

EXAMINING THE EFFECTIVENESS OF ELECTORAL DISPUTE RESOLUTION MECHANISM (EDRM) IN SIERRA LEONE

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Abstract: This article attempts to critically examine the effectiveness of the electoral dispute resolution mechanism unfolding in Sierra Leone's nascent democratisation process. The idea of EDRM as a conflict resolution mechanism as opposed to resorting to violence remains key in the democratization process unraveling in Sierra Leone. The fact that there exist mechanisms for dispute management system through which aggrieved parties choose the law as their arbiter enhances the institutionalisation of the rule of law and constitutionalism culminating in sustainable peace. However, there have been misgivings about the outcome of judicial adjudication and effectiveness of some of these electoral disputes. Electoral disputes are not always resolved expeditiously and courts' decisions on such matters are sometimes overtaken by events. There is also the perception of judicial bias in some cases. More importantly, the plethora of election petitions put a lot of strain on the judiciary characterized by a multiplicity of challenges. This article concludes that for EDRM to be an effective tool, electoral petitions/disputes should be expeditiously resolved by making the process more accountable, transparent, fair, accessible, lawful, independent and impartial.

Keywords: election dispute, election dispute resolution, democratization, electoral fraud, petitions, and election management

Introduction

The 1990s ushered in a noteworthy euphoric moment for democratization in Africa. The imperative for African countries to accept the process of democratization and the exigency to make it a mandatory tool to access and or retain political power cannot be overstated (Liphart 2004). Across the continent, elections have contributed to the emergence of democratic governments in Bostwana, Mauritius, Senegal, The Gambia, and South Africa, to name a few. It is even more enthralling to note that countries that have experienced internecine and violent civil conflicts such as in Sierra Leone and Liberia have held elections widely acclaimed by both national and international observers as credible and transparent. In some of these countries, democratic elections have necessitated the peaceful transfer of power from an incumbent to the opposition, something unheard of in the 1970s and 1980s. For example, Ghana's 2016 and the Liberian 2018 presidential elections which were notably competitive, the ruling parties handed power over to the opposition parties, reaffirming the entrenchment of democracy in Africa (Benson, 2019). In Sierra Leone, the elections of 2007 and 2018 witnessed the smooth transfer of power from an incumbent to the opposition. These developments, indubitably, have enthused citizens across the continent to accept elections results with the attendant heightened sense and demand for observance of good democratic governance, promotion of the rule of law and fundamental human rights, and accountable political process.

The democratic space has been growing and the foundation for sustainable democratic process gaining grounds *albeit* recent military coups in Mali and Guinea.¹ According to the International Foundation for Electoral Systems (2014), 29 out of the 54 countries on the Africa continent held elections in 2015. While most of these elections have been widely applauded by elections observers, some have not gone without snags. This is particularly true with countries who lack the requisite political infrastructure, technical electoral staff and resolution mechanisms to deal with violent-related disputes (Benson 2019). In some countries (as in Cameroon and Uganda) electoral manipulations and open rigging have seen incumbents retaining power to the chagrin of both national and international elections observers. Benson (2010) observes that electoral violence affects about 20 to 25 percent of elections in Africa.

¹ The coups in Mali and Guinea, no doubt, subvert the efforts toward strengthening and consolidation democratic values and culture begun in the 1990s.

Elections in Africa have become periods of despair and anxiety for contesting candidates as well as the general citizenry whose efforts to seek new leadership for their respective countries often prove abortive (Brown, 2003). Authoritarian regimes like Egypt, Togo, and Zimbabwe and recently in Benin have been able to exploit the symbol of elections by abusing them through fraud and skewed procedures. International IDEA, (2020) indicates that over the past decade, electoral processes have become triggers of violence in several African countries: The Democratic Republic of Congo (2006 and 2018), Togo (2005), Nigeria (2007), Lesotho (2007), Guinea-Bissau (2008), and Senegal (2012). In Kenya, flawed elections conducted in 2007 left a trail of disaster which manifested itself through ethnic clashes, leading to the death of over 1000 people. Likewise, the 2008 elections in Zimbabwe took violent dimension when political leaders anticipated defeat (International IDEA, 2020). Electoral violence that characterised these elections led to loss of many lives and human displacement. In each of these cases, election lost its democratic value and failed to confer legitimacy on the political authority.

The electoral history of Sierra Leone is closely linked with and has been influenced by a wave of political instability and a decade-long (1991-2002) civil war. The 1996 elections were held at the height of the civil war. The 2002 elections were conducted under the aegis of the United Nations that ushered in the start of a new post-conflict era. The situation was different in 2007 because the responsibility for security during the elections solely rested with the government of Sierra Leone and it was widely acclaimed as peaceful. The 2007 elections marked a major milestone in the management of elections because the elections were organised and fully managed by two constitutional Elections Management Bodies (EMBs) viz: the National Electoral Commission (NEC), in charge of organising and implementing all phases of the electoral process, and the Political Party Registration Commission (PPRC), in charge of supervising and monitoring political parties' activities.²

The establishment of the NEC and the PPRC was thus part of the country's post-conflict institutional reconfiguration. Since their establishment, the two institutions have been instrumental in the on-going process of democratisation in the country. While both Commissions have made, and continue to make notable progress, there is the need to address ambiguities in the 1991 Constitution and related enabling legislations establishing them, paying close attention to electoral justice, and addressing electoral disputes that have characterized post-conflict elections in Sierra Leone.

