may arise from the activities of all the contesting political parties relating to the elections. According to the Electoral Act 73 of 1996 section 103 and 103A:

- Whenever the Commission, an officer or the chief electoral officer is required in terms of this Act to decide an objection or an appeal, the commission or that person may attempt to resolve the issue that is the subject of the objection or appeal, through conciliation.
- The Commission must prescribe the powers that may be exercised by it, any officer, or the chief electoral officer in deciding an objection or appeal in terms of this Act.

The Commission may attempt to resolve through conciliation any electoral dispute or complaint about an infringement of the Code brought to its notice by anyone involved in the dispute or complaint.

At its provincial offices (as in Mpumalanga), the IEC intends to appoint a person who will deal with election-related problems and complaints. That person is expected to liaise with the two regional panellists who will be responsible for conflict resolution in the respective regions. Mpumalanga

has three regions, i.e. Ehlanzeni, Gert Sibande, and Ekangala and each of these regions has two panellists. The panellists will also be members of the party liaison committee which handles communication between the provincial office of the IEC and the political parties.

Conclusion

With the date of the elections having been proclaimed as 22 April 2009, the IEC is pulling out all the stops to make these elections a success. In terms of figures, the 2009 elections promise to be biggest-ever elections if the voter turnout during the registration weekends is anything to go by. The IEC had a target of 22 million voters for these elections but it has exceeded that target, because there are about 23 million registered voters.

It also promises to be interesting with the court application by the Freedom Front Plus to have the courts to force the IEC to allow expatriates to vote and the formation of the new political party which has changed the political atmosphere in the country.

The Northern Cape Province

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Introduction

South Africa's multi party political party system has been characterised by one party dominance since the establishment of its democracy in April 1994. Given the split of the ruling African National Congress (ANC) and formation of splinter group, the Congress of the People (COPE), predictions are that the 2009 election is likely to be one of the most important elections since the transitional elections of 1994.

South Africa, which will also be celebrating a decade and a half of democracy in April, has been cemented within a comprehensive institutional and legal framework. This framework includes legislation such as the Constitution (Act 108 of 1996), the Electoral Commissions Act (51 of 1996), the Electoral Act (73 of 1998) and the newly designed provincial legislatures. With this framework in place it remains imperative to pro-actively use these institutions to entrench a democratic culture within the country.

South Africa's young legislatures play an integral role in promoting political participation. As Nelson Mandela stated in the National Assembly in 1999, "Because the people of South Africa finally chose a profoundly legal path to their revolution, those who frame and enact constitution and law are in the vanguard of the fight for change. It is in the legislatures that the instruments have been fashioned to create a better life for all. It is here that oversight of government has been exercised. It is here that our society with all its formations has had an opportunity to influence policy and its implementation" (Mandela, 1999). It is therefore important to monitor the national as well as provincial events during the upcoming election.

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This report will provide a context for and background to the institutional framework of the Northern Cape within which this election will take place. The focus of this report is to elucidate provincial dynamics with regard to the preparedness of the Independent Electoral Commission (IEC), the contesting political parties in the province, the role of the media and the civil society organisations committed to a free and fair election.

Preparedness of the Independent Electoral Commission

The input of the IEC is important as it is an institution which had been mandated by the Constitution of South Africa to ensure a free and fair election and to instil and maintain a culture of democracy. As such, every election is regarded by the IEC as a test which will ensure that the election held is free and fair. Since 1994 the IEC has proven its commitment to its mandate and has with each election achieved its constitutional duty in promoting a culture of democracy in South Africa.

The IEC oversees not only the national and local government elections but also the by-elections. In line with electoral procedures the IEC in the Northern Cape had to remind political parties that, in view of the political reshuffling, councillors had to resign from the parties they wish to defect from before the IEC's November 2008 deadline (DFA, 2008:3).

Reporter Michelle Cahill (2008:2) reported that 15 councillors from the ANC and 1 from the Independent Democrats resigned from their respective parties and joined COPE. Despite the political reshuffling the ANC won a landslide victory in the by-elections held in January 2009 by 80%. Elkin Topkin, the IEC provincial manager, declared that "there was approximately 50% voter turnout compared to the usual average of 35%. Smaller towns in the province such as Garies recorded a 60% voter turnout while towns such as Kamiesberg, Keimoes and Upington had an average voter turnout of 50-55%. Hartswater and Kimberley had a lower voter turnout of 40%", (Kwon Hoo, 2009: 2). In an interesting turn of events 94 of the ANC members who had left the party to join COPE had returned and were welcomed back into the fold of the ANC.

Justice Bekebeke, provincial electoral officer, and political parties have pulled out all the stops to encourage voters in the Northern Cape to make use of the registration weekend to exercise their democratic right to participate in the 2009 election. Bekebeke explained in the media that "with regards to staff and station readiness … all structures are in place and that all material is already at the respective municipal electoral offices and will be posted to the stations…" (Fielding, 2009: 6).