The framework for handling electoral disputes in Sierra Leone is very formal and entrenched in the justice system. With regards to addressing pre-election conflicts and disputes, the Political Parties Act, 2012 in Sierra Leone mandates the Political Parties Registration Commission (PPRC) to '*mediate any conflicts or disputes between or among the leadership of any political party or between or among political parties*'. Section 152 of the Public Elections Act also mandates the National Elections Commission (NEC) to receive and address complaints on violations of rights in the electoral process. Both the NEC and PPRC have the mandate for electoral related dispute resolution but lack the power and authority to hold political parties accountable.

Literature Review

The term 'Electoral Dispute Resolution Mechanism' (EDRM) refers to the legal framework detailing the Electoral Justice System (EJS) mechanisms that are designed to resolve electoral disputes and thus protect electoral rights. The resolution of electoral disputes may be entrusted to legislative bodies, judicial bodies or EMBs with judicial powers, or *ad hoc* bodies.³

International IDEA defines Electoral Justice as the means and mechanisms available in a specific country, local community or on a regional or international level for: ensuring that each action, procedure and decision related to the electoral process complies with the legal framework; protecting or restoring electoral rights; and giving the people who believe their electoral rights have been violated and the ability to file a challenge, have their case heard and receive ruling.⁴

²Elections Management Bodies in West Africa: A Comparative Study of the Contribution of Electoral commissions to the strengthening of Democracy, OSIWA publications, 2011

³ See the Electoral justice: An Overview of the International IDEA handbook, Stockholm, Sweden

⁴ Electoral Justice: An Overview of International IDEA Handbook, 2010

Disagreements and disputes are integral to elections. “This is largely because the process is organised within an adversarial framework: the gains of a candidate constitute the losses of his opponent. Hence, disputes should be expected in every election even in the developed world where democratic practices are said to have been consolidated. Those who lose unfairly must always challenge the winners. Those who won could also challenge the process to establish the point that they did not win in the way they wish to win.”⁵

Central to the objectives of the EDRM is to ensure the integrity and credibility of the electoral process. An EDRM allows unlawful electoral actions to be annulled or amended through challenges, and sanctions imposed on the perpetrator or person responsible for an irregularity (Diamond 2005). Electoral challenges are complaints lodged by an electoral participant or stakeholder who believes his or her electoral rights have been violated.⁶ These challenges, which are corrective in nature, help guarantee that electoral processes are conducted in compliance with the law; that possible errors or irregularities are acknowledged, modified, revoked or corrected; and that any electoral rights are protected or restored.⁷

There is a burgeoning literature of EDR at global, regional and national levels (Reilly 2001, Reynolds and Ellis et al. 2005, Horowitz 2001, Lijphart 2004, Patel and Lars 2007, Marco 2006, Large and Timothy 2006, Pritt and Philip 2007 etc.). Elections are designed to ensure free and equal reflection of people’s will in formation of authorities. Abbink and Gerti (1999) portends that elections are a necessary requirement of democracy while at the same time there are certain risks and threats associated with the election process, which may hinder formation of effective democracy in the state. As elections are highly important, states have the obligation before the international community and the modern civilised world “to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.”⁸ Election process in Africa generally and in Sierra Leone specifically is characterised by many of disputes. Analysis of electoral dispute resolution as well as reports of observer organisations and statements of electoral subjects clearly illustrate that the electoral process takes place in a tense and polarised environment, against the background of distrust among election stakeholders.

It is a generally acceptable proposition that elections do not cause violence (UNDP 2011, International IDEA 2010). Instead, the root causes of electoral conflict are often associated with deep-seated politico-socioeconomic issues in dispute and in the allocation of power among various social forces that the electoral process affects. Electoral violence, which can be subsumed under political violence, occurs when actors employ coercion/force in an instrumental way to advance their self-aggrandizement. In other words, electoral violence takes place in a country where the underpinning material conditions for political, social and economic upheavals are firmly rooted and ripe. In line with the above, EDR systems are designed to protect the legality of the electoral process using punitive mechanisms that punish either the person who committed the violation or the person who was responsible for ensuring that the violation did not occur (International IDEA 2010). The penalties are administered using either the electoral administrative law (which defines the punishments), or the electoral criminal law (Marco 2006). By using corrective and/or punitive measures, the EDRS oversees the electoral process, ensuring that elections are held in keeping with the principles of the constitution and/or statute law.

Electoral dispute is an amalgam of election and dispute. A dispute presupposes a disagreement between political actors, people and or groups in a country. An electoral dispute is the climax of the elections process and refers to disagreement between political parties over the conduct and outcome of elections which may sometimes lead to violence (Reilly 2001). Some of the critical factors that culminate in electoral dispute and hence violence include but not restricted to legitimacy of the Elections Management Body (EMB), enfeebled institutional capacity of both the EMB and the judiciary, human capacity deficiency, depleted technical and financial support for rolling out the electoral cycle and lack of support for dispute resolution and management mechanisms.