Role of Civil Society Organisations

Civil society organisation plays a vital role in ensuring that voter education takes place, ensuring free and fair elections and maintaining peace and security during elections. Civil society organisations and faith-based organisations in the Northern Cape which focused on building democracy and ensuring peaceful, free and fair democratic elections have consolidated their efforts and formed the Northern Cape Elections and Democracy Forum (NCDEF). The South African Council of Churches (SACC) in the Northern Cape is the leading organisation within the Forum. Rev. Segalo from the SACC is the Chairman of the NCDEF. The NCDEF is recognised by the IEC who has also commended the forum for the positive results that it has obtained in the democratic electoral processes in the Northern Cape (NCDEF, 2009).

Role of the Media

The media plays a vital role in the forming of public opinion about a variety of electoral issues ranging from voter participation to election manifestos of the different political parties as well as conveying important election results. It is the role of the media to relay political events to the general public in an unbiased, objective and apolitical manner.

Among the various media tools used in the Northern Cape are the Diamond Fields Advertiser, Volksblad Noordkaap,

and Kits-nuus. The local radio stations such as Teemaneng Radio station not only convey important information regarding the electoral issues and procedures but also have regular political debates where listeners, especially the youth, can have an opportunity to voice their concerns and opinions.

The Preparedness of Political Parties

As the political parties gear up for the upcoming elections "… the battle lines have been drawn for what could be the most fiercely contested elections in South Africa since 1994, with the ANC moving into top gear …" (De Lange et al, 2008:2). Despite the usual canvassing for votes, launching of manifestos and debating with opposing parties, political parties have to closely observe the political reshuffling of councillors, members of the provincial legislature (MPLs), members of the provincial executives (MECs) and members of parties.

Alvin Botes, the provincial deputy secretary of the ANC in the Northern Cape, indicated that while the party respected the decision of those who wished to align themselves with other parties he "… urged loyal members of the ANC not to allow themselves to be distracted by all the confused people who are angry and bitter because they have lost positions of leadership in the ANC and therefore think they can challenge the African National Congress" (Fielding, 2008:5). Some of the high-profile political reshuffling includes the MEC of Finances Pakes Dikgetsi, Pieter Saaiman (MEC for Tourism, Environment, Nature Conservation and Economic Affairs), and Nately du Toit (Provincial Co-ordinator of the Youth Movement); all of whom have consequently joined COPE (Cahill, 2009:2).

The ANC has not let the grass grow under its feet and started campaigning for the 2009 election in 2008. In November 2008 Jacob Zuma toured the province accompanied by key role players in the province which included John Block (ANC), Grizelda Cjiekella (ANC Women's League), Vuyo Roji (ANC Youth League), Peter Bailey (COSATU) and Norman Shushu (SACP). Zuma had a tight schedule during his first visit to the province since the

ANC conference at Polokwane and was scheduled to meet with ANC election workers, religious leaders, women, the youth, alliance partners, Mass Democratic Movement Formations as well as door-to-door visits. Zuma also met with the !Xun and Khwe chiefs of the San community and attended a gala event for fundraising (Fielding, 2008:4).

In the previous election, gender was one of the issues high on the political agenda; however, the burning issue for this election seems to be education and job creation. In November 2008 the ANC Youth League President, Julius Malema, addressed a huge crowd at the Mayibuye centre in Galeshewe in Kimberley and criticised those responsible for education in the province, stating that "young people do participate in politics in South Africa and of the 1.6 million registered voters 77% were young people and most of these were women. 'Our vote does not come cheap. We want a university in Kimberley'". Malema called on Jacob Zuma to create job opportunities. He also emphasised that these have to be permanent jobs and not temporary opportunities (Van der Merwe, 2008:1).

During the final state of the province address by current premier Dipuo Peters, on 13 February 2009, before she moved on to the national level, she touched on numerous challenges and achievements of the education system in the province and concluded the topic by stating that the measurement criteria of the education system should not rest mainly with the results of the national senior certificate. Dipuo Peters suggested that a holistic analysis should be done of the education system in its entirety (Van der Merwe, 2009:2; Kwon Hoo, 2009:6).

The ANC in the province is committed to addressing the educational needs in the Northern Cape, with the ANC Provincial Secretary, Zamani Saul, stating that the deployment of the premiership candidate John Block as MEC of Education "… sends a clear message of the ANC's seriousness towards improving the quality of education in the Province" (Fielding, 2008:2). The African Christian Democratic Party (ACDP's) provincial leader, Francois Van Wyk, agrees that education is an important issue and

concern and stated that education in the Northern Cape "… must be addressed as a matter of urgency" (DFA, 2009:5).

Conclusion

The high voter turnout for both the by-election and the registration drive is a positive sign for the up-coming general election on April 22. The IEC and the political parties have gone all out to get voters to register for the election. The political parties have displayed their posters all over the towns and cities of the Northern Cape and provided transport for their supporter's to registration stations. Sampie Cloete, the Independent Democrats Northern Cape Provincial Chairperson, paid the highest price while campaigning for the party when he died in a car accident.

The next report will focus on the registration process and parties' manifesto drives in the province in preparation for the 2009 elections.

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election update

The Western Cape Province

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Introduction

The pending 2009 national elections promise to reshape the composition of parliament. Since the ANC National Congress in Polokwane in November 2007, interest and anxieties have grown regarding the outcome of the 2009 polls. The formation of the Congress of the People (COPE) late in 2008 has added to this anxiety. The Western Cape is expected to witness major political party activity in the weeks leading up to the elections. Yet there is also anxiety about the potential for trouble in light of the rising stakes in the elections. This update focuses on five main issues. First, it outlines the preparedness of the Provincial Independent Electoral Commission (IEC) of the Western Cape to manage the elections. Secondly, it reviews the role of civil society in the electoral process. Thirdly, it looks at the role of social movements such as trade unions. Fourthly, the role of the media is examined and fifthly, various mechanisms for the prevention and management of election-related conflicts are discussed.

Preparedness of the Western Cape Provincial Electoral Commission

The Western Cape electoral commission is confident that it is suitably prepared for the 2009 General Elections, in terms of meeting expectations. Two of the areas of activity generating such high optimism within the Provincial IEC office are the preparatory processes around delimitation and voter registration.

Delimitation Exercise

Delimitation involves subdividing the geographic area of the province into voting districts. Each voting district is serviced by one voting station. Urban voting districts contain on average 3,000 voters located within a radius of some 7,5km of the voting station whilst rural voting districts accommodate approximately 1,200 voters located within a radius of some 10 km of the voting station. The delimitation process was successfully completed in 2008. In the Western Cape there was an increase in the number of voting districts from 1,348 in 2004 to 1,541 in 2009. The majority of voting districts, numbering 818, are in the City of Cape Town, which also has the largest population in the Western Cape. The essence of proper delimitation is to ensure that polling stations are made accessible to the electorate. This in turn ensures that eligible voters are not disenfranchised due to an inability to readily reach polling stations. Improper delimitation is a potential source of tension not only among contending political parties but also between political parties and the provincial IEC. All political parties seem content with the delimitation exercise.

Voter Registration

The two voter registration weekends in the province were completed without major incident. These registration weekends served as a trial-run to check the functioning of systems and processes in the voting districts. Apart from isolated cases of minor disturbances the registration process went off smoothly. The numbers of registered voters following two registration weekends were announced on 11 February. In total, 2,630,174 voters are registered in the Western Cape. This represents a high figure, perhaps due to the increased interest in the elections. People who did not register to vote in previous elections seem to be keen to vote this time around. The president officially proclaimed the election date on 12 February so voter registrations for the National and Provincial elections are now closed.

The Role of Civil Society

Civil society and non-governmental organisations have been involved in the campaign to ensure peaceful and trouble-free elections. Religious groups have been particularly vocal on the need for tolerance and peace in the run-up and during the election. The Western Cape is host to a number of religious faiths, including Christians, Muslims,

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Buddhists and Jews, all of whom have been preaching love and tolerance. These religious groups all hope for peace and tranquillity, given the spate of intolerance among supporters of political parties. So far no religious group in the Western Cape has openly declared support for a particular political party. Similarly, no women's groups or other recognised civil society body has thrown its support behind any of the political parties. This neutral electoral stance on the part of civil society organisations towards political parties is good for peace and democracy in the province and in the country as a whole. The only civil society organisations openly lending support to, and campaigning for, political parties in the province are the youth leagues of the respective parties.

The Role of Social Movements

While the majority of civil society organisations show no open support for political parties, this cannot be said of some social movements. The provincial branch of COSATU has been active in garnering support for the ANC. There are talks of the emergence of a new labour union federation to challenge the COSATU dominance. If this materialises the Western Cape will surely become a highly contested battleground for the rival labour unions. In the last few years the ANC lost control over the Western Cape and Cape Town in particular. It is little surprise that the Provincial branches of the ANC Youth league and COSATU would intensify their efforts in trying to improve the fortunes of the party in the province. At the same time the youth wing of COPE is also working hard to garner the support of the youth in the province for the new party.

Yet there is a more interesting development in the Western Cape. The *Mail and Guardian* (25-01-09) reports that Tony Ehrenreich, the provincial secretary of COSATU, is hatching plans to form a new political party to contest the provincial elections in April 2009. Rather than hurting the ANC, Ehrenreich argues that the move is strategic and aims at helping to garner support for the ANC, while denying this to COPE, the DA and the ID. This comes against a backdrop of the battered image of the ANC in the Western Province. There is a growing opposition to the ANC in the province

and this is reflected in two recent well-respected opinion polls which indicated that 59 percent of voters in the province are hostile to the ANC. This hostile bloc of voters includes ANC members who are disillusioned with the party's leadership. Ehrenreich also hopes to count on another 20 percent of voters who, according to the polls, are either undecided or will not vote at all. Ehrenreich's ultimate objective is to "capture" those hostile to the ANC and prevent them from voting for rival parties. Ehrenreich hopes to enter into a coalition with the ANC in the province after the election, or with other parties to guarantee himself a position as a public figure.

The Role of the Media

The media is playing a no less critical role in educating and informing people in the province on important developments relating to the elections. The print media has in the last several weeks been reporting on important developments and in the process generating, even heightening, enthusiasm in the electoral process.