It should be observed that electoral adjudication occurs where the judiciary of a given country is invoked to decide on an issue involving the elections of that country as opposed to formal or informal alternate dispute resolution

⁵ Bwalya, L. K. The Role of the Judiciary in the effective Resolution of Electoral Disputes in Zambia, p. 15.

⁶ Ibid., p. 5.

⁷ Ibid., p. 6.

⁸ Ibid., p. 2.

mechanisms (Brown 2003). It should be pointed out that judicial adjudication may be invoked at any stage of the electoral processes. In this sense there could be pre-voting adjudication where the courts are invoked to decide on matters emanating from any aspect of the pre-voting processes such as the qualification of a candidate, problems with voters register etc. before the polls or voting (Nkansah 2015). There could also be post-voting adjudication where voting is done, counting and tallying may be done or ongoing, results may have been declared or not, or declared winners may have assumed positions as the case may be and the court is invoked to challenge the election outcome. The challenge could be on any aspect of the electoral process but the main goal of the claim is to have the entire process annulled or modified by the court, or a demand is made for a recount. The basis of the claim may relate to any aspect of the electoral process which is considered to have affected the process and the outcome negatively.⁹

Methodology

This study was purely qualitative and was based on desktop research (literature review) and key informant interviews (virtual and/or telephonic). The research had two levels of data collection and validation of information. This included literature review and content analysis comprising of knowledge products developed by institutions working on elections, elections related Acts/Legislations of the Republic of Sierra Leone, and written reports of the electoral management bodies (PPRC and NEC) such as their annual and activities-based reports. In addition, published reports of election observation missions such as reports from European Union, Commonwealth, African Union, ECOWAS, MRU, and other local based election observation reports on the elections of Sierra Leone were reviewed for an understanding of the effectiveness of DER in Sierra Leone.

Primary data was collected by the researcher through virtual or telephonic interviews with (8) staff of the PPRC, (12) staff of NEC and (2) members of CSOs engaged in elections in Sierra Leone. Interviews were used to gather qualitative information from the above named staff who are directly relevant to the purposes of the study. The interview focused on eliciting experience, stories, and explanations on the effectiveness of EDR mechanisms in the country. The information gathered from interviews was triangulated with data collected from desk review, which informed this article.

Limitation

Restrictions imposed by the government and safety measures put in place to stave off the COVID-19 pandemic limited the researcher to physically engage a wider group of people who have worked on EDR mechanisms in Sierra Leone. The researcher mitigated this limitation by resorting to telephonic and/or virtual calls to solicit information from staff working in the above EMBs and CSO members.

Findings

The Efficacy of the EDRM

The effectiveness or efficacy of electoral dispute resolution, in election parlance, presupposes the maintenance and promotion of the integrity and legitimacy of electoral outcomes. That is the degree to which EDR institutions employ effective methods of communication and engagement with the public, media, and observers and/or whether the EDR institutions have the authority to impose a full range of remedies to restore electoral rights was used as the basis of assessment of the effectiveness of EDRM.

The 1991 Constitution of Sierra Leone and other electoral legal documents reveal that the proceeding of the Court in Sierra Leone is open to the public. The Registrar of the Court is responsible for communicating the Court's decision to the parties involved. The Judiciary service maintains a very active website¹⁰, which is regularly updated with different resources including written judgment on all cases including those related to electoral dispute. It also has an electronic portal for the Court's case management. The website, therefore, provides an important means of communicating with the public, media, observers, and other electoral stakeholders as a means of educating others

⁹ See Lydia A. Nkansah, Dispute Resolution and electoral Justice in Africa: The Way Forward, CODESRIA, Dakar: Senegal, June 2015

¹⁰ See for details <https://www.judiciary.gov.sl/>

on the role of the Court and its activities. However, slander and libel remain criminalized for all persons, regardless of public profile, contrary to international standards. It is therefore perceived that criminal libel law is used to intimidate journalists and the citizens.

The NEC and the PPRC also have Department/Unit/Division within the organisational structure responsible for communication with the public, media, and external bodies. These Units, working closely with IT personnel, are responsible for the development and maintenance of the website that provides public information about activities and other general information regarding the institution. However, the website of both the NEC¹¹ and the PPRC¹² provide very little or no quality information to the public. The website lacks recent information on EMB's activities. For instance, the latest report that can be found on the PPRC website is that of 2012-2013 annual report. There is very limited use of the website as means of communication with the media and external bodies. Even though the website of the NEC has some relevant and very recent information such as questions and answers on commonly asked questions related to elections and its activities, annual reports, and election observation reports of external bodies, and content are generally limited. NEC's website does not provide any information on the complaints received by the NEC and how they are processed or resolved. The Carter Center (2018), remarked that while the lack of capacity of the NEC to maintain an up-to-date, comprehensive website may play a role, the general default seems to be to keep information out of the public domain.