The main English language newspapers – *The Cape Argus* and *The Cape Times* – both reported on the gazetting of the electoral date set for 22 April 2009. Interestingly, the gazetting coincided with the High Court rejection of the Freedom Front Plus's urgent application to stop the presidential proclamation of the election date. On another level the saga with the gazetting of the election date also increased public interest on the discussion or rather the debate around the subject of granting South Africans in the diaspora the right to vote.

The media also reports on the support of political parties in the province. Quoting a TSN poll, the *Cape Argus* highlights the steady decline of support for the ANC in Cape Town, falling from 25 percent of those polled in September 2008 to 18 percent in November, while the support of the DA grew from 20 to 24 percent during the same period. The DA leader, Helen Zille, is upbeat about this development and is determined to raise the fortunes of her party in the 2009 elections to new heights – from its traditional "fight back" stance to one of "we are ready to govern if you'll allow

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us". However, whether the DA's growing support translates into actual votes will only be known after April 22.

Like the DA, the Congress of the People (COPE) also enjoys support in the province, but it seemed to be destined to fight numerous court battles at least in the months preceding the April elections. Having won an earlier court battle against the ANC over the use of its name, COPE seems to be emerging victorious in another legal battle, this time around the Cape Town based *Cape Argus* reports in its Sunday 15 February edition that the little known and regionally based political party, the Cape Party (CAPE), is dragging COPE to the electoral court on the grounds that the name COPE bears a resemblance to its name and could confuse voters. CAPE filed its electoral court papers on Friday 14 February.

This is not the first time CAPE has registered its objection to the use of the name COPE. In December 2008 CAPE's objection to the registration of COPE was thrown out by the electoral court. This time around CAPE is making fresh attempts to prevent COPE from using the name, evoking Section 16(1)(b) of the Electoral Act. This Act empowers the chief electoral officer to deny registration to a political party "if a proposed name, abbreviated name, distinguishing mark or symbol mentioned in the application resembles the name, abbreviated name, distinguishing mark or symbol, as the case may be, or any other registered party to such an extent that it may deceive or confuse voters." One of the leading objectives of CAPE as highlighted in its election manifesto is to secure the independence of the Cape of Good Hope and to establish the "Kaaplander nation."

The media is also helping to expose the seeming schism in the ruling ANC at the topmost level. The media reports allegations that former premier of the Western Cape, Mr Ibrahim Rasool, among a group of staff in the presidency are deliberately undermining the ANC electoral campaign by planning the president's itinerary in such a way that makes it impossible for him to meet his election schedule. By engaging in this act, Rasool and his accomplices are alleged to be indirectly helping the cause of COPE, the ANC's most bitter rival. This allegation was reported to have been made by Nomvula Mokonyane, the ANC convenor in the Western Cape following President Motlanthe's failure to turn up, apparently due to a tight itinerary, for a scheduled ANC rally in Cape Town on Sunday 8 February. The provincial ANC convenor, however, denies this allegation. Part of the allegation also claims that some members of staff in the Presidency are making efforts to distance President Motlanthe from the ANC.

Mechanisms for Conflict Management and Their Effectiveness

The potential for conflicts and violence is high in the weeks leading up to the elections. As a result, the IEC is working closely with the security services, and particularly the South African Police Service (SAPS), to assist in managing any conflict situations in the run-up to elections and on the actual polling day. It is anticipated that in addition to the 6-8 IEC officials to be deployed, there will be at least two policemen at each polling station on voting day. This will enable the IEC to deal with any eventuality in the form of security breaches and disturbances.

The registration weekends went off mostly without incident; however, there were a few cases of conflict. One of the cases reported occurred on 8 February in Du Noon in Cape Town where 300 people attempted to force their way into the voting station when it became evident that it was closing.

According to political party representatives the IEC officials closed the doors at 4.30 pm, shutting out a long line of people outside Inkwenkwezi High School who were waiting to register. Those in the school hall were allowed to register but those outside were not allowed in. When those not in the hall began shouting and attempting to get in the IEC officials called the police who restored calm. According to the representatives of political parties, people were angry that they were not allowed to register. On its part, the IEC blamed people for arriving late to the polling stations and said there had to be a cut-off time set. In

Khayelitsha three men were arrested for disrupting voter registration on the final registration weekend. They were part of a group of residents who decided to boycott the voter registration process in protest at the way the government handled service delivery. They appeared in the Khayelitsha Magistrate's Court on 10 February and were granted bail. The case was postponed to May 15.

Yet, the real potential for conflict is the seeming tension between supporters of political parties. There have been reports of disruptions of party rallies by rival political parties in the Western Cape. COPE has accused the ANC of failing to restrain its supporters who consistently disrupt its political gatherings. The recent signing of the memorandum of understanding among political parties under the aegis of the national IEC may go a long way towards mitigating potential clashes between supporters of rival political parties. It is, however, one thing for party the leaders to sign an agreement against violence and quite another for its supporters to respect and adhere to the provisions of the agreement. Political leaders may appeal to their supporters to be tolerant of other parties. But will the supporters heed the call? This is the question. The provincial IEC is confident that the necessary infrastructure and mechanisms have been put in place for a smooth and trouble-free poll on April 22. The provincial IEC plans to deploy sufficient staff to each polling station. However, with over 1,000 polling stations to cover, this is likely to stretch the human and financial resources of the office to breaking point. That said, it is hoped that the 2009 election will go down as a most remarkable exercise in the Western Cape's post-apartheid history.