Generally, effectiveness is achieved when the electoral dispute resolution body declares that the electoral action or decision subject to an electoral challenge should be invalidated, annulled, revoked or modified' (International IDEA 2010: 39). The EDR bodies in Sierra Leone have been effective in correcting some irregularities amidst shortcomings with transparency, independence, and impartiality, among others. Despite that fact that losers in many electoral disputes do not ideally accept the outcome, the Court has had to rule and indeed done so in almost all cases, even if such rulings must have been delayed. For instance, the 2020 annual report of the NEC captures 12 cases of electoral disputes that were filed at the High Court challenging the results of the 2018 parliamentary elections. Of the 12 cases, two were ongoing while 10 have been decided. In nine of the 10 cases that were decided the High Court ruled in favour of the petitioners and ordered for the removal of the 1st Respondents as MP of their respective constituencies. In all the cases the 1st Respondents were removed as ordered amidst uproar and upheavals in the Sierra Leone parliament. Also, in one of the nine cases, the 1st Respondents appealed to the Court of Appeal on the decision of the High Court, but the Court of Appeal followed the decision of the High Court.

How Accountable is the EDRM in Sierra Leone?

Sierra Leone, like many nascent democracies in Africa, has some EDRM that are used to resolve electoral disputes. Some of the accountability mechanisms inherent in the EDR system of Sierra Leone is the possibility for a higher Court to review the decision of a lower Court. As discussed before, electoral offences that are ruled by the EOC and the High Court can be appealed to the Court of Appeal. The NEC is also obliged by Section 32 (12) of the 1991 Constitution of Sierra Leone, (Act No 6 of 1991) to 'submit a report on its programme and work at least once a year to the President and the Parliament. As a good practice, the annual reports of the NEC can be found at its website and can be freely accessed by all. This helps ensure oversight through the Executive and Judiciary and by extension the general public. Again, the NEC and the PPRC are subject to external audits.

Interlocutors indicated that the majority of decisions reached by the NEC are not subject to judicial review. The only decisions that can be challenged in court are those pertaining to voter registration, candidate nominations, and election results. Other decisions of the NEC are final. Even those decisions made by the NEC that have a direct impact on electoral rights, such as the ability to run for office, are not subject to judiciary review. Because of this lacuna in the regulatory framework, many areas of election administration are under the final power of an administrative body, with no judicial scrutiny and no recourse to effective legal remedy, which is in violation of international standards and best practices (The Carter Center, 2018: 33).

The decisions of the PPRC and the NEC regarding electoral complaints are sometimes not publicly available. For instance, the PPRC registered many political parties for the 2018 elections, and the party registration process was generally inclusive. However, the PPRC refused to register one political party, the People's Democratic League

¹¹ <https://nec.gov.sl/>

¹² <https://pprc.gov.sl/>

(PDL), a social-democratic movement. PDL submitted an application in August 2016, which was denied more than a year later and the ground for the decision was not made public (The Carter Center, 2018:26). Also, in the 2018 elections, when some parliamentary nominees were challenged in different districts on different grounds, the NEC turn down the challenges on ground of lack of proof. However, the NEC's decisions were not made public at the time (The Carter Center, 2018: 29). Although this might have been done with some peace and security intent, their inability to make the basis of their decision public known weakens general accountability to the public.

Transparency of the EDRM

Transparency presupposes the extent to which EDR judicial proceedings are open to the public, observers and the media and EDR case decisions include a clear, publicly available rationale for the decision taken formed the basis of assessment of the transparency of the Sierra Leonean EDRM. Transparency begins with the accessibility of the physical space where proceedings take place (International IDEA, 2019a). The Constitution of Sierra Leone provides that the proceedings and decisions of the Court including that of the Supreme Court be opened to the Court. While the proceedings of the Court are open to the media and the general public, there are some limitations. For instance, the Afrobarometer survey conducted in 2017 about Sierra Leone's court system found Sierra Leoneans are significantly more likely than most Africans to distrust the courts and to perceive judges and magistrates as corrupt (Afrobarometer, 2017). International standards underscore the need for transparency in electoral bodies to prevent corruption, including meetings of election bodies.

While the NEC regularly engages parties and stakeholders¹³ to respond to their requests, information on its decisions on complaints and appeals cannot be easily traced. For instance, such information is not published on their website (The Carter Center, 2018). At the PPRC, the All Political Parties Association (APPA) exist as a forum fort interaction and collaboration between and among all registered political parties. The election law does not generally provide for promoting transparency of the NEC as there are no requirements in the law for making the NEC's information on electoral dispute publicly available such as publishing information on the NEC's website concerning the complaints that were received, and the rationale for their decision taken. Similarly, in the obligatory annual report, the NEC does not provide any status update on the complaints receive and how they were addressed. This is an obvious limitation as it provides little room for the public to know what steps were taken by the NEC in reaching a decision. By this, the NEC denies itself the opportunity to thoroughly explain to the public its decision-making process on electoral disputes. This is more likely to derail public confidence in the EDR process, including among stakeholders that have lost a particular case (International IDEA, 2019a).

The Fairness of EDRM

The fairness exercised in resolving electoral disputes/complaints is integral tot he integrity and legitimacy nay acceptability of an election. If the rules governing the resolution of election claims are incoherent or do not provide fort effective remedies, or if arbiters are biased or poorly trained, the adjudication process can destabilize governments, undermine public trust anjd engender violence (IFES 2010).

Fairness is central to electoral justice system. International IDEA has variously explored this dimension by posing this question "*Are electoral disputants treated fairly by electoral dispute resolution system (EDRS) institutions*?" The right to a fair and public hearing within a reasonable time, before an independent and "impartial" Court, is upheld within the Sierra Leonean public electoral laws. The law is readily available to the public. A copy of the Public Elections Act 2012 and its abridged version can be purchased at the Government bookshop and the NEC District Offices respectively (NEC, 2018). The Public Elections Act (Act No. 4) was passed in parliament in May 2012 to, among other things, consolidate elections-related legislation into a single document to enhance ease of reference for stakeholders and election administrators. Before the passing of the Public Elections Act, 2012 elections laws relating to technical matters were scattered into various legal documents: e.g. the 1991 Constitution of Sierra Leone, the Local Government Act, 2004, the NEC Act 2002; the Electoral Laws Act, 2002, among others.

The NEC and PPRC undertake periodic public education on some of the provisions in the law. For instance, the NEC's Department of Media and External Relations (MER) do facilitate electoral education through town criers,

¹³ There is the Political Parties Liaison Committee (PPLC) at the NEC, which provides a forum for all political parties to meet and discuss issues relating top election and resolve challenges/disputes arising from them.

radio discussions, and the production of jingles and flyers. Even though this might not have been done in perfection due to constraints with funding, it can be said that this aspect of the law is fair because disputants are aware or are easily kept abreast of key information such as their rights and responsibilities, the dates and times of relevant proceedings and what to expect from the EDR bodies regarding the decision-making process. The electoral laws of Sierra Leone also provide for the right to individuals and or groups to present legal arguments and to be represented by a lawyer of one's choice and the right to be promptly and officially informed of any decision taken.

Fairness is also about ensuring equality before the law (International IDEA, 2019a). Section 8 (2) (a) of the 1991 Constitution of Sierra Leone provides that *every citizen shall have equality of rights, obligations and opportunities before the law and the State shall ensure that every citizen has an equal right and access to all opportunities and benefits based on merit*. However, this might not be the case in reality. Very often, losers of electoral disputes have rejected the outcome of the resolution processes blaming it on unfair play. Therefore, one cannot conclusively say that all individuals are treated fairly. In 2018, a petition case was filed for Constituency 110 in the western Area challenging the validity of the election of the member of Parliament. The petitioner alleged rampant and widespread malpractices, intimidations, and irregularities. She, therefore, requested that the election be declared a nullity and 1st Respondent be denounced and removed as MP elect. The petitioner also sought for an injunction to restrain all statutory authorities from swearing in the 1st Respondent as MP of the Constituency 110 (NEC, 2020: 22). The High Court ordered a rerun of the election, which was to be held on 24th August, 2019, but the was again marred with electoral violence and subsequently cancelled by the Electoral Commission on the grounds of violence and tampering with the secrecy of the ballots. The rerun election could not be held 18th December, 2020.

This gives some impression that the outcome of the petition was not satisfactory to all parties involved. Since fairness is also a question of perception, participants in a court or other adjudicatory proceeding must believe that they were fairly heard, so that they may be more likely to accept the result of the proceeding, even if they are on the losing side (International IDEA, 2019a). In this regard, it can be observed that disputants perceived the Court process as unfair.

How Lawful is the EDRM in Sierra Leone?

Lawfulness has many dimensions and some of them relate to clear and understandable jurisdictions and responsibilities of all EDR, acceptance of decisions of the EDR bodies by disputants who are adversely affected (electoral case 'losers'), the extent to election-related civil and criminal sanctions proportionate to the severity of the offence or violation, and the existence of an alternative electoral dispute resolution mechanisms that operate in a fair manner (International IDEA 2019). The extent to which international obligations regarding electoral dispute resolution are given force in the national law of Sierra Leone was also considered during this study.

There is documentary evidence suggesting that some elements of lawfulness can be identified within the Sierra Leonean EDRM *albeit* others are lacking. For instance, all the EDR bodies and their jurisdictions and responsibilities are clearly stated in the Public Elections Act (2012). An abridged version of the Act is also available for non-legal people to be able to read. This was completed by public education and sensitisations aimed at helping the public to understand the law. The NEC also has a simplified version of the law and other electoral related information published in questions and answer form on its website. There are several electoral dispute related cases, some decided, and others pending that have been pursued by individuals through the relevant bodies. In 2020 alone, there were up to 14 cases that were reported by the NEC in its annual report (NEC, 2020).

The NEC and the PPRC have overlapping responsibilities when it comes to handling election-related complaints. The NEC's mandate is derived from the election law, whereas the PPRC's campaign code of conduct for political parties outlines a procedure for filing complaints with the PPRC. Carter Center 2018 notes that the law, however, is unclear as to what actions the NEC should take in the event that a presidential candidate is disqualified by a court, whether before or after the election. The NEC and the PPRC are also under no legal obligation to send complaints or information on campaign-related electoral offences to law enforcement for investigation and possible prosecution (Carter Center, 2018: 37).