The Gauteng Province

Ebrahim Fakir, Ntokozo Ngidi and Sydney Letsholo; EISA

Introduction

The IEC is an independent institution that is established in terms of chapter 9 of South Africa's Constitution and is tasked (along with other chapter nine institutions) to support democracy. The mandate of the IEC is to manage and administer the electoral process and thus is tasked with the delivery of all the appropriate logistical and process arrangements in order to deliver a free, fair and credible election. It is provided in the Constitutions that the IEC must be ready to deliver an election within 90 days after the proclamation of the date of an election by the President of the Republic of South Africa. The President has formally proclaimed the election date as 22 April 2009 and the IEC has stated that it will be ready to deliver an election by 15 April when special votes will be administered to qualified voters.

In fulfilling its mandate, the IEC in Gauteng has conducted registration drives (consistent with the National IEC) in the November 2008 and February 2009. About 1.2 million voters are registered in the Gauteng Province across 2 238 voting stations.

In addition, the Gauteng Provincial IEC has hosted a seminar on political intolerance to which all parties were invited in which the IEC provided a detailed presentation of the Electoral Act as well as the responsibilities of political parties in ensuring that the election is peaceful. It was during this event that all parties registered for the elections in the Province signed the Code of Conduct in conformity with the Electoral Act.

The IEC in Gauteng embarked on a process of rolling out election materials and has in place contracts for the use of facilities, of which there will be 2238 voting stations in place. There will be approximately 382 temporary voting stations some of which potentially pose problems for the conduct of an administratively seamless and efficient

election in which it is easy and convenient for citizens to participate. In this regard the finalisation of lease agreements for the use of facilities for decentralised election management and administration and for the use of facilities as voting stations has proved a particular difficulty, since in some instances facilities designated to be polling stations are reserved and or double booked to cater for funerals, meetings, weddings and other community activities.

On the recruitment of staff, the IEC has faced some challenges with respect to recruiting temporary staff as election officials, to stem the perceptions of electoral staff such as teachers and other public sector workers who belong to unions strongly identified with one or other political party and who are politically prominent.

The IEC's guidelines in this regard preclude recruiting a person who in the last five years stood as a candidate for one or other party in an election. With respect to presiding officers at polling stations, they are required to have a minimum of 8 years of administration experience and a new position, that of a Deputy Presiding Officer has been incepted in order to assist and oversee the ballot counting process as the parallel vote tabulation process and the counting process overall becomes increasingly complex. The Gauteng IEC expects to deploy eight officials per voting station for the election. And IEC staff will soon be in the field to administer special votes to voters who are qualified to vote before the election date and as such will visit old age homes, hospitals and other such places to conduct special voting for those qualified to exercise this franchise because of their special circumstances. Special vote is scheduled for April 15.

Role of Civil Society Organisations

South African civil society organisations have come together to form an election coalition known as the South African Civil Society Election Coalition (SACSEC). SACSEC plans to deploy in excess of 2000 election observers around the country in order to observe all facets of the 2009 elections, including the registration and nomination processes in the pre-election period. They will also be present at the polling and counting stations during the elections.

At provincial level the SACSEC will also have offices which will be coordinated by the South African Council of Churches (SACC) and other civil society partners, including EISA who with the SACC Gauteng will assume overall responsibility for co-ordinating election observation in Gauteng.

The strategy that has been adopted by the SACSEC is two-pronged. The first is to facilitate programmes to ensure effective civil society election observation through direct engagement with NGO's, CBO's and citizens. The second strategy is to identify potential areas of concern with respect to political violence, intimidation and intolerance in collaboration with the IEC. Through engagement with the IEC, SACSEC aims to better understand the processes of election administration and management so that SACSEC observers are better informed about the standards by which they determine freeness and fairness of the election and the appropriate interventions they may deem necessary during the process.

In order to instrumentalise its mission, SACSEC aims to recruit, train and deploy at least 60 observers in every province, including Gauteng. Through its civil society engagement process by providing voter education, SACSEC aims to mobilise the voters to turn out in large numbers to vote.

The premise upon which SACSEC departs is that the provision of the relevant knowledge about elections and the electoral process (such as providing information and workshops on the requirements for registration as voters and the registration process, explaining the regulatory and other requirements for the registration of parties contesting the elections, and information about the role and function of the IEC) will contribute to minimising the potential for election conflict and provide the necessary information to create enthusiasm amongst citizens for the elections and overall have better informed voters.

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SACSEC has carried out voter education programs and citizens' mobilisation throughout the Gauteng province in order to address the problem of voter apathy, despondency and a loss of faith in the electoral process as a means towards improving the turnout of voters and their participation in the 2009 general elections.

To meet these above stated goals, SACSEC has undertaken and will undertake the following activities:

SACSEC has divided Gauteng up into six regions with a facilitator/coordinator in each region training and co-ordinating a total of 250 community trainers. Each of the community trainers will be conducting 10 workshops each in their respective regions. Training started in February 2009 and will be concluded by the first week of April.