A key test facing the EDRM in Sierra Leone is how electoral stakeholders would accept the decisions of EDR bodies, regardless of whether they have 'won' or 'lost' a particular case. Sierra leone's judiciary has not been fairing on well and there is apparent public mistrust in the courts' ability to handle matters in a fair and timely way, devoid

of corruption and political interference. The President's constitutional authority to appoint members of the judiciary as well as the government's role in overseeing the judiciary, contribute to public distrust of the judiciary, as do the apparent political connections of some judges particularly those serving on high-level courts (Carter Center, 2018). There is also no legal provision on how the acceptance of the decisions of the Court on election disputes can be enforced. Often, it has taken the informal dispute resolution bodies such as the Eminent Persons Group, and the Election Peace and Conflict Mitigation Group and international observers to mediate and persuade the parties at the losing side of the election dispute to accept the outcome.

The Independence of the EDRM

The independence of the EDR bodies was assessed with respect to the extent to which the EDR officials are politically independent in performing their duties; the extent to which the EDR institutions are independent of other state institutions; and whether there are legal provisions for ensuring impartiality or political balance within EDR institutions.

While the constitution provides for an independent judiciary, in practice the courts are prone to interference from the executive branch, particularly in corruption cases. A lack of clear procedures for appointing and dismissing judges leaves those processes vulnerable to abuse. Judicial corruption, poor salaries, and inadequate resources also undermine the courts' autonomy. As revealed by the Afrobarometer survey conducted in 2017 about Sierra Leone's court system, the majority of the citizens have distrust for the Court. According to International IDEA (2010:95) Judicial independence means not only about resolving disputes lawfully or independently of any political pressures that may be brought to bear but also in a timely fashion. On this ground, various opposition parties and independent observers have called into doubt the independence and impartiality of the country's judiciary system as it failed to decide on any of the three cases that was brought before it within the mandatory 30-day in the run up to the 2018 election.

Similarly, the trend can be observed with the High Court case on the parliamentary elections as per the NEC's 2020 annual report. For some of the cases that were filed in the High Court following the 2018 election, decision was not made even as at January 2021. For example, the NEC (2020) reported that in Constituency 039, the Petitioner alleged that massive irregularities and fraud were committed in 25 Polling Stations. He also alleged that the 1st Respondent was seen campaigning on polling day and was also intimidating his supporters. The Petitioner, therefore, requested the election result to be declared a nullity. He also sought an Interim Injunction restraining all statutory authorities from swearing the 1st Respondent as an elected MP. The matter last came up for hearing on 19th November 2019, in the Makeni High Court. It was adjourned to January 2021. The case has, therefore, taken over one year to be resolved. This is contrary to the provisions in the Public Elections Act 2012 for the Court to expedite the determination of electoral disputes.

Dovetailing with the above was the ban by the Sierra Leone Police (SLP) on vehicle movement throughout election day at the end of January, citing concerns about potential election day violence (with exceptions for NEC-accredited vehicles for parties, observers, media outlets, and nongovernmental organizations, as well as commercial and government transportation to transport voters to polling stations). The PMDC filed a case with the High Court on March 1 alleging that the car restriction had not been justified by the police as a necessary security measure and had, therefore, breached the constitutionally guaranteed right to freedom of movement. During a brief hearing that day, the High Court ordered an interim injunction prohibiting the police from disseminating any further information regarding the car ban, as stipulated in the Memorandum of Understanding, until the next day's session. With little opportunity for a substantive hearing, the court rejected the application and set aside the interim injunction, retaining the ban in effect the following day. This resulted in the court denying due process, and its brief written reasoning demonstrated that it failed to fully explore relevant legal concerns, including the question of whether the prohibition violated the Constitution (The Carter Center, 2018: 50).

Is the EDRM Accessible to Citizens?

Accessing any justice system remains a key challenge to dispute avoidance and outright electoral violence. The questions this study explored under accessibility include whether the legal standing requirements provide individuals and other entities whose rights have been injured with the ability to file electoral complaints or challenges; financial

costs associated with filing or responding to a complaint; whether women and men have equal ability to access EDR institutions; and whether members of marginalized groups have the ability to access EDR institutions. The Public Elections Act 2012 makes provision for individuals who feel injured with the electoral process to seek redress through the NEC, the Judiciary, and also the PPRC (whose mandate for receiving complains stem from the Code of Conduct for political parties). There are also numerous instances where these channels for addressing electoral disputes have been used. For instance, in the 2018 elections, three cases were lodged with the Supreme Court in the pre-election period challenging the nominations of some three presidential candidates. There is also no financial cost when filing a complaint except when an appeal is filed.