In addition the establishment of the election monitoring network (the EMN) complements a range of civil society activities relation to the elections. Although the EMN steering committee is based in the Western Cape, it will seek to deploy approximately 500 monitors nationwide to monitor election related abuse and violence. The EMN is a network of independent civil society organisations and its core secretariat is composed of the Institute for Democracy in South Africa, Action for a Safe South Africa, the South African Council of Churches-WC, the Western Cape Religious Leaders Forum, the Southern African Catholic Bishops' Conference, the Justice and Peace Commission, the Quaker Peace Centre and the Black Sash.

Other civil society activities in relation to the elections have also taken place. Amidst fears that election violence and political intolerance may yet again feature on South Africa's electoral landscape, on March 20, 2009 South African artists and musicians came together to provide of their gifts and services through performance in a day marked for prayer and reflection ahead of the elections. This occurred at Freedom Park in order to create social conditions that were peaceful and stable, under the rubric and theme of "forgive and be forgiven".

Role of Social Movements

The advent of new social and political formations in post apartheid South Africa has changed the civil society landscape considerably. They have come to be termed "new social movements" and have been a significant political actor even if calling for a boycott of previous South African elections. In the Gauteng Province specifically, the landless people movement, the Soweto electricity crisis committee and the anti privatisation forum (APF) called for a boycott of the 2004 national and provincial elections under the slogan of "no land, no house, no vote". However, in the 2006 local government elections some social movements under the banner of the Operation Khanyisa Movement contested a local ward in Soweto. This suggests that social movements seem to be making more instrumental calculations with respect to participating in elections, on the basis of what the likely costs and benefits to them of participating in an election might be. Some of the social movements therefore might not join the call for a blanket boycott of participating in the 2009 election despite debate within movements about the strategic and tactical outcomes of participating or not participating might be[28]. While this is the case, organisations such as the Landless People's movement have already called for non participation resuscitating the "no land, no house, no vote" campaign.

Role of the Media

The media plays a critical role in informing and educating the citizenry with respect to information regarding electoral processes as well as the policy issues surrounding the elections. While most (print, broadcast, electronic and online) have dedicated projects in relation to the 2009 elections, Gauteng has very little or no Province specific coverage. Province specific coverage has thus far been subsumed under coverage of the elections generally, although the South African Broadcasting Corporation (SABC) will in the days before the election, on polling day and

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[28] See "The APF and the 2009 National Elections" http://apf.org.za/article.php3?id_article=325

until the results are released be broadcasting from the Provinces, with a dedicated daily hour long broadcast specific to each provincial broadcast This means that information that is province specific will be broadcast within that province with elements that have national import broadcast nationally. The SABC also screens a topic specific debate on Sunday evenings on the SABC 2 channel in association with the University of Johannesburg. Province specific information and coverage by print media outlets specific to Gauteng is consolidated with its holding companies overall election coverage at the Independent Online (http://www.iol.co.za/index.php?set_id=1&click_id=3086). All other print media have election coverage, none of which is province specific and much of which aggregates media reports from around the country and from a selection of different publications.

On the nature of the coverage, all media outlets have been accused of one or other sort of bias[29]. More substantially, the media monitoring NGO, Media Monitoring Africa has suggested that media coverage of the elections have not provided much process specific information and thus the educative element of the media's role has not been adequately fulfilled.

Political Tolerance and Conflict Prevention

As the Gauteng province and the rest of the country gears itself for the 2009 national elections on 22 April; the effectiveness of mechanisms for managing election-related conflict will be critical in ensuring a campaign period and polling day that is free of disruption due to conflict, violence, intolerance and intimidation. To this end a number of structures have been put in place that to promote conflict and violence free elections. Primarily, these are the Independent Electoral Commission's (IEC) party liaison committees; conflict management panels and the Electoral Court. In dealing with election-related conflicts these structures are guided by the stipulations of the Electoral Act and the Electoral Code of Conduct.

Despite indications of an evolving and increasing level of political maturity and tolerance in Gauteng, there are intervening structures in place, in case of election-related conflict. These mechanisms have been put in place as a matter of course, arising out of the IEC's code of conduct for political parties and due to stipulations in the electoral law, the Electoral Commission Act and Regulations, Act 51 of 1996 and the Electoral Act and Regulations, Electoral Act 73 of 1998. Moreover, while political violence that is strictly elections related or which can be termed electoral violence has not occurred across Gauteng on a large scale, generalized political violence that is separable and distinct from incidences of specific election related political violence has been difficult to discern, and the nature of generalized political violence has been noted by the IEC to affect the Gauteng Province. To this effect, Dr Brigalia Bam, chairperson of the IEC, has noted that "KwaZulu-Natal and the Gauteng region still bear the scars of political violence"[30].

Measures of South Africa's success and weaknesses at facilitating free, fair and credible elections cannot solely be judged on the absence of violence and intolerance in an election year, when violence and intolerance remains a feature of the generalised political culture between election years. There are myriad examples of such generalised political violence and intolerance, which in 2008 found expression in violent attacks on foreign nationals. Whilst debates about the causes of this violence and intolerance rages on, the fact that it occurred has sent shock waves throughout the country and its neighbours. The ugly pictures of the 2008 xenophobic upsurge also shocked the world as South Africa's rainbow democracy was put to the most severe test since 1994.

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[29] "ANC MPs accuse SABC of air time bias towards Cope" *Cape Times*, 19 November 2008; and "SABC accused of political bias", *Mail & Guardian*, 04 November 2008.

[30] South Africa Peace Indaba Summit, 25 November 2008, Durban, Speech delivered by Dr Brigalia N. Bam, (Chairperson, Independent Electoral Commission), "Eternal vigilance and the value of Peace and Political Tolerance in advancing Democracy"

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Mechanisms for Conflict Management

Provincial Electoral Commission

The Independent Electoral Commission (IEC) is the main institution that governs elections. For any elections to occur there has to be some form of common understanding among the main role players in elections. The Electoral Act No 73 of 1998 established the Electoral Code of Conduct. In a nutshell, the purpose election instrument is to ensure that all registered and contesting political parties adhere by signing the code of conduct which aims promote conditions that are conducive to free and fair elections. Importantly, every registered party or candidate must publicly commit in adhering to the requirements of the code. In an interview with Mr. Masego Sheburi, Gauteng's Provincial IEC Manger on Electoral Manager, it was confirmed that there was a seminar on 11th-12th February 2009 in Kopanong Hotel, Benoni. Entitled "Tolerant Political Cultures: The Dictates of the Electoral Code of Conduct", the seminar brought together all the electoral stakeholders under one roof. Sheburi asserted that even unregistered political parties were invited to attend the seminar. Day one of the seminar witnessed the Security and Justice clusters briefing the participants on their capacity and deployment plans for the elections. Furthermore, the Prosecution Authorities were also available to give a brief on how measures have been put in place to speedily handle election-related prosecutions. Finally, the last day of the seminar culminated in registered political parties and independent candidates making public pledges to abide by the stipulations of the code of conduct.

Conflict Management Panels

The provincial electoral office has also devised other means through-which election-related conflict will be addressed. This includes the conflict management panels which were first introduced by the IEC in 1999 and which have played a valuable role in managing electoral related conflict. The IEC has had a partnership with EISA in designing appropriate material and training mediators countrywide. The same partnership will be in place for the 2009 elections. Since 1999 a body of well trained and well skilled mediators are available as a resource to the IEC. These panels will help in the mediation of election disputes before they reach the IEC, PLCs and the Electoral Court. The panels use the Alternative Dispute Resolution (ADR) methodology which emphasises compromise rather than litigation used by the judiciary. Comprised by at least 15 members, this panel of mediators will be made up of members of the community who have:

- high standing in the community;
- election observation experience;
- high levels of legal perspective; and
- peace keeping experience.

EISA and the IEC have collaborated in organising workshops to train the trainers ahead of the establishment of the conflict management panels throughout the country including the Gauteng Province.

Party Liaison Committees (PLCS)

Party liaison committees play a crucial role in election-related conflicts. In order to build confidence and trust in the IEC, the commission has powers vested in it by Section 5 (1) (g) of the Electoral Commission Act, 1996 and has established and maintained Party Liaison Committees (PLCs)[31]. PLCs are established at three levels. These are at the national, provincial and municipal levels. The purpose of these committees is to promote transparency through consultation, to promote trust between parties and between them and the IEC, and so to promote conditions conducive to free and fair elections[32]. In terms of the 1996 Regulations on Party Liaison Committees (PLC) a provincial liaison committee may not have more than two representatives from every registered party represented in

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[31] Pitso, T. 2004. "Management of Election-Related Conflicts- A Case Study of South Africa", in *Election Update*, February-June. EISA
[32] http://www.search.gov.za/info/speeches Speech by Mr. Justice. J. Kriegler, Chairperson of the IEC at the Parliamentary Media Briefing Week, 04 August 1998.

the legislature of the province concerned. PLC's are available in all the province's 11 municipalities.

The Electoral Court

The Electoral Commission Act 51 of 1996 established the Electoral Court, which empowered the court to adjudicate in electoral disputes. Section 20 of this particular Act clearly stipulates the mandate of the Electoral Court; and these are:

- The Electoral Court may review any IEC decision concerning an electoral matter;
- The Electoral Court may consider an appeal against a decision by the Commission, but only if such a decision relates to the interpretation of any law, or concerns a matter for which an appeal is provided by law; and
- The Electoral Court may investigate any allegation of misconduct, incapacity or incompetence on the part of members of the Commission.

Further powers of the Electoral Court are also expanded in the Electoral Act 73 of 1998 (56). These are:

- The Electoral Court may order that the votes cast at a particular voting station do not count in whole or in part; or
- That the votes cast in favour of a registered party at a particular voting station must be deducted in whole or in part from the votes cast in favour of that registered party in that election.

Based on the recommendations of the Judicial Service Commission (JSC), the President has the power to decide on the composition of the Electoral Court. The Electoral Court comprises of:

- A chairperson, who is a judge of the Appellate Division of the Supreme Court, and two other judges of the Supreme Court; and
- Two other members who are South African citizens[33].