Beyond the surface of the legal provisions, other glaring factors obstruct access, particularly to the Court. For example, the Afrobarometer survey conducted in 2017 on the Sierra Leonean court system revealed that the country's legal system still has a long way to go before it can offer citizens access to justice in the country. High proportions of Sierra Leoneans distrust the courts and believe that judges and magistrates are corrupt, compared to the general population of Africa. Very few Sierra Leoneans even use the courts. The proportion of citizens who report having contact with the justice system is the sixth lowest among 36 African countries studied in 2014/2015. Citizens who did have contact with the courts reported that they found it difficult to obtain the assistance they required, and nearly two-thirds said they were required to pay a bribe -nearly twice the regional and continental averages. Many people expressed dissatisfaction with long delays, high prices, the intricacies of the legal system, a lack of legal representation, and judges who refused to listen (Afrobarometer, 2017:1). Clearly, this is a kind of limitation that can pose significant hindrance to women, youths and other vulnerable and marginalised groups in accessing the Judiciary on cases related to electoral dispute.

The NEC adopted a disability policy in 2015 to ensure that people with disabilities (PWDs) have the right to vote in elections. The NEC, in partnership with the National Commission for Persons with Disabilities, also assessed PWDs' access to the electoral process, which resulted in recommendations for electoral institutions, political parties, and civil society organizations. With international assistance, NEC engaged district voter education and training officials, all of whom were disabled, to engage with disability groups in the districts, which was a positive step. Although there have been significant improvements, there are still significant limitations for people with disabilities. For example, wheel-chair-bound citizens face difficulties in accessing NEC offices, as well as access to buildings housing law enforcement and the judiciary, which are important institutions in the EDR. There is also a scarcity of voter education opportunities for the deaf and the visually impaired (The Carter Center, 2018: 37)

Conclusion and Recommendations

This paper has offered some insights into the emerging phenomenon of electoral adjudication and electoral dispute resolution mechanisms in Sierra Leone. The idea of instituting an election petition court of elections offences court as opposed to the aggrieved persons resorting to violence is a positive sign in the democratisation process. The aggrieved choose the law as their arbiter and put their hope in the law. Adjudication brings a closure to electoral disputes all things being equal. This practice will facilitate the institutionalisation of democratic succession and entrench the rule of law and constitutionalism. The effective resolution would also mean a review of the work of the electoral management body by making them accountable. Thus, an EMB whose work has come under the scrutiny of the court is likely to improve upon its performance in the future, for such a review is likely to bring out the lapses in the system for possible reform.

From the foregoing, EDR mechanism in Sierra Leone has some very positive elements that has the tendency to safeguard the electoral system and stability at large. There exist EDR systems in the two main EMB albeit shortcomings. the Sierra Leone Constitution and other electoral laws make provisions for litigants/petitioners to access the courts, have a fair hearing and hold the judiciary accountable in many instances. The laws on election should be clear and definite, adequate, and consistent to avoid excessive room for discretion that leads to conflicting interpretation. There is the need for reform on electoral laws.

Ideally, the judiciary should be fair, impartial and ensure due process in the resolution of elections disputes in an expeditious manner. Judicial independence is critical to the electoral process in particular and to promoting stability in a country. It should be observed that judicial independence is enshrined in the Constitutions of Sierra Leone. Yet, the judiciary plagued with corruption, unfair trials, political influence, and resource and capacity problems to handle such electoral disputes effectively. As a result they do not have the confidence and trust of the people. It should be

pointed out that electoral politics have polarised the country so a decision on an electoral dispute is likely to receive mixed responses. In all intents and purposes, the judiciary should rise above parochial party sentiments. Justice must not only be done, but that it should be manifestly and undoubtedly seen to be done is more relevant in Sierra Leone's nascent democracy. Judges should be trained to build capacity for the handling of electoral disputes.

Recommendations

Review the 1991 Constitution of Sierra Leone and other electoral legal framework by considering the recommendations contained in the Justice Cowan Constitutional Review Commission (2017) with the view to address the legal lacunas, ambiguities and to ensure that critical issues relating to electoral violence, human rights, rule of law, women and youth issues are amended and comprehensively addressed.

The Government of Sierra Leone, through the Judiciary and the Electoral Commission (EC), to facilitate the immediate setting up of an Elections Offences and Petitions Court and the enactment of Election Petition Rules for the speedy adjudication of all legal election-related matters.

Provide support (financial, technical) to the EMBs to institutionalize the operations of dispute resolution systems established by the EMBs to serve as effective instruments for electoral dispute resolution in Sierra Leone. Strengthen these groups to operate country-wide and increase their membership at all levels.

Consider amending the Public Elections Act, 2012 and other elections-related Acts to provide legislative certainty for what should happen in the case of disqualification of a presidential candidate during the campaign period with the view to permit the political party to nominate an alternative candidate and reduce the incidence of electoral dispute

Provide support to the government's newly established Independent Commission for Peace and National Cohesion to ensure its impartiality, independence, accountability and transparency in discharging its duties especially in intra and inter-party dispute resolution. A national entity with this purpose has been demonstrated in several other countries in sub-Saharan Africa to be an effective instrument in election violence prevention, overall conflict prevention, and participatory dialogue leading to improved social cohesion.