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[33] Electoral Commissions Act 51 (19)

Role of the Judiciary

The Constitutional Court also plays an integral role in the case of election-related dispute. A case in point is the recent court case by the Freedom Front-Plus. The party successfully lodged an urgent application with the Pretoria High Court to have the regulations of the Electoral Act declared unconstitutional. The Pretoria High Court has referred judgment to the Constitutional Court for confirmation. The Act does not permit South Africans living abroad permanently the right to cast their vote in this year's elections. The Homecoming Revolution, which encourages expat South Africans to return home to address the country's skills shortage, estimates that about two million expatriates would be eligible to vote if the Act was amended[34]. However, according to Ms. Titi Pitso- Elections Manager at the Electoral Institute of Southern Africa (EISA), if indeed the Act is amended, the IEC will have its work cut-out. Pitso asserts that what this means is that the IEC will first have to send independent workers to each country's embassy which in turn will be extremely expensive in terms of flight and accommodation expenses; and this will depend on how many potential voters there are in each city. The voters in foreign countries would then have to be added to the voters' roll through registering and this process could take time[35].

Role of the South African Police Service

As in every election the South African Police services deploys roughly 60 000 police personnel to promote and air of safety and security in the period before during and after the elections. The role of the SAPS is also to provide security with respect to the transportation of ballots and other elections materials to safeguard the integrity of the IEC and the electoral process as a whole. With specialised briefings and intelligence gathering capacity in relation to potential threats to the electoral process the role of the SAPS is critical to safeguarding not just the electoral

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[4] http://www.mg.co.za/article/2009-02-09 "High Court Rules in Favour of Expat Vote". 09 Feb 2009.
[35] http://www.iol.co.za/index: "Voting Abroad a Logistical Nightmare"- EISA, 10 Feb. 2009.

process itself, but of the rights of citizens to make electoral choices in an atmosphere of safety and security. While the SAPS has played a valuable role in the electoral process thus far, and over previous elections in post apartheid South Africa, its impartiality and integrity has been called into question by some political parties. At a Congress of the People (COPE) election event in Pretoria, COPE accused the SAPS of aiding the ANC in disrupting its campaign activities.[36]

Even though the province of Gauteng is yet to experience large scale an election-related conflict for the 2009 election, on paper, it would clearly seem that these conflict management mechanisms are adequate to deal with any conflict that might arise.

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[36] "SAPS bias claim by COPE", *The Citizen*, 15 February 2009

election update

ABOUT EISA

Since its inception in July 1996 EISA has established itself as a leading institution and influential player dealing with elections and democracy related issues in the African continent.

The organisation's strategic objectives are

- To enhance electoral processes to ensure their inclusiveness and legitimacy
- To promote effective citizen participation in democratic processes to strengthen institutional accountability and responsiveness
- To strengthen governance institutions to ensure effective, accessible and sustainable democratic processes
- To promote principles, values and practices that lead to a culture of democracy and human rights
- To create a culture of excellence that leads to consistently high quality products and services
- To position EISA as a leader that consistently influences policy and practice in the Democracy and Governance Sector.

The vision of EISA is "an African continent where democratic governance, human rights and citizen participation are upheld in a peaceful environment". This vision is executed through the organisational mission of "striving for excellence in the promotion of credible elections, participatory democracy, a human rights culture, and the strengthening of governance institutions for the consolidation of democracy in Africa". EISA staff members are essentially drawn from the whole African continent.

In conjunction with the Electoral Commission's Forum of SADC countries (ECF), EISA has helped develop "Principles for Electoral Management, Monitoring and Observation in the SADC Region", PEMMO, a document reviewing guidelines for running a professional and legitimate election. EISA is also one of the organisations which developed, adopted and launched the Declaration of Principles for International Election Observation in 2005 at the United Nations in New York.

EISA has extensive experience in formulating, structuring and implementing democratic and electoral initiatives. It has built an internationally recognised centre for policy, research and information and provides this service to electoral commissions, political parties and civil society in a variety of areas, such as voter and civic education, electoral reform, electoral observation/monitoring and conflict management and transformation. EISA initiated the formation and establishment of the civil society-based SADC Electoral Support Network (SADC ESN) in 1997 and the Electoral Commissions Forum of SADC countries (ECF) in 1998. EISA was the Secretariat of both regional bodies over several years from their inception.

EISA is also helping inter-state institutions like the African Union, the Pan-African Parliament and the SADC Secretariat to reinforce their capacity in the area of election observation and will provide similar assistance to ECOWAS and the East Africa Community in 2009.

EISA has observed and co-ordinated over 30 electoral processes in the continent and beyond. It has conducted training of political party agents, local monitors and regional observers in election monitoring and observation. It has deployed election observation teams to observe electoral processes and possesses the logistical expertise for coordinating such exercises. Countries in which EISA has observed elections include Angola, Botswana, the Democratic Republic of Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia, Zanzibar and Zimbabwe. Beyond the SADC region EISA has observed elections in Burundi, Ghana, Kenya, Nigeria, Rwanda and Somaliland.

EISA has been involved in all the elections in South Africa since 1999 in three important ways namely (a) production of election updates; (b) election observation; and (c) public dialogue especially around electoral reforms.