References

1. Abbink, Jon, and Gerti Hesselting, eds. (1999). *Election Observation and Democratization in Africa*. Basingstoke: Macmillan Press.
2. Afrobarometer, Popular Distrust, Perceptions of Corruption Mark Sierra Leone's Court System (Freetown: Afrobarometer, 2017)
3. Benson G. H. (2021). Electoral Dispute Resolution in Ghana Since 1992: An Assessment of the Role of the Judiciary Arm of State. Prague, Czech Republic: World Conference on Social Science and Humanities.
4. Blanc, J. Aanund H. and Kåre V. (2006). *State Structure and Electoral Systems in Post-Conflict Situations*. Washington, D.C.: International Foundation for Electoral Systems.
5. Brown, M. M. (2003). 'Democratic Governance: Toward a Framework for Sustainable Peace', *Global Governance* 9: 141-6.
6. Diamond, L. (2005). *Squandered Victory: The American Occupation and the Bungled Effort to Bring Democracy to Iraq*. New York: Times Books.
7. Horowitz, Donald. (2001). *The Deadly Ethnic Riot*. Berkeley and Los Angeles: University of California Press.
8. International IDEA (2010). *Electoral Justice: The International IDEA Handbook*. Strömsborg: International IDEA
9. International IDEA (2014). *Electoral Management Design*. Stockholm: International IDEA
10. International IDEA (2016). *Electoral Justice Regulations Around the World: Key findings from International IDEA's global research on electoral dispute-resolution systems*. Strömsborg: International IDEA
11. International IDEA (2019b). *The Global State of Democracy; Addressing the Ills, Reviving the Promise*. Stockholm: International IDEA
12. International IDEA. (2019a). *Electoral Justice System Assessment Guide*. Stockholm: International IDEA
13. International IDEA. (2021). *Towards a Global Index of Electoral Justice*. Strömsborg: International IDEA
14. Large, Judith, and Timothy D. Sisk. (2006). *Democracy, Conflict and Human Security: Pursuing Peace in the 21st Century*. Stockholm: International IDEA.

15. Lijphart, Arend. (2004). 'Constitutional Design for Divided Societies', *Journal of Democracy* (15, 2): 96-109.
16. Marco, Derrick. (2006a). 'IDASA's Support for Non-Violence in the 2003 Elections', in I.O. Albert, Derrick Marco, V. Adetula (ed. 2006) *Conflict Tracking Dossier, Toward the 2007 Elections: Perspectives on the 2003 Elections in Nigeria*, Abuja: IDASA Nigeria, Madol Press Ltd.
17. Marco, Derrick. (2006b). 'The Context and Contents of the Strategic Assessment' in I.O. Albert, Derrick Marco, V. Adetula, eds. *Conflict*
18. Norris, Pippa. (2004). *Electoral Engineering: Voting Rules and Political Behavior*. Cambridge: Cambridge University Press.
19. Parsons T. (1963), "The Concept of Political Power". *The American Philosophical Society* Vol. 107, No. 3, 232-262.
20. Patel, Nandini and Lars Svåsand, eds. (2007). *Government and Politics in Malawi*. Zomba, Malawi: Centre for Social Research (CSR) and Bergen, Norway: Christian Michelsen Institute.
21. Pruitt, Bettye and Philip Thomas. (2007). *Democratic Dialogue: A Handbook for Practitioners*. Stockholm: International IDEA.
22. Reilly, Benjamin. (2007). *Democracy and Diversity: Political Engineering in the Asia-Pacific*. Oxford: Oxford University Press.
23. Reilly, Benjamin (2006). 'Political Engineering and Party Politics in Conflict-Prone Societies', *Democratization* 13 (5): 811-827.
24. Reilly, Benjamin (2004). 'Elections in Post-Conflict Societies' in Edward Newman and Roland Rich (eds.). *The UN Role in Promoting Democracy: Between Ideals and Reality*. Tokyo: United Nations University Press.
25. Reilly, Benjamin. (2003). 'Democratic Validation', in *Contemporary Peacemaking: Conflict, Violence and Peace Processes*, John Darby and Roger MacGinty, eds. London: Palgrave.
26. Reilly, Benjamin. (2003). 'International Electoral Assistance: A Review of Donor Activities and Lessons Learned', The Hague: Netherlands Institute of International Relations 'Clingendael'.
27. Reilly, Benjamin (2002). 'Post-Conflict Elections: Constraints and Dangers', *International Peacekeeping* 9(2): 118-139.
28. Reilly, Benjamin (2001). *Democracy in Divided Societies: Electoral Engineering for Conflict Management*. Cambridge: Cambridge University Press.
29. Reilly, Benjamin and Andrew Reynolds. (2000). 'Electoral Systems and Conflict in Divided Societies', in Paul C. Stern and Daniel Druckman, *International Conflict Resolution after the Cold War*. Washington, D.C.: National Research Council.
30. Reynolds, Andrew, Benjamin Reilly, and Andrew Ellis, et al. (2005). *Electoral System Design: The New International IDEA Handbook*. Stockholm: International IDEA.
31. The Carter Center (2014). *Final Report on 2014 Legislative and Presidential Elections in Tunisia*. Atlanta: The Carter Center.